

Not Reported in F.Supp., 1993 WL 256755 (D.Kan.)
(Cite as: 1993 WL 256755 (D.Kan.))

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United States District Court, D. Kansas.

Sam J. **WALTERS**, D.C., Plaintiff,

v.

MONARCH LIFE INSURANCE CO., Defendant.

Civ. A. No. 91-2396-GTV.

April 4, 1994.

Thomas L. Thurston, Perry, Hamill & Fillmore, [Anthony F. Rupp](#), Shughart, Thomson & Kilroy, Overland Park, KS, [W. James Foland](#), [Bradley J. Baumgart](#), [David H. Luce](#), Shughart, Thomson & Kilroy, P.C., Kansas City, MO, for plaintiff.

[Lee M. Smithyman](#), **Smithyman & Zakoura, Chtd.**, Overland Park, KS, for defendant.

MEMORANDUM AND ORDER

VAN BEBBER, District Judge.

*1 This case is before the court on Plaintiff's Motion for Reinstatement of Policy Rights (Doc. 313). Defendant has responded and opposes the motion.

As an initial matter, the court notes that it has not previously ruled upon the instant motion because the motion was filed after defendant filed its notice of appeal to the Court of Appeals for the Tenth Circuit. This court concluded that it lacked jurisdiction to consider a motion that would seemingly inject a substantive issue into the case which had not previously been addressed. Upon further review, however, the court concludes that it has jurisdiction to deny the motion or state that it intends to grant the motion upon remand from the Tenth Circuit. See [Aldrich Enterprises, Inc. v. United States](#), 938 F.2d 1134 (10th Cir.1991). For the reasons stated in this memorandum and order, the motion is denied.

This case arises out of two disability insurance policies issued by **Monarch Life Insurance** Company to Sam J. **Walters**. **Walters** has alleged claims of breach of contract based upon defendant **Monarch's** termination of disability benefits which were being paid to **Walters** pursuant to a personal disability insurance policy. **Monarch** asserted a

counterclaim for fraud, seeking a return of benefits paid under the disability insurance policy and its companion overhead expense insurance policy. The case was filed by **Walters** in the District Court of Johnson County, Kansas, and subsequently removed by **Monarch** to this court. The action was tried to a jury in November and December, 1992. On December 4, 1992, the jury entered a verdict for plaintiff **Walters** in the amount of \$44,066.43 on his breach of contract claim. The jury also found in favor of **Walters** on **Monarch's** counterclaim for fraud.

In an order dated June 29, 1993 (Doc. 307), the court denied plaintiff's Motion to Correct Entry of Judgment (Doc. 274), concluding that [Fed.R.Civ.P. 60\(a\)](#) was not the correct avenue to address the substantive issue of whether plaintiff should be reinstated under his disability insurance policy. However, the court allowed plaintiff to file a motion for equitable relief on this issue if he so desired. In the same order, the court denied plaintiff's Motion for Judgment as a Matter of Law (Doc. 285) in which plaintiff argued that based upon the jury's finding of past and current total disability, there was no legally sufficient evidentiary basis for a reasonable jury to have found damages in an amount other than \$176,265.72 ^{FNI} and his damage award should be increased to the full amount of disability benefits sought. The court concluded it was within the evidence of the case for the jury to find that plaintiff was not continuously, totally disabled for the full time period at issue.

Plaintiff has styled the instant motion as a Motion for Reinstatement of Policy Rights brought pursuant to [Fed.R.Civ.P. 60\(b\)\(1\)](#), [60\(b\)\(2\)](#), and [59\(e\)](#). Plaintiff contends that in accordance with the jury's findings at trial, he is entitled to reinstatement of his rights under the disability insurance policy issued to him by defendant **Monarch Life Insurance** Policy. Specifically, plaintiff argues that he is entitled to reinstatement of his policy rights because: (1) he requested this relief and because the jury's findings require that the judgment be amended to reflect the true merits of the case; (2) there is no basis for forfeiture of plaintiff's policy rights; and (3) defendant is estopped from asserting any new defense to this action other than the fraud defense it initially pursued.

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*2 Upon consideration of plaintiff's motion, the court rejects plaintiff's contention that the jury's verdict compels plaintiff's reinstatement under the disability insurance policy. At the heart of plaintiff's arguments is the premise that the jury's verdict supports his automatic reinstatement under the policy and that he has proved his entitlement to reinstatement under the policy. The court is unable to determine, based on the jury's verdict awarding plaintiff \$44,066.43 in damages and the record compiled at trial, that plaintiff is entitled to reinstatement under the policy. "When legal and equitable claims are joined in the same action, 'the right to a jury trial on the legal claim, including all issues common to both claims, remains intact.'" [Lytle v. Household Mfg.](#), 494 U.S. 545, 550 (1990) (citing [Curtis v. Loether](#), 415 U.S. 189, 196 n. 11 (1975)).

The jury verdict alone does not provide the court with a basis for concluding that plaintiff is entitled to reinstatement under the disability insurance contract. In light of the various constructions that might be given to the jury's verdict in this case and discussed in this court's previous memorandum and order (Doc. 307) dated June 29, 1993, the court is simply unable to conclude that the jury's findings *require* that the judgment be amended to restore plaintiff's rights under the disability insurance contract. It is ultimately plaintiff's burden to show that he is entitled to the remedy of reinstatement under the terms of the disability insurance policy at issue here. The court is not satisfied that the record is sufficient for it to conclude that plaintiff is entitled to the equitable relief of reinstatement under the policy.

IT IS, THEREFORE, BY THE COURT ORDERED that Plaintiff's Motion for Rein statement of Policy Rights (Doc. 313) is denied.

Copies of this order shall be mailed to counsel of record for the parties.

IT IS SO ORDERED.

FNI. \$176,265.72 was the total amount of damages requested by plaintiff, as well as the amount of benefits which plaintiff's economic expert testified would have been owed plaintiff for the total period of disability that had not been paid by

defendant.

D.Kan.,1994.
 Walters v. Monarch Life Ins. Co.
 Not Reported in F.Supp., 1994 WL 123611 (D.Kan.)

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