

# THE EMPLOYEE BENEFIT ADVOCATE

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ERISA and Disability Lawyers & Advocates

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## Improving Client Service

In July 2010, our firm made a significant investment in case management software and training in an effort to further improve our service to clients. This software will allow us to monitor cases more closely than the traditional method of a hard copy file which is a method lawyers have used for over 200 years. While we still maintain a hard copy of the file in our notebook system, having access to details of the file through this software will allow us to serve our clients more quickly.

Another tremendous benefit is the ability to keep closer tabs on trends of each insurance company and even with individual adjusters. This will provide us statistical evidence to show how many times a certain adjuster has denied a claim regarding all of our clients or how many times an insurance company has denied a claim for all of our clients. For example, if a certain adjuster has denied 100 of our clients' claims, and has never made a determination in favor of our clients, that may well provide statistical evidence of a conflict of interest for the insurance company and certainly with the adjuster.

As many of you know, this is a very challenging area of the law and the deck is stacked against the employee and plan beneficiaries. We are therefore constantly looking for any competitive advantage. After all, our desire is the same as our client's - we want to win with the truth!

## The Naughty and Nice Corner

We have handled claims against many different insurance companies, plan administrators, and employee benefit plans. In this newsletter, we want to let you know the names of the plans or companies against whom we have recently filed suit. In other words, we are letting you know who has been naughty. Next time, we will let you know the names of the companies that have actually paid claims without forcing suit to be filed. Extensive efforts were made to exhaust all claim remedies before suit was filed as required by law. The naughty companies and the lawsuits and pending are as follows:

- Arvinmeritor Inc. 1
- Lincoln National Life Ins. Co. 3
- Life Ins. Co. of North America (LINA/CIGNA) 1
- Liberty Life Assurance Co. of Boston (Liberty Mutual) 2
- Metropolitan Life Ins. Co. (MetLife) 4
- Unum Life Ins. Co (Unum) 1
- Modern Woodmen of America, Inc. 1
- The Hartford 2
- The Prudential Life Ins. Co. 1
- American United Life Ins. Co. (AUL) 1
- Disability Reinsurance Management Services (DRMS) 1

## About our Firm

Every client at our firm actually has three attorneys. At different stages of the case, one attorney may be acting as lead counsel, however all three attorneys are involved. We regularly hold "roundtable" discussions on each client's case to optimize the service for the case and to develop creative ways around any difficult circumstances. The three attorneys are David P. Martin, Ariel S. Blocker, and Jason E. Burgett. We also have a paralegal who is certified as a Social Security Disability advocate who assists on long term disability cases and handles Social Security Disability cases. Her name is Melissa Chicha.

Next, each case has a case manager who typically handles the case from start to finish. The three case managers for most of this year have been Jennifer Saltzmann, Ashley Martin, and Melissa Saltzmann - and yes there is a connection between Ashley Martin and David Martin as she is his daughter-in-law. Ashley is having a baby which will be David's first grandchild! Sadly, however, Ashley and her husband have moved to Memphis, Tennessee and so after Ashley has her baby, she will be leaving our firm. However, we already have a replacement and Marlena Pettway is already working with us and will be completely taking over Ashley's position shortly.

Our case managers are an excellent source of information for basic matters on the claim file such as whether medical records and plan documents have been received. They can also be an excellent way of communicating an urgent message to an attorney who may be out of the office or tied up on another client's matter. If you have a specific question on the file and want to know the case status, it is best to talk to the lead attorney handling the claim file. Just call and ask to have a time set to speak with the lead attorney. Your case manager will be glad to assist with that. Every client's case is very important to us!

## ADVICE FOR CLIENTS

### Facebook and Twitter – Cheap Surveillance

It is very common for insurance companies to hire a private investigator to videotape our clients going about their daily lives. For example, an investigator will lay out in bushes videotaping a client walking to a mailbox or driving a car to the store. The investigator will often note in the report that the client was walking smoothly and showing no signs of restrictions and limitations. Then the report and video is sent to the insurance company and adjuster who ordered it (and caused his company to have to pay for this expensive of surveillance). The adjuster will seize on the report and deny the claim because when the client was secretly videotaped, the client (at least in the subjective opinion of the investigator) showed no signs of any disabling conditions. Some courts have found that such reasons for denying the claim are improper. Courts have observed that the comments made in the report are subjective and further that the video doesn't demonstrate anything at all. You can never know

Insurance companies have not enjoyed course because then they have less cheaper way to deny our client's claims. MySpace, and other social networking that many clients have public postings scour them for anything useful to help in claims that traveling every week is too find his claim to be denied when he for six hours to see his favorite college

***“When a client is pursuing a disability claim... social postings should be kept private.”***

how a court will rule on this however.

incurring this surveillance expense, of profit. So they have been searching for a Along comes Facebook, Twitter, resources. Insurance adjusters have found on these social network tools, and they will denying a claim. For example, a client who difficult because of pain and fatigue, may posts on Facebook that he traveled in a car football team play an away game. What

isn't noted in such postings usually is the fact that the next day after the travel, the client was too tired to do anything else and it may have taken several days to a week to recuperate.

Another client claimed that typing on a keyboard for several hours made her too tired due to her medical condition and she could not do that week in and week out in occupation any longer. However, she had very lengthy postings on Facebook and MySpace as well as a blog which she seemed to maintain every day. When the insurance company found this, of course the claim was terminated as the client's credibility was questioned and challenged. What wasn't obvious from these postings was the fact that the client would actually only use a keyboard for 15 or 20 minutes at a time and she also requested her daughter to assist in most postings.

When a client is pursuing a disability claim or they have disability benefits being paid, s/he should keep in mind that social postings should be kept private. There really is no legitimate reason for them to post information publicly for insurance adjusters to view these matters. If the postings can't be kept quiet with just close friends, perhaps they shouldn't be posted it at all. They should choose another medium of communication with friends. The social networking resources have turned out to be a cheap surveillance tool, allowing insurance companies to peer into private lives and misinterpret information.

Some courts have recognized that a person, who meets the definition of disability in the policy, isn't necessarily incapable of any activity. Usually a disability policy doesn't require that a client should relegate himself to a dark secluded room every day in order to prove disability. A disabled person can and should enjoy many activities, but such persons should be very mindful that their actions can be misinterpreted or misconstrued. Be aware!