

FILED IN CLERK'S OFFICE  
USDC ATLANTA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

APR 1 - 2004

LUTHER D. THOMAS, Clerk  
By *F. Kincaid* Deputy Clerk

CHARLES L. THOMPSON,  
  
Plaintiff,  
  
v.  
  
UNUM LIFE INSURANCE COMPANY OF  
AMERICA and UNUMPROVIDENT  
CORPORATION,  
  
Defendants.

:  
:  
:  
CIVIL ACTION  
:  
FILE NO. \_\_\_\_\_  
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**T 04 CV - 0898**  
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**ODE**

**NOTICE OF REMOVAL**

The defendants file this Notice of Removal and state as follows:

1.

The defendants give notice that the civil action styled as Charles L. Thompson v. UNUM Life Insurance Company of America and UNUM Provident Corporation, Civil Action File No. 04VS063509, originally filed in the State Court of Fulton County, State of Georgia (the "civil action") is an action between citizens of different states and is hereby removed to this Court pursuant to UNUM's right of removal under 28 U.S.C. §§ 1441, et seq.

2.

A copy of all pleadings served upon the defendants within the past thirty days is attached hereto as Exhibit "A." This

**FORMS RECEIVED**  
Consent To US Mag.   
Pretrial Instructions   
Title VII-NTC

removal petition is timely filed pursuant to 28 U.S.C. § 1446(b).

3.

The plaintiff is, and was at the time of the commencement of this civil action, a citizen of the State of Georgia.

4.

Defendant UNUM Life Insurance Company of America is, and was at the time of the commencement of this civil action, a corporation incorporated under the laws of the State of Maine, with its principal place of business in Maine.

5.

Defendant UNUM Provident Corporation is, and was at the time of the commencement of this civil action, a corporation incorporated under the laws of the State of Tennessee, with its principal place of business in Tennessee.

6.

This civil action involves a controversy which is wholly between citizens of different states.

7.

As evidenced on the complaint, the plaintiff seeks, inter alia, recovery of long-term disability benefits, unspecified attorney's fees and a penalty for bad faith under the Georgia Insurance Code, unspecified damages for alleged tortious interference with contractual relations, and punitive damages

under O.C.G.A. § 51-12-5.1, in the specified amount of \$250,000. Thus, the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

8.

This action is therefore one over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

9.

As evidenced on the attached Certificate of Service, written notice of the filing of this Notice of Removal has been given to the plaintiff as required by law.

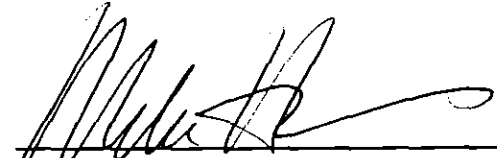
10.

A true and correct copy of this Notice of Removal has been filed with the Clerk of the State Court of Fulton County, State of Georgia, as required by law. A copy of the notice filed in the State Court of Fulton County is attached hereto as Exhibit "B."

WHEREFORE, the defendants pray that this action proceed in this Court as an action properly removed.

This 18<sup>th</sup> day of April, 2004.

*[signature on following page]*



Michael J. Hannan, III  
Georgia Bar No. 323587

Attorney for Defendants

LOVE WILLINGHAM PETERS  
GILLELAND & MONYAK LLP  
Suite 2200, Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
(404) 607-0100

COPY

GEORGIA  
FULTON COUNTY

STATE COURT OF FULTON COUNTY  
(Civil Division)

CHARLES L. THOMPSON

4201 Osprey Point

Woodstock, GA 30189

(Plaintiff's Name and Address)  
vs.

UNUM LIFE INSURANCE COMPANY OF AMERICA;  
and UNUMPROVIDENT CORPORATION

c/o Registered Agent, CT Corporation System  
1201 Peachtree Street, NE  
Atlanta, GA 30301  
(Defendant's Name and Address)

DO NOT WRITE IN THIS SPACE

FILED IN OFFICE

MAR -1 PM 5:05

STEPHANIE SEARCY  
CLERK, STATE COURT OF  
FULTON COUNTY, GEORGIA

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*Handwritten:* J

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> Account	Principal \$ _____
<input type="checkbox"/> Contract	Interest \$ _____
<input type="checkbox"/> Note	Atty. Fees \$ _____
<input type="checkbox"/> Tort	Ct. Costs \$ _____
<input type="checkbox"/> Trover	
<input type="checkbox"/> Special Lien	
<input type="checkbox"/> Foreign Judgment	
<input type="checkbox"/> Personal Injury	

**SUMMONS**

UNUM LIFE INSURANCE COMPANY OF AMERICA, c/o Registered Agent  
TO THE ABOVE NAMED-DEFENDANT: CT Corporation System, 1201 Peachtree St., NE, Atlanta, GA

You are hereby required to file with the Clerk of said court and to serve a copy on the 30361  
Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Pamela I. Atkins  
Galler & Atkins, LLC  
(Name) 1117 Perimeter Center West  
Suite W405  
(Address) Atlanta, Georgia 30338  
(770) 399-2790  
(Phone No.)

*Vertical stamp:* FULTON COUNTY  
CLERK OF SUPERIOR COURT  
MAR -2 PM 12:04

an answer to the complaint which is herewith served on you, within (30) days after service  
on you, exclusive of the day of service. If you fail to do so, judgment by default will be  
taken against you for the relief demanded in the complaint, plus cost of this action.

This 3/11/04

*Signature of Deputy Clerk*  
Deputy Clerk

DEFENSE MAY BE MADE, AND JURY TRIAL DEMANDED, if desired, in the Clerk's Office at  
20100, 185 Central Avenue, SW, (Between MLK, Jr. Drive and Mitchell Street), Atlanta, Georgia  
30303.

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more  
Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making  
written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition  
is sworn to, or if suit is based on an unconditional contract in writing, then the  
**DEFENDANT'S ANSWER MUST BE SWORN TO.**

If the principal sum claimed in the suit, or value of the property sued for, is less  
than \$300.00 and is on a note, unconditional contract, account sworn to, or the petition  
sworn to, defense must be made by filing a sworn Answer setting up the facts relied on as a  
defense.

SERVED: This 3 day of Mar, 19 04

*Signature of Deputy Marshal*  
DEPUTY MARSHAL STATE COURT OF FULTON COUNTY

(Staple to front of SERVICE COPY of complaint)

COPY

FILED IN OFFICE  
2004 MAR -1 PM 5:05  
STEVEN B. SEARBY  
CLERK, STATE COURT OF  
FULTON COUNTY, GEORGIA

**IN THE STATE COURT  
FULTON COUNTY, STATE OF GEORGIA**

CHARLES L. THOMPSON )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNUM LIFE INSURANCE )  
 COMPANY OF AMERICA; )  
 AND UNUMPROVIDENT )  
 CORPORATION )  
 )  
 Defendants. )

CIVIL ACTION NO.:

**COMPLAINT**

COMES NOW Plaintiff, CHARLES L. THOMPSON, by and through his attorney, and files this Complaint alleging that Unum Life Insurance Company ("Unum Life" or "UNUM") and UnumProvident Corporation ("UnumProvident" or "UNUM") (hereinafter collectively referred to as "Defendants") wrongfully deprive Mr. Thompson of his disability insurance benefits that were contractually bargained and exchanged for in the Unum Life Insurance Company of America Disability Income Policy, Policy Number LAD000181 ("Policy"), plus interest and attorney's fees.

**A. PARTIES**

1.

Plaintiff, Charles L. Thompson, (hereinafter "Mr. Thompson" or "Thompson") is and was, at all relevant times, a citizen of the United States and a resident of the

MIKE HANNAN

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CLERK OF SUPERIOR COURT  
SOUTH COAST COUNTY, GEORGIA

State of Georgia residing at 4204 Osprey Point, Woodstock, Georgia 30189.

2.

Unum Life Insurance Company ("Unum Life" or "UNUM") is and was at all relevant times a foreign corporation organized and existing under the laws of the state of Maine and an insurance company registered and authorized to transact business in the State of Georgia. Unum Life may be served with process by and through its registered agent CT Corporation System, 1201 Peachtree Street NE, Atlanta, GA 30361.

3.

UNUMProvident Corporation ("UnumProvident" or "UNUM") is and was at all relevant times a foreign for profit corporation organized and existing under the laws of the state of Tennessee and registered and authorized to transact business in the State of Georgia. UnumProvident may be served with process by and through its registered agent, CT Corporation System, 1201 Peachtree Street N.E., Atlanta, Georgia 30361.

- a) UnumProvident is a holding company and the parent corporation of Unum Life;
- b) UnumProvident is not a named party to the Policy and has no contractual authority to determine eligibility for benefits or interpret the terms and provisions of the Policy;
- c) UnumProvident is the alter-ego of Unum Life and acted as such in the handling of Plaintiff's claim for disability benefits:

- i) There are interlocking officers and directors between UnumProvident and Unum Life and the officers and directors of UnumProvident and Unum Life are virtually identical;
  - ii) UnumProvident provides the following services for Unum Life: sales, underwriting, administration, claims, financial services, human resources;
  - iii) In filings with government agencies, UnumProvident has stated that it offers various insurance and income protection products even though it is designated as a holding company (a foreign profit corporation, not an insurance company) and claims it is not an insurer;
  - iv) Hundreds of millions of dollars pass between UnumProvident and its subsidiaries, including Unum Life;
  - v) UnumProvident substantially controls the operations of Unum Life;
  - vi) UnumProvident issues checks on behalf of Unum Life;
  - vii) UnumProvident considers income of Unum Life as its own;
  - viii) UnumProvident controls and dominates the finances and business practices of Unum Life;
- d) UnumProvident acts as the alter ego and/or joint venturer with Unum Life and administers claims in relation to policies insured by Unum Life and so acted in administering and handling the claim filed by Plaintiff:
- i) UnumProvident created the claims handling procedures for three, merged



- insurance subsidiaries (Provident Life, Paul Revere, and Unum Life) and the unified claims operations are overseen by UnumProvident;
- ii) Corporate changes subsequent to the issuance of the group insurance policy resulted in UnumProvident employees assuming the claims handling functions for Unum Life and other subsidiaries of UnumProvident;
  - iii) UnumProvident is the employer of all persons who were involved in the claim processing and denial of Mr. Thompson's claim for benefits;
  - iv) Unum Life had no employees for claims handling functions at the time of the termination/denial of Mr. Thompson's benefits, and all decisions made in good or bad faith were made by UnumProvident;
  - v) UnumProvident employees made all the claims decisions and acted in concert with their wholly owned subsidiary, and failed to consider all the evidence Mr. Thompson submitted in support of his claim;
  - vi) UnumProvident handled Mr. Thompson's claim and made claims determinations on the approval and denial of Mr. Thompson's claim;
  - vii) UnumProvident exercised discretion, responsibility and control over Mr. Thompson's claim and acted in violation, committing per se violations, of the fair claims practices act;
  - viii) UnumProvident exercised authority over Mr. Thompson's claim even though there is no privity or contractual relationship between Mr. Thompson

and UnumProvident;

ix) Correspondence concerning the denial of Plaintiff's disability benefits was sent to Plaintiff on UnumProvident letterhead from persons employed and paid by UnumProvident not Unum Life;

x) UnumProvident was the entity that last reviewed and denied Mr. Thompson's claim;

**B. JURISDICTION & VENUE**

4.

Plaintiff's claims relate to the Unum Life Insurance Company of America Disability Income Policy, Policy Number LAD000181 ("Policy").

5.

Jurisdiction in this Court is proper. Plaintiff is a resident of the State of Georgia. Defendants are registered and authorized to transact business in the State of Georgia. Plaintiff's claims simultaneously and alternatively seek legal and equitable remedies. Plaintiff's claims are not associated with an employee welfare benefit plan as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001, et seq.

6.

Venue in this Court is proper pursuant to OCGA §§ 14-2-510, 33-4-1.

7.

Plaintiff exhausted all required pre-litigation remedies.

**C. FACTS**

8.

At all times relevant to this action, Plaintiff was the named insured and paid all premiums due under the Policy. A true copy of the Policy is attached as Exhibit "A" and incorporated herein by reference.

9.

Beginning on or about April 30, 2000, Mr. Thompson's *sickness*, his cardiac condition, caused at least a 75% loss of net income in his regular occupation. Mr. Thompson's *sickness*, his cardiac condition, continues to cause Mr. Thompson to be disabled within the terms of the Policy. Therefore, the Policy's terms require UNUM to pay Mr. Thompson the Policy's Maximum Disability Benefits from October 2000 to present, and so long as Mr. Thompson remains disabled within the terms of the Policy, the Policy's terms require UNUM to pay Mr. Thompson's Monthly Benefit Amount for the Maximum Benefit Period.

10.

**Terms of the Policy**

The Policy defines "sickness" as a mental or physical illness or condition which has been diagnosed or treated.

11.

The Policy defines “regular occupation” as the Insured’s occupation at the time the Elimination Period begins. If the Insured engages primarily in a professionally recognized specialty at that time, his occupation is that specialty.

12.

The Policy defines “disability” or “disabled” as the period while the Insured is satisfying the Elimination Period, or while the Disability Benefit or Loss of Use Benefit is payable.

- a) The Policy defines the “Insured” as Charles L. Thompson, who is the Plaintiff in this action.
- b) The Policy defines “Elimination Period” as 180 days, preceding the date benefits become payable (other than Loss of Use Benefit), during which injury or sickness impairs the insured. The Elimination Period begins on the first day that the Insured is impaired. If the impairment ceases before the Insured satisfies the Elimination Period and he becomes impaired again from the same cause within 6 months, we will combine those impairments to determine when benefits begin.
  - i) The Policy defines “impairment,” “impairs,” “impaired” as: (1) injury or sickness totally or residually disables the Insured; and (2) the Insured is receiving medical care from someone other than himself which is appropriate

for the injury or sickness.

c) Under the terms of the Policy, disability benefits are paid as follows:

**Disability Benefit.** We will pay the Monthly Benefit Amount in any month after the Insured has satisfied the Elimination Period that:

- 1. the Insured is totally disabled or the Insured is residually disabled and experiences at least a 20% loss of net income in his regular occupation as a result of a present injury or sickness;
- 2. the injury or sickness which causes the loss of net income is one which caused him to satisfy the Elimination Period;
- 3. he is receiving medical care from someone other than himself which is appropriate for the injury or sickness; and
- 4. benefits under the Disability Benefits and the Loss of Use Benefit combined have not been paid for the Maximum Benefit Period.

i) The Policy establishes "Monthly Benefit Amount" as follows:

**Monthly Benefit Amount.** If the Insured is totally disabled or if the Insured's loss of net income is 75% or more, we will pay the Maximum Disability Benefit for that month. Whenever the loss of net income is less than 75% but at least 20%, the amount payable will be determined by the following formula:

$$\frac{\text{loss of net income}}{\text{prior net income}} \times \text{Maximum Disability Benefit}$$

During the first six months that we pay the Disability Benefit, as a result of a residual disability, we will pay one-

half of the Maximum Disability Benefit rather than the amount due under the formula if the Insured's loss of net income is from 20% to 50%.

- ii) The Policy defines "total disability" and "totally disabled" as injury or sickness restricts the Insured's ability to perform the material and substantial duties of his regular occupation to an extent that prevents him from engaging in his regular occupation.
- iii) The Policy defines "residual disability" and "residually disabled" as injury or sickness does not prevent the insured from engaging in his regular occupation, BUT does restrict his ability to perform the material and substantial duties of his regular occupation: (i) for as long a time as he customarily performed them before the injury or sickness; or (ii) as effectively as he customarily performed them before the injury or sickness.
- iv) The Policy defines the Maximum Benefit Period as the later of (A) age 65 policy anniversary or (B) 24 months after disability payments begin.

13.

Mr. Thompson was born in 1951, and the applicable Maximum Benefit Period for Mr. Thompson's claim under the Policy is age 65 policy anniversary.

14.

**Occupation, Sickness & Benefits Application**

Prior to April 30, 2000, Mr. Thompson's regular occupation was with Fidelity

Investments as an Investment Advisor and Retirement Consultant.

15.

While working in his regular occupation, Mr. Thompson's annual earned income before taxes for 1999 was \$132,000.

16.

Beginning on or around April 30, 2000 and at age 48, Mr. Thompson suffered from an acute anteroseptal myocardial infarction, commonly known as a heart attack. At that time, Mr. Thompson also suffered from continued chest pain, hypertension, and hypercholesterolemia. Mr. Thompson's treating physicians were Alan R. Levinstone, MD and Nicholas A. Cossa, MD.

17.

On or around April 30, 2000, Mr. Thompson underwent cardiac catheterization, angioplasty, and stent placement procedures. Upon completing these procedures, Mr. Thompson's treating physicians concluded the following: (1) Coronary artery disease. Significant single-vessel disease with high-grade stenosis of the very proximal LAD; (2) At least moderate LV dysfunction with evidence of recent anteropical infarction; (3) Elevated left ventricular end diastolic pressure.

18.

The cardiac condition described above and the continuing complications suffered by Mr. Thompson, described below, serve as the sickness, impairment,

disability and/or residual disability restricting Mr. Thompson's ability to perform the material and substantial duties of his regular occupation: (i) for as long a time as he customarily performed them before the injury; or (ii) as effectively as he customarily performed them before the injury.

19.

On or around May 10, 2000, Mr. Thompson applied for and was approved for Short Term Disability insurance coverage through The Hartford Insurance Company.

20.

On or around July 1, 2000, Mr. Thompson attempted to return to his regular occupation at Fidelity Investments after conducting cardiac rehabilitation. However, on or around July 27, 2000 and while attempting to perform his regular occupation, Mr. Thompson experienced increased chest discomfort, stomach discomfort and weakness, due to stress and anxiety related problems, whereupon Mr. Thompson was taken to the hospital emergency room and was re-admitted for treatment. Mr. Thompson was discharged from the hospital on or around August 1, 2000.

21.

On or around August 5, 2000, Mr. Thompson again attempted to return to his regular occupation at Fidelity Investments on a modified schedule during a slow period in the industry, however, Mr. Thompson was unable to maintain his normal workload and keep pace with his previous abilities. In fact, on or around October 10, 2000 and



while attempting to perform his regular occupation, Mr. Thompson experienced chest discomfort, stomach discomfort and weakness, due to stress and anxiety, whereupon Mr. Thompson was taken to Dr. Levinstone's office for treatment. On or about August 15, 2000, Dr. Levinstone performed another cardiac catheterization.

22.

Upon examination, Dr. Levinstone ordered that Mr. Thompson not return to work and that Mr. Thompson change his regular occupation to one requiring fewer hours per week, less stress and less responsibility.

23.

On or around October 11, 2000, Mr. Thompson again applied for and was approved for Short Term Disability insurance coverage through The Hartford Insurance Company.

24.

On or around October 15, 2000, Mr. Thompson submitted his application for Long Term Disability benefits under the Policy, attaching Dr. Levinstone's Attending Physician's Statement in support of his claim.

25.

Dr. Levinstone's October 18, 2000 Attending Physician Statement opined the following:

Objective Findings: Coronary Artery Disease, Angioplasty,

Myocardial Infarction

Secondary Conditions contributing to the disability:  
Hypertension, Fatigue

Functional Capacity for cardiac condition: Class 3 – Marked  
Limitation

Patient’s condition work related: Yes – Stress and Hours are  
excessive

Fully describe restrictions and limitations: Unable to handle  
demands of financial job

Specific Restrictions: Gets hypertension when working in  
office; gets reflux symptoms

Specific Limitations: avoid dealing with demanding clients  
who have severe money troubles

26.

Since April 30, 2000, Mr. Thompson has undergone continuous treatment for his cardiac condition from Drs. Levinstone and Cossa, among others.

27.

On or about February 27, 2001, Dr. Cossa sent an opinion letter to Unum Life regarding Mr. Thompson’s disabling condition. In his letter, Dr. Cossa opines that:

In view of his history of having a significant heart attack at a young age, he was advised to reduce his workload and to reduce the amount of stress he has at work in order to live a healthier lifestyle. The patient should be considered disabled from his current level of employment and should seek alternative employment which will allow him a lighter work schedule and a less stressful environment.

28.

On or about March 9, 2001, Dr. Levinstone sent an opinion letter to Unum Life regarding Mr. Thompson's disabling condition. In his letter Dr. Levinstone opines that:

Charles Thompson has been under my care since 1993. I attended him during his severe heart attack at Fair Oak Hospital on April 30, 2000 and his subsequent rehabilitation. I recommended that Mr. Thompson change his job to one requiring fewer hours and less stress and responsibility. He subsequently had another attack of chest pain last summer.

His job at Fidelity Investments as a Financial Advisor and Retirement Consultant given his medical history, places him at risk of another cardiac event.

I placed Mr. Thompson on short-term disability [three] times since his myocardial infarction. He is currently on short-term disability. I support his claim for long-term disability from his current position that would allow him to engage in a new career compatible with his medical history and risk.

29.

In addition to the documents discussed in the allegations above, Mr. Thompson sent UNUM numerous medical records, reports and findings that support his claim, however, UNUM continues to wrongfully deny Mr. Thompson's claim. In fact, UNUM's wrongful denial of Mr. Thompon's claim is consistent with UNUM's routine, pattern and practice of wrongfully denying claims for cardiac conditions.

30.

**Thompson Meets the Policy Definition of Disability &**

**Thompson is Eligible for the Policy's Maximum Disability Benefit**

On or about April 30, 2000, Mr. Thompson's sickness, his cardiac condition, caused him to become impaired within the terms of the Policy.

- a) Beginning on or around April 30, 2000, Thompson's sickness, his cardiac condition, restricted his ability to perform the material and substantial duties of his regular occupation, an Investment Advisor and Retirement Consultant, for as long as he customarily performed them before the injury or sickness, at least fifty (50) hours per week.
- b) Beginning on or around April 30, 2000, Thompson's sickness, his cardiac condition, restricted his ability to perform the material and substantial duties of his regular occupation, an Investment Advisor and Retirement Consultant, as effectively as he customarily performed them before the injury or sickness.
- c) Beginning on or around April 30, 2000, Thompson has received ongoing and continuous medical care from someone other than himself, and Thompson's treating physicians provide appropriate care for his injury, his cardiac condition.

31.

Since April 30, 2000, Mr. Thompson's sickness, his cardiac condition, has continually caused him to be residually disabled within the terms of the Policy, and therefore, Mr. Thompson satisfied the Policy's Elimination Period.

- a) The Elimination Period began on the first day that Thompson's sickness, his cardiac condition, impaired him, April 30, 2000.
- b) Thompson remained impaired for 180 days before benefits became payable, October 27, 2000.
- c) In the alternative possibility that Thompson's impairment ceased at any point before the expiration of 180 days from April 30, 2000, Thompson suffered from the same impairment within six (6) months, and therefore, satisfied the Elimination Period.

32.

Upon Mr. Thompson satisfying the Policy's Elimination Period, UNUM was required to pay Mr. Thompson's Disability Benefit under the Policy.

- a) Thompson was disabled or residually disabled, and continues to be disabled or residually disabled, within the terms of the Policy. Thompson experienced, and experiences, at least a 20% loss of net income in his regular occupation as a result of his present sickness, his cardiac condition.

- b) Thompson's sickness, his cardiac condition, caused the loss of net income that satisfied the Elimination Period.
- c) Since April 30, 2000, Thompson has received ongoing and continuous medical care from someone other than himself for his sickness, and Thompson's treating physicians provide appropriate care for his sickness.
- d) UNUM has not paid Mr. Thompson's benefits claim for the Maximum Benefit Period as defined in the Policy.

33.

The Policy obligates UNUM to pay Mr. Thompson's Disability Benefits in the appropriate Monthly Benefit Amount, which is the Maximum Disability Benefit, beginning on October 28, 2000.

- a) Thompson's loss of net income was more than 75% in October 2000;
- b) Thompson's loss of net income has been and continues to be more than 75% since October 2000.

**D. GROUNDS FOR RELIEF**

34.

**Count I**

**Breach of Contract - OCGA § 9-2-20**

**UNUM's Wrongful Denial of Thompson's Benefits Claim**

The allegations of the preceding paragraphs are incorporated herein by

reference.

35.

Mr. Thompson has fulfilled all conditions precedent under the Policy to entitle him to monthly benefits commencing on or about the 181st day after April 30, 2000. The Policy declares that UNUM will pay the Monthly Benefit Amount, up to the Maximum Disability Benefit, for every month that Mr. Thompson satisfies the Policy's Disability Benefits provisions. Since April 30, 2000, Mr. Thompson's sickness, his cardiac condition, met, and continues to meet, the Policy's definition of disability and impairment, satisfying the Policy's Disability Benefits provisions.

36.

Mr. Thompson timely submitted his claim.

37.

UNUM wrongfully denied Mr. Thompson's claim by letter on or about February 13, 2004.

38.

Mr. Thompson timely appealed UNUM's wrongful denial on or about February 22, 2001.

39.

In response to Mr. Thompson's appeal, on or about February 28, 2001, UNUM requested that Mr. Thompson send additional information that Mr. Thompson would

like for UNUM to review as part of Mr. Thompson's appeal, such as the updated stress report with corresponding data, to UNUM.

40.

On or around March 8, 2001, Mr. Thompson submitted additional information to UNUM – Proof of Loss – which supported his claim.

41.

On or around March 19, 2001, Moody & Associates, Inc., on behalf of Mr. Thompson, submitted additional information to UNUM – Proof of Loss – which supported Mr. Thompson's claim.

42.

On or around April 4, 2001, UNUM wrongfully upheld its denial of Mr. Thompson's claim. At this time, UNUM forwarded Mr. Thompson's claim to UNUM's Quality Performance Support Unit for completion of the appellate review.

43.

On or around June 12, 2001, UNUM issued its final denial of Mr. Thompson's claim.

44.

As a routine, pattern and practice, UNUM wrongfully denies disability claims relating to claimant's with cardiac conditions.



45.

**Count II**

**Bad Faith – OCGA § 33-4-6**

The allegations of the preceding paragraphs are incorporated herein by reference.

46.

UnumLife and UnumProvident are insurers within the meaning of OCGA § 33-4-6. UNUM has been cited in an Order issued by the Insurance Commission of Georgia for its routine behavior in handling claims, wrongful conduct in handling claims, and/or bad faith in wrongfully denying claims against Georgia law.

47.

In terminating Mr. Thompson's claim, both Unum Life and UnumProvident failed to objectively and fairly evaluate the claim, asserted reasons for denying the claim that are without reasonable bases in fact, conducted an unreasonable investigation of the claim, and unreasonably withheld benefits.

48.

Unum Life's failure and refusal to reverse its determination in its February 13, 2001 letter that Mr. Thompson is no longer entitled to benefits under the Policy constitutes a refusal to pay policy benefits in bad faith, in that Unum Life has no reasonable grounds or no good or probable cause upon which to deny Mr. Thompson's

claim for benefits, and/or its denial of liability is frivolous and unfounded.

49.

UnumProvident conducted, and conspired and cooperated with Unum Life to conduct, a bad faith investigation of Mr. Thompson's claim, with the intent that Mr. Thompson's claim be denied upon no reasonable grounds, and for no good or probable cause, and upon frivolous and unfounded bases.

50.

UnumProvident directed Unum Life to deny Mr. Thompson's claim with knowledge that the denial was based upon no reasonable grounds, and for no good or probable cause, and upon frivolous and unfounded bases.

51.

Unum Life's bad faith in refusing to further pay Mr. Thompson's benefits, and UnumProvident's bad faith in conducting an investigation, and conspiring and cooperating with Unum Life and directing it to terminate Mr. Thompson's benefits, is further evidenced by the corporate patterns, practices and conduct set forth above, all of which have played a material role in Defendants' actions with respect to Mr. Thompson.

52.

Defendants are further guilty of bad faith by intentionally ignoring or intentionally misconstruing the overwhelming evidence of Mr. Thompson's total

disability in their investigative file.

53.

Defendants are further guilty of bad faith by repeatedly making material misstatements and misrepresentations of fact in their dealings with Mr. Thompson.

54.

Unum Life's refusal to pay policy benefits in bad faith, and UnumProvident's conspiracy in support thereof and direction to Unum Life to do so, despite the clear evidence in their possession that Mr. Thompson was at all relevant times totally disabled under the terms of the Policy has, upon information and belief been undertaken as part of Defendants' effort to reduce losses arising out of these and other non-cancelable disability policies and reflects the intent of Defendants to place their own interests ahead of those of their insureds, all of which further constitutes bad faith – per se bad faith violations of the fair claims practice act, OCGA §§ 33-6-30 - 37.

55.

More than 60 days have passed since Mr. Thompson made a written demand upon Defendants to reverse their decision that he is no longer entitled to benefits under the Policy.

56.

In accordance with O.C.G.A. 33-4-6, Unum Life is liable to Mr. Thompson for a bad faith penalty of fifty percent (50%) and reasonable attorney's fees.

57.

In accordance with O.C.G.A. 33-4-6, UnumProvident is liable to Mr. Thompson for a bad faith penalty of fifty percent (50%) and reasonable attorney's fees.

58.

**Count III**

**Bad Faith Breach of Contract**

The allegations of the preceding paragraphs are incorporated herein by reference.

59.

Unum Life assigned the responsibility for conducting investigations into Mr. Thompson's benefits claim and determinations on Mr. Thompson's benefits claim to UnumProvident, which thereupon became Unum Life's agent for that purpose.

60.

As such, Mr. Thompson and UnumProvident entered into a contractual relationship concerning the investigation and determination of Plaintiff's claim for benefits, pursuant to which UnumProvident implicitly covenanted to conduct all such investigations in good faith and fair dealing.

61.

UnumProvident conducted its investigations with respect to Plaintiff's claim in bad faith, and/or has been stubbornly litigious, and/or has caused Plaintiff unnecessary

trouble and expense.

62.

Unum Life is responsible for the acts of its agent as aforesaid.

63.

By virtue of this breach of the duty of good faith and fair dealing, and the bad faith conduct as aforesaid by Unum Life and UnumProvident, Plaintiff has sustained damages in the form of lost long-term disability benefits, and consequential damages resulting therefrom, and has been required to incur expenses of litigation, including but not limited to attorneys' fees and costs which he is entitled to recover under the provisions of OCGA § 13-6-11.

64.

**Count IV**

**Tortious Interference with Contractual Relations**

The allegations of the preceding paragraphs are incorporated herein by reference.

65.

UnumProvident is not a party to the Policy. UnumProvident has no privity of contract with Mr. Thompson. UnumProvident wrongfully and improperly denied Mr. Thompson's benefits claim under the Policy.

66.

In wrongfully denying Mr. Thompson's benefits claim, UnumProvident acted with malice and intent to injure.

67.

UnumProvident's wrongful conduct caused Unum Life, a party to the Policy, to breach the terms of the Policy and fail to pay Mr. Thompson's benefits claim.

68.

UnumProvident's conduct in wrongfully interfering with the Unum Life's obligations under the Policy and wrongfully causing Unum Life to fail to abide by the terms of the Policy caused damage to Mr. Thompson.

69.

### **Count V**

#### **Punitive Damages – OCGA § 51-12-5.1**

The allegations of the preceding paragraphs are incorporated herein by reference.

70.

UnumProvident's actions in wrongfully interfering with Mr. Thompson's benefits under the Policy showed willful misconduct, malice, fraud, wantonness, oppression, and/or the entire want of care which would raise the presumption of conscience indifference to consequences.

71.

**Count VI**

**UnumProvident engaged in a Joint Venture with**

**Unum Life and UnumProvident is the Alter Ego of Unum Life.**

The allegations of the preceding paragraphs are incorporated herein by reference.

72.

UnumProvident engaged in a joint venture with Unum Life by acting as one in the same entity when denying Plaintiff claim.

To not allow Plaintiff's allegations against UnumProvident to stand

73.

UnumProvident is the alter ego of Unum Life, both of which wrongfully denied Plaintiff's claim.

74.

Because UnumProvident and Unum Life are one in the same, either as a joint venture or alter ego corporations, it would be an injustice allowing subterfuge not to hold UnumProvident accountable for its wrongful actions.

75.

**Count VII**

**Attorney Fees & Expenses of Litigation – OCGA §§ 9-15-14, 13-6-11**

The allegations of the preceding paragraphs are incorporated herein by reference.

76.

Defendants' position in denying Mr. Thompson's benefits claim exhibits a lack of substantial justification, was interposed for delay, and unnecessarily expanded the proceedings by improper conduct.

**E. PRAYER FOR RELIEF**

77.

**WHEREFORE**, Mr. Thompson requests the following relief:

- a) Judgment in favor of Plaintiff, Charles L. Thompson;
- b) That Unum Life be ordered to pay to Mr. Thompson the full amount of benefits due and unpaid under the Policy as of the date of judgment, plus interest at the policy rate of 18% per year;
- c) That Unum Life be ordered to refund to Mr. Thompson all premiums paid by him during the period of his disability;
- d) That Unum Life be found to hold Mr. Thompson's unpaid monthly benefits and premium payments as trustee for Mr. Thompson, and accordingly be ordered to



account to Mr. Thompson for and be ordered to pay over to Mr. Thompson all monies earned on the withheld benefits and premium payments;

e) That Unum Life be ordered to pay to Mr. Thompson the present value of benefits actuarially determined to be due to him for the remainder of his life;

f) That the Court award the following Bad Faith damages:

i) Against Unum Life:

(1) A penalty of fifty percent (50%) on the amount of unpaid past and future benefits; and

(2) Reasonable attorneys fees and costs in accordance with O.C.G.A. 33-4-6.

ii) Against UnumProvident:

(1) A penalty of fifty percent (50%) on the amount of unpaid past and future benefits; and

(2) Reasonable attorneys fees and costs in accordance with O.C.G.A. 33-4-6;

g) That the Court find that UnumProvident tortuously interfered with the contractual relations between Unum Life and Mr. Thompson;

h) That the Court award \$250,000 in punitive damages for UnumProvident's tortuous and malicious conduct in interfering with the contractual relations of Unum Life and Mr. Thompson;

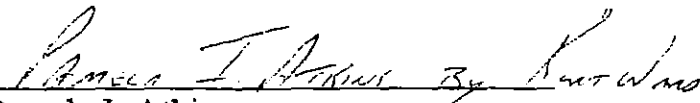
- i) That the Court find that UnumProvident and Unum Life acted as alter egos and/or in a joint venture in wrongfully denying Plaintiff's claim, and that the Court implement equitable remedies for UNUM's wrongful denial of Plaintiff's claim; and
- j) That the Court enter judgment against Unum Life and UnumProvident for all damages proximately caused by its wrongful conduct together with interest and the expenses of litigation in accordance with OCGA §§ 9-15-14(b), 13-6-11.

**F. JURY TRIAL DEMAND**

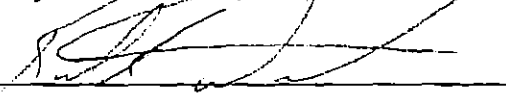
73.

Plaintiff demands a trial by jury on all counts of this Complaint to which he has a right to trial by jury.

Respectfully submitted this 2<sup>nd</sup> day of March, 2004.

  
 \_\_\_\_\_  
 Pamela I. Atkins

Georgia Bar No. 026302  
Attorney for Plaintiff, Charles L. Thompson

  
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 Kurt R. Ward

Georgia Bar No. 737025  
Attorney for Plaintiff, Charles L. Thompson

Galler & Atkins, LLC  
1117 Perimeter Center West, Suite W405  
Atlanta, GA 30338  
Phone (770) 399-2790  
Fax (770) 399-2797

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

CHARLES L. THOMPSON,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY  
OF AMERICA and UNUMPROVIDENT  
CORPORATION,

Defendants.

CIVIL ACTION

FILE NO. 04VS063509

**NOTICE OF FILING NOTICE OF REMOVAL IN  
THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF GEORGIA,  
ATLANTA DIVISION**

TO: Clerk, State Court of Fulton County  
State of Georgia

Please take notice that, pursuant to 28 U.S.C. § 1441, the defendants have removed the above-styled action from this Court to the United States District Court for the Northern District of Georgia, Atlanta Division. A copy of the Notice of Removal filed in the United States District Court for the Northern District of Georgia, Atlanta Division, is attached hereto as Exhibit "A".

This 1st day of April, 2004.



Michael J. Hannan, III  
Georgia Bar No. 323587

Attorney for Defendants

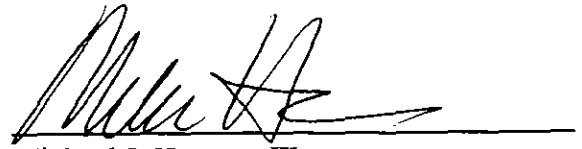
LOVE WILLINGHAM PETERS  
GILLELAND & MONYAK LLP  
Suite 2200, Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
(404) 607-0100

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served counsel for all interested parties to this action with a copy of NOTICE OF FILING NOTICE OF REMOVAL IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION, by depositing a copy of same in the United States Mail, in a properly addressed envelope with adequate postage affixed thereon to:

Pamela I. Atkins, Esq.  
Kurt R. Ward, Esq.  
Galler & Atkins, LLC  
1117 Perimeter Center West  
Suite W405  
Atlanta, Georgia 30338

This ~~18~~ day of ~~March~~<sup>April</sup>, 2004.



Michael J. Hannan, III  
Georgia Bar No. 323587

Attorney for Defendants

LOVE WILLINGHAM PETERS  
GILLELAND & MONYAK LLP  
Suite 2200, Bank of America Plaza  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
(404) 607-0100

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all interested parties to this action with a copy of this Notice of Removal, by depositing a copy of same in the United States Mail, in a properly addressed envelope with adequate postage affixed thereon to:

Pamela I. Atkins, Esq.  
Kurt R. Ward, Esq.  
Galler & Atkins, LLC  
1117 Perimeter Center West  
Suite W405  
Atlanta, Georgia 30338

This 18 day of April, 2004.



Michael J. Hannan, III  
Georgia Bar No. 323587

Attorney for Defendants

LOVE WILLINGHAM PETERS  
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