AKO EXECUTIVE INSURANCE ALERT

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Corporate Executives as Plaintiffs in Disability Insurance Cases:

An Awkward, but Sometimes Necessary, Evil

By Rhonda D. Orin

While it is easy to view the plaintiffs' bar as "the enemy" and to treat "trial lawyers" as a dirty word, every once in a while, corporate executives may find themselves in a very awkward situation: as plaintiffs, personally, in lawsuits against their own insurance companies.

This situation is arising with increasing frequency in connection with disability claims. For many years, disability insurance companies sold rising executives a blue-chip type of disability policy known as "own occupation" coverage. This coverage applies whenever executives are unable to perform their own, particular occupations. That they may be able to work at some other type of job does not matter. These policies provide that corporate executives are entitled to full disability benefits when they are unable to perform their own occupations—*even* if they decide to work full-time doing something else.

As baby boomers age, increasing numbers of corporate executives are filing claims under these policies. And the insurance industry is responding by denying these claims in record proportions.

When these claims are denied, corporate executives often react by looking for dignified ways to solve the problem, as by contacting insiders at the insurance companies that denied the claims, and working things out quietly. Sometimes this works. Too often, though, it doesn't.

When such efforts fail, the corporate executives may have no choice but to seek assistance from an unlikely source: the dreaded "plaintiffs' bar." When they do, it is important to make sure that they are comfortable with the manner in which their cases are handled, and their situations are presented.

Hot Spots

There are many potential hot spots. One of them, for example, arises from the public nature of court files. It can be very uncomfortable for corporate executives—especially those who are well known—to disclose personal financial information, as well as details about their physical or mental health problems in these court records. Thus, any decisions regarding such disclosure should be assessed carefully, and minimized wherever possible.

Another issue is how the executive's claim is presented. A disability claim of corporate executives often involves a large amount of money, much more than typically is associated with disability claims. It is important to make sure that the size of the claim does not become a distraction to the court, and that it is not viewed as being somehow incongruous with the concept of disability.

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The good news is, though, that in many cases, the pursuit of such claims will be successful. With a thoughtful strategy, and a lot of persistence, it is entirely possible to reverse wrongful denials of disability claims.

A Three-Part Victory

That discovery was made this past spring by a partner at a major law firm in Pennsylvania. There, the federal court in Philadelphia held that the Standard Insurance Company erred by denying partial disability benefits to that partner, who suffered from a heart condition and was directed by his physicians to tone down his practice in order to avoid stress.

In a three-part victory, the court first awarded summary judgment to the claimant, then ordered Standard to reimburse the claimant for all of his legal fees, and finally denied a motion by Standard to stay payment until after an appeal. Shortly thereafter, Standard decided not to pursue the appeal and the matter was brought to a conclusion.

The principal issue in that case was whether stress plays a role in connection with heart disease. Standard took the position that there is no link between work stress and an increased risk of accelerating existing heart disease. Standard based this position almost exclusively upon the opinion of a cardiology professor who had never examined or even met the claimant, and was relying solely upon his review of the claimant's medical records.

The claimant, in contrast, presented a substantial amount of evidence to refute this position. This evidence included a collection of articles from highly regarded medical publications. It also included reports from two leading cardiologists, both of whom were engaged in treating the claimant and had independently formed the opinion that a reduction of work stress was essential as a medical matter in his particular situation.

At the end of the day, the court found that the claimant had presented enough evidence to prove that he was partially disabled, and the insurance company had not presented enough evidence to disprove the claim. Under the circumstances, the court held that the denial of the claim by the insurance company was "arbitrary and capricious." The court found that the denial reflected the insurance company's financial interest in denying the claim, rather than an open-minded assessment of the claimant's right to coverage.

Not only did the claimant enjoy complete vindication, but he also did a service for all others who suffer from heart disease. This decision now stands for the proposition that there is a relationship between stress and heart disease, and is being followed by other courts that are called upon to examine this issue.

Corporate executives may be uncomfortable as plaintiffs against disability insurance companies. This case, and others like it, show that executives often will have no choice. In such situations, they should put aside their discomfort and take whatever actions are necessary to protect their rights. If their claims are valid, then—like the claimant who scored a complete victory against Standard Insurance Company—they eventually should achieve results that show their temporary discomfort was worthwhile. ■