



## Newsletters

### The LHD/ERISA Advisor - March 2021

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As we look ahead to 2021, we start our second edition of Hinshaw's LHD/ERISA Advisor by reporting on key cases that closed out 2020. Through *The Advisor*, our team of attorneys nationwide strive to report on legal developments and trends in the life, health, and disability practice area. Since our goal is to provide a resource that helps guide your litigation and claim decisions, we welcome any comments or suggestions that would help us tailor *The Advisor* to meet your needs. We hope you enjoy this issue.

Here's what we are covering in this edition:

- **Sixth Circuit Upholds Denial of LTD Benefits by Decision Makers Employed by Another Entity Within the Plan Administrator's Corporate Family**
  - In *Davis v. Hartford Life & Accident Life Ins. Co.*, the Sixth Circuit held that a district court properly applied the abuse of discretion standard when reviewing the denial of disability benefits under ERISA, even though the subject plan's decisionmakers arguably were not employed by the corporate entity to which the plan granted discretionary authority.
- **Ninth Circuit Rules in Favor of Medical Provider in Dispute with Insurer Regarding Anti-Assignment Provisions**
  - The Ninth Circuit significantly limited insurers' ability to rely on anti-assignment provisions in ERISA health plans in *Martin Luther King, Jr. Community Hospital v. Community Insurance Company dba Anthem Blue Cross Blue Shield, et al.* The case has broader significance because it affirms that courts can reform an ERISA plan's non-benefit aspects to prevent inequitable results.
- **Ninth Circuit Affirms District Court May Consider Social Security Administration Ruling That Was Not Before the Plan Administrator**
  - In *Perez v. Lincoln Nat'l Life Ins. Co.*, the Ninth Circuit held that a district court reviewing a denial of disability benefits under ERISA may consider a Social Security Administration ruling that was not part of the administrative record.
- **California Federal Court Rules in Favor of Equitable Tolling of Benefit Plan Limitations Period**
  - In *Poisson v. Aetna Life Ins. Co.*, the court held that the contractual limitations period in a long-term disability plan is equitably tolled based upon a finding of the participant's mental incompetence, even though the participant pursued his legal rights for government disability benefits

#### Attorneys

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#### Service Areas

Life, Health, Disability & ERISA  
Litigation



during that period.

- **Court Ruling that ACA Gender Transition Mandate Violates Religious Liberty Illustrates Interplay Between ACA and ERISA**
  - In *Religious Sisters of Mercy v. Azar*, a district court awarded a group of plaintiffs permanent injunctive relief against a provision of the Affordable Care Act ("ACA") that required them to offer health coverage for gender-transition procedures.
- **Remand Order Constitutes Sufficient Degree of Success on the Merits to Justify Attorneys' Fees Award**
  - In *Fisher v. Aetna Life Ins. Co.*, a New York federal court held that a remand order requiring the claim administrator to reassess its denial of benefits constituted a sufficient degree of success on the merits to justify a fee award under ERISA's fee-shifting provision.
- **Denial of Mental Health Treatment Benefits Ruled Improper under Milliman Care Guidelines**
  - In *Jessica U. v. Health Care Service Corp.*, 2020 U.S. Dist. LEXIS 207277 (D. Mont. Dec. 9, 2020), the district court of Montana held that an ERISA plan administrator improperly denied benefits for mental health residential treatment based solely on so-called "Milliman Care Guidelines" that were not included in the plan documents.
- **ERISA Plan Entitled to Seek Reimbursement from Plan Beneficiary Who Recovered Damages in Tort Action Related to Underlying Accident**
  - In *Vercellino v. Optum Insight*, the Nebraska district court held that a self-funded ERISA plan could seek reimbursement for medical benefits paid from any recovery the plan beneficiary received in a third-party tort action for damages related to his injuries.
- **Court Affirms Principle that Challenges to Benefits Determination Involving Mental Illness Limitation Require Specific, Concrete Evidence of Physical Factors**
  - In *Gill v. Unum Life Ins. Co. of America*, a California federal court held that a plaintiff claiming disability due to cognitive impairment was limited to benefits to 24 months under the subject ERISA plan's mental illness limitation where the plaintiff had a history of mental illness and no evidence established that his reported cognitive impairment was caused by a non-psychiatric illness or injury.