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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jeffrey L. Wissot, DDS,)	CV 11-10040 RSWL (JCGx)
)	
Plaintiff,)	
)	
v.)	Statement of
)	Uncontroverted Facts and
)	Conclusions of Law Re:
)	Defendant Great-West
Great-West Life and Annuity)	Life & Annuity Insurance
Insurance Co. and American)	Company's Motion for
Dental Association,)	Summary Judgment [42]
)	
Defendants.)	
)	

After consideration of the papers and arguments in support of and in opposition to Defendant Great-West Life & Annuity Insurance Company's ("Defendant") Motion for Summary Judgment [42], the Court makes the following findings of fact and conclusions of law.

UNCONTROVERTED FACTS

1. The American Dental Association ("ADA") sponsors group insurance plans for the benefit of its members. Defendant's Proposed Stmt. of Uncontroverted Facts and Conclusions of Law ¶ 1.

2. In 1992, the ADA contracted with Defendant to

1 administer and insure a group disability income
2 protection plan in order to insure qualifying ADA
3 members. Id.

4 3. Plaintiff, a member of the ADA, became insured
5 with Defendant under the group policy. Id. ¶¶ 3, 4.

6 4. In relevant part, the 1992 version of the group
7 policy defined "Total Disability" as "that due to an
8 accident or sickness, an insured Member is unable to
9 perform the duties of his profession or occupation."

10 Id. ¶ 1. The 1992 individual certificate issued to
11 Plaintiff contained the following policy language
12 describing the long-term benefits available under the
13 plan:

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Plan II Additional Period

For a **Total Disability** due to accident or sickness which begins:

Amount and Additional Period

- before the Member reaches age 50

- 100% of the Member's Optional Long Term Monthly Income Benefits will be continued to age 65; and

- when the Member reaches age 65, his Optional Long Term Monthly Income Benefits will be reduced by 50% and that amount will be continued for life¹

- on or after the Member reaches age 50 but before he reaches age 63

the Member's Optional Long Term Monthly Income Benefits will be continued after he reaches age 63 but will end when he reaches age 65.

¹ For the sake of clarity, this benefit will be hereinafter referred to as "reduced lifetime benefits".

1 Id. ¶ 3.

2 5. The ADA and Defendant subsequently changed some
3 of the features of the group policy, effective May 1,
4 1997. Id. ¶ 4. A new group policy document and new
5 individual certificates were issued to all covered
6 members. Id. In April 1997, Defendant mailed a letter
7 from the ADA's Chairman of Council on Insurance to
8 insured members to provide notice of the changes to the
9 group insurance plan. Id.

10 6. In July 1996, Plaintiff, then forty-eight-
11 years-old, was struck by a car while riding his
12 bicycle, resulting in a torn ligament in Plaintiff's
13 right (dominant) hand. Compl. ¶ 18; SUF ¶ 6; Pl.'s
14 Proposed Stmt. of Uncontroverted Facts and Conclusions
15 of Law ¶ 15.

16 7. In 2003 Plaintiff ended his dentistry practice
17 at the age of fifty-five. SUF ¶ 9. Plaintiff
18 subsequently submitted a claim for disability benefits
19 to Defendant, which Defendant paid to Plaintiff. Id.
20 ¶¶ 6-7.

21 8. Plaintiff did not suffer a total disability
22 before age 50. Id. ¶ 9.

23 **CONCLUSIONS OF LAW**

24 1. Under Illinois law, "when construing the
25 language of an insurance policy, a court's primary
26 objective is to ascertain and give effect to the
27 intentions of the parties as expressed by the words of
28 the policy." Rich v. Principal Life Ins. Co., 226 Ill.

1 2d 359, 371 (2007) (citations omitted). Further, "an
2 insurance policy is to be construed as a whole, giving
3 effect to every provision and taking into account the
4 type of insurance provided, the nature of the risks
5 involved, and the overall purpose of the contract."
6 Id. (internal citations omitted). "All the provisions
7 of the insurance contract, rather than an isolated
8 part, should be read together to interpret it and to
9 determine whether an ambiguity exists." United States
10 Fire Insurance Co. v. Schnackenberg, 88 Ill.2d 1, 5
11 (1981).

12 2. A contract provision is considered ambiguous
13 and will be construed strictly against the insurer who
14 drafted the policy if "the words used in the insurance
15 policy are reasonably susceptible to more than one
16 meaning." Id. However, "a contract is not rendered
17 ambiguous merely because the parties disagree on its
18 meaning." Id. A court should not strain to find
19 ambiguity where none exists. Id. "Although policy
20 terms that limit an insurer's liability will be
21 liberally construed in favor of coverage, this rule of
22 construction only comes into play when the policy is
23 ambiguous." Id.

24 3. The language in dispute in the instant matter
25 is not ambiguous. In order to receive reduced lifetime
26 benefits after Plaintiff turns age 65, Plaintiff must
27 suffer a "total disability" before he turns 50 years
28 old. Therefore, Plaintiff is not entitled to reduced

1 lifetime benefits under the 1992 group insurance plan.

2 4. 215 ICLS § 5/155 provides that when a purported
3 tort claim boils down to an insurer's failure to pay,
4 the remedies provided in Section 155 and for breach of
5 contract cover the claim and are sufficient. Sieron v.
6 Hanover Fire & Cas. Ins. Co., 485 F. Supp. 2d 954, 961
7 (S.D. Ill. 2007). However, Section 155 does not
8 preempt a claim of insurer misconduct if it is based on
9 a separate and independent tort. When a plaintiff
10 alleges and proves the elements of a tort separate from
11 his allegations of an insurer's bad faith or
12 unreasonable and vexatious conduct, "the plaintiff may
13 bring an independent tort action for insurer
14 misconduct." Guarantee Co. of N. Am., USA v.
15 Moecherville Water Dist., N.F.P., No. 06 C 6040, 2007
16 WL 2225834, at *3 (N.D. Ill. July 26, 2007). Thus, the
17 Court must "go beyond the legal theory asserted and
18 examine the conduct forming the basis for [Plaintiff's]
19 claim[s]" in order to determine whether they comprise
20 independent tort claims or merely allege bad faith or
21 unreasonable or vexatious conduct that is addressed by
22 Section 155. Commonwealth Ins. Co. v. Stone Container
23 Corp., No. 99 C 8471, 2001 WL 477151 at *2 (N.D. Ill.
24 May 3, 2001).

25 5. It is well established in Illinois that "mere
26 allegations of bad faith . . . without more, do not
27 constitute a separate and independent tort. Such
28 allegations are preempted by [S]ection 155." Burress-

1 Taylor v. Am. Sec. Ins. Co., No. 1-11-0554, 2012 IL App
2 (1st) 110554, at *6-*7 (Ill. App. Ct. Oct. 26, 2012);
3 see also Busse v. Paul Revere Life Ins. Co., 341 Ill.
4 App. 3d 589, 598 (2003) (warning against litigant
5 attempts to make an "end run" around the limits imposed
6 by § 155 by creating a common law action "that remedies
7 the same basic evil"); Combs v. Insurance Co. of Ill.,
8 146 Ill. App. 3d 957 (1986) (holding that a claim for
9 bad faith denial of benefits framed as claim for
10 intentional infliction of emotional distress was
11 preempted by § 155).

12 6. Plaintiff's second, sixth, and seventh claims
13 of Plaintiff's Complaint are preempted by Section 155.

14 7. In an action for negligence, a plaintiff must
15 set out facts establishing (1) the existence of a duty
16 of care, (2) a breach of that duty, and (3) an injury
17 proximately resulting from that breach. Friedman v.
18 Safe Sec. Servs., Inc., 328 Ill. App. 3d 37, 47 (2002).

19 8. Defendant is not liable for negligence.
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22 **IT IS SO ORDERED.**

23 DATED: June 12 , 2013.

24
25 **RONALD S.W. LEW**
HONORABLE RONALD S.W. LEW
26 Senior, U.S. District Court Judge
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