

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

| | | |
|---|---|----------------------------------|
| PATRICIA DOWNS | * | CIVIL ACTION NO. 17-0888 |
| VERSUS | * | JUDGE ROBERT G. JAMES |
| UNITED OF OMAHA LIFE INSURANCE COMPANY, ET AL. | * | MAG. JUDGE KAREN L. HAYES |

J U D G M E N T

The Report and Recommendation of the Magistrate Judge having been considered, together with the written objections thereto filed with this Court, and, after a *de novo* review of the record, finding that the Magistrate Judge's Report and Recommendation is correct and that judgment as recommended therein is warranted,

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants' motion to dismiss pursuant to Rule 12(b)(6) [Doc. No. 6] is hereby **GRANTED IN PART and DENIED IN PART**. The motion is **GRANTED** as follows:

- (1) Judgment is entered in Defendants' favor finding that the subject disability policy is an ERISA plan, that Plaintiff's state law claim for unpaid benefits and fees under the plan are completely preempted by ERISA, but the claims are recast under ERISA § 502(a)(1)(B);
- (2) Any other state law claim, including claims for punitive damages and/or penalties, is hereby **DISMISSED WITH PREJUDICE**;
- (3) Plaintiff's jury demand is **STRICKEN**; and
- (4) Plaintiff's claim for fees under 42 U.S.C. § 1988 is **DISMISSED WITH**

PREJUDICE.

The motion is otherwise **DENIED**.

MONROE, LOUISIANA, this 8th day of February, 2018.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE