

Special Report

A Federal Judge's Summary of Unflattering Unum Court Decisions

This Respected Federal Judge Took the Time to
Summarize What Courts Across the Country Have
Said About Unum

And then he said:

*Employers have a duty to select insurers for their
employees with care, and to avoid hiring insurers with
reputations for shoddy and hostile claims
administration....*

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)
RADFORD TRUST,)
)
Plaintiff,)
)
v.) CIVIL ACTION
) NO. 02-12477-WGY
FIRST UNUM LIFE INSURANCE)
COMPANY OF AMERICA,)
)
Defendant.)
_____)

Excerpts From
Actual Court
Opinion

MEMORANDUM AND ORDER

YOUNG, C.J.

June 15, 2004

This is an action under the Employment Retirement Security Act of 1974, codified as amended at 29 U.S.C. §§ 1001-1461 (ERISA).¹ The plaintiff, Radford Trust ("Radford"), alleged that the defendant, First Unum Life Insurance Company of America ("First Unum"), had wrongfully denied benefits owed to Radford's beneficiary, John Doe ("Doe") (who assigned his claim to Radford), under a group long term disability policy (the "Policy") that First Unum managed for Doe's former employer, New York City law firm Hawkins, Delafield & Wood ("Hawkins"). Radford's action sought damages, costs, and attorney's fees. First Unum maintained that its denial of benefits was proper,

¹ Radford has agreed to drop its claim in Count II of the Complaint for relief under Mass. Gen. Laws ch. 93A. See Pl.'s Mem. Opp'n [Doc. No. 17] at 1.

Doe's date of disability after the date his active employment ended.

First Unum's conduct in denying Doe's claim was entirely inconsistent with the company's public responsibilities and with its obligations under the Policy. This is not the first time that First Unum has sought to avoid its contractual responsibilities, and an examination of cases involving First Unum and Unum Life Insurance Company of America, which like First Unum is an insuring subsidiary of Unum Provident Corporation,¹⁹ reveals a disturbing pattern of erroneous and arbitrary benefits denials, bad faith contract misinterpretations, and other unscrupulous tactics.²⁰ These cases suggest that segments

¹⁹ UnumProvident Companies, at <http://www.unum.com/aboutus/ourcompanies/upbrandedcompanies.aspx> (last visited June 10, 2004). Other subsidiaries include Provident Life and Accident Insurance Company, The Paul Revere Life Insurance Company, and Provident Life and Casualty Insurance Company. Id.

²⁰ Courts have often commented unfavorably on these companies' conduct. See, e.g., Hedley-Whyte v. Unum Life Ins. Co. of America, No. Civ. A. 94-11731-GAO, 1996 WL 208492, at *3 (D. Mass. Mar. 6, 1996) (O'Toole, J.) (noting that attorney's fees were particularly appropriate because Unum Life's construction of its policy was so clearly at odds with its plain language); Keller v. Unum Life Ins. Co. of America, No. 90 Civ. 5718 (VLB), 1992 WL 346343, at *2 (S.D.N.Y. Sept. 30, 1992) (describing Unum's behavior as "culpably abusive").

Numerous courts have reversed these companies' denials of benefits under a de novo standard, many times criticizing their practices. See Lauder v. First Unum Life Ins. Co., Nos. 02-9152, 02-9232, 76 Fed. Appx. 348, 350, 2003 WL 21910757, at *2 (2d Cir. Aug. 8, 2003) (unpublished opinion) ("There was ample demonstration of bad faith on First Unum's part, including . . . the frivolous nature of virtually every position it has advocated in the litigation."); Curtin v. Unum Life Ins. Co. of America,

298 F. Supp. 2d 149, 159 (D. Me. 2004) ("[T]his Court finds that Defendants exhibited a low level of care to avoid improper denial of claims at great human expense."); Locher v. Unum Life Ins. Co. of America, No. 96 Civ. 3828(LTS)(HPB), 2002 WL 362769, at *9-10 (S.D.N.Y. Mar. 7, 2002) (overturning Unum's denial of benefits, despite Unum's argument that the claimant was not disabled because she worked a full day the day she left her job); Barone v. Unum Life Ins. Co. of America, 186 F. Supp. 2d 777, 787 (E.D. Mich. 2002); Wilkes v. Unum Life Ins. Co. of America, No. 01-C-182-C, 2002 WL 926279, at *10 (W.D. Wis. Jan. 29, 2002) (finding "that the defendant's position was not substantially justified or taken in good faith"); Hall v. Unum Life Ins. Co. of America, No. 97-CV-1828, 1999 WL 33485551, at *8 (D. Colo. Nov. 1, 1999) vacated in part on other grounds, 300 F.3d 1197 (10th Cir. 2002); Leva v. First Unum Ins. Co., No. 96 CIV 8590(DC), 1999 WL 294802, at *1-2 (S.D.N.Y. May 11, 1999) (noting that "Unum is 'culpable' in the sense that it did not consider [the plaintiff's] application with the care that she deserved," and that the only medical review of the claim was done by a registered nurse, who happened to be the claims examiner's mother); Jones v. Unum Life Ins. Co. of America, No. 99-7173, 1998 WL 778366, at *6 (S.D.N.Y. Nov. 6, 1998), vacated in part on other grounds, 223 F.3d 130 (2d Cir. 2000); Ragsdale v. Unum Life Ins. Co. of America, 999 F. Supp. 1016, 1026 (N.D. Ohio 1998); Dishman v. Unum Life Ins. Co. of America, No. 96-0015-JSL, 1997 WL 906146, at *11-13 (C.D. Cal. May 9, 1997) (noting that the court would have reached the same decision under an arbitrary and capricious standard, and describing Unum Life's "unscrupulous conduct" in engaging in "bad faith denial of large claims as a strategy for settling them for substantially less than the amount owed"); Hamner v. Unum Life Ins. Co. of America, No. C 96-1973 TEH, 1997 WL 257515, at *6 (N.D. Cal. May 6, 1997); Mays v. Unum Life Ins. Co. of America, No. 95 C 1168, 1995 WL 631807, at *9 (N.D. Ill. Oct. 24, 1995).

Similar comment on the companies' practices can be found in decisions reversing denials of benefits under an arbitrary and capricious or abuse of discretion standard. See Morgan v. Unum Life Ins. Co. of America, 346 F.3d 1173, 1178 (8th Cir. 2003); Lain v. Unum Life Ins. Co. of America, 279 F.3d 337, 346-47 (5th Cir. 2002) (basing the decision in part on Unum's misinterpretation of its own policy); Shutts v. First Unum Life Ins. Co., No. 1:01-cv-1993, 2004 WL 615134, at *7-8 (N.D.N.Y. Mar. 24, 2004); Crespo v. Unum Life Ins. Co. of America, 294 F. Supp. 2d 980, 994, 996-97 (N.D. Ill. 2003) (reversing in part because Unum based its denial on failure to prove "disability" before or near the last day of work); Mennenoh v. Unum Life Ins. Co. of America, 302 F. Supp. 2d 982, 989-90 (W.D. Wis. 2003);

that have run in recent years on "60 Minutes" and "Dateline," alleging that Unum Provident "regularly declines disability claims as a way of boosting profits," may have been accurate. See Edward D. Murphy, Unum Corp. Retirees Feeling a "Sense of Loss," Portland Press Herald, Apr. 29, 2003, at 1C. This Court cannot tell whether First Unum and other Unum Provident companies are considered pariahs in the industry, or whether their ability to retain customers is a result of low prices, market

Cheng v. Unum Life Ins. Co. of America, 291 F. Supp. 2d 717, 721 (N.D. Ill. 2003); Pelchat v. Unum Life Ins. Co. of America, No. 3:02CV7282, 2003 WL 21479170, at *3 (N.D. Ohio June 25, 2003) ("UNUM's decision was therefore not based on a good faith interpretation of its policy language or an honest mistake."); Dirnberger v. Unum Life Ins. Co. of America, 246 F. Supp. 2d 927, 935 (W.D. Tenn. 2002); Henar v. First Unum Life Ins. Co., No. 02 Civ. 1570(LBS), 2002 WL 31098495, at *5 (S.D.N.Y. Sept. 19, 2002); Holzschuh v. Unum Life Ins. Co. of America, No. Civ. A. 02-1035, 2002 WL 1609983, at *9 (E.D. Pa. July 18, 2002); Winters v. Unum Life Ins. Co. of America, 232 F. Supp. 2d 918, 932-33 (W.D. Wis. 2002); Heffernan v. Unum Life Ins. Co. of America, No. C-1-97-545, 2001 WL 1842465, at *6 (S.D. Ohio Mar. 21, 2001); Newman v. Unum Life Ins. Co. of America, No. 99 C 7420, 2000 WL 1593443, at *6-7 (N.D. Ill. Oct. 23, 2000) (finding, in a case where Unum maintained a policy interpretation similar to First Unum's interpretation of the Policy in this case, that the "defendant contorted the meaning of its own policy in order to deny plaintiff's claim on a nonexistent technicality"); Hines v. Unum Life Ins. Co. of America, 110 F. Supp. 2d 458, 460-61 (W.D. Va. 2000) (noting the "scathing failure by Unum Insurance to impartially administer the disability plan"); Lake v. Unum Life Ins. Co. of America, 50 F. Supp. 2d 1243, 1257 (M.D. Ala. 1999); Russell v. Unum Life Ins. Co. of America, 40 F. Supp. 2d 747, 751 (D.S.C. 1999); Riley v. Unum Life Ins. Co. of America, 28 F. Supp. 2d 639, 643-44 (D. Kan. 1998); see also Dandurand v. Unum Life Ins. Co. of America, 284 F.3d 331, 336-38 (1st Cir. 2002) (overturning an arbitrary and capricious calculation of benefits); Wyatt v. Unum Life Ins. Co. of America, No. 97 C 8228, 1999 WL 116213, at *7 (N.D. Ill. Mar. 2, 1999) (overturning a decision to offset a claimant's benefits because of an alleged eligibility for benefits from the Federal Insurance Company).

inefficiency, or other factors. In either case, employers have a duty to select insurers for their employees with care, and to avoid hiring insurers with reputations for shoddy and hostile claims administration, although it may well be that suits based on violation of this duty are preempted under ERISA.

F. Other Grounds for Denying Doe's Claim

Beyond what the Court has discussed here, First Unum failed to preserve any other argument for denying Doe's claim. While evaluating Doe's claim and subsequent appeals, First Unum relied exclusively on its assertion that Doe had not become disabled before his coverage terminated. In proceedings before this Court, First Unum did not argue any grounds for its position other than those which the Court has discussed. Thus, any alternative arguments have been waived. See Fed. R. Civ. P. 8(c); Knapp Shoes, 15 F.3d at 1226; Ramirez-Rivera, 869 F.2d at 626.

G. Remand Would Be Inappropriate

First Unum argued that to the extent that the Court decided that the company had erred in denying Doe's benefits claim, the appropriate course would be to remand to First Unum for a determination whether Doe's disability had rendered him unable to "perform each of the material duties of his regular occupation," and whether, if eligible for benefits at the end of the Elimination Period, he had remained eligible during the months

For the reasons stated, the Court DENIED First Unum's Motions for Summary Judgment [Doc. Nos. 13, 30], ALLOWED Radford's Motion for Partial Summary Judgment [Doc. No. 16], and entered Judgment for Radford as to Count I of Radford's Complaint [Doc. No. 1]. Radford's Motion to Amend Judgment [Doc. No. 39] is DENIED. The Court will issue an Amended Judgment clarifying the appropriate calculation of prejudgment interest forthwith.

SO ORDERED.

/s/ William G. Young

WILLIAM G. YOUNG
CHIEF JUDGE