

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Mike Russell,)
)
Plaintiff,)

v.)

Randolph Gill and Pennsylvania)
Life Insurance Company,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2011CP3204981

SUMMONS 2010-CP-10-1144

Civil Action Number:

2010 FEB 10 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

2010-2387

MOORE, TAYLOR & THOMAS, P.A.

BY: Ralph N. Adley Sr. For,
S. Jahue Moore
Attorney for Plaintiff
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

West Columbia, South Carolina
January 27, 2010

2011 DEC 29 A 10:02

FILED

RECEIVED

OCT 20 2014

SC Court of Appeals

2011CP3204981

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Mike Russell,)
)
Plaintiff,)

COMPLAINT 2010-CP-10-1144

v.)

Civil Action Number:

Randolph Gill and Pennsylvania)
Life Insurance Company,)
)
Defendants.)

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JULIE J. ARBUSTROM
CLERK OF COURT

Plaintiff, complaining of Defendant, would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION
(Bad Faith Refusal to First Party Benefits)

1. Plaintiff is a resident and citizen of Lexington County, South Carolina.
2. Upon information and belief the Defendant Randolph Gill, is a resident of Charleston County, South Carolina.
3. The Defendant Pennsylvania Life Insurance Company is a foreign business entity who regularly conducts and solicits business in South Carolina.
4. The Court has jurisdiction over the parties and subject matter herein, and venue is proper before this court.
5. The Defendant Randolph Gill, Agent number 173416, is an agent or broker doing business in South Carolina for Defendant, Pennsylvania Life Insurance Company,.
6. On or around July 9, 2002, the Plaintiff entered into an insurance contract with the Defendants whereby the Defendants agreed to pay the Plaintiff \$2,500.00 per month if the Plaintiff became disabled. The Defendant Randolph Gill was the agent that sold the Plaintiff said policy.

FILED
2011 DEC 29 AM 10:02
JULIE J. ARBUSTROM
CLERK OF COURT

7. The Defendant Pennsylvania Life Insurance Company charged the Defendant \$130.00 per month as a premium for the policy. The Plaintiff made all of the policies required payments.

8. On or around June 18, 2008 the Plaintiff became disabled as a result of injuries he sustained from a motorcycle accident.

9. The Plaintiff notified the Defendants of his injuries and asked the Defendants to begin making payments required by the insurance policy between the parties.

10. The Defendants began making the required payments to the Plaintiff until October of 2009 when the Defendants intentionally refused to make any future payments.

11. The Defendants have acted intentionally, unreasonably, and in bad faith by refusing to make the required payments to the Plaintiff.

12. The Defendants have knowingly failed to articulate a legitimate or arguable reason for failing to make the required payments.

13. The Defendant's failure to make the required payments amounts to a breach of good faith and fair dealing.

14. The conduct complained of herein amounts to a bad faith refusal to pay a valid insurance claim.

15. As a direct and proximate result of the Defendants' bad faith refusal to pay, Plaintiff has been damaged in that it has incurred costs, fees, delays as well as other items of damage as may be discovered through the pendency of this action, all to its damage both actual and punitive.

16. Plaintiff is entitled to judgment against Defendants for actual and punitive damages.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract to Procure Insurance)

17. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

18. In or around July of 2002, Mike Russell was in the market to obtain a new accident insurance policy naming him as the insured.

19. In or around July of 2002, Defendants solicited Plaintiff and encouraged him to buy an accident/sickness insurance policy through Defendants.

20. At all times pertinent hereto, Defendants held out and represented themselves to be experts in the field of accident/sickness insurance.

21. Defendants discussed and advised Plaintiff regarding the procurement of the accident/sickness insurance policy to meet his needs.

22. Plaintiff discussed and advised Defendants regarding his accident/sickness insurance needs and provided to Defendants all information, documents and materials requested by them.

23. Defendants agreed and contracted to procure an accident/sickness insurance policy suitable to Plaintiff's needs.

24. Defendants filled out the accident insurance application for Plaintiff and represented to him that the policy was in accordance with his needs and that he would be fully covered by the policy.

25. Plaintiff relied upon Defendants to procure the accident/sickness insurance policy and further relied upon Defendants' representations regarding the policy.

26. In or around July of 2002, Defendants issued Plaintiff the accident/sickness insurance policy. Plaintiff paid all premiums demanded by the policy and provided everything further requested of them by Defendants.

27. On or around June 18, 2008 the Plaintiff became disabled as a result of injuries he sustained from a motorcycle accident.

28. The Defendants refusal to make required payments to the Plaintiff as required by the policy language amounts to a breach of contract to procure insurance.

29. As a direct and proximate result of the aforementioned breach of contract to procure insurance, Plaintiff has been damaged in that he has lost the benefit of his bargain, has lost benefits pursuant to the accident insurance policy, has lost premiums paid for the accident insurance policy, has lost interest upon withheld benefits, has incurred attorney fees and costs associated with bringing this action as well as other items of damages as may be discovered through the pendency of this action

30. Plaintiff is entitled to judgment against Defendants for actual, consequential and incidental damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

31. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

32. The Defendants sold and issued its policy of Accident/Sickness Insurance Protection to Mike Russell, policy number PA1679360. The policy requires the Defendants to pay the Plaintiff \$2,500.00 if the plaintiff becomes sick or disabled.

33. At all times relevant hereto, the aforementioned policy was in full force and effect. All premium payments were current and Mike Russell complied with all conditions precedent to payment of the benefits.

34. On or around June 18, 2008 the Plaintiff became disabled and made a demand for his benefits under the policy

35. Pennsylvania Life Insurance Company has refused to make payments required by the policy.

36. The Defendant's failure to pay the benefits pursuant to the policy constitutes a breach of the insurance contract.

37. Upon information and belief, the Plaintiff is entitled to a judgment against the Plaintiff for breach of contract.

38. As a direct and proximate result of the aforementioned breach of contract, Plaintiff has been damaged in that he has lost the benefit of his bargain, has lost benefits pursuant to the accident insurance policy, has lost premiums paid for the accident insurance policy, has lost interest upon withheld benefits, has incurred attorney fees and costs associated with bringing this action as well as other items of damages as may be discovered through the pendency of this action

39. Plaintiff is entitled to judgment against Defendants for actual, consequential and incidental damages.

WHEREFORE, having fully complained against the Defendants herein, Plaintiff prays for an order of this Court for judgment against the Defendants for actual, consequential, and incidental damages; special damages; punitive damages; costs, interest; for attorney fees and costs; and for such other and further relief as this Court may deem just and proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: _____

S. Jahue Moore
R. Nichols Riley, Jr.
Attorneys for the Plaintiff
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

West Columbia, South Carolina
January 27, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESON)

Mike Russell,)

Plaintiff,)

vs.)

Randolph Gill and Pennsylvania Life Insurance,)
Company,)

Defendant.)

IN THE COURT OF COMMON PLEAS

2010-CP-10-1144
CIVIL ACTION COVERSHEET

2011CP3204981

(Please Print)

Submitted By: S. Jahue Moore
Address: 1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171

SC Bar #: 4063
Telephone #: 803-796-9160
Fax #: 803-791-8410
Other:
E-mail: Jake@mttlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input checked="" type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) <input type="checkbox"/> Notice/Med Mal (230) Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Label (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Penden (750) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture (840) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (650) | | | |

Submitting Party Signature: *Jahue Moore* Date: January 27, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (8/06)

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville, and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action is filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by the State;
 - g. mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS†
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY††
C. DAVID SAWYER, JR.††
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BARRY L. THOMPSON, II
MELISSA K. MOORE
S. JAHUE MOORE, JR.
WILLIAM F. FORTINO
R. NICHOLS "NICK" RILEY, JR.

OF COUNSEL:
JANE H. DOWNEY**

RETIRED:
BILLY C. COLEMAN††

February 9, 2010

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Russell v. Randolph Gill and Pennsylvania Life Insurance, Company.

Dear Ms. Armstrong:

Enclosed is the Plaintiff's Complaint in the above referenced matter. Please file the original and 2 copies of each. I would appreciate your office mailing copies of the filings in the self addressed, pre-paid envelope provided for your convenience.

Thank your for your attention to this matter. Please feel free to contact our office with any questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Nick Riley", is written over a horizontal line.

Nick Riley

/nr
Enclosure
CC (w/Enclosure): Mike Russell