

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT WAGNER,)	
)	
Plaintiff,)	
)	
v.)	No. 08 C 2750
)	Judge Conlon
ALLIED PILOTS ASSOCIATION)	
DISABILITY INCOME PLAN (Loss of)	
License),)	
)	
Defendant.)	

AMENDED COMPLAINT

Now comes the Plaintiff, ROBERT WAGNER, by his attorneys, MARK D. DE BOFSKY, and DALEY, DE BOFSKY & BRYANT, and complaining against the Defendants, ALLIED PILOTS ASSOCIATION DISABILITY INCOME PLAN (Loss of License), he states:

Jurisdiction and Venue

1. Jurisdiction of this Court is based upon the Employee Retirement Income Security Act of 1974 (ERISA); and, in particular, 29 U.S.C. §§1132(e)(1) and 1132(f). Those provisions give the district court jurisdiction to hear civil actions brought to recover benefits due under the terms of an employee welfare benefit plan which, in this case, consists of a group long-term disability income plan sponsored and administered by the Allied Pilots Association.

2. The ERISA statute provides, at 29 U.S.C. §1133, a mechanism for administrative or internal appeal of benefit denials. Those avenues of appeal have been exhausted.

3. Venue is proper in the Northern District of Illinois. 29 U.S.C. §1132(e)(2), 28 U.S.C. §1391.

Nature of Action

4. This is a claim seeking disability income benefit payments to Plaintiff pursuant to a plan providing group long-term disability income (a true and correct copy of which is attached hereto and by that reference incorporated herein as Exhibit "A") sponsored and administered by the Allied Pilots Association. This action, seeking recovery of benefits, is brought pursuant to §502(a)(1)(B) of ERISA (29 U.S.C. §1132(a)(1)(B)).

The Parties

5. The Plaintiff, Robert Wagner, is and was a resident of Evanston, Illinois at all times relevant hereto.

6. The Defendant, Allied Pilots Association Disability Income Plan (Loss of License) ("Plan") is a disability income plan sponsored and administered by the Allied Pilots Association. At all times relevant hereto, the Plan was operating and being administered throughout the United States, including the Northern District of Illinois.

7. At all times relevant hereto, the Plan constituted an "employee welfare benefit plan" as defined by 29 U.S.C. §1002(1); incident to Plaintiff's employment he received coverage under the Plan as a "participant," as defined by 29 U.S.C. §1002(7). This claim relates to benefits under the foregoing Plan.

Statement of Facts

8. Plaintiff was employed as a pilot for American Airlines and was a member of the Allied Pilots Association actively employed until July 22, 2005, when he was forced to cease working due to disequilibrium/vertigo caused by a perilymph fistula on his right side which plaintiff incurred due to barometric pressure trauma during his last flight while piloting an aircraft on behalf of his employer. Plaintiff has not been actively employed since that date.

9. Subsequent to ceasing employment, Plaintiff made a claim for disability benefits under the Plan. Plaintiff supported his claim for benefits with medical records and reports, as well as other evidence, including objective medical evidence, certifying and establishing his disability

10. Pursuant to the Plan, *disability* is defined as follows:

The terms “Disabled” and “Disability” mean the inability of a Plan Participant to perform the material occupational duties as a Company pilot as the result of an Injury or Sickness and such Injury or Sickness is not excluded under the “General Exclusions” subsection on page 10. The Plan Participant must be under the Regular Care and Attendance of a Physician and must be unable to maintain either a first or second class FAA medical certificate.

11. Due to his condition, Plaintiff has been unable to perform the material occupational duties of his occupation, or any other occupation, since July 2005.

12. Despite the consistency of the evidence submitted on Plaintiff’s behalf, the Plan denied benefits and, upon appeal, upheld the denial despite the submission of further proofs and evidence demonstrating and establishing the Plaintiff’s entitlement to benefits, and that his condition did not fall within any policy limitations or exclusions.

13. That determination by the Plan is contrary to the terms of the Plan and has no rational support in the evidence. The decision is contrary to the reports and assessments of all treating and examining physicians and was not based on substantial evidence.

14. As a direct and proximate result of the foregoing, based on the evidence submitted to Allied establishing Plaintiff has met and continues to meet the Plan’s disability definitions, Plaintiff is entitled to all benefits due since July 2005, and such benefits must continue for the maximum benefit period.

15. All avenues of administrative appeal to Allied have now been concluded. Therefore, all efforts at administrative review or appeal have been exhausted and this matter is ripe for judicial review

WHEREFORE, Plaintiff prays for the following relief:

A. That the court enter judgment in Plaintiff's favor and against Defendant and that the court order Defendant to pay disability income benefits to Plaintiff in an amount equal to the contractual amount of benefits to which he is entitled;

B. That the court order Defendant to pay Plaintiff prejudgment interest on all benefits that have accrued prior to the date of judgment.

C. That the court determine and then declare that Defendant is required to continue paying Plaintiff benefits so long as he meets the Plan's terms and conditions for receipt of benefits;

D. That the court award Plaintiff attorney's fees pursuant to 29 U.S.C. §1132(g); and

E. That Plaintiff recover any and all other relief to which he may be entitled, as well as the costs of suit.

Dated: May 20, 2008

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