

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

GARY McVAY,

Plaintiff,

Case No.:

v.

LIFE INSURANCE COMPANY
OF NORTH AMERICA.

Defendant.

COMPLAINT

Plaintiff sues the Defendant and says:

I. JURISDICTION AND VENUE

1. Plaintiff's claims are filed pursuant to 29 U.S.C. § 1001, *et seq.* (ERISA).

Venue and jurisdiction are, therefore, proper pursuant to 29 U.S.C. § 1132.

2. More specifically, Defendant does business in Florida, therefore jurisdiction and venue are proper pursuant to 29 U.S.C. § 1132 (e)(2).

II. PARTIES

3. Plaintiff, Gary McVay, is a resident of Miami-Dade, Florida. Defendant, Life Insurance Company of North America (hereinafter "LINA") is a foreign corporation doing business in Florida. LINA is the insurer and administrator of the long-term disability plan at issue in this cause.

III. FACTS

4. At all times material to this action there was in full force and effect an insurance plan for long-term income disability benefits ("plan") constituting a binding contract of insurance between the parties.

6. The purpose of the plan was to provide Mr. McVay a percentage of his salary in the event that he became disabled.

7. Mr. McVay was employed by Grant Thornton, LLP as a Manager and was an eligible plan participant of the plan at all times material to this action.

8. Mr. McVay suffers from numerous disabling conditions as the result of an acute medical incident on April 16, 2005, which required surgical repair of the mitral valve on April 29, 2005.

9. Mr. McVay has been unable to perform the duties of his occupation, or any other occupation, at all times material to this claim; he is disabled under the terms of the plan.

10. In recognition of Mr. McVay's total disability, Mr. McVay was paid short-term disability benefits by Grant Thornton's Short-Term Disability Plan.

11. In accordance with the procedures established by the plan, Mr. McVay notified the Defendant that he was disabled under the terms of the plan.

12. Mr. McVay's treating physicians have consistently communicated to the Defendant that Mr. McVay is totally disabled.

13. In a letter dated August 17, 2005, Defendant informed Mr. McVay that his application for long-term disability benefits was denied. The sole premise offered by the Defendant for denying Mr. McVay's long-term disability benefits was that Mr. McVay's disability was "caused or contributed by a Pre-existing condition".

14. Mr. McVay appealed the Defendant's decision to deny his claim for long-term disability benefits in a letter dated December 2, 2005. In that letter, Mr. McVay

explained that his doctors deem his medical condition to be the result of an acute medical incident and not a pre-existing condition.

15. Mr. McVay's treating physicians have communicated to the Defendant that Mr. McVay's medical condition is the result of an acute medical incident and not a pre-existing condition.

16. In a letter dated February 3, 2006, the Defendant upheld its decision to deny Mr. McVay's claim for long-term disability benefits without seeking any clarification from Mr. McVay's treating physicians or doing any investigating beyond the unsupported opinions of the doctors hired by the Defendant.

17. Despite Mr. McVay's permanent total disability, documented by voluminous objective medical records that demonstrated he was unable to perform the duties of any occupation, the Defendant upheld the decision denying Mr. McVay's long-term benefits in a letter dated July 13, 2006. Mr. McVay exhausted his administrative remedies under ERISA.

18. Mr. McVay filed his claim as soon as possible and followed all reasonable procedures established by the Defendant.

19. In making the decision to deny Mr. McVay's long-term disability benefits, the Defendant employed a tactic of evaluating claimants' illnesses disjointedly, consciously ignoring the comorbidity of claimants' diseases in order to avoid payment of disability benefits.

20. The decision to deny Mr. McVay long-term disability benefits was arbitrarily and capriciously made by the Defendant and was based upon a company policy of the

Defendant to deny all claims to save money and extort favorable lump settlements to remove claimants from the company's books.

21. The denial of Mr. McVay's claim was a breach of the terms of the long-term plan under which the Plaintiff was covered and a breach of the Defendant's fiduciary responsibilities owed to the Plaintiff.

22. In denying the Plaintiff's claim, the Defendant is guilty of bad faith and has caused the Plaintiff unnecessary trouble, expense, and emotional distress. Moreover, the Defendant's actions were intentional, willful, malicious, in bad faith, and reflect an entire want of care, which raises the presumption of conscience indifference to the consequences of the acts of the Defendant, especially in light of its inherent conflict of interest. The actions of the Defendant were done with the specific intent to harm the Plaintiff, Gary McVay.

IV. COUNT I: PLAN BENEFITS

Plaintiff incorporates the allegations contained in Paragraphs 1 through 22 as if fully stated herein and says further that:

23. Plaintiff is entitled to certain benefits of the plan consisting of past long-term disability benefits including prejudgment interest, retroactive to the day benefits were terminated, pursuant to 29 U.S.C. §1132(a)(1)(B).

24. Plaintiff is entitled to the benefits identified herein because:

- a. the benefits are permitted benefits under the plan;
- b. Plaintiff has satisfied all conditions to be eligible to receive the benefits;

- c. Plaintiff has not waived or otherwise relinquished his entitlements to the benefits.

25. The Defendant has refused to pay the benefits sought by the Plaintiff, ignoring the medical records and clear opinions of the physicians who have personally and continuously treated the Plaintiff.

V. COUNT II: OTHER EQUITABLE RELIEF

Plaintiff incorporates the allegations contained in Paragraphs 1 through 25 as if fully stated herein and says further that:

26. To the extent that the Defendant violated any provisions of Subchapter I of Title 29, Chapter 18 of the United States Code, the Plaintiff is entitled to appropriate equitable relief pursuant to 29 U.S.C. §1132(a)(3)(B) including but not limited to prejudgment interest on past due disability benefits.

VI. COUNT III: ATTORNEY'S FEES

Plaintiff incorporates the allegations contained in Paragraphs 1 through 26 as if fully stated herein and says further that:

27. To the extent that the Defendant violated any provisions of Subchapter I of Title 29, Chapter 18 of the United States Code, the Plaintiff is entitled to reasonable attorney's fees and costs of this action pursuant to 29 U.S.C. §1132(g)(1).

V. RELIEF REQUESTED

Plaintiff incorporates the allegations contained in Paragraph 1 through 27 as if fully stated herein and says further that:

28. As a result of the acts and/or omissions of the Defendant as alleged herein, the Defendant owes the Plaintiff unpaid long-term disability benefits, plus interest and/or

the Plaintiff is entitled to appropriate equitable relief as a result of the acts and/or omissions of the Defendant.

29. The Defendant is also liable for the Plaintiff's attorney's fees and the costs of litigation in an amount to be proven at trial.

30. The Defendant is also liable to place the Plaintiff in the position he would have enjoyed under the plan had he not been wrongfully denied benefits by the Defendant.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Gary McVay, prays for a judgment against the Defendant for the relief as plead herein and for such other equitable relief as this Honorable Court deems just and proper.

Respectfully submitted this ____ day of November, 2007.

WagarFeit
Counsel for Plaintiff
3250 Mary Street, Suite 302
Coconut Grove, FL 33133
(305) 443-7772
(305) 443-1969 (fax)

BY: _____
KIRK W.B. WAGAR
FL Bar No. 994936