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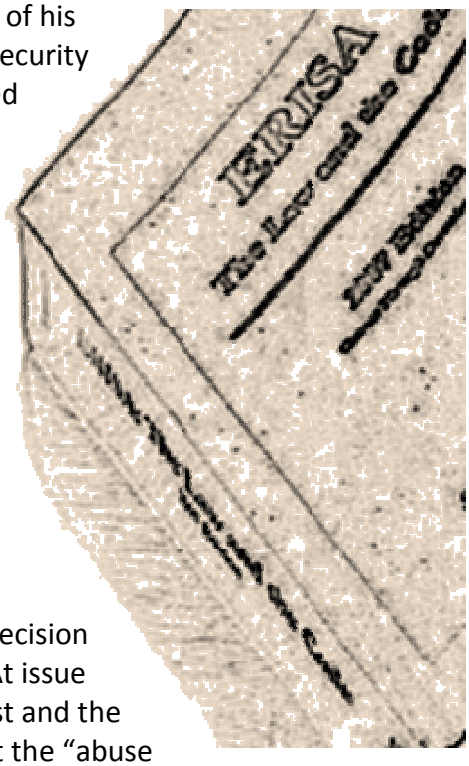
# District Court Applies Abuse of Discretion Standard of Review After *Montour*

Recently, in *Montour v. Hartford Life & Accident*, 582 F.3d 933 (9th Cir. 2009), the Ninth Circuit Court of Appeals, in one of its most important cases, adopted a new standard of reviewing ERISA abuse of discretion cases where the insurer has a conflict of interest. The court held that a "modicum of evidence in the record supporting the administrator's decision will not alone suffice in the face of such a conflict, since this more traditional application of the abuse of discretion standard allowed no room for weighing the extent to which the administrator's decision may have been motivated by improper considerations." Further, the court in *Montour* explained that a reviewing court must also take into account the administrator's conflict of interest as a factor in the abuse of discretion analysis. This was significant because the appeals court gave a comprehensive description of the "signs of bias" it found were exhibited by Hartford throughout the decision-making process. These included overstatement of and excessive reliance upon Montour's activities in the surveillance videos; Hartford's decision to conduct a paper review rather than an "in-person medical evaluation;" Hartford's insistence that Montour produce objective proof of his pain level; and Hartford's failure to deal with and distinguish the Social Security Administration's contrary disability decision. The appeals court also noted Hartford's "failure to present extrinsic evidence of any effort on its part to 'assure accurate claims assessment.'"




*Sacks v. Standard Ins. Co.*, __ F. Supp. 2d __, 2009 WL 4307558 (C.D. Cal. 2009) is one of the first cases to address the abuse of discretion standard of review since the Ninth Circuit's important decision in *Montour*. In *Sacks*, the claimant was a mortgage underwriter for Countrywide Home Loans. Standard Insurance Company ("Standard") was the claims administrator and insurer for the Countrywide Home Loans Long Term Disability Plan (the "Plan"). After her claim for long-term disability benefits was denied, the claimant sued Standard Insurance in federal courts for benefits under the ERISA.

The court recognized that the Plan granted Standard with discretionary authority. However, since Standard provided the funds and made the decision concerning benefits, it operated under a structural conflict of interest. At issue was how to apply the standard of review in light of the conflict of interest and the recent Ninth Circuit opinion in *Montour*. Here, the court recognized that the "abuse of discretion" standard of review does not change just because there is a conflict of interest. Instead, the factual circumstances surrounding the conflict of interest is a factor providing weight in the overall analysis of whether an abuse of discretion occurred. As a result, the court in *Sacks* gave greater weight to the conflict of interest for a variety of reasons including because Standard used an erroneous occupation criteria to evaluate Plaintiff's claim, failed to consider the effects of the claimant's medication on her ability to perform her own occupation, and failed to adequately investigate the claim. In addition, the court highlighted the fact that Standard failed to conduct follow-up testing as recommended by the IME physician and instead merely

accepted the part of the physician's conclusion that supported its claims decision. These actions, the court found, warranted greater skepticism of Standard's claims decision. Accordingly, the court found that Standard had abused its discretion and reversed the claim decision by awarding the plaintiff benefits.

Expect to see more district courts to focus their analysis on these and other self-interest factors as they assess how much weight to give to an insurer's conflict of interest. Also expect to see more district courts applying the *Montour* analysis to find that administrators have acted in a manner that evidences their self-interest and to award more ERISA participants their benefits under insured benefit plans.

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