A Smorgasbord of Interesting Disablity Cases: Accident v. Sickness

November 30, 2011 by Martin Rosen

Kerns v. The Northwestern Mutual Life Ins. Co., 2010 U.S. Dist. LEXIS 126769 (E.D. Cal. 2010)

Facts and holding: Gary Kerns ("Kerns") owned two disability policies with The Northwestern Mutual Life Insurance Company ("Northwestern Mutual"). Under the terms of both policies, total disability benefits were payable to Kerns for the duration of his life if he became disabled due to accidental bodily injury, but only until age 65 if he became disabled due to sickness.

On October 3, 2006, Kerns submitted a claim for total disability benefits to Northwestern Mutual. He asserted that he had become disabled from his occupation as an insurance agent in February 2006 due to neck and head pain. Kerns claimed that his disability was due to "accident" from two sporting incidents which occurred in 1987 and 2001.

Northwestern Mutual rejected Kerns' claim that his disability resulted from the 1987 and 2001 incidents (accidents) and determined that Kerns was totally disabled from degenerative arthritis of the spine (a sickness). Northwestern Mutual approved Kerns' claim on that basis and paid Kerns monthly disability benefits consistent with the policy's terms governing disability due to "sickness."

In reaching its determination that Kerns' disability was the result of sickness, Northwestern Mutual relied on the opinion of its medical consultant that Kerns had progressive degenerative arthritis, which was asymptomatic until 2006, and that neither the 1987 nor the 2001 incidents accelerated his condition. Northwestern Mutual also relied on Kerns' medical records, which reflected that following the 2001 incident, Kerns underwent a CT scan and x-ray, the results of both of which were normal. Further, the medical records from 2000 did not reference any complaints of headache or cervical issues.

Kerns disagreed and brought suit against Northwestern Mutual for breach of contract and a declaration that he was entitled to lifetime benefits because his disability was due to "accident," rather than "sickness."

In support of his claim, Kerns' expert witness, an orthopedic surgeon, testified that the traumas Kerns experienced in the 1987 and 2001 incidents were "'most likely' a large cause of Kerns' total disability." The Court held that this was insufficient to support a reasonable inference that Kerns' disability was caused by accident because it was based on "assumptions of fact" or "conjectural factors."

According to the Court, an "accident" is defined by California case law as "a casualty — something out of the usual course of events and which happens suddenly and unexpectedly and without any design of the person injured." Since Kerns' symptoms

arose in 2006 without any precipitating event, his accidental injury claim was unsupported. Therefore, after a bench trial, the Court gave judgment to Northwestern Mutual.

Lessons learned:Claims of this kind – where the insured asserts that an accident (often not contemporaneously reported to his doctors) is a contributing cause of his later claimed disability – occur with some regularity. These types of claims are difficult to resolve by summary judgment. In this instance, the Court found the insured's assertion that certain accidents were the cause of his disability to be based on unsupported assumptions and conjecture.

Typically, in this kind of litigation there is significant uncertainty as to what conclusion the fact-finder will reach (accident versus sickness). And the consequences of an adverse determination may be heightened if a bad faith claim is also asserted. Here, by the time the bench trial occurred, there was no bad faith cause of action. Most insurers feel much more comfortable trying such cases if any such bad faith claim has already been eliminated.

For a mini-primer on the standards that might be used in assessing whether a disability claim is an accident or a sickness, those interested may wish to read *Alessandro v. Massachusetts Casualty Ins. Co.,* 232 Cal. App. 2d 203 (1965), *McMackin v. Great American Reserve Ins. Co.,* 22 Cal. App. 3d 428 (1971) and *Salas v. Minnesota Mutual Life Ins. Co.,* 1994 U.S. App. LEXIS 30035 (9th Cir. [Cal.] 1994).