

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN**

RICHARD GEROUX,)	
)	
Plaintiff,)	
)	Case No. 2:08-cv-00184-RAED
vs.)	
)	
ASSURANT, INC., and)	
UNION SECURITY INSURANCE)	
COMPANY,)	
)	
Defendants.)	

SEPARATE ANSWER OF DEFENDANT ASSURANT, INC.

COMES NOW Defendant ASSURANT, INC. (hereinafter, “this Defendant”) and for its Answer to Plaintiff’s Tribal Court Complaint, now a Complaint by virtue of removal, and STATES, ADMITS and DENIES as follows:

1. As to the allegations contained in Paragraph 1 of Plaintiff’s Complaint, this Defendant: upon information and belief, ADMITS the allegations contained in subparts a and b of Paragraph 1 of Plaintiff’s Complaint, and DENIES the allegations contained in subparts c and d of Paragraph 1 of Plaintiff’s Complaint.

2. This Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraph 2 of Plaintiff’s Complaint and therefore, DENIES same.

3. For answer to Paragraph 3 of Plaintiff’s Complaint, this Defendant: ADMITS that the group insurance division of Mutual Benefit Life Insurance Company was acquired by AMEV Holdings, Inc. in 1991, and that AMEV Holdings, Inc. changed its name to Fortis, Inc. in that same year. This defendant DENIES that Fortis, Inc. was sold via an initial public offering in 2004. This Defendant STATES that Fortis, Inc. was merged into Assurant, Inc., which is a

publicly traded company. This Defendant ADMITS the remaining allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. For answer to Paragraph 4 of Plaintiff's Complaint, this Defendant: upon information and belief, DENIES that partial payments have been made, upon information and belief, STATES that Union Security Insurance Company and previously, Fortis Benefits Insurance Company and Mutual Benefit Insurance Company paid all benefits due and owing to Plaintiff and no benefits are due and owing to Plaintiff, and to the extent the remaining allegations contained in Paragraph 4 of Plaintiff's Complaint are not inconsistent with the statements and denials contained in this Paragraph, they are ADMITTED.

5. For answer to Paragraph 5 of Plaintiff's Complaint, this Defendant incorporates by reference the statements, admissions and denials to Paragraphs 1 through 4 of Plaintiff's complaint as if they were set out at length herein.

6. This Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations contained in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of Plaintiff's Complaint and therefore, DENIES same.

SEPARATE ANSWER TO FIRST PRAYER FOR RELIEF

7. For answer to Paragraph 20 of Plaintiff's Complaint, this Defendant incorporates its statements, admissions and denials to Paragraphs 1 through 19 of Plaintiff's Complaint as if they were set out at length herein.

8. DENIES the allegations contained in Paragraphs 21 and 22 of Plaintiff's Complaint.

9. STATES that Plaintiff's First Prayer for Relief of the Complaint fails to state a claim against this Defendant.

10. Except as otherwise admitted herein, DENIES each and every other allegation, averment, statement, fact and conclusion plead or averred in Plaintiff's First Prayer for Relief of the Complaint.

AFFIRMATIVE DEFENSES

11. For further answer, this Defendant STATES that Plaintiff's claims are barred by the doctrines of laches, estoppel, and waiver.

12. For further answer, this Defendant STATES that Plaintiff's claims, any and all of them, are barred by the applicable statutes of limitation or repose under any tribal, state and/or federal law found to be applicable to any and all of Plaintiff's claims.

13. For further answer, this Defendant STATES that any loss or damage claimed by Plaintiff was not caused by any action or inaction of either this Defendant or Defendant Union Security Life Insurance Company. Further, this Defendant had and has no connection or involvement with the Group Insurance Policy or Plaintiff's claim under the Group Insurance Policy.

14. For further answer, this Defendant DENIES that Plaintiff has any cognizable claims or causes of action, but this Defendant STATES that to the extent the Court deems Plaintiff to have any claims or causes of action, such claims or causes of action are governed or controlled by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* as amended, known commonly as ERISA. ERISA preempts all of Plaintiff's alleged claims, damages and causes of action. To the extent Plaintiff asserts any claim other than a claim under ERISA, or seeks damages other than those recoverable under ERISA, such claim, damage, or cause of action is preempted and barred by ERISA. Further, this Defendant has no connection with any claim asserted by Plaintiff.

15. In the alternative, on information and belief, this Defendant STATES that Plaintiff has failed to exhaust administrative remedies as required by ERISA, in that all of Plaintiff's claims herein are to be construed pursuant to and according to the terms, conditions and provisions of the Group Insurance Policy at issue, by the Group Insurance Policy's claim review designee. Upon information and belief, this Defendant STATES that to the extent: a) Plaintiff has made allegations that were not before the claim review designees and the Court concludes that it will entertain such allegations, b) Plaintiff intends to rely on evidence or present to this Court evidence that was not before such claim review designees at the time the claim was last reviewed and the Court concludes that it will entertain such evidence, or c) an award of benefits is ordered to be rendered and, due to the initial claim decision in this matter, the calculation of such benefit has not been determined in the administrative process, then Plaintiff has failed to exhaust administrative remedies and this matter is in the primary jurisdiction of this Defendant and is not ripe for judicial determination. Further, upon information and belief, this Defendant STATES that Plaintiff has not submitted the claim to Union Security Insurance Company for consideration prior to filing suit. Accordingly, Plaintiff's claim is barred.

16. For further answer, upon information and belief, this Defendant STATES that any denial or review of Plaintiff's claims was not an abuse of discretion or arbitrary and capricious and any judicial review of this matter should be conducted under the deferential, arbitrary and capricious standard of review.

17. Upon information and belief, this Defendant STATES that all benefits due and owing to Plaintiff have been paid pursuant to the Group Insurance Policy and ERISA, and that no such benefits, including interest, are due and owing, and STATES that, to the extent that

Plaintiff has been overpaid benefits, Defendant Union Security Insurance Company is entitled to recover such overpayment.

18. Upon information and belief, STATES that Plaintiff's remedies against Defendant, if any, are limited solely to those afforded by the Group Insurance Policy and ERISA.

19. Upon information and belief, DENIES that pursuant to the terms, conditions and provisions of the Group Insurance Policy at issue, Plaintiff is entitled to benefits, and for further answer, upon information and belief, STATES that Plaintiff has failed to comply with all of the terms, provisions and conditions of the Group Insurance Policy in that Plaintiff has failed to pursue or exhaust administrative remedies, and failed to timely bring suit as required under the Group Insurance Policy and ERISA.

20. STATES that Plaintiff's claims are barred and preempted by ERISA.

21. This Defendant has incurred and will incur expenses, costs and attorney's fees in defending against Plaintiff's claims and this Defendant is entitled to recover from Plaintiff its expenses of litigation, costs and reasonable attorney's fees pursuant to ERISA, 29 U.S.C. § 1132(g).

22. This Defendant reserves the right to amend its Answer to assert such other, further and additional defenses as are warranted, if any, and otherwise discovered during the pendency of this lawsuit.

23. To the extent Plaintiff has made, or will make, a demand for a jury trial, this Defendant STATES that pursuant to ERISA and case law interpreting same, Plaintiff is not entitled to a trial by jury.

SEPARATE ANSWER TO SECOND PRAYER FOR RELIEF

24. For answer to Paragraph 23 of Plaintiff's Complaint, this Defendant incorporates its statements, admissions and denials to Paragraphs 1 through 22 of Plaintiff's Complaint as if they were set out at length herein.

25. DENIES the allegations contained in Paragraph 24 of Plaintiff's Complaint.

26. STATES that Plaintiff's Second Prayer for Relief of the Complaint fails to state a claim against this Defendant.

27. Except as otherwise admitted herein, DENIES each and every other allegation, averment, statement, fact and conclusion plead or averred in Plaintiff's Second Prayer for Relief of the Complaint.

AFFIRMATIVE DEFENSES

28. Incorporates by this reference Paragraphs 11 through 23 of its Affirmative Defenses as if the same were set out at length herein.

SEPARATE ANSWER TO THIRD PRAYER FOR RELIEF

29. For answer to Paragraph 25 of Plaintiff's Complaint, this Defendant incorporates its statements, admissions and denials to Paragraphs 1 through 24 of Plaintiff's Complaint as if they were set out at length herein.

30. DENIES the allegations contained in Paragraph 26 of Plaintiff's Complaint.

31. STATES that Plaintiff's Third Prayer for Relief of the Complaint fails to state a claim against this Defendant.

32. Except as otherwise admitted herein, DENIES each and every other allegation, averment, statement, fact and conclusion plead or averred in Plaintiff's Third Prayer for Relief of the Complaint.

AFFIRMATIVE DEFENSES

33. Incorporates by this reference Paragraphs 11 through 23 of its Affirmative Defenses as if the same were set out at length herein.

SEPARATE ANSWER TO FOURTH PRAYER FOR RELIEF

34. For answer to Paragraph 27 of Plaintiff's Complaint, this Defendant incorporates its statements, admissions and denials to Paragraphs 1 through 26 of Plaintiff's Complaint as if they were set out at length herein.

35. DENIES the allegations contained in Paragraph 28 of Plaintiff's Complaint.

36. STATES that Plaintiff's Fourth Prayer for Relief of the Complaint fails to state a claim against this Defendant.

37. Except as otherwise admitted herein, DENIES each and every other allegation, averment, statement, fact and conclusion plead or averred in Plaintiff's Fourth Prayer for Relief of the Complaint.

AFFIRMATIVE DEFENSES

38. Incorporates by this reference Paragraphs 11 through 23 of its Affirmative Defenses as if the same were set out at length herein.

SEPARATE ANSWER TO FIFTH PRAYER FOR RELIEF

39. For answer to Paragraph 29 of Plaintiff's Complaint, this Defendant incorporates its statements, admissions and denials to Paragraphs 1 through 28 of Plaintiff's Complaint as if they were set out at length herein.

40. DENIES the allegations contained in Paragraph 30 of Plaintiff's Complaint.

41. STATES that Plaintiff's Fifth Prayer for Relief of the Complaint fails to state a claim against this Defendant.

42. Except as otherwise admitted herein, DENIES each and every other allegation, averment, statement, fact and conclusion plead or averred in Plaintiff's Fifth Prayer for Relief of the Complaint.

AFFIRMATIVE DEFENSES

43. Incorporates by this reference Paragraphs 11 through 23 of its Affirmative Defenses as if the same were set out at length herein.

WHEREFORE, Defendant Assurant, Inc. denies liability to Plaintiff and prays that the Court enter judgment in its favor, ordering that Plaintiff go hence *sine die*, and that this Defendant recover its costs incurred herein from Plaintiff, and that the Court grant to this Defendant an award of expenses and attorney's fees pursuant to 29 U.S.C. § 1132(g), and that the Court grant this Defendant such other and further relief as the Court deems is just and proper in the premises.

Respectfully submitted,

LATHROP & GAGE L.C.

By: s/ Richard N. Bien

Richard N. Bien, Admitted 8/15/2008
Benjamin Hassebrock, Admitted 8/15/2008
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2684
Telephone: (816) 292-2000
Telecopier: (816) 292-2001

And

Roger W. Zappa, Michigan Bar #P36610
Bensinger, Contant & Menkes, P.C.
122 W. Bluff
Marquette, MI 49855
Telephone: (906) 225-1000
Telecopier: (906) 225-0818

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that, on August 21, 2008, I filed the foregoing electronically with the Clerk of Court, to be served by operation of the Court's electronic-filing system upon the following counsel of record:

Joseph P. O'Leary
P.O. Box 659
Baraga, MI 49908
Tel: (906) 524-5440
Fax: (906) 524-5832
joleary@up.net

s/ Richard N. Bien
Attorney for Defendant