

SHORT & LONG-TERM DISABILITY BENEFITS & WORKER'S COMPENSATION CLAIMS: A PRACTICAL GUIDE

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1. BACKGROUND INFORMATION – PRACTICE AREAS

- a. Shareholder HQEP
- b. Practice Areas
 - i. WC (applicant-side)
 - ii. LTDI (plaintiff-side)
 - iii. Taft-Hartley Funds
 - 1. ERISA Compliance
 - 2. Subrogation Work

2. SHORT & LONG TERM DISABILITY CLAIMS

- a. Disability Benefit Plans
 - i. Basics
 - 1. Benefit rights are contractual
 - a. Not Statutory based benefits

- b. Remedies are statutory
- 2. Every contract is different
- 3. General provisions
 - a. Benefit pays a percentage of employee's wages as long as employee is "disabled."
 - b. Disabled is generally defined as
 - i. For a period of time, unable to do material duties of his / her own occupation
 - ii. After a period of time, unable to perform material duties of "any occupation"
 - c. Benefits paid until certain age (e.g. 65 or 66) or until person reaches Normal Retirement Age – per Social Security Administration
 - d. STDI / LTDI usually offset by other income (e.g. WC benefits / SSDI benefits)
 - e. Exclusions (typical):
 - i. Self-inflicted injuries
 - ii. Pre-existing (not necessarily a bar)
 - iii. Mental health (usually a limited benefit period)
 - iv. Self-reported symptoms (i.e. pain without objective medical evidence to support)
 - f. Right to bench trial – not jury trial.¹
- 4. Usually makes sense to pursue both STDI / LTDI benefits and WC benefits b/c "own occupation" and TTD standards are generally compatible and benefits last for a longer period of time than WC benefits
- 5. Administrative Appeals
 - a. Must exhaust administrative appeals before filing suit²

¹ See, e.g., *Wardle v. Central States, Southeast & Southwest Areas Pension Fund*, 627 F.2d (7th Cir. 1980).

² See, e.g., *Simmons v. Wilcox*, 911 F.2d 1077, 1081 (5th Cir. 1990); *Mason v. Continental Group, Inc.*, 763 F.2d 1219, 1224-1227 (11th Cir. 1995); *Diaz v. United Agr. Employee Welfare Ben. & Trust*, 50 F.3d 1478, 1484 (9th Cir. 1995); *Worsowicz v. Nashua Corp.*, 612 F. Supp. 310, 314 (D. N.H. 1985).

- b. Exceptions:
 - i. Futility³ (e.g. policy of denying all claims);
 - ii. Denial of meaningful access to plan procedures⁴ (e.g. denial letter fails to tell participant about appeals process); or
 - iii. Threat of irreparable harm⁵.
 - 1. More applicable in health care plan cases
 - 2. E.g. participant might die or become seriously ill if he / she does not receive certain medical treatment.
- c. 180-day deadline to appeal denial (minimum)⁶
- d. Plan has 45 days to respond to appeal (may request an additional 45 days if more information is needed to make decision)⁷
- e. What happens if Plan doesn't follow rules?
 - i. No real monetary penalty
 - ii. Participant has right to file suit
- f. If denied on review – right to file suit

6. Private Rights of Action

- a. Four Basic Claims:
 - i. Failure to provide required information – 502(a)(1)(A)
 - ii. Enforce Benefit Rights – 502(a)(1)(B)
 - iii. Breach of Fiduciary Duty – 502(a)(2)
 - iv. Enforce Plan Terms – 502(a)(3)
- b. Generally must be brought in federal court
 - i. However: suits to enforce benefits rights may be brought in state or federal court

³ *Salus v. GTE Directories Serv. Corp.*, 104 F.3d 131, 138 (7th Cir. 1997).

⁴ *Conley v. Pitney Bowes*, 34 F.3d 714 (8th Cir. 1994).

⁵ *Dozsa v. Crum & Foster Ins. Co.*, 716 F. Supp. (D. N.J. 1989).

⁶ 29 C.F.R. §§ 2560.503-1(h)(3)(i), (h)(4).

⁷ 29 C.F.R. §2560.503-1(i)(3)(i)

- ii. Federal law applies
 - iii. Joint jurisdiction
- 7. ERISA generally preempts state law claims
- 8. Damages:
 - a. Benefits
 - i. Back benefits
 - ii. Clarify rights to future benefits
 - b. Attorney Fees and Costs⁸
 - i. Court's discretion
 - ii. To either party – winner or loser
 - c. Pre-Judgment Interest⁹
 - i. Court's discretion
 - ii. Should be awarded except in unusual circumstances¹⁰
 - d. No Punitive Damages¹¹

3. PRACTICAL CONSIDERATIONS

- a. Wis. Stat. §102.30(7)(a) The department may order direct reimbursement out of the proceeds payable under this chapter for payments made under a nonindustrial insurance policy covering the same disability and expenses compensable under s. 102.42 when the claimant consents or when it is established that the payments under the nonindustrial insurance policy were improper. No attorney fee is due with respect to that reimbursement.
- b. Wis. Stat. §102.42 Incidental Compensation – deals with medical treatment.
- c. What does 102.30(7)(a) actually give the department the power to do?
 - i. “Covering the same disability and compensable under s. 102.42.”

⁸ 29 U.S.C. §1132(g)(1) states, “In any action under this title (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorneys’ fee and costs of action to ether party.”

⁹ See, e.g., *Cottrill v. Sparrow, Johonson & Ursillo, Inc.*, 100 F.3d 220 (1st Cir. 1996).

¹⁰ *Lutheran Med. Ctr. v. Contractors, Laborers, Teamsters & Eng’rs Health & Welfare Plan*, 25 F.3d 616 (8th Cir. 1994).

¹¹ *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985).

- ii. I would argue, it only gives the power to issue an order of reimbursement for payments made for the same disability and related to medical expenses, per. 102.42.
- iii. Should not apply to short-term and long-term disability policies
- iv. But, in reality, orders are issued for short-term and long-term disability policy repayments
 - 1. See *Walton v. LIRC et al.*, Slip Copy, 2009 WL 399739 Wis. App., 2009
 - a. In the absence of proof of a legitimate subrogation claim, the Department does not have the power to order that payments be made pursuant to Wis. Stat. §102.30(7)(a)
- d. What other recourse do short and long-term disability plans have when benefits have been paid for same period as WC benefits?
 - i. Strong right of recovery (reimbursement / subrogation)
 - 1. Claims for reimbursement / subrogation are akin to 502(a)(1)(B) claims
 - a. Plan steps into the shoes of participant to enforce recovery rights of Plan Document
 - b. State and federal courts have concurrent jurisdiction over such claims
 - c. ERISA preempts state law insurance claims which would otherwise preclude an ERISA-based fund from exercising its reimbursement rights¹²
 - 2. *Sereboff v. Mid Atlantic Medical Services, Inc.*¹³
 - a. Facts:
 - i. Sereboffs were beneficiaries of a health insurance plan administered by Mid Atlantic
 - ii. Plan provided payment for treatment resulting from injury caused by third party in exchange for right to reimbursement from recovery against third party.

¹² *FMC Corp. v. Holliday*, 498 U.S. 52 (1990). In *Holliday*, a beneficiary was involved in a MVA. Beneficiary's self-funded health insurance plan paid medical expenses. Beneficiary filed suit against other driver, settled the claim, and refused to reimburse the health insurance plan, relying on state law. Supreme Court said state law was unenforceable, and preempted by ERISA.

¹³ 547 U.S. 356 (2006)

- iii. Sereboffs involved in MVA and benefits paid by Mid Atlantic
 - iv. Sereboffs settled PI claim but did not pay Mid Atlantic back for benefits paid
 - v. Mid Atlantic filed 502(a)(3) suit against Sereboffs seeking to recover benefits paid related to MVA
- b. Issue:
- i. Whether 502(a)(3) allows for a plan to recover from participants in such circumstances?
- c. Holding:
- i. Mid Atlantic properly brought a claim for “appropriate equitable relief”
 - ii. Modifies the court’s philosophy on “appropriate equitable relief” in 502(a)(3) claims
 - iii. Broadens “equitable relief” to include “equitable lien”
3. *Administrative Committee of the Wal-Mart Stores, Inc. Associates’ Health & Welfare Plan v. Shank*¹⁴
- a. Facts:
- i. Shank was a Wal-Mart employee and member of the plan
 - ii. Shank involved in serious MVA
 - iii. Plan pays approximately \$469,000 related to MVA
 - iv. Settled claim for \$700,000 but did not settle medical expense claim.
 - v. Plan filed 502(a)(3) claim to enforce reimbursement language in plan document
- b. Issue:
- i. Whether claim for full reimbursement is “appropriate equitable relief.”
- c. Holding:

¹⁴ 500 F.3d 834 (8th Cir. 2007)

- i. Relying on *Sereboff*, the 8th Circuit held that a claim of equitable relief under 502(a)(3) includes a claim for restitution in the form of a constructive trust or equitable lien.
 - ii. Follows *Sereboff*
 - e. Tips for Applicant's Attorneys
 - i. Make sure clients are pursuing STDI and LTDI benefits
 - ii. 180-day deadline to appeal denial of STDI or LTDI benefits
 - iii. Strong right of recovery for ERISA-based plans
 - iv. Resolve these issues as part of WC settlement
 - f. Tips for Respondent's Attorneys
 - i. Be aware of these plans' rights of recovery when settling
 - ii. Resolve these issues as part of WC settlement

4. ERISA-BASED HEALTH INSURANCE PLANS

- a. Note – same strong recovery rights as ERISA-based STDI / LTDI plans
- b. Another consideration for settlement

5. ERISA BASICS

- a. Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001, et. seq.
- b. Generally applies to all employee benefit plans maintained by employer or organizations representing employees whose activities affect interstate commerce
 - i. Two general types of plans:
 - 1. Pension plans (which we will not discuss today)
 - a. Defined contribution; and
 - b. Defined benefit;
 - 2. Welfare plans
 - a. Health care plans
 - b. Disability insurance plans
 - ii. Exclusions from ERISA coverage
 - 1. Payroll practices (some, but not all, STDI plans fall into this exclusion);

2. Governmental plans¹⁵
3. Certain church plans¹⁶
4. Plans maintained solely for complying with state mandated insurance laws (i.e. worker's compensation plans)¹⁷

¹⁵ 29 U.S.C. §1003(b)(1).

¹⁶ 29 U.S.C. §1003(b)(2).

¹⁷ 29 U.S.C. §1003(b)(3).