

Special Report

Why Did A Respected Federal Judge Say That Claimants Who Do Not Have An Attorney When Dealing with the Long-Term Disability Insurance Company Often Face a *Loaded Deck*

(We would usually comment on an opinion such as this, however this opinion needs no comment. The message is clear, if you are contemplating filing for disability benefits you need the advice of an attorney or, the COURT says, you will be at a distinct disadvantage when fighting the insurance company!)

Benjamin W. Glass, III
Fairfax, VA
703-591-9829

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**SANDRA ABROMITIS, Plaintiff; Vs. CONTINENTAL CASUALTY
COMPANY/CNA INSURANCE COMPANIES, Defendant.**

1:02cv165-C

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NORTH CAROLINA, ASHEVILLE DIVISION**

2003 U.S. Dist. LEXIS 7995

February 7, 2003, Decided

**THESE ARE CASE EXCERPTS FROM A
LONG-TERM DISABILITY CLAIM IN
NORTH CAROLINA**

**ONCE THE LAWSUIT WAS FILED THE
PLAINTIFF SOUGHT INFORMATION ABOUT
THE FINANCIAL RELATIONSHIP BETWEEN THE
DISABILITY INSURANCE COMPANY AND THE
VOCATIONAL REHABILITATION EXPERT IT
HIRED TO REVIEW THE CLAIM**

Dr. Pinder's report is in the administrative record, but Plaintiff seeks additional information about the number of LTD cases with which Dr. Pinder has assisted Defendant, as well as the amount of money Dr. Pinder has been paid by Defendant to consult on LTD claims. According to Plaintiff, Dr. Pinder's office is located approximately [*3] five miles from Maitland, Florida, where Defendant is headquartered, and Dr. Pinder considered only five pages of material in evaluating Plaintiff's claim. In the information sent to Dr. Pinder, she was instructed not to call Plaintiff, and Plaintiff submitted a document from another case in which Dr. Pinder had sent her report to Defendant and asked Defendant's representative to "call with any changes." Plaintiff asserts that the information she seeks about Dr. Pinder is relevant to the issue of Dr. Pinder's bias and possible conflict of interest. Defendant counters that it acknowledges that it both administers the ERISA plan at issue in this case and funds any claim for benefits, creating the potential for a conflict of interest, which admission obviates the need for discovery on this issue. Defendant also objects to the document submitted by Plaintiff from the other case in which Dr. Pinder was involved as inadmissible hearsay and notes that the

changes to which Dr. Pinder was referring may well have been to various background details contained in the report, such as the date of loss, date of birth, education of the claimant, or [*4] other information.

The Court Denied the Request and Noted that If It Granted the Request There Would be Increased Costs and Expenses Involved in Reviewing Denials.

What, we ask, could be more expensive than losing your right to benefits and not having a chance to show that the insurance company and expert reviewer are in financial cahoots?

Finally, the Court notes that because the evidence Plaintiff seeks to discover pertains to a conflict of interest of a vocational consultant [*8] hired by Defendant, permitting discovery requests such as this one would increase both the time and expense involved in reviewing ERISA benefits decisions.

The Court Reached The Conclusion that the Claimant Could not get this Information even though admitting that *claimants are placed at a distinct disadvantage if discovery is not permitted on judicial review.*

Having recognized the difficulties posed by Plaintiff's position, the Court also recognizes that ERISA claimants may not have the advantage of legal advice or favorable referrals before the administrative process is complete, placing such claimants at a distinct disadvantage if discovery is not permitted on judicial

review. For ERISA claimants not able or aware enough to hire legal counsel before the administrative process is complete, they likely enter into judicial review facing a loaded deck--a deck loaded with the expert opinions of those hired by the plan administrator and, with the possible exception of a treating physician or two, lacking the opinions of vocational or medical experts hired by the claimant. Further, if the plan vests discretion with the plan administrator, as almost all do, such claimants also face the hurdle of a discretionary standard of review. *See Elliott, 190 F.3d at 606* (recognizing that Fourth Circuit has held no abuse of discretion in plan fiduciary's denial of disability pension benefits where "conflicting medical reports" were presented). Nevertheless, the Fourth Circuit's decisions have emphasized the limited [*10] nature of discovery that can be permitted in ERISA

actions, *see, e.g., Elliott, 190 F.3d at 608, 608 n.6, Sheppard & Enoch Pratt Hosp., 32 F.3d at 125*, and based on these decisions and the weight of authority from other jurisdictions, *see, e.g., Spangler, 38 F. Supp.2d at 955; Newman, 997 F. Supp. at 1280-81*, this Court will deny Plaintiff's motion.

III. Conclusion

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Compel (# 8) is **DENIED**.

This 7th day of February 2003.

MAX O. COGBURN, JR.

UNITED STATES MAGISTRATE JUDGE

Ben Glass is an attorney who has been fighting the insurance companies for 20 years. He helps claimants in disability cases across the country. He is the author of *14 Ways to Guarantee that Your Disability Claim will be Denied and You Lose in Court (Avoid them and you just may have a chance)* which is available by emailing Ben at Ben@BenGlassLaw.com.

He also is the author of many consumer publications, including:

- How The United States Supreme Court Made Long-Term Disability Claims Even More Difficult
- Five Deadly Sins That Can Wreck Your Injury Claim (Avoid Them And You May Have A Shot At Winning)
- Client First Fees™ A Different Way Of Looking At Attorney Fees In Personal Injury Claims!
- What Does It Mean When Lawyers Advertise That They Are "Highest Rated;" "Board Certified;" Or Are Included In Best Lawyers In America?

Contact Ben Glass by emailing your request to Ben@BenGlassLaw.com