

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

JACK A. SCHWARTZ,)	
)	
Plaintiff,)	Civil No. 3:01-cv-10084
)	
vs.)	
)	
NEW YORK LIFE INSURANCE)	
COMPANY, a Delaware Corporation)	ORDER	
authorized to do business in Iowa)	
)	
Defendant.)	

Now before the Court is defendant's motion for summary judgment, filed on August 8, 2002.

Plaintiff filed a response on October 3, 2002. The matter is fully submitted.

I. BACKGROUND

The following facts are undisputed or viewed in a light most favorable to plaintiff.

Plaintiff, Jack Schwartz ("Schwartz"), is a lawyer practicing in Iowa and Illinois. He is a trial attorney, specializing in criminal defense work and personal injury cases. As part of his practice, plaintiff interviews clients, corresponds with clients and other attorneys, conducts legal research, travels, and appears in court. *See* Appendix, at 115-120 (Attorney Questionnaire). Plaintiff has earned income from his practice during each of the past seven years.

Defendant, New York Life Insurance Company ("NYL"), issued Premier Disability Income Policy No. H3055261 ("the Policy") to plaintiff. The Policy, effective January 1, 1987, provides a

monthly income benefit of \$1,000 for each month in which the insured suffered from a “disability.” Under the terms of the Policy, “disability” means a “total disability,” which is defined as a condition wherein “the Insured cannot do any of the substantial and material duties of his or her regular job.” Appendix, at 4. “Regular job” is defined as “the occupation in which the Insured is engaged when a disability starts.” *Id.*

Plaintiff began experiencing heart problems in 1995. However, plaintiff did not inform NYL of his medical problems until he filed his Notice of Claim in June 1998. Instead, in 1996, he requested that NYL add a Residual Disability Rider to his Policy. *See* Appendix, at 46-47. NYL issued a Residual Disability Benefit Rider, effective July 1, 1996. The Residual Disability Rider provides benefits for “residual disability,” which is defined as a loss of “income” of at least 20%. Under the Residual Benefit Rider:

The monthly income benefit for residual disability is equal to the monthly income benefit for total disability, multiplied by the loss of income for the calendar month. The loss of income is equal to: prior monthly income minus current income, divided by prior monthly income, with the result expressed as a percent.

Appendix, at 50.¹ Thus, in order to calculate the amount of residual disability benefits under the Residual Benefit Rider, both “prior monthly income” and “current income” must be known.²

¹ In other words, residual benefits equal:
monthly income benefit for total disability x $\frac{(\text{prior monthly income} - \text{current income})}{\text{prior monthly income}}$

² “Prior monthly income” is defined as the greatest of:

(a) the highest average monthly income for any two consecutive years of the most recent five year period during which we paid no benefits under this policy; or

On September 27, 1997, NYL, still unaware of plaintiff's congestive heart failure, reminded him of his option to increase his monthly benefit through purchase of additional benefit riders. On January 21, 1998, plaintiff applied to increase his monthly benefit through purchase of an additional benefit in the amount of \$2,200 per month. NYL issued the (second) Additional Benefit Rider, effective January 1, 1998. The Rider specifically states:

This Benefit Addition Rider and any rider(s) named above will not take effect as of the policy date. Instead, they will take effect on this rider's effective date, shown above. *The additional benefits provided will not apply to any claim which results from an injury which occurs or a sickness which first manifests itself before the effective date of this rider.*

Appendix, at 21 (emphasis added).

On June 23, 1998, plaintiff completed a "Notice of Claim." See Appendix, at 68-70. He listed his disabling sickness as recurring cardiomyopathy and indicated that symptoms first appeared in

-
- (b) the average monthly income for the 12 calendar months immediately preceding the elimination period; or
 - (c) the average monthly income for the 12 calendar months immediately preceding the elimination period, excluding any periods of at least 30 consecutive days of disability.

Appendix, at 51. "Current income" is defined in the Residual Disability Rider as "income received by the Insured during the month for which a monthly income benefit is to be paid." *Id.* at 51. "Income" is defined as "wages, salaries, bonuses, commissions and any other amounts received by the Insured for personal services." *Id.* at 51. In addition:

If the Insured owns any portion of a business or profession, income also means (a) any income received by that business or profession due to the personal services of the Insured, less the Insured's share of normal and usual business expenses; and . . . (c) the Insured's wages, salaries, bonuses, commissions and any other amounts received by the Insured for personal services, before deducting any taxes.

Id.

January 1998. Plaintiff submitted an accompanying letter, dated June 11, 1998, from his cardiologist, Dr. Koh G. Chua. Dr. Chua stated that plaintiff was referred to him for congestive heart failure, and that he has been treating plaintiff since 1995. Appendix, at 69. Unlike plaintiff, who claimed the heart condition began in 1998, Dr. Chua stated that the cardiomyopathy manifested in 1995.

On July 10, 1998, Helen Gianinni, an NYL representative, acknowledged receipt of plaintiff's Notice of Claim. She requested that he complete a more detailed Proof of Claim and submit an Attending Physician's Statement. Gianni also explained to plaintiff that because he continued to work as a trial attorney, he was eligible only for residual disability benefits.

On June 8, 1999, plaintiff sent the completed Proof of Claim documentation to NYL. *See* Appendix, at 74-86. In the Proof of Claim plaintiff contradicted the response he gave in his initial Notice of Claim and admitted that his cardiomyopathy first appeared in July 1995, not January of 1998. *Id.* at 78, 80.

Upon receipt of plaintiff's Proof of Claim, NYL immediately paid retroactive benefits of \$1,800 per month from April 1, 1998 (90 days after the claimed date of disability pursuant to the policy's 90 day elimination period) to June 18, 1999, in the amount of \$26,280. NYL also refunded premiums plaintiff paid since January 1, 1998 in the amount of \$2,052. Plaintiff then received monthly payments of \$1,800 through February 2000. On February 29, 2000, NYL paid plaintiff an additional lump sum benefit of \$13,000 while it continued to investigate his eligibility for benefits under the \$2,200 Additional Benefit Rider. On March 10, 2000, NYL advised plaintiff of his entitlement to an automatic increase of \$300 per month. Plaintiff then received monthly benefits in the amount of \$2,100 from March, 2000 until September 2000, when NYL's claim administrator stopped all payments.

NYL informed plaintiff that payments would be suspended until he could submit information to substantiate his income from the practice of law. After corresponding with plaintiff, the claim administrator concluded that NYL had overpaid him. Plaintiff, on the other hand, believed benefits were owed and demanded the resumption of payments.

In March 2001, plaintiff provided NYL copies of his 1999 tax returns. He submitted a copy of his 2000 tax return to NYL's counsel after filing the present litigation. As of the date of his deposition, plaintiff had not completed his 2001 or 2002 tax returns.

Plaintiff filed the present suit on April 19, 2001. Plaintiff claims that he is entitled to: (1) total disability benefits owed pursuant to the Policy in the amount of \$2,100 per month from October 2000 to the time of trial; (2) monthly benefits owed pursuant to the Additional Benefit Rider he exercised on January 22, 1998, in the amount of \$2,200 per month from January 1998 to the time of trial; (3) benefits owed pursuant to the Residual Disability Rider, effective July 1, 1996; and (4) \$3,000,000 in punitive damages for NYL's bad faith suspension of his benefits in September 2000.

II. APPLICABLE LAW AND DISCUSSION

- Summary Judgment Standard

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he mere

existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "As to materiality, the substantive law will identify which facts are material Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

- Choice of Law

Federal district courts must apply choice-of-law rules of state in which they sit when jurisdiction is based on diversity of citizenship. *Winthrop Res. Corp. v. Stanley Works*, 259 F.3d 901, 904 (8th Cir. 2001). Accordingly, this Court will apply Iowa substantive law, including Iowa's choice of law rules. *Smith v. Gould, Inc.*, 918 F.2d 1361, 1363 (8th Cir. 1990). Iowa uses the most significant relationship test in contract actions. *Cole v. State Auto & Casualty Underwriters*, 296 N.W.2d 779, 781 (Iowa 1980). As plaintiff is an Iowa resident, and the Policy was purchased from defendant's agent in Iowa, Iowa has the most significant relationship to the facts of this case.

- Burden of Proof

In Iowa, insurance policies are a form of written contract. *Carins v. Grinnell Mut. Reins. Co.*, 398 N.W.2d 821, 823 (Iowa 1987). Absent an applicable statute or a clear, overriding public policy, the parties to an insurance policy are free to decide what coverage will be provided. *Walker v. American Family Mut. Ins. Co.*, 340 N.W.2d 599, 601 (Iowa 1983). The burden of proof rests on the insured to prove a claim is covered by the terms of a policy. *Messer v. Washington Nat. Ins. Co.*,

11 N.W.2d 865, 867 (Iowa 1991). The insurer bears the burden of proving any policy exclusion. *Kalell v. Mutual Fire and Auto Ins. Co.*, 471 N.W.2d 865, 867 (Iowa 1991). NYL does not rely on any policy exclusion in this case. Therefore, the burden is on plaintiff to prove he is entitled to the benefits he seeks.

- Total Disability Benefits under the Policy

Plaintiff claims he is entitled to total disability benefits under the Policy, which became effective January 1, 1987. To collect these benefits under the Policy, plaintiff must prove that he “cannot do *any* of the substantial and material duties of his regular job.” Appendix, at 4 (Premier Disability Income Policy) (emphasis added). The undisputed facts in the record show that plaintiff does not qualify for total disability benefits. Since the onset of his heart condition, plaintiff has continued to perform at least some of his substantial and material duties as an attorney. The record shows that he still travels, interviews clients, appears in court, conducts legal research, and corresponds with clients. Although plaintiff does not engage in these activities as frequently as he did prior to the onset of his illness, he nevertheless continues to earn an income from the practice of law. The Court holds that under the plain language of the Policy and the undisputed facts, plaintiff’s present claim for total disability benefits fails as a matter of law.

- 1998 Additional Benefit Rider

Plaintiff next claims he is entitled to monthly benefits owed pursuant to the Additional Benefit Rider he exercised on January 22, 1998. The Additional Benefit Rider states that “[t]he additional benefits provided will not apply to any claim which results from an injury which occurs or a sickness

which first manifests itself before the effective date of this rider.” Appendix, at 21 (Additional Benefit Rider). The Iowa Supreme Court has set forth the following rule for determining when a sickness “first manifests:” “[T]he origin of a sickness or disease within the meaning of a health and accident policy, is that point in time when it is manifest to a person learned in medicine from symptoms or other physical conditions that the illness or disease exists.” *Dirgo v. Associated Hosp. Serv. Inc.*, 210 N.W.2d 647, 650 (Iowa 1973).

The undisputed facts in the record show that plaintiff’s heart condition manifested prior to the effective date of the Additional Benefit Rider he exercised in January 1998. Doctor Chua diagnosed the condition in 1995; plaintiff listed July 1995 as the date of manifestation in his Proof of Claim form; and plaintiff admitted in his deposition that the condition first affected him in 1995. Plaintiff cannot prove that he is entitled to benefits under the Additional Benefit Rider. Therefore, summary judgment is entered in favor of the defendant on this claim.

- Residual Disability Benefits

Plaintiff also claims he is entitled to residual disability benefits pursuant to the Residual Disability Rider he added to the Policy in 1996. Under the terms of the Residual Disability Rider, plaintiff is entitled to some benefits if his loss of income is at least 20%. As previously discussed, plaintiff has yet to submit his 2001 and 2002 tax returns. Thus, he has failed to prove that he is entitled to residual disability benefits for those time periods. In addition, the record contains no facts demonstrating that plaintiff is entitled to benefits greater than \$70,000, the amount defendant has already paid. Summary judgment is granted in favor of defendant on this claim.

- Bad Faith

The Court next turns to plaintiff's claim that defendant acted in bad faith when it suspended plaintiff's benefits in September 2000. In order to sustain his bad faith claim, plaintiff must establish the following elements: "(1) the absence of a reasonable basis for denying the claim, and (2) that the defendant knew or had reason to know that its denial was without a reasonable basis." *Thompson v. Untied States Fidelity & Guaranty Co.*, 559 N.W.2d 288, 291 (Iowa 1997). A reasonable basis exists if the claim for benefits is "fairly debatable" as to either matter of fact or law. *Dolan v. AID Insurance Co.*, 431 N.W.2d 790, 794 (Iowa 1988).

Defendant suspended plaintiff's benefits, because it had questions concerning plaintiff's amount of lost income. When defendant suspended plaintiff's benefits in September 2000, its claim administrator asked plaintiff to submit reliable income data to substantiate the amount of his loss of income, as that data was necessary for determining the appropriate amount of any benefit due. Similar data was required in order to determine any benefits for 2001 and 2002. Plaintiff did not submit his 1999 tax return until March 2001, he did not submit his 2000 tax return until after litigation began, and he has yet to submit his 2001 and 2002 tax returns. Plaintiff's failure to provide defendant with the requested information gave defendant a reasonable basis for suspending his payments.

Defendant also withheld payments to plaintiff, because it doubted whether any benefits were due under the Additional Benefit Rider. As previously discussed in this order, the Court finds that plaintiff is not entitled to disability payments under the Additional Benefit Rider. Defendant's unwillingness to tender those payments was reasonable, as plaintiff's entitlement was, at the very least, "fairly debatable." *See Dolan*, 431 N.W.2d at 794 (holding that an insurer does not act in bad faith by challenging fairly debatable claims).

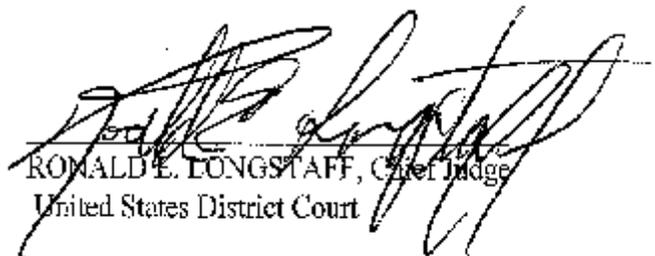
The Court holds that plaintiff failed to show the absence of a reasonable basis for the suspension of plaintiff's disability benefits and the denial of additional benefits pursuant to the Addition Benefit Rider. Summary judgment is entered in favor of defendant on plaintiff's bad faith claim.

III. CONCLUSION

Viewing the facts in a light most favorable to plaintiff, the Court finds that plaintiff has failed to generate a material issue of fact with respect to the following claims: (1) total disability benefits owed pursuant to the Policy; (2) monthly benefits owed pursuant to the Additional Benefit Rider he exercised on January 22, 1998; (3) benefits owed pursuant to the Residual Disability Rider, effective July 1, 1996; and (4) punitive damages for NYL's alleged bad faith suspension of his benefits. The Clerk of Court shall enter summary judgment in favor of defendant on each of plaintiff's claims.

IT IS SO ORDERED

Dated this 5th day of February, 2003.


RONALD E. LONGSTAFF, Chief Judge
United States District Court

