IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

LAURA YASKO, o/b/o)	
ALAN YASKO, M.D.)	
)	
Plaintiff,)	
)	
v.)	No. 12 C 02658
)	
RELIANCE STANDARD LIFE)	Judge John J. Tharp, Jr
INSURANCE COMPANY,)	
)	
Defendant.)	

STATEMENT

In 2012, Laura Yasko filed suit against Reliance Standard Life Insurance Company to recover accidental death benefits from an insurance policy (the "Policy") issued to her husband, Dr. Alan Yasko. Ms. Yasko's suit was brought under the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1132(e)(1) and 1132(f). Reliance moved for summary judgment, which this Court denied by written opinion on June 30, 2014 ("Summary Judgment Order"). On July 15, 2014, the parties agreed that no in-court testimony or additional written materials were needed for this Court to render a judgment in the case and submitted the case for resolution on the papers pursuant to Fed. R. Civ. P. 52. The Court finds that the evidence supports the plaintiff's position and accordingly enters judgment in her favor.

The Court adopts and incorporates the findings of fact and analysis of law set forth in the Summary Judgment Order as the basis of its judgment in favor of the plaintiff. Based on the undisputed facts, the Court concluded that Dr. Yasko's death from pulmonary embolism was an "Accident" as defined by the Policy. There were no unresolved material factual disputes bearing on this determination, so the Court's prior discussion of this issue requires no supplementation.

Because Dr. Yasko's death was an "Accident" as defined by the Policy, it was covered *unless* the Policy's exclusion that denies coverage for "any loss ... to which sickness, disease, or myocardial infarction, including medical or surgical treatment thereof, is a contributing factor" applies. With respect to that question, the Court concluded as a matter of law that Dr. Yasko's surgery in February 2010 was not a contributing factor to his death within the meaning of the Policy. The Court also concluded that "the evidence leans strongly toward the conclusion that after his surgery, Dr. Yasko did not have active lung 'cancer;" and on the basis of that discussion, the Court now finds that the evidence on this point supports a judgment (under the preponderance standard) in favor of the plaintiff. Concluding that Dr. Yasko did not have active lung cancer at the time of his death necessarily means that cancer could not have been a contributing factor in his death.

Even if the Court found that Dr. Yasko still had some degree of active cancer when he died, that fact would still not establish that lung cancer was a contributing factor in his death. As the Summary Judgment Order noted, Reliance has not adduced "any evidence of the mechanism by which cancer can cause an embolism, or that this mechanism actually occurred in Dr. Yasko's case." It is Reliance's burden to establish that a Policy exclusion applies and in this case it has not met that burden. Accordingly, the Court finds that neither lung cancer, nor the surgery Dr. Yasko underwent, was a contributing factor in his death and the "contributing factor" Policy exclusion therefore does not apply.

* * *

For the reasons set forth above, judgment is entered in favor of the plaintiff and against the defendant pursuant to Fed. R. Civ. P. 52. This case is terminated.

Entered: August 20, 2014

John J. Tharp, Jr.

United States District Judge