

# Disability Law Ledger

April 2009



Disability Updates from DeHaanBusse LLP

## Have You Heard The One About The Guy Who Bought Disability Insurance?

**I**t goes like this . . . A guy goes into an insurance office to purchase a disability policy. The agent has him sign all of the appropriate paperwork, and the guy assumes the policy will be there for him if and when he ever needs it. He figures if he plays by “the rules” his insurance company will too. Here’s the punch line, when it comes to paying out benefits, many insurance companies constantly move the goal post. In other words, there are no rules. Many times, it’s a crap shoot, a roll of the dice.

Thanks, in large part, to the McCarran-Ferguson Act of 1945, insurance companies are not federally regulated. Rather, your disability policy is governed by the state in which you live. And, each state has wide latitude in regulating insurance companies. That and the standard by which your claim is “judged” too often puts you at a disadvantage in disability legal disputes.



### *The Standard Of (Your Case) Review . . .*

The Standard of Review is your burden in Court. Regarding a private/individual policy that you have purchased for yourself, more than 50% of the evidence you present in your disability case must be on your side – or must prove your case. For ERISA (Employer-sponsored disability plans), the standard of review is usually far more difficult. In most ERISA disability cases, claimants’ Standard of Review poses the question: Was the insurance company’s actions/decisions arbitrary and capricious? This standard is one of the hardest to prove under our system. But remember, in the arbitrary and capricious Standard of Review, you are the plaintiff and the burden of proof is on you. You most often are limited to proving the insurance carrier’s actions were arbitrary and capricious solely through *their* claim file. That means you rarely get to call a witness or present evidence.

### *So, Insurance Companies Have An Edge At The Outset . . .*

One could argue that they do. And despite the many big budget insurance commercials and marketing campaigns assuring you they do the responsible thing and that you’re in pretty good hands, few insurers, if any, actually live up to these claims. Rather, for many, denying claims is business as usual – whether those claims are legitimate or not. Instead of evaluating whether or not the claimant is entitled to benefits, carriers evaluate whether or not they can avoid paying the claim.

*Continued P.2*

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*Once you’ve achieved your American Dream, we fight to make sure you keep it.*



## The Guy Who Bought Disability Insurance *Continued from P. 1*

*Take Unum, For Example . . .*



Most people are aware that Unum Provident was exposed several years ago on *60-Minutes* for denying coverage to their disabled customers. It was so wide-spread that Unum was investigated by 49 state attorney generals and the U.S. Department of Labor. Unum quickly settled before the regulators could dig too deeply. As a result, the regulators never dealt with some of the worst complaints against Unum.

This “deny” mentality appears to be endemic in the insurance field. Of course, there are exceptions and there are insurance carriers out there who strive to keep their word. However, too many do just the opposite. When it comes to disability policies: Caveat Emptor (*Let the buyer beware*).

*Don't Go It Alone . . .*

If you have a disability claim, it is prudent to seek the advice of an attorney experienced in disability law to obtain the benefits you paid for and have a legal right to receive. Again, when dealing with disability insurance, the burden of proof (quite a high threshold) is squarely with you. Having an experienced disability attorney on your side can make all the difference.

## The Employee Retirement Income Security Act (ERISA) of 1974 – Get To Know It

**E**RISA is a federal law that was enacted to provide some protection to individuals enrolled in private industry pension and health plans.

If you work for a private company and that company has a group insurance plan in place, be aware that your employer must adhere to the minimum standards set forth in ERISA law.



*What are the minimum standards?*

First, ERISA requires plan providers (employers) to communicate all of the details of the plan (including coverage and limitations) to plan participants (employees). So, if you are enrolled in a group plan, you should have received a Summary Plan Description from your employer which is a document that describes the plan's features. If you haven't, you must request this information.

*Continued P.3*



## Legislative News . . . Veterans Groups Give Unanimous Support to Caregiver and Rural Health Bills at Hearing Scheduled Next Month



WASHINGTON, D.C. - U.S. Senator Daniel K. Akaka (D-HI), Chairman of the Veterans' Affairs Committee, chaired a hearing during which several veterans organizations testified in support of pending health care legislation. The backing of Paralyzed Veterans of America, Wounded Warrior Project, and Disabled American Veterans adds momentum to the Chairman's veterans' health care agenda, which includes reforming health care funding, breaking down health care barriers for rural veterans, and establishing a permanent support program for family caregivers.

"VA must adapt to the changing needs of America's veterans and their families. These bills recognize veterans' families as partners, allow veterans to receive the care they've earned, and make veterans' health care funding more timely and secure. I look forward to moving these important measures from the Veterans' Affairs Committee to the President's desk," said Akaka.

*Continued P.4*

## ERISA - GET TO KNOW IT

*Continued from P.2*

*A word about plan features . . .* you should read this information carefully and often to check for changes. Too many plan participants never read the details and are caught by surprise when they have to file a disability claim. Sadly, they then find out what their plans do not cover.

Should you ever file a claim and have it denied, *ERISA also requires your employer to have a grievance and appeals process in place to challenge the decision.* All too often, plan administrators and insurers will arbitrarily deny a claim whether the claim is legitimate or not. You do have options available; you can sue for your benefits. But first you must go through the appeals process.

Additionally, under ERISA plan administrators are legally responsible for managing and controlling the plan's assets. If you are a part of a group plan covered by ERISA, you should be aware of the fiduciary decisions made by the administrator as well as the results of those decisions.

### *The COBRA Amendment*

One of the most significant amendments to ERISA is the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA allows plan participants (employees) to continue health coverage after the loss of employment, typically for 18 months.

Since the economic downturn, there is some relief for the recent unemployed regarding COBRA coverage. The American Recovery and Reinvestment Act of 2009 allows eligible individuals to pay only 35 percent of COBRA premiums as opposed to 100%. The remaining 65% will be paid by the coverage provider (employer) who then will be reimbursed by the government through a tax credit.

According to Recovery.gov: *The premium reduction applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period.*



## About DeHaanBusse LLP . . .

*DeHaanBusse LLP* is a leader in disability law including **Federal Employee Retirement System Claims (FERS)** and **Civil Service Retirement System Claims (CSRS)**, **Private Insurance Policy Claims**, **Employee Benefit Claims (ERISA)**, and **VA Disability Claims**. Our practice is based upon one simple premise: *you have the right to receive what you have paid for and what you have been promised according to the law.*

We focus on and believe that the safety net most Americans have worked long and hard to provide for themselves and their families should be there when they need it. Unfortunately, more and more that is not the case. Insurers often arbitrarily deny legitimate disability claims, despite the costly premiums paid out through the years. Their decisions have resulted in the near financial collapse of many individuals and their families.

### Why Our Firm?

**Knowledge** - Our attorneys have an in-depth knowledge of the process and the law as it specifically applies to disability, and will provide you with a realistic opinion of your case.

**Experience** - We know which details are fundamentally important to achieving a favorable decision in your case. Our partners collectively have over 55 years of experience in disability law.

**Personal Attention** - We know our clients come to us at extremely difficult times in their lives. That is why our attorneys and our entire staff are uniquely responsive to their needs. We believe in and practice total transparency, and take the time required to explain the details as well as all legal fees relating to your case.

**We are here to help**, and are available to you for a free consultation. Call us today.

## Legislative News . . .

*Continued from P.3*

S. 801, the Family Caregiver Program Act of 2009, would establish a permanent program for the caregivers of disabled veterans, providing them with training and certification, access to VA health care and financial support, and new travel benefits.

S. 734, the Rural Veterans Health Care Access and Quality Act of 2009, would improve health care staffing, enhance access to quality care, and provide travel benefits, for veterans living in rural and remote areas.

S. 423, the Veterans Health Care Budget Reform and Transparency Act of 2009, would promote timely and predictable funding for the largest health care system in the country, which has started 19 of the past 22 fiscal years without knowing its budget for the year. S. 423 is co-sponsored by a bipartisan group of more than one-third of the Senate, and is supported by the President and numerous veterans service organizations.

**Source:** [akaka.senate.gov](http://akaka.senate.gov)