

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO: DIVISION " " DOCKET NO.

DR. CARL BERNOFSKY

VERSUS

TEACHERS INSURANCE AND ANNUITY ASSOCIATION &
THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

Plaintiff, Dr. Carl Bernofsky ("Bernofsky") residing at 6478
General Diaz, New Orleans, Louisiana 70124, respectfully
represents:

1.

Bernofsky is a person of the full age of majority, and a
resident of Orleans Parish, State of Louisiana.

2.

The following are made defendants herein:

- A. Teachers Insurance and Annuity Association,
domiciled at 730 Third Avenue, New York, NY
10017, is a foreign insurer doing business in
this Parish and State but not registered with
either the Secretary or the Commissioner of
Insurance for the State of Louisiana.
- B. The Administrators Of The Tulane Educational
Fund, the board charged with overseeing the
operation and administration of the Tulane
University School of Medicine an institution
of higher learning, with certain of its board
members domiciled in this Parish and State.

3.

Upon information and belief, the aforesaid defendants are
justly and truly indebted unto plaintiff jointly, severally, and
in solido in the full and true sums that are reasonable in the
premises, with legal interest on all amounts from date of
judicial demand until paid, plus reasonable attorney fees and all
costs of this proceeding.

4.

Bernofsky was employed as a full time employee by Tulane
University Medical School ("Tulane") in the State of Louisiana
during the period from 1975 to April 21, 1995. During his period

of employment with Tulane, he paid insurance premiums to the Teachers Insurance and Annuity Association ("Insurer") for long term disability coverage, an insurance arrangement.

5.

The premiums paid to the Insurer for long term disability coverage were collected and forwarded by Tulane to the Insurer.

6.

Bernofsky amassed a cancerous tumor measuring 8 cm x 5 cm x 3.5 cm, or 140 cc in volume. Bernofsky observed the appearance of the tumor on May 9, 1995 and immediately sought medical treatment.

7.

To amass a tumor this size, a minimum of 74 days to 370 days is necessary, i.e., the onset of tumorigenesis occurred within the time frame of 2 to 10 months prior to observation while Bernofsky was employed at Tulane.

8.

Bernofsky suffered latent disablement during the development of his malignancy even though at the time his only physical symptom was fatigue.

9.

Bernofsky was terminated from his employment with Tulane on April 21, 1995.

10.

Bernofsky applied for benefits under the Insurer's group long term disability insurance policy. He was notified by the Insurer on March 6, 1998 that his application for long term disability benefits was denied.

11.

The policy states: "If your insurance ceases, it will not affect your benefits for a Total Disability existing on that date."

12.

Upon information and belief, Tulane neither directly nor indirectly owns, controls, administers or assumes responsibility for the Insurance policy or its benefits.

The defendants have breached their contract of insurance with Bernofsky and wrongfully denied him coverage and benefits to which he is entitled.

WHEREFORE, Bernofsky prays that defendants be ordered to provide payment of benefits due under the Teachers Insurance and Annuity Association Group Long Term Disability Benefits Plan, together with fees pursuant to La.Rev.Stat. 22:657.

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PLEASE SERVE:

- 1) TEACHERS INSURANCE AND ANNUITY ASSOCIATION
C/O Jay Applebaum, Esq.
Teachers Insurance and Annuity Association
730 Third Avenue
New York, NY 10017

- 2) THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
C/O Agent for Service of Process
Ronald Mason, Jr., Esq.
Tulane University
Uptown Campus
300 Gibson Hall
New Orleans, Louisiana 70118-5698.