

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

<b>CLV</b>	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 1:16-cv-00939 JFM
	)	
<b>UNUM GROUP CORPORATION et al</b>	)	
	)	
Defendants	)	
	)	
_____	)	

**MEMORANDUM IN REPLY TO DEFENDANT’S OPPOSITION  
TO PLAINTIFF’S MOTION TO REMAND**

This Memorandum is filed by CLV, Plaintiff, through counsel, in reply to Defendant’s opposition to Plaintiff’s motion to remand.

**Background**

The Notice of Removal filed herein asserts that this Court’s jurisdiction is based on diversity of citizenship. The Notice further asserts that the amount in controversy requirement for diversity jurisdiction is satisfied because future monthly disability benefits that will accrue during the pendency of this action through the scheduled trial date, when added to accrued benefits as of the commencement of this litigation, will exceed \$75,000.

In its opposition to the motion to remand, Defendant reiterates the amount in controversy contentions advanced in the Notice of Removal. In addition, Defendant contends that this Court may consider the value of future benefits that may accrue during the remaining term of Plaintiff’s disability insurance policy [the “Policy”]. As Defendant points out, if Plaintiff prevails in the litigation presently before this Court, Defendant’s obligation to pay disability benefits in

the amount of \$6,900 per month plus future cost of living adjustments will continue to accrue until Plaintiff is no longer disabled or attains age 65, whichever is the first to occur. Plaintiff does not dispute Defendant's contention that as of the commencement of this case, Defendant was potentially liable for the payment of monthly disability benefits for an additional ten (10) years, in addition to accrued benefits as of the commencement of this case in the amount of \$27,600. There is no dispute concerning Defendant's contention that Plaintiff may be entitled to cumulative future benefits over the life of the Policy in the amount of \$828,000.

### **Argument**

The issue before this Court is whether, in a case involving a claim for benefits under a disability insurance contract, the amount in controversy for jurisdictional purposes includes claims for the value of any future benefits which may accrue after the commencement of litigation. There is controlling Fourth Circuit case law which has decided this issue.

In *Beaman v. Pacific Mutual Life Insurance Company*, 369 F.2d 653 (4th Cir. 1966), the Fourth Circuit held that in a disability benefits case, the amount in controversy is the amount of accrued benefits as of the commencement of the case. The amount in controversy does not include future benefits that may accrue after the commencement of the case.

In *Beaman*, the district court judge had dismissed, for lack of jurisdiction, a complaint for declaratory judgment in which the plaintiff insured sought a declaration that he was permanently and totally disabled under the terms of a policy of disability insurance. The plaintiff further sought recovery of \$69,884.00, based upon the monthly benefit under the policy times his claimed life expectancy. The district court determined that it lacked jurisdiction because the amount in controversy was less than \$10,000.00. The Fourth Circuit affirmed.

The *Beaman* court cited its earlier decision in *Mutual Life Ins. Co. of New York v. Moyle*, 116 F.2d 434 (4<sup>th</sup> Cir. 1940), wherein the court explained:

... all that is in controversy is the right of the insured to the disability payments which had accrued *at the time of suit*. The company is obligated to make these payments only so long as the condition evidencing total and permanent disability continues; and, as this condition, theoretically at least, may change at any time, it is impossible to say that any controversy exists as to any disability payments except such as have accrued.

116 F.2d at 435 (emphasis added). This Court has followed *Beaman* in the context of a motion to remand. See *Lenox v. Bituminous Casualty Company*, 463 F.Supp. 51 (D. Md. 1978). The rule enunciated in *Beaman* and *Moyle* has been followed in other circuits as well. See, e.g., *Keck v. Fid. & Cas. Co. of New York*, 359 F.2d 840, 841 (7<sup>th</sup> Cir. 1966); *White v. N. Am. Accident Ins.*, 316 F.2d 5, 6-7 (10<sup>th</sup> Cir. 1963); *Travelers Ins. Co. v. Greenfield*, 154 F.2d 950, 952 (5<sup>th</sup> Cir. 1946). Thus, it is not surprising that courts in other jurisdictions have remanded disability insurance cases which Unum had improperly removed to the federal court, see *Russ v. Unum Life Ins. Co.*, 442 F.Supp.2d 193, 197 (D.N.J.2006). These and similar holdings have led one district court to make the following observation:

“[i]t may be counterintuitive that a declaratory action about quantifiable benefits accruing entirely in the future has no amount in controversy, but it is an arcanum of federal jurisdiction that that is the case. Defendant's attempt to satisfy the amount in controversy requirement by reference to the value of the disputed future disability payments is impermissible.

*Shoemaker v. Sentry Life Ins. Co.*, 484 F.Supp.2d 1057 (D. Ariz., 2007). <sup>1</sup>

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<sup>1</sup> Defendant cites *Broglie v. MacKay-Smith*, 541 F.2d 453 (4<sup>th</sup> Cir. 1976) for the proposition that this Court may consider damages which the plaintiff claims will accrue in the future “if a right to future payments will be adjudged in the present suit”. *Broglie* did not involve a claim for benefits under a disability insurance contract. The case involved a breach of contract for the sale of a horse. Because it was nearly certain that plaintiff’s damages would continue to accrue after the commencement of litigation, the court in *Broglie* considered future damages when it determined the amount in controversy. In the case *sub judice*, Defendant will be obligated to make future benefit payments only if Plaintiff remains disabled within the meaning of the Policy. Because

Defendant argues that this Court should take into account the value of future disability benefits because the Complaint asserts a claim for “anticipatory damages” based on Defendant’s alleged “repudiation” of the Policy. In *Beaman*, however, the court held that the doctrine of anticipatory breach is applicable only to cases involving executory contracts which neither party has fully performed. The doctrine has no application to disability insurance contracts “because the condition in the policy that the insured must be totally disabled to be entitled to a benefit is not an exchange of values so as to render the contract bilateral.” 369 F.2d at 656. The holding in *Beaman* negates Defendant’s argument that Plaintiff’s claim for “anticipatory damages” may be considered when determining the amount in controversy for jurisdictional purposes.<sup>2</sup>

Defendant points out that the Complaint requests a declaratory judgment which determines Plaintiff’s right to receive benefits under the Policy. Defendant cites *Wilbert v. Unum Life Ins. Co.*, 981 F.Supp. 61 (D.R.I., 1997) for the proposition that the amount in controversy in a case involving a claim for declaratory judgment is measured by the value of the right to be protected. The court in *Wilbert* held that the amount in controversy requirement was satisfied because the two disability policies in question could potentially provide benefits exceeding \$1,000,000 each over the life of the policies. Similarly, Defendant suggests that the value of

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Plaintiff’s disabling condition could change at any time, there is for the purpose of determining this Court’s jurisdiction no present controversy concerning Plaintiff’s claim for future benefits. *Mutual Life Ins. Co. of New York v. Moyle*, *supra* at 435.

<sup>2</sup> Defendant cites *Fast Bearing Co. v. Precision Development Co.*, 185 Md. 288 (1945) for the proposition that a party’s repudiation of a contract generally permits the other party to seek “prospective” damages. *Fast Bearing Co.* is a breach of contract case involving a patent license. This state court case does not address the issue decided in *Beaman*, *i.e.*, that the doctrine of anticipatory breach is inapplicable to cases involving disability insurance contracts.

Plaintiff's benefits claim exceeds \$75,000 because Plaintiff may be entitled to aggregate benefits in the amount of \$828,000 over the life of the Policy.

*Wilbert* is distinguishable, though, because unlike the case *sub judice*, the insurer in *Wilbert* had cancelled plaintiff's insurance policies prior to the commencement of litigation, based on the insured's alleged failure to make premium payments. The declaratory judgment action sought not the payment of benefits in accordance with the terms of the policies, but the reinstatement of the policies themselves. The court explained that if the controversy relates not merely to the insurer's liability for the payment of accrued benefits, but to the validity of the disability insurance policy, then the amount in controversy is the face amount of the policy.

*Wilbert* is consistent with the holding in *Moyle, supra*, wherein the Fourth Circuit distinguished cases in which the controversy involves the insurer's liability for the payment of benefits from cases in which the controversy involves the validity of the policy. In the former, all that is in controversy is the plaintiff's right to benefits as of the commencement of the case. In the latter, the face amount of the policy determines the amount in controversy. *Mutual Life Ins. Co. of New York v. Moyle, supra* at 435.

In the case *sub judice*, there is no allegation in the Complaint that Defendant has cancelled or rescinded the Policy. On the contrary, the Complaint demands a monetary judgment for benefits due in accordance with the terms of the Policy and a declaratory judgment which determines Plaintiff's right to benefits under the Policy. The Affidavit filed in support of Defendant's opposition to the motion to remand confirms that the Policy remains in effect, and that Plaintiff is eligible to receive benefits for an additional ten (10) years. The controversy in the case *sub judice* relates not to the validity of the policy, but to Defendant's liability for the

payment of benefits in accordance with the terms of the Policy. Accordingly, the amount in controversy is only \$27,600, the amount of accrued benefits as of the commencement of this case.

For these reasons, this Court lacks subject matter jurisdiction over the case *sub judice*. Plaintiff therefore respectfully requests that this case be remanded to the Circuit Court for Howard County, and for such other and further relief as justice may require.

Date: 6/10/2016

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this date the foregoing Memorandum in Reply to Defendant's Opposition to Plaintiff's Motion to Remand was served electronically through the CM/ECF system and by regular first class mail, postage pre-paid, on

Bryan D. Bolton, Esq.  
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Twelfth Floor  
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Date: 6/10/2016

/s/ James P Koch