

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
TREVOR CHARLES CLARKE,	:	04 Civ. 1440 (RJH)
	:	
Plaintiff,	:	
	:	<b><u>MEMORANDUM</u></b>
- against -	:	<b><u>OPINION AND ORDER</u></b>
	:	
AETNA LIFE INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	:	
-----X	:	

This is an action brought by plaintiff Trevor Clarke against Aetna Life Insurance Company (“Aetna”) for breach of contract for failure to pay disability benefits to Plaintiff pursuant to a long term disability policy issued by Aetna (the “Policy”).

This case was tried before the Court without a jury from April 1 to April 3, 2008. This opinion sets forth the Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). To the extent that any finding of fact reflects a legal conclusion, it should be to that extent deemed a conclusion of law and vice versa. For the reasons explained below, the Court finds that Clark has not proved, by a preponderance of the evidence, that he was entitled to either total disability or partial disability benefits under the Policy.

**FINDINGS OF FACT**

**Plaintiff’s Occupation**

1. Trevor Clarke is a solicitor specializing in pensions law in the UK. In 1994, Clarke helped to start Garrett’s, a Leeds law firm financially backed by Arthur

Andersen (“Andersen”). Andersen, the largest professional services organization in the world, was seeking to establish multi-disciplinary partnerships throughout the world.

2. Clarke joined Garrett’s as a National Partner in May 1994. At Garrett’s, Clarke was guaranteed a “Capped Equity,” which was a share of the firm’s profits. When he first joined Garrett’s, his guaranteed profit share was about \$240,000. By 1998, this had increased to about \$273,000.
3. Prior to working at Garrett’s, Clarke had worked at the law firms Edge Ellison and Simpson Curtis.
4. Garrett’s was a competitive environment. Garrett’s partners were expected to perform at a high level and to be “on call” to address work issues outside normal working hours, including weekends and holidays. (Clarke Aff. ¶¶ 24, 32.) At Garrett’s, Clarke handled pension schemes of large corporate clients, drafted trust deeds for small self-administered pension schemes (“SSASs”), and acted as a Pensioner Trustee for these SSASs. (Clarke Aff. ¶ 34.) Initially, Clarke had responsibility for all pensions work generated in the Leeds and London offices. Later he moved to Birmingham and assumed responsibility for pensions work in England and Scotland. He supervised three or four pension lawyers in Birmingham and assisted with other offices. Clarke also assisted regional offices in appointing their own pension lawyers.

As these offices' pensions practices developed, Clarke was responsible for replacing the work that had previously been referred from these offices with work for Birmingham clients. (Clarke Aff. ¶¶ 23–35.)

5. After a merger between Garrett's Employment Law and Pensions department and the Human Capital Services ("HCS") Department of Andersen, Clarke became the joint head of the HCS practice in the Midlands. In this role, Clarke was asked to recruit for a new division within HCS that specialized in pensions and financial services as part of creating a new full-service pensions and investment services. Clarke also had to recruit and supervise non-legal personnel for the HCS department. In total, Clarke and one other partner were responsible for a group of approximately forty individuals. (Clarke Aff. ¶¶ 26–35.)
6. Andersen set an annual target for the increase in the number of qualified staff working under each partner. Clarke was required not only to increase the number of qualified staff working for him but also to find enough client work to occupy all of these individuals. (Clarke Aff. ¶¶ 30–32.)
7. Clarke's occupation was that of a senior partner in a large law and accounting firm in Birmingham, England. The material duties of Clarke's occupation were to oversee Garrett's pension work in England and Scotland, to practice pensions law, to be "on call" outside of regular working hours, to recruit

personnel for the HCS division, to supervise legal and non-legal personnel, and to maintain client relationships and obtain new clients.

### **The Policy**

8. As a partner at Garrett's, Clarke was covered by Long-Term Disability Policy No. LTD-299098 ("the Policy"), issued by Aetna.
  
9. The parties have provided competing versions of the Policy as trial exhibits; there is a dispute over which version governs Clarke's 2001 claim for disability benefits under the Policy. (Aetna Ex. 1; Clarke Ex. 2.) Clarke notes that his version is labeled with the code "94BERM," while Aetna's version is labeled "93BERM." In addition, Clarke provides an August 3, 1999 letter from Aetna to Clarke indicating that total disability benefits are paid at a rate of 70% of monthly basic earnings until age 62. (Clarke Ex. 4 at 5-7.) This is consistent with the total disability benefits described in the 94BERM policy offered by Clarke (Clarke Ex. 2 at 4, 5, 7, 26), but not the 93BERM policy offered by Aetna (Aetna Ex. 1 at 6, 8, 31.). Aetna has offered no argument or evidence on this issue. The Court finds that Clarke's claim for disability benefits is governed by the version of the Policy designated 94BERM (Clarke Ex. 2).
  
10. The relevant provisions of the Policy are as follows:
  - II.A.2. An individual will remain eligible [for Long-Term Disability Coverage] as long as he or she:
    - a. Continues to be an active partner; or

- b. Is a retired partner under age 62 (only for total disability benefits).

VII.3. Actively Employed or Active Employment for partners means:

- a. Devoting all professional time, skill and attention to the affairs of the Policyholder; and
- b. Not being:
  - (1) Hospital confined;
  - (2) Confined in any institution/facility other than a hospital due to an injury or sickness; or
  - (3) Confined at home and under the supervision of a physician.

II.D.2. If a covered individual is eligible because of employment, he or she will no longer be eligible when the covered individual:

- a. Resigns; . . .
- c. Is dismissed, disabled or suspended;
- d. Is no longer in an eligible class;
- e. Does not satisfy the requirements for hours worked or any other eligibility provisions.

VII.33. Total Disability/Totally Disabled for LTD means: . . .

- b. For Active Regular Partners or for Retired Partners disabled while active that solely because of an illness, pregnancy or accidental bodily injury, an insured partner is unable: (1) To perform each of the material duties of the partner's regular occupation on a full-time basis; . . . .
- c. For Retired Partners disabled after retirement that solely because of an illness, pregnancy or accidental bodily injury, an insured partner is unable . . . to perform independently the functions needed for the basic Activities of Daily

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.