From: John J. Spiegel [mailto:jspiegel@bellsouth.net]
Sent: Friday, December 08, 2017 9:27 AM
To: EBSA, E-ORI - EBSA
Subject: 1210-AB39 Proposed Delay of Effective Date of Regulations

Dear Deputy Assistant Director Hauser:

I write to urge your Department to permit the new regulations pertaining to ERISA governed welfare plans providing disability benefits to go into effect on January 1, 2018 as scheduled. An exhaustive review and serious deliberations by your staff has already occurred. Further review is unnecessary.

I am an attorney and was first admitted more than 32 years ago. Over that time I have almost exclusively represented insureds, beneficiaries and policyholders in insurance claim disputes, the majority of which involved disability benefit claims. My practice is nearly a 50-50 mix of disability claim disputes governed by state law and those governed by ERISA. When I first began to handle the ERISA cases I was shocked at the stark differences made by whether the matter was governed by ERISA. I have seen countless examples of claims accepted and paid when state law applies and identical facts resulting in a claim denial when ERISA applies **by the same insurance company.** Colleagues whose law practice is like mine have all seen this over and over.

The simple reason for this is that the insurance companies and plan administrators enjoy immunity from extra-contractual damages, bad faith damages or punitive damages regardless of egregious, deceitful and fraudulent conduct. State law, however, typically allows for basic fairness and protections and allows an aggrieved claimant the opportunity to actually hold the carrier accountable. The specter of meaningful sanction is a powerful incentive for the carriers to behave themselves. Not always, but far more often than when ERISA applies.

Moreover, ERISA is so complicated and so loaded with potential pitfalls, it is practically impossible for a claimant to navigate an adverse benefit decision appeal without the assistance of ERISA experienced counsel. Even lawyers not familiar with ERISA are prone to made serious mistakes in handling such matters.

A new game played by the insurance companies and plans is to refuse to answer the simple question of when the statute of limitations to file an action expires. An old game played is to demand an IME during the pendency of an ERISA appeal, hire a biased examiner, concoct a brand new reason to uphold the benefits denial and **refuse to allow the claimant to rebut the new report (sandbagging).**

The plans and insurance companies allege that premiums will rise if the new regulations go into effect, based on purported "data" only the insurance companies have seen. This is just another sandbagging effort, and that argument has already been rejected by your staff. Sandbagging is a lucrative practice for the carriers, so much so that they pray to be permitted to continue to do it. Don't let them.

Fundamental fairness demands that the new regulations be allowed to go into effect, and that should occur as scheduled on January 1, 2018.

Thank you for your consideration.

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