

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
BROWARD DIVISION

JOHN ZALEWSKI,

Plaintiff,

Case No.:

v.

MICROSOFT CORPORATION,

Defendant.

COMPLAINT

COMES NOW, Plaintiff, John Zalewski, by and through undersigned counsel hereby files his Complaint against the Defendant, MICROSOFT CORPORATION 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.

II. PARTIES

2. Plaintiff, John Zalewski, is a resident of Oakland Park, Florida. Defendant, Microsoft Corporation (hereinafter "Microsoft") is a foreign corporation. Microsoft is the insurer and administrator for the short-term disability plan at issue in this cause.

III. FACTS

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

4. The purpose of the short-term plan was to provide Mr. Zalewski short-term disability benefits in the event that he became disabled.

6. Mr. Zalewski was employed by Microsoft and was an eligible plan participant of the short-term plan at all times material to this action.

7. Mr. Zalewski suffers from numerous disabling conditions, including but not limited to, anticardiolipin antibody syndrome. The effects of Mr. Zalewski's medical conditions prevent him from performing the duties of his own and any occupation.

8. Mr. Zalewski 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 short-term plan.

9. In accordance with the procedures established by the short-term plan, Mr. Zalewski notified the Defendant that he was disabled under the terms of the plan and his treating physicians have consistently communicated to the Defendant that Mr. Zalewski is totally disabled.

10. Mr. Zalewski has been found disabled by the Social Security Administration and receives Social Security Disability Income benefits.

11. In recognition of Mr. Zalewski's total disability, Defendant Microsoft approved Mr. Zalewski's claim and paid Mr. Zalewski short-term disability benefits effective January 14, 2005.

12. In a letter dated May 3, 2005, Defendant Microsoft informed Mr. Zalewski that his short-term disability benefits were terminated effective May 3, 2005. The sole premise offered by Defendant Microsoft for terminating Mr. Zalewski's benefits was that his position was "eliminated" due to "reorganization" and therefore he was no longer eligible for short-term disability benefits. In actuality, Mr. Zalewski's position still exists and was simply relocated.

13. It was futile for Mr. Zalewski to exhaust his administrative remedies under ERISA where Microsoft terminated Mr. Zalewski for retaliatory reasons and to prevent him from receiving benefits under the Plan.

14. In making the decision to terminate Mr. Zalewski's short-term disability benefits, Defendant Microsoft employed a tactic of reallocating Mr. Zalewski's position with the sole purpose of avoiding payment of disability benefits.

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

16. 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, John Zalewski.

**IV. COUNT I: INTERFERENCE OF RIGHTS UNDER ERISA
IN VIOLATION OF SECTION 510 OF ERISA**

Plaintiff incorporates the allegations contained in Paragraphs 1 through 16 as if fully stated herein and says further that:

17. The Defendant violated Section 510 of ERISA, 29 U.S.C. § 1140, by terminating the Plaintiff for retaliatory purposes to prevent Plaintiff from receiving benefits under the Plan.

18. The Plaintiff is entitled to appropriate equitable relief pursuant to 29 U.S.C. §1132(a)(3) including, but not limited to, attorney fees and costs, and other further relief as the Court deem just and proper.

19. Plaintiff is entitled to the relief requested herein because:

- a. Plaintiff had a right to and was receiving benefits under the plan;
- b. while the Plaintiff was receiving such benefits, Defendant terminated Plaintiff's position, thereby discontinuing his benefits as permitted by the plan;
- c. In actuality, Plaintiff's position still exists and was simply relocated;
- d. Defendant terminated the Plaintiff for retaliatory purposes to prevent Plaintiff from receiving future benefits under the Plan.

V. COUNT II: PLAN BENEFITS

Plaintiff incorporates the allegations contained in Paragraphs 1 through 19 as if fully stated herein and says further that:

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

21. 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.

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

VI. COUNT III: OTHER EQUITABLE RELIEF

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

23. 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 other 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.

VII. COUNT IV: ATTORNEY'S FEES

Plaintiff incorporates the allegations contained in Paragraphs 1 through 23 as if fully stated herein and says further that:

24. 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).

VIII. RELIEF REQUESTED

Plaintiff incorporates the allegations contained in Paragraph 1 through 24 as if fully stated herein and says further that:

25. As a result of the acts and/or omissions of the Defendant as alleged herein, the Defendant owe the Plaintiff unpaid short-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.

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

27. 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.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, John Zalewski, 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.