

IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

BENJAMIN T. BROWN,
Plaintiff,

CASE NO.

v.

NORTHWESTERN MUTUAL
LIFE INSURANCE COMPANY;
A foreign corporation.

Defendant.

COMPLAINT FOR DISABILITY INSURANCE BENEFITS

COMES NOW, Plaintiff, Benjamin T. Brown, M.D., by and through undersigned counsel hereby files his Complaint against the Defendant, NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY and says:

JURISDICTION & VENUE

1. This is an action for damages in excess of Fifteen thousand Dollars (\$15,000.00), exclusive of interest and costs.
2. Plaintiff, Benjamin T. Brown (hereinafter “Dr. Brown”), was at all times material hereto a citizen of Florida and a resident of Volusia County, Florida.
3. Defendant Northwestern Mutual Life Insurance Company (hereinafter “Northwestern Mutual”) is a foreign corporation for profit doing business in Florida, engaged in the sale of disability income insurance policies.
4. Northwestern Mutual issued and delivered the disability income insurance policies at issue (hereinafter the “policies”), policy number D117147 (attached

hereto as “Exhibit A”) and policy number D064473 (attached hereto as “Exhibit B”) to Dr. Brown.

5. Dr. Brown is a Genitourinary Surgeon and performed all the material and substantial duties of his occupation covered by the policies in Volusia County, Florida. Defendant Northwestern Mutual Life Insurance Company (hereinafter “Northwestern Mutual”) is the insurer and administrator of the policies.
6. This matter is governed by Florida law where the policies were issued and delivered in the state of Florida.

FACTS

7. There was in full force and effect two disability income insurance policies (the “policies”), numbered D117147 and D064473, for income disability benefits constituting a binding contract of insurance between the parties.
8. Northwestern Mutual issued policy number D117147 to Dr. Brown on December 15, 1977. Northwestern Mutual issued policy number D064473 to Dr. Brown on January 6, 1975. Issuance of the policies was in consideration of the premiums paid by the Plaintiff.
9. The policies are covered by the applicable provisions of Florida statutes on insurance in effect on the date the policies were issued or renewed including, but not limited to:
 - a. F.S. §627.409;
 - b. F.S. §627.426;
 - c. F.S. §626.9541;
 - d. F.S. §624.155.

10. The purpose of policy number D117147 and policy number D064473 (hereinafter the “policies”) was to compensate Dr. Brown a monthly benefit, up to the first policy anniversary after age 65, in the event he became disabled from his occupation as a Genitourinary Surgeon due to sickness, as defined in the policy.

11. According to the provision of the policies, Total Disability is defined as:

***Definition of Total Disability.** Total Disability is the incapacity of the Insured, caused by accident or sickness, to engage in an occupation. Until the policy anniversary next following the Insured’s 65th birthday, or until the date benefits for disability have been paid during a continuous period of disability under this policy for five years, whichever is later, occupation means the occupation of the Insured at the time disability began; thereafter, if benefits continue to be payable under this policy, it means any occupation for which he is reasonably fitted by education, training or experience, with due regard to his vocation and earnings prior to disability.*

12. Dr. Brown is employed by Atlantic Urological Associates as a full-time Genitourinary Surgeon where, before becoming disabled, he performed open surgical urological procedures, including pre-operative preparation and post-operative follow-up care, and was on-call. Dr. Brown is also responsible for a clinical practice, which includes performing non-open procedures and patient evaluations.

13. In June of 2004, Dr. Brown began to experience numbness and pain in his right shoulder area. Dr. Brown has been diagnosed with a herniated cervical disc for which he underwent surgery on September 19, 2004. His medical condition causes a number of disabling symptoms including, but not limited to, a loss of tactile sensation in his index finger of his dominant right hand. Due to the effects of these conditions, Dr. Brown has been unable to perform open surgical procedures, and therefore, also cannot be on-call. Dr. Brown is totally disabled

from his occupation as a Genitourinary Surgeon in accordance with the definitions of Total Disability under the terms of the policies.

14. Since the onset of his disabling condition, Dr. Brown has been unable to perform open surgical urological procedures as well as on-call duties. Dr. Brown has been unable to perform the material and substantial duties of a Genitourinary Surgeon at all times material to this action; he is totally disabled under the terms of the policies.
15. In accordance with the procedures set forth by the policies, Dr. Brown notified the Defendant that he was disabled.
16. Dr. Brown's treating physicians have communicated to the Defendant that Dr. Brown is totally disabled from his occupation.
17. Defendant only evaluated and reviewed Dr. Brown's claim for Proportionate Disability Benefits. Defendant deemed Dr. Brown to be partially disabled and approved his claim for proportionate benefits despite the fact that Dr. Brown never presented a claim for proportionate benefits.
18. In a letter dated September 20, 2006, counsel for Dr. Brown informed the Defendant that he was assisting Dr. Brown in his claim for Total Disability benefits.
19. In a letter dated July 27, 2007, Defendant informed Dr. Brown that his claim for disability benefits was closed.
20. In approving Dr. Brown's claim for Proportionate Disability benefits and without ever conducting a review for Total Disability benefits, the Defendant has ignored the medical documentation and disregarded the duties of Plaintiff's occupation as

a surgeon, and thereby failed to recognize that he is totally disabled from his occupation as a surgeon.

21. Plaintiff has been required to retain an attorney to enforce policy benefits and is entitled to reasonable attorney's fees pursuant to Florida Statute §627.428.

BREACH OF CONTRACT

The Plaintiff realleges paragraphs 1 through 21 of this complaint and says:

22. The Plaintiff has suffered and continues to suffer from a disability as defined in the policies issued by the Defendant. The Plaintiff's disability causes him to be unable to perform the duties of a Genitourinary Surgeon and he is under the regular care of a physician.
23. The Plaintiff has complied with all provisions and conditions precedent prior to filing suit.
24. The Defendant, under the terms of its contract of insurance, is indebted to the Plaintiff for monthly benefits plus interest, commencing on or about August 1, 2004, for total disability benefits, and to pay him benefits, as they come due, up to the first policy anniversary after age 65.
25. The Defendant has failed and refused to honor its obligations under the policies of insurance issued to the Plaintiff.

WHEREFORE, Plaintiff, Benjamin T. Brown, demands judgment against Defendant, Northwestern Mutual Life Insurance Company, for all contractual benefits, pre-judgment interest, paid premiums since the date of disability, costs and attorney's fees pursuant to F.S. §627.428 and such further relief this Court

deems just under the circumstances. Plaintiff demands jury trial on all issues so triable.

Respectfully submitted this ____ day of November, 2007.

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BY: _____
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