UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DENISE B. D'APRILE,

               Plaintiff,

-vs-   Case No. 2:09-cv-270-FtM-36SPC

UNUM LIFE INSURANCE COMPANY OF
AMERICA,

               Defendant.

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ORDER

This matter comes before the Court on the Defendant's Opposed Motion to Remedy Technical Defect or in the Alternative, to Supplement Its Response in Opposition to Plaintiff's Motion for Partial Summary Judgment on Liability (Doc. #174) filed on December 14, 2010, and the Plaintiff Denise B. D'Aprile's Motion to Strike Defendant's Response in Opposition to Plaintiff's Motion for Partial Summary Judgment on Liability (Doc. # 175) filed on December 14, 2010.

On December 10, 2010, the Defendant filed a responsive brief which was twenty-five (25) pages long. Pursuant to M.D. Fla. Local Rule 3.01(b) briefs filed in response to a motion may not exceed twenty (20) pages in length without first receiving leave from the Court. The Defendant did not seek leave to file an oversized brief. The Defendant acknowledges that the brief exceeds the Rule's page limit and now moves the Court to accept the brief as filed.

The Plaintiff objects to the enlargement of the brief (Doc. # 175) because the Defendant did not first seek leave before filing the brief and further because the brief contains new grounds for

summary judgment not previously divulged. On November 12, 2010, the Defendant filed a Motion for Summary Judgment (Doc. # 146) which addressed the Plaintiff's claim for Recovery Benefits and her benefits past the filing of the instant action. The Defendant's responsive brief in opposition to the Plaintiff's Motion for Summary Judgment added the new claim that the Plaintiff did not satisfy the provisions of her policy for Residual Death Benefits. The Plaintiff objects to the new grounds arguing the Defendant would be given a second bite at the summary judgment apple after the time to do so has expired under Fed. R. Civ. P. 56(b).

Pursuant to Fed. R. Civ. P. 56(b), a party may file a summary judgment motion anytime until thirty (30) days after the close of discovery. The Plaintiff states the Defendant's response with the new grounds for summary judgment was filed after the time allowed under Rule 56, and therefore, the response should be stricken. Contrary to the Plaintiff's position, the time restriction imposed by Rule 56(b) is only a default provision and can be modified freely by the Court. See Chrysler International Corp. v. Chenaly, 280 F.3d 1358, 1360 (11th Cir. 2002) (holding District Courts have broad discretion in managing their cases).

While the Defendant exceeded the page limit imposed by the Local Rules, the Defendant did file a Motion, albeit after the fact, seeking the Court's leave to enlarge the page limit. After a review of the Parties memoranda of law, the Court finds good cause to grant the increased page limit. The Court will also allow the new argument for summary judgment in favor of the Defendant on the grounds that the Plaintiff did not satisfy the provisions of her policy for Residual Death Benefits to stand. However, the Plaintiff will be allowed the opportunity to file a reply brief limited in scope to that issue.

Accordingly, it is now

ORDERED:

(1) The Defendant's Opposed Motion to Remedy Technical Defect or in the Alternative, to Supplement Its Response in Opposition to Plaintiff's Motion for Partial Summary Judgment on Liability (Doc. #174) is **GRANTED**.

(2) The Plaintiff Denise B. D'Aprile's Motion to Strike Defendant's Response in opposition to Plaintiff's Motion for Partial Summary Judgment on Liability (Doc. # 175) is **DENIED**.

(3) The Plaintiff Denise B. D'Aprile may file a Reply Brief limited in scope the Defendant's argument that she did not satisfy the provisions of her policy for Residual Death Benefits. The Reply Brief is limited to **five (5) pages** in length and shall be filed on or before **December 28, 2010.**

DONE AND ORDERED at Fort Myers, Florida, this ___16th___ day of December, 2010.

SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record