



## Newsletters

### The LHD/ERISA Advisor - October 2021

October 2021

Hinshaw's *LHD/ERISA Advisor* remains committed to bringing you recent legal developments that may guide your life, health, and disability litigation strategy and claims decisions.

In this edition, we cover a recent DOL Information Letter that provides guidance under ERISA's regulations on producing an audio recording or transcript of calls between claimants and claim administrators. We also review a multitude of case decisions that include an AD&D policy determination stating an amputation was not an accident, a denial of LTD benefits due to a failure to establish functional limitations, ERISA exhaustion requirements not satisfied through verbal appeal, an interpretation of contractual limitations period, and a barring of the use of equitable estoppel when it contradicts a plan's express terms.

- **DOL Letter Indicates ERISA Plan Administrators Must Produce an Audio Recording or Transcript of Call Between Claimant and Plan Representative Upon Request**
  - An ERISA plan administrator must, if requested by a claimant contesting an adverse benefits determination, produce a copy of an audio recording or transcript of a telephone conversation between the claimant and a plan representative, according to a recent interpretation of ERISA's implementing regulations issued by the U.S. Department of Labor.
- **Ninth Circuit Joins Fourth Circuit in Holding that Equitable Estoppel is Barred Where Use Would Contradict Express Terms of an ERISA Plan**
  - In *Wong v. Flynn-Kerper*, the Ninth Circuit barred the use of equitable estoppel to challenge the purchase price of company shares under an ERISA stock ownership plan when such use would contradict the plan's express terms.
- **District Court Finds Reduction in Monthly LTD Benefit Due to IRA Rollover Appropriate Under Plan Terms**
  - In *DeBold v. Liberty Life Assur. Co. of Bos.*, a district court held that an ERISA plan administrator could reduce an insured's monthly long-term disability benefit based on retirement funds that she rolled over into an IRA.
- **Fifth Circuit Holds Amputation Not An Accident Under AD&D Policy Where Employee's Underlying Medical Conditions Contributed to the Loss**
  - In *Byerly v. Std. Ins. Co.*, the Fifth Circuit determined that a claimant, whose leg was amputated after he stubbed his toe, did not suffer a

#### Attorneys

Peter J. Felsenfeld

#### Service Areas

Life, Health, Disability & ERISA  
Litigation



qualifying loss under his group AD&D policy because the loss was not caused solely by an accident, but rather was contributed to by the employee's underlying medical conditions.

- **Texas District Court Upholds Denial of LTD Benefits Because Claimant Did Not Prove Functional Limitations Within Benefit Waiting Period**
  - In *Calkin v. United States Life Ins. Co.*, a Texas district court affirmed the insurer's denial of LTD benefits, holding that while a claimant established diagnoses, he failed to establish functional limitations within the applicable benefit waiting period.
- **Court Rules LTD Benefits Properly Terminated After Plaintiff Failed to Undergo Recommended Survey for Disability**
  - In *Hall v. Aetna Life Ins. Co.*, a California district court held that an ERISA claim administrator properly terminated LTD benefits after the plaintiff failed to undergo recommended surgery for her disability.
- **Court Rejects Insurer's Interpretation of its Own Policy Language on Limitations Period**
  - In *Spina v. Metro. Life Ins. Co.*, the court held the insured's lawsuit was not barred by the contractual limitations period imposed by the policy.
- **ERISA Exhaustion Requirement Not Satisfied by Verbal Appeal When Plan Required Written Appeal**
  - In *Ligotti v. United Healthcare Services*, a Florida district court held that a health care provider challenging claim denials on behalf of his patients cannot satisfy ERISA's exhaustion requirement by verbally appealing adverse benefits determinations when the underlying plan requires written appeals.