

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
ORLANDO DIVISION

FREDERICK FREEMAN,
Plaintiff,

CASE NO.

v.

MONARCH LIFE INSURANCE COMPANY;
A foreign corporation.

Defendant.

COMPLAINT FOR DISABILITY INSURANCE BENEFITS

COMES NOW, Plaintiff, Frederick Freeman, M.D., by and through undersigned counsel hereby files his Complaint against the Defendant, Monarch Life Insurance Company, and says:

JURISDICTION & VENUE

1. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. 1332, inasmuch as Plaintiff is a citizen of Florida, Defendant is a foreign corporation conducting business in Florida, and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.
2. Plaintiff, Frederick Freeman (hereinafter "Dr. Freeman"), was a citizen of Brevard County, Florida when the disability income insurance policy (the "policy") at issue, policy number 2022412 (attached hereto as "Exhibit A") was issued and delivered to him.
3. Dr. Freeman is an Otolaryngologist, and performed all the material and substantial duties of his occupation covered by the policy in Brevard County, Florida.

4. Defendant Monarch Life Insurance Company (hereinafter “Monarch”) is the insurer and administrator of the policy at issue. The Defendant is a foreign corporation for profit doing business in Florida.
5. This matter is governed by Florida Law where the policy was issued and delivered in the state of Florida.

FACTS

6. There was in full force and effect a disability income insurance policy, policy number 2022412, for income disability benefits constituting a binding contract of insurance between the parties.
7. Monarch issued the policy to Dr. Freeman on March 19, 1990. Monarch is the insurer and administrator of the policy.
8. Issuance of the policy was in consideration of the premiums paid by the Plaintiff and the policy was and is enforceable in the state of Florida where it was issued and delivered.
9. The policy is covered by the applicable provisions of Florida statutes on insurance in effect on the date the policy was 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 the policy was to compensate Dr. Freeman a monthly benefit, for the duration of his lifetime, in the event he became disabled from his occupation due to injury or sickness.
11. According to the provision of the policy, total disability is defined as:

Total Disability means that because of Injury or Sickness:

- 1. You cannot perform the substantial and material duties of Your regular occupation; and*
- 2. You are receiving care by a Physician which is appropriate for the condition causing Your Disability. You need not to be under a physician's care on a regular basis if you can show that further recovery is not expected.*

12. Dr. Freeman is employed by Olser Medical as a full-time Otolaryngologist where, prior to his disability, he specialized in ear, nose, and throat surgery. Dr. Freeman is also responsible for a clinical practice.

13. On December 28th, 2005, Dr. Freeman suffered a retinal tear in his right eye. Dr. Freeman was subsequently seen by his physician and diagnosed with a retinal tear, posterior vitreous detachment in both eyes, with very extensive vitreous strands, and opacities in the left eye. His medical condition causes a number of disabling symptoms, including, but not limited to, a disabling glare in his vision and a loss of 20/20 vision in the right eye. Dr. Freeman has been unable to perform surgeries due to the effects of these conditions, and his physician has concluded that these abnormalities have made it “impossible for Dr. Freeman to have binocular vision”, and, has recommended he “cease his surgical activities”. Dr. Freeman is totally disabled from his occupation as an Otolaryngologist in accordance with the definitions of Total Disability under the terms of the policy.

14. Dr. Freeman ceased performing surgeries in June 2006. Dr. Freeman has been unable to perform the material and substantial duties of an Otolaryngologist at all times material to this action; he is totally disabled under the terms of the policy.

15. In accordance with the procedures set forth by the policy, Dr. Freeman notified the Defendant that he was disabled.

16. Dr. Freeman's treating physicians has consistently and clearly communicated to the

17. In a letter dated February 9, 2007, Defendant denied Dr. Freeman's claim for long-term Total Disability benefits.

18. In denying Dr. Freeman's claim for Total Disability benefits, the Defendant ignored the opinions of Dr. Bloom's treating physicians and failed to acknowledge he was totally disabled from his occupation as an Otolaryngologist.

19. 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 19 of this complaint and says:

20. The Plaintiff has suffered and continues to suffer from a disability as defined in the policy issued by the Defendant. The Plaintiff's disability renders him unable to perform the duties of an Otolaryngologist.

21. The Plaintiff has complied with all provisions and conditions precedent prior to filing suit.

22. The Defendant, under the terms of its contract of insurance, is indebted to the Plaintiff for monthly benefits plus interest, commencing on or about September 10, 2006, for total disability benefits, and to pay him benefits, as they come due, for the duration of his lifetime.

23. The Defendant has failed and refused to honor its obligations under the policy of insurance issued to the Plaintiff.

WHEREFORE, Plaintiff, Frederick Freeman, demands judgment against Defendant, Trustmark 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.