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INSURANCE LAW BULLETIN

Re: New Jersey District Court Dismisses Putative Nationwide
Class Action Filed By Term Life Insurance Policyholder

The United States District Court for the District of New Jersey recently dismissed a class action complaint filed against a life insurer on behalf of a purported nationwide class of life insurance policyholders asserting claims for breach of contract and of the implied duty of good faith and fair dealing.

The complaint alleged the insurer failed to “effectuate” a premium withdrawal, failed to provide notice of termination of coverage, and “wrongfully” refused to reinstate a term life insurance policy. The insurer moved to dismiss arguing the complaint failed to allege payment of the premiums or compliance with the reinstatement process. The insurer further argued the policy did not require notice of termination and the implied duty of good faith could not be construed to require notice.

The court dismissed the breach of contract claim because the complaint failed to allege that the bank account from which pre-authorized premium payments were deducted remained open and with sufficient funds to pay the premiums due. The court further found the complaint failed to allege compliance with the reinstatement process set forth in the policy. Finally, the court found the duty of good faith and fair dealing does not impose a unilateral obligation on an insurer to send contractual notices not called for in the insurance contract.

If you have any questions or would like a copy of the decision, then please contact Bryan D. Bolton at 215.399.5772 or bbolton@fblaw.com or Amy Strachan at 215.399.5780 or astrachan@fblaw.com.

January 31, 2007
2007-2

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

	:	
MARVIN COHEN, on behalf of	:	Hon. Joseph H. Rodriguez
himself and all others similarly situated,	:	
	:	No. 1:06-CV-2122-JHR-AMD
Plaintiff,	:	
	:	
v.	:	
	:	
CHASE INSURANCE LIFE AND	:	
ANNUITY COMPANY, formerly known as	:	<u>OPINION</u> and <u>ORDER</u>
FEDERAL KEMPER LIFE ASSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	
	:	

RODRIGUEZ, Senior District Judge:

This matter comes before the Court on Defendant’s, Chase Insurance Life and Annuity Company (“Chase Insurance”), Motion to Dismiss Amended Complaint of Plaintiff, Marvin Cohen, pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons discussed herein, the Court will grant Chase Insurance’s Motion to Dismiss.

I. Factual Background

To understand the context of the claims against Chase Insurance, it is necessary to briefly review the underlying allegations between Plaintiff and Defendant. Plaintiff alleges he was the owner and insured under a term life insurance policy (the “Policy”) issued by Chase Insurance with an effective date of January 5, 1999. The Policy issued states that the promises in the Policy were in consideration of the premiums on the Policy date. The Policy does not provide for any

type of notice to be provided by Chase Insurance regarding either the Plaintiff's obligation or failure to pay premiums. The Policy explains that premium payments are due in advance at the start of each billing period. Moreover, the Policy explicitly states on the cover page that the Policy is a legal contract between the insured and the insurer.

The Policy states that there is a grace period of 31 days for payment of each premium. The Policy further provides that coverage would "continue in force during the grace period," but "[i]f the premium remains unpaid at the end of the grace period, coverage will cease." (See Ex. B at p. 8.)

The Policy also explains the reinstatement process. "Reinstatement means to restore this policy to a normal in force status after it has gone into default because a premium due was not paid before the end of the grace period." (Id. at p. 8) The Policy may be reinstated if Chase Insurance receives:

1. a request to do so: a. prior to the Expiry date and the death of the insured, and b. within 3 years after the due date of the unpaid premium;
2. due proof that the insured is insurable at the rate class in effect as of the date of premium default[;]
3. payment of the premium from the date we agree to reinstate the policy to the next premium due date; and
4. the premium due for any coverage provided under the Grace Period.

(Id.)

The Policy gave Plaintiff the option of having his preauthorized payments withdrawn from his bank account, and he chose this method of payment. Plaintiff alleges he learned that Chase Insurance could not "effectuate" the preauthorized premium payment withdrawals from his bank account when he contacted Chase about a separate matter. He claims that Chase Insurance "unilaterally and without any notice or opportunity to cure any perceived defect

cancel[ed] the Policy and then refus[ed] to reinstate the Policy under the terms of the Policy.”

(See Ex. A at ¶ 14.) Finally, when Plaintiff inquired about how to have the Policy reinstated, he was told that it would cost approximately \$5,000 to reinstate. (See Ex. A at ¶ 11.)

II. Discussion

A. Standard of Review

A Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted must be denied “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A district court must accept any and all reasonable inferences derived from those facts. Glenside West Corp. v. Exxon Co., U.S.A., Div. of Exxon Corp., 761 F. Supp. 1100, 1107 (D.N.J. 1991). Further, the court must view all allegations in the Complaint in the light most favorable to the plaintiff. See Scheuer, 416 U.S. at 236; Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994).

It is not necessary for the movant to plead evidence, and it is not necessary to plead the facts that serve as the basis for the claim. Bogosian v. Gulf Oil Corp., 561 F.2d 434, 446 (3d Cir. 1977). The question before the court is not whether movants will ultimately prevail; rather, it is whether they can prove any set of facts in support of their claims that would entitle them to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Therefore, in deciding a motion to dismiss, a court should look to the face of the pleadings and decide whether, taking all of the allegations of fact as true and construing them in a light most favorable to the non-movant, the allegations state a legal claim. Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). Only the allegations in the complaint, matters of public record, orders, and exhibits attached to the

complaint, are taken into consideration. Chester County Intermediate Unit v. Pennsylvania Blue Shield, 896 F.2d 808, 812 (3d Cir. 1990).

B. The Parties' Arguments

Chase Insurance argues that Plaintiff has failed to state a claim for breach of contract, because: (i) He fails to allege he paid the premiums due to keep the Policy in force, (ii) the Policy does not require Chase Insurance to provide premium notices, grace period notices, or notices of cessation of coverage, (iii) the Policy has no cure period beyond the grace period, and (iv) Plaintiff fails to allege he performed the conditions precedent necessary to reinstate the Policy. (Chase Insurance Br. at 6-10.) Additionally, Chase Insurance argues that Plaintiff's claim for breach of the implied duty of good faith and fair dealing should be dismissed because: (i) the duty cannot alter the Policy terms agreed to by the parties, and (ii) the conclusory allegation of bad faith is insufficient to sustain a claim for breach of the implied duty of good faith and fair dealing.

Conversely, Plaintiff claims that Chase Insurance violated New Jersey law by failing to provide notice of cancellation of the Policy. In addition, Plaintiff claims that: (i) he has set forth allegations to state a valid breach of contract claim, (ii) Chase Insurance violated New Jersey law and breached the terms of the contract by failing to provide a grace period notice, and (iii) Chase Insurance breached the contract by refusing to reinstate the Policy according to the terms required by New Jersey law. Finally, Plaintiff alleges that Chase Insurance breached its duty of good faith and fair dealing.

C. Breach of Contract Claim

Plaintiff purports to state a claim for breach of contract. The amended complaint alleges that Chase Insurance should have provided premium notices, as well as an opportunity to cure, and wrongfully refused to reinstate the Policy.

Under New Jersey law, “a party alleging a breach of contract satisfies its pleading requirement if it alleges (1) a contract; (2) a breach of that contract; (3) damages flowing therefrom; and (4) that the party performed its own contractual duties.” Video Pipeline, Inc. v. Buena Vista Home Entm’t, Inc., 210 F. Supp. 2d 552, 561 (D.N.J. 2002), aff’d, 342 F.3d 191 (2003), cert. denied, 540 U.S. 1178 (2004).

The amended complaint purports to allege two separate breaches of contract. First, Plaintiff claims that Chase Insurance unilaterally terminated the Policy without providing notice. (See Ex. A at ¶ 10.) Second, Plaintiff asserts that Chase Insurance refused to reinstate the Policy. (Id. at ¶ 11.) The amended complaint, however, fails to state a claim for breach of contract under either theory.

Regarding the first claim of unilateral termination of the Policy without notice. The amended complaint fails to allege that the preauthorized bank account remained open and with sufficient funds to pay the Policy premiums due to Chase Insurance. Plaintiff also fails to allege that the inability to “effectuate” the withdrawals was due to an error by Chase Insurance. In addition, Plaintiff does not allege he paid the premiums due to keep the Policy in force. Finally, the Policy does not require Chase Insurance to provide premium notices, grace period notices, or notices of cessation of coverage.

In his response to Defendant’s motion to dismiss, Plaintiff also alleges that Chase

Insurance violated New Jersey law by failing to provide him notice. However, New Jersey law does not require premium notices, a grace period notice, or notice of cancellation. Furthermore, the New Jersey statutes and Administrative Code Provision cited by Plaintiff are inapplicable to the Policy.

Second, Plaintiff asserts that Chase Insurance refused to reinstate the Policy. However, he did not allege that he complied with the Policy conditions for reinstatement. Although the Policy requires a request for reinstatement, payment of premiums, and due proof of insurability under the approved rate, the amended complaint and response fail to allege that he performed any of these conditions precedent to reinstatement. Instead, he simply alleges he inquired about how to have the Policy reinstated and was told that it would cost approximately \$5,000 to do so. Finally, the reinstatement provision contained in the Policy is essentially verbatim of N.J. Stat. Ann. § 17B:25-9, so Plaintiff's claim that the Policy violated New Jersey law is unfounded.

The existence of a duty is a question of law, and it may be decided by the Court in a motion to dismiss. However, Plaintiff can prove no set of facts in support of a claim for breach of contract. In order to have an actionable breach of contract claim against Chase Insurance Plaintiff must show the existence of a breach or the performance of his own contractual duties.

D. Breach of Implied Duty of Good Faith and Fair Dealing Claim

Plaintiff purports to state a claim for breach of the implied duty of good faith and fair dealing and argues that the duty required Chase Insurance to send premium notices, premium default notices, and grace period notices (See Ex. A at ¶¶ 10, 21). In addition, he claims that Chase Insurance acted "wrongfully" by not reinstating the Policy.

It does not appear that any court interpreting New Jersey law has extended the duty of

good faith and fair dealing to create a unilateral obligation to send contractual notices not called for in an insurance contract. The duty of good faith and fair dealing does not extend to modify the express contractual terms agreed upon by the parties. Glenfed Fin. Corp. v. Penick Corp., 276 N.J. Super. 163, 175, 647 A.2d 852, 857 (N.J. Super. Ct. App. Div. 1994). Similarly, the implied duty does not impose a cure period different from or in addition to the grace period.

The law recognizes that a breach of the implied duty of good faith and fair dealing is not found where there are no claims from which it could be inferred that a defendant acted with bad motive or intent. See, e.g., Elliot & Frantz v. Ingersoll-Rand Co., No. 05-2403, 2006 U.S. App. LEXIS 20588 at *44 (3d Cir. Aug. 11, 2006). Plaintiff claims Chase Insurance acted “wrongfully” by not reinstating the Policy, notwithstanding the fact that he never requested reinstatement or complied with the other conditions precedent to reinstatement. Furthermore, New Jersey precedent supports the conclusion that Plaintiff has failed to state a claim for breach of the implied duty of good faith and fair dealing. Therefore, Chase Insurance’s motion to dismiss Mr. Cohen’s amended complaint is granted.

III. Conclusion

For the reasons set forth above, Defendant Chase Insurance Life and Annuity Company, Motion to Dismiss is granted.

/S/ Joseph H. Rodriguez
JOSEPH H. RODRIGUEZ
United States District Judge