

John Doe
v.
XYZ and
ABC Employer

Action for Reinstatement of
Wrongfully Terminated Long Term
Disability Benefits
and Statutory Penalties

Mr. Doe

- Worked for ABC Regional Medical Center for over **20 years [since 1978]** as CFO earning \$14,285.71/month
- Purchased disability insurance
- Mr. Doe paid 100% of the cost with after tax dollars
- On the advice and consent of his treating physicians, Mr. Doe stopped working on **11/18/1999** due to his primary medical disability, Coronary Artery Disease

Defendants' Position

- **Medical records do not demonstrate a current disabling condition and that all that Mr. Doe has is the “potential for the possibility of loss” in the future which is not insured under the policy.**

Severe and Serious Illness

- History for Coronary Artery Disease
 - ◆ 1st Myocardial Infarction/heart attack-June' 97 “died” & resuscitated
 - ◆ Bypass surgery to unblock arteries and open-heart surgery to implant stent
- Primary Diagnosis chronic, coronary artery disease; status post bypass
 - ◆ With bouts of severe angina and shortness of breath.

Secondary Diagnoses:

Secondary to his
cardiac problems:

- Mild psycho-neurological dysfunction
- Personality decompensation
- Mixed affective dysfunction
- Generalized Anxiety Disorder

Cardiac Surgeries and Procedures

- ◆ 4 coronary angioplasties,
- ◆ 5 coronary stent insertions,
- ◆ Open heart surgery with coronary bypass

Onset

- 1997 Severe myocardial infarction
- 9/9/99 approved for FMLA/medical leave due to cardiac condition
- 9/15/99 coronary bypass surgery
- Attempts to return to work on a reduced schedule
PT 10/4/99 & FT 10/18/99
- Unable to endure the impact of the stress inherent in his occupation on his cardiac condition
- 11/17/99 ceases working

Mr. Doe is Disabled

Under the advise and consent of his treating and examining physicians, Doe stopped working. With the exception of his attempted, unsuccessful return to work effort, due to his disabling impairment, Mr. Doe was continuously unable to perform the substantial and material duties of his regular occupation and has not engaged in any substantial gainful activity.

LTD Claim with XYZ

- Filed 2/22/2000
- Supported by John C. Hawkins, MD, the treating cardiologist
- Completed an attending physician's statement of disability documenting that Mr. Doe is under his regular care, is medically unable to work and "needs to be totally disabled." [4/12/2000]
- Other medical records were provided to XYZ by Mr. Doe's doctors.

The XYZ LTD Policy

Definition of Disability

**Own
Occupation
to age 65**

Definition of Disability

- ◆ The Disability Contract defines “Total Disability” as follows:
- Total Disability means that ...the Insured Employee because of injury or sickness, is
 - ◆ 1. Continuously unable to perform the substantial and material duties of his regular occupation;
 - ◆ 2. Under the regular care of a licensed physician other than himself; and
 - ◆ 3. Not gainfully employed in any occupation for which he is or becomes qualified by education, training or experience.

Hospital Chief Financial Officer

directing the financial and business office activities of the hospital coincidental with defined hospital policies and objectives

- DOL's OOH 2002-2003 Top Executive Category
- Intense pressure to earn higher profits, provide better service and attain goals
- Hospital CFOs a high stress occupation
- In the exercise of reasonable medical judgment, the physical and mental activities and functioning of the position of Hospital CFO, including the ability to endure the high stress of the occupation on a daily basis, poses an unreasonable risk of further harm to Mr. Doe's health or death

Legitimate and Reasonable Risk

- Unable to RTW with continuity and regularity to perform the material and substantial duties of his occupation
- Objectified in the reports and observations of Dr. Oxford and Priscilla Flake, Director of Nursing at XYZ as follows:

Claim file documents actual inability to function and real risk *during attempt to return to work*

- Dr. Oxford observed Doe pale and diaphoretic
- Doe has to be carried to the ER on a stretcher due to episodes of chest pain
- On several occasions, Ms. Flake, R.N., D.O.N. found Doe in his office experiencing severe chest pain
- On multiple occasions, Ms. Flake, R.N., D.O.N., observed Doe looking like death warmed over;
- Other employees also witnessed Doe having chest pain following his return to work

Dr. Huckaby & Dr. Oxford
*strongly advised Doe to cease working in his
occupation because:*

- Of the stress factors involved with the particular level of employment
- He has incomplete heart muscle repair and scarring which has left him in essence a “cardiac cripple”
- And if he continued in his extremely stressful regular occupation, it would certainly lead to further exacerbating problems with his heart, his cardiovascular disease and/or the reasonable risk of an early death.

Mr. Doe had no choice but to preserve his health

XYZ denies the Claim

- P L, XYZ disability specialist denies the claim on 5/22/2000
 - ◆ Does not reference the specific policy provisions upon which the denial is based
 - ◆ Does not provide a description of any additional material or information necessary to perfect the claim or
 - ◆ An explanation of why such material or information is necessary

XYZ does not dispute the
existence of Mr. Doe's
condition

do not have any opinions from any
consultants or reviewers contradicting any
of the supportive medical information

Never attempted to have Mr. Doe examined

Continuous Disability

- Treated regularly/continuously- onset through present, under the regular care of various medical providers.
- Drs. Hawkins
 - ◆ The treating Cardiologists, repeatedly and continuously state Doe is totally and permanently disabled from his own occupation

**Proof of disability
furnished as requested**

Appeal of the Denial

- Mr. Doe appeals
- 5/30/00 Dr. Huckaby writes letter for consideration following denial
- URMC writes re: reconsideration of denial

Appeal of Denial

- Mr. Doe informed XYZ that he was appealing the decision to deny his benefits.
- Nancy D., XYZ Claims Consultant upheld the denial on appeal. *[August 10, 2000]*
 - ◆ *Medical records do not support current disabling condition*
 - ◆ *Potential for the possibility of loss not insured under the policy*

Attorney Appeal of Denial

[9/7/2000]

Doe through his attorney submitted another appeal of the termination of his disability claim.

- Which outlined the progression of his cardiac impairments,
- support of his treating physicians
- submitted reports attesting to his “total disability” from treating and examining physicians

Acknowledgment & determination

from XYZ 10/16/2000

Another Attorney Appeal

- 5/23/2001 denied by XYZ

Bad Faith demand

- Is this ERISA??
 - ◆ Safe Harbor Argument

Vocational Evaluation

- ◆ a comprehensive vocational assessment from Sink & Associates
- ◆ He is unable to return to his previous position as a CFO due to the high degree of stress involved in the occupation and the fact that he no longer meets the critical cognitive and temperament requirements of the occupation

XYZ Refused to Reconsider

- XYZ upheld denial

The denial was erroneous and contrary to the weight of the medical and vocational evidence and the specific statements of the treating sources.

OUTRAGEOUSNESS of the denial

- Not a single piece of medical evidence or any medical review to substantiate the determination
 - ◆ Failure to explain the denial with sound medical reasoning
- Decision ignores or rejects without substantial justification the medical opinions and restrictions of the treating/examining physicians

- XYZ has been instructed that under this policy that it cannot require objective evidence of disability when such evidence cannot be provided

- Picture of other ruling

Final Denial

- Conclusion that Mr. Doe is able to perform his occupation
- Based solely on the opinions of XYZ 's claims administrator
- Not support by any medical evidence of record
- Not one in house medical review documented in claim file
- No IME requested or obtained
- Directly contradicted by all of Mr. Doe's treating and examining physicians.

FAILURE TO INVESTIGATE

egregious claims handling

Prior to making a claim's decision XYZ has an **affirmative duty** to ensure that it is in the possession of all necessary information, See Motor Vehicles Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co., 463 US 29, 43 (1983) (*a decision is arbitrary and capricious if the decision maker "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before [it], or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."*)

Failure to Investigate a claim is Deemed Arbitrary & Capricious

- Good faith requires an honest effort to ascertain the facts upon which its exercise must rest and an honest determination from such ascertained facts...If [the fiduciary] knew of matters concerning which honesty would require investigation, and failed to act, or if knew of matters which would honestly compel a given determination and it announced to the contrary, it cannot, in law be regarded as having exercised good faith, and its action would be arbitrary. Thus, an improper motive sufficient to set aside a fiduciary's decision may be inferred from the fiduciary's failure to investigate or to interpret honestly evidence that greatly preponderates in one direction. *Brown v. Blue Cross*, 898 F.2d 1556, 1566 (11th Cir. 1990)

Failure to Investigate

■ Shannon v. Jack Eckerd Corp., 113 F.3d 208, 210(11th Cir. 1997)

(“obligation to make a reasonably relevant inquiry”)

■ Kunin v. Benefit Trust Life Ins. Co., 910 F.2d 534, 538 (9th Cir. 1990)

(an inadequate investigation provides an unreasonable basis for a decision and is arbitrary and capricious)

XYZ did Nothing to Investigate!

- XYZ did not contact the treating or examining physicians,
- XYZ did not have Doe examined by a physician,
- XYZ did not even have a physician perform a review of the documents that were submitted!!

In effect the determination made by a non-physician was permitted to over rule that of a treating cardiologist and other physicians

Defendant

- Failed to consider properly the evidence provided
- Declined to pay Mr. Doe's disability benefits

The case law is contrary to
XYZ's position on the
“potential for the possibility of loss”

- House v. Paul Revere,
- Lasser v. Reliance Standard Life Ins. Co., Henar v. First Unum
- Hoover v. Provident
- Cunningham v. Paul Revere
- Shipp v. Provident
- Bowers v. UNUMProvident
- Barone v. UNUM Life

See P's initial disclosures for citations

**Mr. Doe has continuously
met
the policy definitions
of total disability
since alleged onset date**

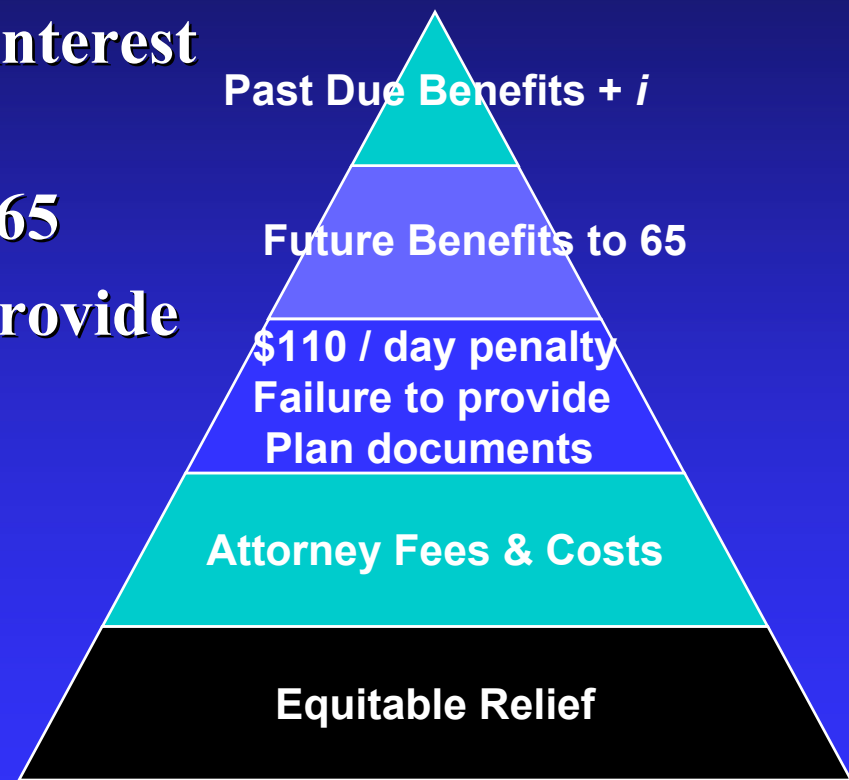
Request for Documents to XYZ and ABC Employer

- 1st --March 16, 2001 – requested SPD, policies of insurance and other plan documents
- Subsequent requests to lawyers--request the LTD Plan document
- Lidoshore, 994 F.Supp 229 (SDNY 1998)

To date LTD plan document has not been produced.

PRAYER FOR RELIEF

- Past Due benefits and interest at 12%
- Future Benefits to age 65
- Penalty for failure to provide documents \$110/day
- Attorney Fees & Costs
- Equitable Relief—
 - ◆ other benefits reinstatement;



Benefits Owed

\$10,000 per/mo

[70% of mo salary]

Past: 2/7/00 -7/7/03

Future: to 7/6/2010

[DOB: 7/6/1945—age 65 as
of 7/6/2010]

mos past due (\$) plus
compound interest at 12%

\$ _

mos discounted
back at 5%

\$ _

\$ _

Penalty

- \$110 per day from April 22, 2001 [30 days after date of D's receipt of the request to the present.

over \$89,000

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