

NO

MAR 03 2003

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re Enron Corporation, Securities,
Derivative & "ERISA" Litigation

MARK NEWBY, ET AL.,

Plaintiffs

Vs.

ENRON CORPORATION, ET AL.,

Defendants

PIRELLI ARMSTRONG TIRE
CORPORATION RETIREE MEDICAL
BENEFITS TRUST, Derivatively On
Behalf of ENRON CORPORATION, ET
AL.,

Plaintiffs

Vs.

KENNETH LAY, ET AL.,

Defendants

PAMELA M. TITTLE, on behalf of
herself and a class of persons similarly
situated, ET AL.,

Plaintiffs

Vs.

ENRON CORP., an Oregon
Corporation, ET AL.,

Defendants.

Consolidated Civil Action Number: _____
H-01-3624

(SEEC Civil Action Number:
H -02-0267)

AFFIDAVIT

Judge: Melinda Harmon.

1263

Affidavit of Robin Denise Hosea

I, Robin Denise Hosea, being duly sworn, make the following statement based on information and facts about my former employment with Enron Corporation (Enron) and my relationship with attorneys representing me and the Severed Enron Employees Coalition (S.E.E.C.). I am over the age of 18 and competent to make this statement.

1. My name is Robin Denise Hosea. I was born on August 20, 1953 in Ashtabula Ohio. My Texas driver's license number is 09437704. I reside at 1406 Second Street, Seabrook, Texas 77586 with my husband Joseph Marshall Hosea, Jr.
2. In August 2000 I was offered and accepted temporary employment that led to permanent employment at Enron as a Senior Benefits Specialist. I am a certified database specialist and I have unique experience in financial data basing. My job description was to organize the Enron benefit department financial data into a database format so that it would accurately reflect the account status and determine the extent of the funds deposited and withdrawn. My more than twenty years of experience lead me to understand that this task would likely involve determining those funds for which accounting was inaccurate or for which records were missing.
3. Between November 2000 and March 2001, I formulated, simplified, and tested a database so that the benefit department records would be available in a readily and accurate viewable format. In March 2001 I merged the benefits accounting numbers in Specialized Accounting Program (SAP) with the database I had developed and tested.
4. As I examined the benefits department transactions, I questioned a significant number of transactions that lacked appropriately documented approval and acceptance for payment according to Enron policies and that deviated from standard accounting practices. I presented these concerns to my supervisor, Ms. Cynthia Barrow. On numerous occasions Ms. Barrow instructed me to cease further investigation of the payment(s) in question. I became concerned because the payments for which there was questionable, improper or inadequate documentation numbered in the hundreds and possibly more. The name of one of the recipients of numerous substantial payments from the benefits funds was Willie J. Alexander, who was not an Enron employee. Several incidents in which I reported the accounting irregularities caused me to conclude that there were a number of senior Enron employees who were at least aware of what appeared to be improper practices and payments involving the employee benefits funds.

5. After a short trip in April 2001 during which I began experiencing severe knee pain, I was examined by my primary care physician, Dr. Le, who referred me to a specialist, Dr. Cains. Believing the problem was torn cartilage Dr. Cains recommended arthroscopic knee surgery for June 2001.
6. During May 2001 my job responsibilities involved gathering information for the benefits department audit that was being conducted by Ernst & Young. Ernst & Young had also performed the benefits department audit in 2000 for the benefit year 1999 after the accounting firm of Arthur Andersen was dismissed from that duty. Ernst & Young prepared the 5500 forms for filing with the Securities and Exchange Commission for the benefit years 1999, 2000 and 2001.
7. The surgery in June 2001 determined that the problem affecting my knee was far more serious than torn cartilage. The initial diagnosis was severe arthritis. Further diagnostic procedures and treatment by Dr. Philip Daley of Clear Lake Orthopedic Clinic lead to the current diagnosis of degenerative joint disease (DJD) and severe advanced deteriorative arthritis (SADA).
8. The seriousness of the arthritis made it necessary for me to take a leave of absence from my employment at Enron. In September 2001 I applied for long term disability under the group benefits policy for which I was eligible through my Enron employment.
9. After the "collapse" of Enron, I was contacted by the U.S. Department of Labor on December 10, 2001 and was interviewed by Mr. Juan Gonzalez of Fort Worth. Most of Mr. Gonzalez's questions explored matters at Enron that did not deal with the work I performed or the benefits data base administration for which I was responsible. After that interview I began to receive threatening telephone calls on an almost daily basis. The singular message was, "Hello, this is Robin's daily warning call." One message was "shut up or you will die."
10. In January 2002 I received an E-mail from S.E.E.C. stating that a CBS investigative reporter wanted to interview former Enron employees who might have information about Enron and its accounting practices. After a series of E-mails, I agreed to speak to Ms. Sharyl Attkisson, News Correspondent for CBS Evening News.
11. On January 22, 2002 at 10:00 PM (CST) I spoke to Sharyl Attkisson and agreed to make arrangements to fly to Washington D.C. to meet with her to discuss my knowledge about Enron. The phone call concluded at 11:30 PM (CST) with an agreement to fly out the next morning at 6:00 AM (CST). At 11:35 PM (CST) I received a phone call from Brenda Fletcher stating that she was a S.E.E.C. representative and that George Whittenburg wanted to speak to us about the 'situation at hand.' A man who identified himself as Mr.

George Whittenburg did telephone at approximately 11:40 PM (CST). He stated that he was an attorney for S.E.E.C. and requested that we postpone our meeting with Sharyl Attkisson and speak with him the following day at 6:00 PM (CST) at Ninfa's Restaurant, 1200 Smith Street, Houston, Texas. I immediately contacted Sharyl Attkisson to postpone the interview we had scheduled. Ms. Attkisson decided to fly to Houston, Texas to meet with me, my husband, and George Whittenburg.

12. On January 23, 2002 at 6:00 PM (CST), I met with Randy McClanahan who was introduced to me as being another attorney for S.E.E.C., Mr. Whittenburg and Sharyl Attkisson at Ninfa's Restaurant. Ms. Attkisson wanted an immediate interview with me, and although Randy McClanahan disagreed, Mr. Whittenburg stated that he would remain for the interview with Ms. Attkisson. Mr. McClanahan abruptly left the restaurant taking all of my original documents, CD-Roms and diskettes of information regarding the events at Enron about which I had information. *Some of these original documents and diskettes have not been returned to me as of this date.* During the news interview, which later aired on national television, Mr. Whittenburg sat off-camera in a corner after instructing me not to answer any questions that would require the supporting documents that Mr. McClanahan had taken. During the interview, Mr. Whittenburg received pager notification; he then left abruptly before the interview was completed.
13. On January 31, 2002 I contacted Randy McClanahan and expressed my concerns about his and Mr. Whittenburg's conduct on January 23, 2002. Mr. McClanahan apologized and offered to represent my interests due to the critical nature of the events surrounding Enron. Given the threatening phone calls I had received and the national publicity surrounding Enron, I agreed to enter into a contract for representation. The contract of employment my husband and I signed identified the following law firms that would be representing me: Whittenburg Whittenburg & Schachter, Dies and Hile, Spivey & Ainsworth, P.C., Bilsin Sumberg Dunn Baena Price & Axelrod LLP, and McClanahan and Clearman LLP. Mr. McClanahan signed the contract on behalf of all counsel. The contract is entitled "Power of Attorney and Contingent Fee Contract" and is dated January 31, 2002. See Attorney Fee Contract dated January 31, 2002 marked Exhibit 1.
14. On February 11, 2002 Mr. Thomas Holloman, a DOL investigator on loan to Senator Joseph Lieberman's committee interviewed me by telephone. During the interview, from McClanahan's office, Mr. McClanahan's telephone connection was lost. Mr. Holloman telephoned Mr. McClanahan's office and asked to speak to my husband privately. After the conversation, my husband explained to Mr. McClanahan that he needed a letter stating that he was not represented by any member of the S.E.E.C. legal counsel. Mr. McClanahan provided such a letter of non-representation to my husband, on February 15,

2002 that identified the following attorneys: George Whittenburg of Whittenburg Whittenburg & Schachter, Richard Hile and Martin Dies of Dies and Hile, Broadus Spivey of Spivey & Ainsworth, P.C., Scott Baena, of Bilsin Sumberg Dunn Baena Price & Axelrod LLP, and Randy McClanahan of McClanahan and Clearman LLP. See McClanahan Letter dated February 15, 2002 marked Exhibit 2.

15. Because Mr. Holloman invited me to Washington, D.C. to testify before the Senate committee investigating Enron, my husband and I left for Washington D.C. on February 15, 2002. During our drive to Washington, Mr. Whittenburg called many times and offered to represent me in the Congressional testimony that I was about to give. My husband and I agreed to the counsel and met Mr. Whittenburg at the Dirkson Senate building in Washington D.C. on February 19, 2002 at 9:00 AM for approximately four hours of testimony. A CBS News camera crew filmed us entering the interview. My testimony included information about the accounting irregularities I had identified between November 2000 and May 2001, including payments made to entities without appropriate accounting documentation and authorization, payments to Willie J. Alexander, massive shortages in the employee benefits accounts, Ernst & Young's involvement in the benefit year 1999 and 2000 audits, and what I experienced and considered retaliatory behavior by my supervisors at Enron when I was in the process of reconciling the irregularities to the employee benefits funds I had questioned. Thomas Holloman and an FBI agent were representatives of the Senate committee. Mr. George Whittenburg informed these investigators that he represented me in all matters concerning Enron. At one point the committee took a break and when we returned to the Senator's office, we were bluntly told we could go home. Mr. Whittenburg assured me that he would apply for the Whistleblower compensation benefits for which I was eligible.
16. Between March 4, 2002 and March 9, 2002, I met with Mr. Whittenburg in Amarillo, Texas. During those meetings we discussed my medical condition, the application that I had made for Long Term Disability and the insurance provider's rejection of that claim, and the financial distress that my husband and I were experiencing because we were both unemployed due to the Enron collapse. I provided all medical records I had obtained until that date, all documents and correspondence relating to my Long Term Disability claim and all of the financial records relating to the financial distress my husband and I were experiencing. Mr. Whittenburg stated that he and his firm would assist me in pursuing the Long Term Disability claim and in filing for bankruptcy and also in applying for the Whistleblower payment.
17. On April 16, 2002, one of Mr. Whittenburg's associates, Mr. Karl Baumgardner, provided me with a packet containing documents for our

bankruptcy filing and a letter explaining that we should file this bankruptcy ourselves. See Bankruptcy Letter dated April 15, 2002 marked Exhibit 3.

18. On April 23, 2002 I received a contract for representation for my Long Term Disability claim by mail from Mr. Whittenburg's office. I signed and returned the contract, but did not receive a signed copy of the contract. See Whittenburg Contract marked Exhibit 4. At this time, I again asked Mr. Whittenburg about his promised application on my behalf for the Whistleblower compensation for which I was eligible. He assured me he would make the application. He also promised to make application for reimbursement for my travel expenses for testimony before Congress. I understood that my travel expenses were to be paid for by Enron as ordered by either the court or Congress. To this date and to my knowledge, Mr. Whittenburg did not apply for the Whistleblower compensation or the reimbursements for which I was eligible due to my testimony before Congress. I have been informed by Congress that there is a ninety day filing limitation for this payment.
19. On Monday, May 6, 2002 my husband and I presented the documents to the Southern Division Houston District Bankruptcy Court, however, the U.S. District Court Clerk refused to accept the filing stating that it was unacceptable in form.
20. On May 10, 2002 I received a copy of a letter written by Mr. Baumgardner that appealed the Prudential Insurance's second denial of my application for Long Term Disability benefits. I contacted Mr. Baumgardner with my concerns that he did not include all of my more current medical records with the letter and that the letter was not sent by certified mail to Prudential. See Baumgardner Letter dated May 10, 2002 marked Exhibit 5.
21. On June 10, 2002 I wrote to Mr. Whittenburg about the status of my long term disability claim, about his proposed strategy, and to express my concerns about, among other things, his assertion that I did not need COBRA insurance. In reply, Mr. Baumgardner informed me that Mr. Whittenburg would continue to pay my COBRA premiums and that Mr. Whittenburg stated that I would need to file for Social Security Disability benefits by myself. See R. Hosea Letter dated June 10, 2002 marked Exhibit 6.
22. On August 1, 2002, Prudential Insurance again denied Long Term Disability benefits. On August 14, 2002 Karl Baumgardner stated that the firm would probably file another appeal and a lawsuit at the same time. See Prudential Denial Letter dated August 1, 2002 marked Exhibit 7.
23. On August 12, 2002 my health insurer, CIGNA, denied a power chair that my doctor prescribed. Mr. Baumgardner instructed me to handle the first appeal

and, if necessary, he would handle further appeals regarding the wheelchair. See CIGNA Denial Letter August 12, 2002 marked Exhibit 8.

24. On September 11, 2002 I received a letter from Congress requesting me to testify before Senator Grassley's and Baucus's committee. I forwarded the letter to Mr. Baumgardner who informed me on September 13, 2002 that Mr. Whittenburg arranged for the interview to be conducted by telephone with Mr. Whittenburg present. See Congress Letter dated September 4, 2002 (3 pages) marked Exhibit 9.
25. On September 13, 2002 I received a letter that denied Social Security Disability benefits. Mr. Baumgardner indicated that the Whittenburg firm would not handle the Social Security claim so on September 19, 2002 I employed another law firm to handle my Social Security Disability claim.
26. On September 19, 2002 Mr. Baumgardner agreed to take over the CIGNA appeal for the power wheel chair.
27. On September 19, 2002 Mr. Baumgardner informed me that the telephone investigation with Congress would take place at 1:30 PM (CST) on September 20, 2002. Prior to the conference call, instead of Mr. Whittenburg being present, Mr. Baumgardner stated that he would be representing me but that 'he had no knowledge of this part of the case and that he was there only for my support.'
28. On October 18, 2002 I received an E-mail from Mr. Baumgardner that included a draft of an original complaint for a Long Term Disability lawsuit. See Original Complaint (received via E-mail with attachments) marked Exhibit 10.
29. On November 7, 2002 an E-mail I received from Mr. Baumgardner stated that Mr. Whittenburg reviewed and approved the lawsuit and that it would be filed in Dallas by the firm's Dallas office. I understood that the claim would be filed in federal court because it was an ERISA claim. See Baumgardner E-mail dated November 7, 2002 marked Exhibit 11.
30. On November 11, 2002 at 9:05 AM (CST) I received a phone call from the clerk for the County Court at Law Number 3. She stated that a lawsuit had been filed under the ERISA act and that it was the practice of that court to notify the actual parties and the attorneys of any serious errors in filing prior to dismissal. The clerk noted that she had gotten our contact information by contacting Mr. Whittenburg's office. She then stated 'that filing an ERISA case in a county court at law was considered to be a serious error in process and the judge felt it only fair that we be advised.'

31. On November 12, 2002 I received an E-mail from Mr. Baumgardner stating that the ERISA lawsuit had been filed in state court. I asked for a copy of the filing, which I received a few days later. The copy was clearly file stamped as having been filed in the Dallas County Court at Law Number 3. See Baumgardner E-mail dated November 12, 2002 and County Court Filing marked Exhibit 12.
32. On November 21, 2002 my husband and I spoke with Susan Halloday, Assistant Director of Regulation Interpretation at the Department of Labor Pension Welfare Benefits Agency and faxed her copy of the apparently misfiled ERISA filing. She stated "that the filing is simply recovery of Long Term Disability Benefits" and certainly not an "accusation of misappropriation of accounts." She further noted that the case should have been filed as an "1132 a (1) b case under the 503-1 guidelines that includes recovery of benefits under section 1001." I then reviewed the original S.E.E.C v Northern Trust et al class action lawsuit and found that my complaint was almost identical in its allegations. See S.E.E.C v Northern Trust et al marked Exhibit 13. Compare Example Complaints marked Exhibits 14, 15, and 16.
33. Despite his earlier agreement to represent me, the week prior to the Second Level Appeal with CIGNA regarding the power wheel chair application, Mr. Baumgardner stated that I should handle that hearing on my own. On December 18, 2002 I had no choice but to handle the telephonic hearing regarding the power wheel chair without representation. The appeal was denied. See CIGNA National Level Denial Letter dated December 19, 2002 marked Exhibit 17.
34. On December 30, 2002 I received a letter from Mr. Whittenburg and Mr. Baumgardner demanding that I assign to Mr. Whittenburg all payments by his firm of COBRA premiums from any social security disability lump sum payments that I hoped to receive. See Assignment Letter dated December 27, 2002 marked Exhibit 18.
35. On or about January 15, 2003 I discovered that Mr. Whittenburg's son, Joseph W. Whittenburg is still employed with Enron and that Joseph W. Whittenburg is married to Emily Tovar Whittenburg, who was previously an attorney for Andersen Consulting until their demise and then went to work for Ernst & Young. See Internet Message Board for Joseph W. Whittenburg marked Exhibit 19; Joseph W. Whittenburg Accountancy License Information marked Exhibit 20; Whittenburg/Tovar Wedding Announcement dated August 5, 2001 marked Exhibit 21; and Emily Tovar Whittenburg State Bar of Texas Membership Information marked Exhibit 22. I testified six times for Congress and government agencies and identified Ernst & Young as the entity that conducted the Enron benefit funds audits for the benefit years of 1999, 2000,

and 2001 from which I had identified hundreds of payments that did not have supporting documentation or authorization.

36. On or about January 15, 2003 I also learned that James A. Whittenburg III, who is directly related to Mr. George Whittenburg, was on an election steering committee for the recent Texas Lieutenant Governor election with Willie J. Alexander, whom I named in the Congressional investigation hearings as an individual who was receiving payments from the Enron employee benefits funds. See Dewhurst Election Committee as found on the Internet marked Exhibit 23.
37. On January 24, 2003 my husband and I contacted Mr. Broadus Spivey, one of the S.E.E.C. attorneys, and requested that he meet with us to discuss matters that I believed were harming and would continue to harm the handling of my Long Term Disability claim *and the S.E.E.C. class action*. When my husband and I spoke with Mr. Spivey we expressed the importance of maintaining complete confidentiality. He agreed to meet us in confidentiality on Saturday, January 25, 2003 at his office in Austin, Texas.
38. On January 25, 2003 my husband and I met with Mr. Spivey in his office. We discussed the information that my husband and I obtained regarding Mr. Whittenburg's family relationships to Enron and other information that my husband and I believed raised issues of conflicts of interest and professional misconduct or neglect in the handling of my Long Term Disability claim by Mr. Whittenburg and the concern that those same conflicts, misconduct or neglect would have on the S.E.E.C. class action. *My husband and I stated to Mr. Spivey that we wanted to handle these matters quietly, 'in house and confidentially,' and without creating any conflict. Mr. Spivey stated that he appreciated that we wanted to handle these matters confidentially. My husband and I provided Mr. Spivey a written timeline of events and supporting documents. Mr. Spivey specifically asked for permission to speak with Mr. Richard Hile and promised to keep these communications with Mr. Hile confidential as well. He promised to contact us on January 27, 2003 to let us know how this issues might be addressed appropriately.*
39. On January 27, 2003 Mr. Spivey stated that he felt that he had a conflict and that his only suggestion was to contact Mr. Whittenburg as he could no longer discuss this with us.
40. On January 28, 2003 I sent a letter to Mr. Spivey and Mr. Randy McClanahan in a further effort to resolve the issues professionally. See Hosea to Spivey Letter dated January 28, 2003 marked Exhibit 24.
41. On January 30, 2003 Mr. Spivey's reply stated that he had informed the other S.E.E.C. lawyers about the concerns my husband and I discussed with him.

He acknowledged that he did not maintain the confidentiality to which he had originally agreed. See Spivey E-mail Response dated January 30, 2003 marked Exhibit 25.

42. I informed the other attorneys on the S.E.E.C. legal team that they could obtain information directly from Mr. Spivey about the concerns my husband and I discussed with him. For responses from the attorneys, see E-mails marked Exhibits 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36.

43. On February 7, 2003 I received an amended petition from Mr. Whittenburg that joins another party to my Long Term Disability lawsuit. See Amended Petition marked Exhibit 37.

44. On February 7, 2003 I received my client file from Randy McClanahan and a withdrawal letter, dated February 4, 2003. The file contained only some of the original documents he had taken on January 23, 2002. Several documents and a CD-Rom are not in the file materials returned to me. See McClanahan Withdrawal Letter dated February 4, 2003 marked Exhibit 38.

45. On February 10, 2003 I received a copy of a Motion to Withdraw as counsel from Mr. Whittenburg. See Whittenburg Withdrawal Motion marked Exhibit 39.

46. On February 11, 2003 I asked Mr. Whittenburg to provide me with a court stamped copy of the Motion to Withdraw. He has not yet provided that copy to me.

Further sayeth not Affiant.

Robin D. Hosea
Robin D. Hosea

3/3/03
Date

NOTARY ATTESTATION

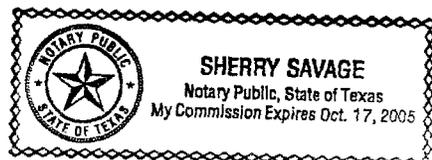
United States of America -)
County of Harris)
State of Texas)

Before me, a Notary Public in and for the State of Texas, on this 3rd day of March, 2003, did appear Robin D. Hosea, who having provided proper identification did swear, affirm, and execute the above document entitled Affidavit of Robin Denise Hosea, consisting of 19 pages, including this attestation.

Sherry Savage
Notary Public

My commission expires:
10-17-2005

[stamp or seal]



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<p>Broadus A. Spivey VIA WEBSITE Spivey & Ainsworth, P.C. 48 East Avenue Austin, Texas 78701 Telephone: (512) 474-6061 FAX: (512) 474-1605 E-mail: bas@spain-attys.com</p>	<p>George Whittenburg VIA WEBSITE Whittenburg, Whittenburg, Schachter and Harris, P.C. P.O. Box 31718 1010 Harrison Amarillo, Texas 79120 Telephone: (806) 372-5700 FAX: (806) 372-5757 E-mail: gwhittenburg2@whittenburglaw.com</p>
<p>Scott L. Baena VIA WEBSITE Bilzin, Sumberg, Dunn, Baena, Price & Axelrod, L.L.P Wachovia Financial Center 200 South Biscayne Blvd. Suite 2500 Miami, Florida 33131 Telephone: (305) 374-7580 FAX: (305) 374-7593 E-mail: sbaena@bilzin.com</p>	

POWER OF ATTORNEY AND CONTINGENT FEE CONTRACT

This agreement is between the undersigned Client and the law firms of Whittenburg, Whittenburg & Schachter, P.C., Dies & Hile, L.L.P., Spivey & Ainsworth, P.C. and McClanahan & Clearman, L.L.P. ("Counsel"). In consideration of the mutual promises contained in this agreement, the parties agree as follows:

1. PURPOSE OF REPRESENTATION.

The Client retains and employs Counsel to investigate, sue for, settle and recover all damages and compensation due to the Client from any party arising out of the termination of Client's employment with Enron Corp. or its subsidiaries, Client's participation in the Enron Corporate Savings Plan, or Client's investments in Enron. The parties believed to be responsible for injuries include, by example, Enron Corp., The Northern Trust Company, Northern Trust Retirement Consulting L.L.P., Andersen, L.L.P. and Arthur Andersen, L.L.P., their officers, directors and agents. Client understands that Counsel believes that the aspects of the Client's claims are appropriate for class litigation and Client will consider serving as a class representative if Counsel decides to prosecute the case as a class action.

It is agreed that Counsel's obligations are limited to representing the Client in the specific matters described herein and the Client does not expect Counsel to provide any other legal services.

The Client represents that he has not currently employed another attorney for this matter, through a contingent fee contract, to represent Client's interest in the matters identified in §1. Further, the Client will not attempt to make any assignment of the interest he has now assigned to Counsel. Counsel cautions the Client that entering into multiple fee contracts can result in the payment of multiple fees under Texas law.

2. COUNSEL'S FEE.

In consideration of the services rendered and to be rendered to the Client by Counsel, the Client does assign, grant and convey to Counsel 33 and 1/3% of Client's present undivided interests in all Client's claims and causes of action described in §1 of this agreement as a reasonable contingent fee for Counsel's services. Counsel shall not seek a fee for any claims for the payment of wages, salaries, commissions, severance, vacation, and sick-leave pay earned by the Client in accordance with company policies that existed as of December 2, 2001, and that do not require assistance of Counsel.

If the Client's claim results in an individual settlement or judgment recovery against one or more of the defendants, then Counsel's contingent attorneys' fee shall be based upon the gross recovery or settlement, after deducting expenses as described in §3 below. If the Client's claim results in a class settlement or judgment recovery against one or more of the defendants, then Counsel's contingent attorneys' fee and award for expenses shall be determined by the court's judgment. The attorneys' fee shall be the lesser of the percentages indicated above or the fee ordered by the court. The Client agrees to support Counsel's application for an attorneys' fee award and expenses as stated above but to be applied to the entire class' recovery. If Counsel does not obtain a settlement or recovery for the Client, then Counsel will not receive any contingent fee or be reimbursed for expenses.

The recovery or settlement to which the percentage of Counsel's contingent attorneys' fee is to apply and upon which such fees are to be calculated, includes all monies and everything of value (expressed in dollars) recovered, received or obtained because of any settlement or recovery. Such things of value include, but are not limited to, the

value of any business deal or transaction entered into by the Client or the class with any of the defendants or potential defendants. For example, if the Client or the class and a defendant reach an agreement or settlement by which the defendant, instead of, or in addition to, paying money, makes an agreement with the Client or the class to provide something of benefit to the Client or the class, then Counsel would be entitled to their respective percentage of the value of the business deal or transaction as their contingent attorneys' fee.

If Counsel and the Client cannot agree on the expressed dollar value at the time of settlement, of any item, thing or agreement included in the total recovery or settlement, the parties agree to retain the services of the C.P.A. firm of Deloitte & Touche, L.L.P. to make an appraised present cash value of such item, thing or agreement. The parties will assign the appraised value determined by Deloitte & Touche, L.L.P. to such item, thing or agreement for purposes of determining the present cash value of the total recovery or settlement.

If there is any type of settlement or recovery by which the Client is to receive or be paid future payments, then Counsel and the Client will reduce the settlement to present value, and arrange the settlement so that there is sufficient cash at the time of the settlement to pay the attorneys' fees. In determining the present cash value of the recovery, Counsel and the Client agree to use the yield of 5 year treasury notes, as reported in THE WALL STREET JOURNAL under "Treasury Bonds, Notes & Bills," on the date of settlement or judgment.

All sums due and to become due are to be paid at the offices of McClanahan & Clearman, L.L.P., 4100 Bank of America Center, 700 Louisiana, Houston, Texas 77002, Harris County, Texas.

3. DEDUCTION AND PAYMENT OF EXPENSES.

Counsel will have the authority to decide on expenses to be incurred. Such expenses shall not be unreasonable, and may be subject to review by the Client upon settlement. The expenses shall include, but shall not be limited to, expert fees, copy costs, travel expenses, deposition fees, court costs, other litigation support fees, and other direct, out-of-pocket expenses associated with the handling of the litigation. The Client agrees that Counsel may borrow funds from a commercial bank to finance or pay expenses, and the reasonable interest charged by the bank on such borrowed funds will be added to the expenses. Any fees or expenses incurred by Deloitte & Touche, L.L.P., as reflected in §2, shall be included as an expense. The Client and Counsel will deduct expenses from any recovery consistent with §2 before Counsel's contingent attorneys' fee is calculated.

4. APPROVAL NECESSARY FOR SETTLEMENT.

The Client and Counsel shall not offer or accept a settlement without their mutual approval. The Client and Counsel will not unreasonably withhold such approval. The Client understand that ultimate approval of a class settlement will be made by the court.

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Counsel cannot and does not warrant or guarantee the outcome of the case and Counsel has not represented to the Client that the Client will recover all or any of the funds from the defendants or potential defendants. The Client realizes that Counsel will be investigating the law and facts applicable to Client's claim on a continuing basis and if reasonable investigation indicates that continued prosecution of the case is not economical or practical, then Counsel may withdraw from

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NATIONAL BOARD OF TRIAL ADVOCACY

15 February 2002

To Whom It May Concern:

This will confirm that neither I nor my co-counsel in the Enron related litigation represent Marshall Hosea in any way. We do represent Robin Hosea in her claims related to the collapse of Enron.

If you require further clarification please feel free to call me.

Very truly yours,


Randy J. McClanahan

RJMc/ss

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April 23, 2002

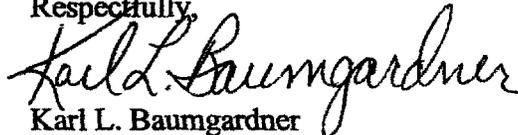
Robin Hosea
1406 Second Street
Seabrook, Texas 77586

Re: LTD Claim

Dear Robin:

Enclosed is the Agreement which sets our fees in representing you on your LTD claim against Prudential. Please review it and sign on the appropriate line at the bottom. Marshall can be your witness. Forward the signed document to me in the enclosed, self-addressed, stamped envelope. I am also enclosing a copy of the Texas Lawyers Creed for your files. Let me know if you have any questions.

Respectfully,


Karl L. Baumgardner

Enclosures

CONTINGENT FEE AGREEMENT WITH ASSIGNMENT AND POWER OF ATTORNEY

CLIENTS: ROBIN HOSEA
OCCURRENCE: DENIAL OF LTD CLAIM
DATE OF OCCURRENCE: DECEMBER 2001 TO PRESENT
PLACE: HOUSTON, TEXAS

We employ the attorneys of the law firm of Whittenburg Whittenburg & Schachter, P.C. for legal representation in asserting all claims (whether contractual or tortious in nature) against whomever (whether one or more) their investigation discloses a cause of action (whether judicial or administrative) for injuries and damages suffered by me/us arising out of the occurrence described above.

In consideration of the services rendered and to be rendered, we assign and agree to pay the attorneys of Whittenburg Whittenburg & Schachter, P.C. as their compensation 25% of the causes of action and of any amount recovered and collected by suit, arbitration, settlement, or otherwise before the initiation of any proceeding, 40% of the causes of action and of any amount recovered and collected by suit, arbitration, settlement, or otherwise after any suit is filed but before any new trial or mistrial is granted or any party appeals from the first trial court judgment, and 50% of the causes of action and of any amount collected by suit, arbitration, settlement, or otherwise after a new trial or mistrial is granted or any party appeals from the first trial court judgment.

We also agree to reimburse or advance to the attorneys all costs and expenses reasonably necessary for the investigation, preparation, and prosecution of these claims, including those for consulting and testifying experts; however, if no settlement is reached and nothing is recovered, the attorneys shall receive nothing for their time and effort, but shall be reimbursed their costs and expenses only. All costs and expenses shall be charged in the amount incurred, except that in-house copying and research printing shall be charged at the rate of 20¢ per page. Costs and expenses shall be due and payable when billed by the attorneys and shall bear interest at the rate of 10% per annum from 30 days after the attorneys bill them, with all payments thereon applied first to the payment of interest accrued. At the end of each calendar year, accrued unpaid interest shall be added to the unpaid balance due under this agreement and shall bear interest at the rate of 10% per annum.

The attorneys at their discretion may employ expert witnesses and consultants whose services might further the prosecution of the claims, and other technical experts to analyze and report on the facts of the occurrence. We understand that all the experts will report solely to the attorneys. Fees charged by the expert witnesses and investigators

may be advanced by the attorneys and charged as costs and expenses.

If at any time the law or the facts of the case do not warrant further prosecution in the opinion of the attorneys, then the attorneys may withdraw from the case. If we discharge the attorneys before a settlement is made or a judgment is obtained, the attorneys will be entitled to their full contingent share of any settlement or judgment on the claim as compensation for their services rendered.

The attorneys may receive the settlement or judgment amount and may retain their percentage attorneys' fee and the amount of costs and expenses incurred before disbursing the remainder to us. We give the attorneys a lien on the claims or causes of action, on any sum recovered by way of settlement, and on any judgment recovered, for their percentage attorneys' fee for their services. We further agree that the attorneys shall have all general, possessory, and retaining liens, and all other liens known to the common law.

We understand that the attorneys have made no representations concerning the successful termination of the claims or the favorable outcome of any legal action that may be filed, and they have not guaranteed that they will even obtain reimbursement of any costs or expenses. We further acknowledge that all statements of the attorneys concerning the possibility of the success of these claims are statements of opinion only.

By this instrument, we appoint each attorney of Whittenburg Whittenburg & Schachter, P.C. as our lawful attorneys in fact, with power and authority to do all things in connection with these claims that we could personally do. We also agree not to attempt to make any settlement of these claims without consulting the attorneys, and we further understand that no settlement of these claims will be made by the attorneys without approval.

The assignment and power of attorney conveyed to Whittenburg Whittenburg & Schachter, P.C. by this document shall not terminate upon either of our disabilities or deaths.

We have received a copy of the Texas Lawyer's Creed promulgated by the Supreme Court of Texas.

SIGNED April 23 2002.

[Signature]
WITNESS

[Signature: Robin D. Hosea]
CLIENT

WITNESS

CLIENT

APPROVED AND ACCEPTED:

WHITTENBURG WHITTENBURG & SCHACHTER, P.C.

By: _____
Of Counsel

Hosea Letter
April 15, 2002
Page 2

Finally, I am enclosing a document entitled "Liquidation Under the Bankruptcy Code - Chapter 7" for your review. It may help you understand the process a little better regarding your bankruptcy.

Let me know if you have any questions.

Respectfully,


Karl L. Baumgardner

Enclosures

WHITTENBURG WHITTENBURG & SCHACHTER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

GEORGE WHITTENBURG
MACK WHITTENBURG
CARY IRA SCHACHTER
SUSAN L. BURNETTE
CHARLES G. WHITE
KARL L. BAUMGARDNER
RAYMOND P. HARRIS, JR.
DEBORAH ASHMORE HARRIS
C. JARED KNIGHT
ANA E. ESTEVEZ
LAUREL SIEGERT FAY
CYNTHIA S. SCHIFFER
ANDREW MELVILLE
JUAN TOMASINO
VENU NAIR
JENNAFER GROSWITH

2300 PLAZA OF THE AMERICAS
600 NORTH PEARL, LB 133
DALLAS, TEXAS 75201

(214) 999-5700
FAX (214) 999-5747

1010 SOUTH HARRISON
P.O. BOX 31718
AMARILLO, TEXAS 79120

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FAX (806) 372-5757

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REPLY TO AMARILLO OFFICE

May 10, 2002

Direct Dial: (806) 345-5405

kbaumgardner@whittenburglaw.com

Manager, Appeals Review Unit
Disability Management Services
GLDI Main
P.O. Box 13480
Philadelphia, PA 19101

Re: Claimant: Robin D. Hosea
Control#/Br: 79332 / 00012
Claim#: 10418516
SS#: 276-50-9159
Date of Birth: 08/20/1953

Dear Sir or Madam:

This letter is to appeal once again your decision to deny LTD benefits for the above-referenced claimant. As stated in a letter from Gina Hendricks dated February 7, 2002, the definition of disability under Group Policy #79332 is:

"Total Disability" exists when Prudential determines that all of these conditions are met:

(1) Due to sickness or accidental injury, both of these are true:

(a) You are not able to perform, for wage or profit, the material and substantial duties of your occupation.

(b) After the Initial Duration of a period of Total Disability, you are not able to perform, for wage or profit, the material and substantial duties of any job for which you are reasonably fitted by your education, training or experience. The initial duration is equal to the first 18 months of In benefit.

(2) You are not working at any job for age or profit.

(3) You are under the regular care of a Doctor.



Prudential Appeal Letter
May 10, 2002
Page 2

It is our understanding that Prudential is denying Ms. Hosea's claim for LTD because she was allegedly able to perform the substantial duties of her job during the Elimination Period. It is clear to Ms. Hosea and us that she has not been able to perform the duties of her job since May 25, 2001. You first rely on the opinion of Dr. Caines that Ms. Hosea could return to work until her surgery was performed on June 14, 2001. Ms. Hosea discontinued her physician-patient relationship with Dr. Caines because he was obviously not able to properly diagnose and evaluate Ms. Hosea's condition.

Ms. Hosea then became a patient of Dr. Daley, who has consistently and clearly stated that she was not able to work. On a prescription note dated June 7, 2001, and signed by Dr. Daley, the doctor stated, "No work until released from doctors care. L Knee Surg. pending 6-14-01." Ms. Hosea has, as of the date of this letter, not been released from Dr. Daley's care. On another note dated August 29, 2001, Dr. Daley states, "She is not going to be able to get back to work. She is going to try for long-term disability."

On the "Attending Physician's Statement" that Prudential provided for Ms. Hosea's physician to complete, Dr. Daley's signature of September 6, 2001, appears after his statements reading, "Patient has difficulty walking or sitting for any period...At this [time] she cannot go back to work...Return after rehab complete - probably 3-6 months." Under medical obstacles to return to work, Dr. Daley wrote, "Pain and restricted motion and weakness in knee." You place all your emphasis on the fact that Dr. Daley checked a box that indicated her job category was "sedentary." What you neglect to point out is that, on this form prepared by Prudential, not the doctor or the patient, there is no box for "cannot work at all" or "should not be working." The description the physician is guided by in checking the box is "What job category best describes the claimant's functional abilities? (Please check appropriate box)." The physician is not even given the option of not checking a box at all. Dr. Daley, duly following Prudential's instructions, checked the lowest functional ability box the you provided him. That was what *best* described Ms. Hosea's functional abilities out of all the options given by you, not necessarily the most accurate description. The most accurate description was given in the remainder of the form where Dr. Daley consistently stated Ms. Hosea could not work, even though her job was a so-called "sedentary" job to begin with.

In a letter dated November 21, 2001, Dr. Daley wrote, "Due to the medications she has to take to maintain her pain level, it makes it very difficult to work constantly turning and twisting in chair or walking...It is my recommendation that the patient not work until seen in our offices for her knee and hip." It is curious to me that you would put so much emphasis on one checked box by Dr. Daley, yet ignore *every other* note he wrote dating from June 7, 2001, stating Ms. Hosea should not return to work.

Ms. Hosea, according to Dr. Daley, suffers from "advanced arthritic deterioration of both knees." It is an irreversible, inoperable, and aggressive condition that produces extreme pain eventually in all joints. It will worsen with time and cannot be repaired. It hurts constantly, whether Ms. Hosea is sitting, standing, walking, or riding in a car. Dr. Daley has increased her pain medication to help alleviate her pain and try to make her as comfortable as possible. The medication does not stop the pain, but only takes the edge off of it. I am enclosing for your review endoscopy photos of Ms. Hosea's left knee dated June 14, 2001. These

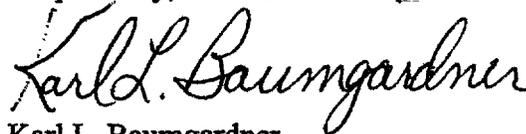
Prudential Appeal Letter
May 10, 2002
Page 3

should give you an idea of the severity of her knee condition. The right knee is in the same condition that is shown in these photos.

Dr. Daley has consistently taken the position that Ms. Hosea could not return to her job, despite your allegations to the contrary in your denial of Ms. Hosea's claim. He has prescribed a mobility cart for Ms. Hosea in order for her to get around without putting unnecessary and painful weight on her knees. Further, he has determined that Ms. Hosea is not a candidate for knee replacement and will not be until she is at least in her late 50s or early 60s. That is over 10 years from now.

Based upon the medical records, Dr. Daley's consistent diagnosis and prognosis regarding Ms. Hosea's disability, the terms of the Long Term Disability Policy, and the conditions of the job Ms. Hosea last held prior to her disability, we believe it is clear that she qualifies for the LTD benefit. We, therefore, request a complete review of her claim and that she be granted full LTD benefits under the terms of the policy at issue.

Respectfully,



Karl L. Baumgardner

Enclosures

cc(w/o encl): Robin D. Hosea

**Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433
E-mail hoseantx@msn.com**

**Mr. George Whittenburg
Whittenburg Whittenburg & Schachter, P.C.
1010 South Harrison
P.O. Box 31718
Amarillo, TX 79120**

June 10, 2002

Dear George,

Please let me start this letter by saying thank you for your continued help and support in my needs of the Long Term Disability case. The reason I am writing this letter is to clarify where we are at and what path we should take. If you are not aware of the situation completely, I am hopeful this letter will bring you up to date.

Point One: Dr. Daley has taken the steps to help procure a powered chair to assist me in mobility needs. CIGNA insurance is dragging their feet in requesting a review before agreeing to purchase the chair. At the time of the last visit, Dr. Daley stated that the advanced arthritis is in a deteriorative state, simply put, the arthritis is aggressive in nature and is continuously lessening my capabilities in all affected joints. Since you last saw me I have lost in excess of 60 pounds in hopes of easing the constant pain. Though I feel better about myself, it does not seem to help with mobility and pain issues.

Point Two: Because of the aggressive nature of my arthritis pain management has become a challenge to Dr. Daley. He has increased the level of medications and added a second prescription to help control the pain. It is Dr. Daley's thought that the insurance will demand the Scoping of the right knee to confirm whether or not it is affected by this problem. Though he feels that the symptoms in the grinding that it makes when he manipulates it, assures him that it suffers from the same problem. It is Dr. Daley's opinion that Scoping an advanced arthritic patient does not necessarily the most prudent solution, which leads to the first of many questions that I need you to answer for me.

Question 1: Do you feel that it would be helpful to this case for Dr. Daley to scope my right knee or do you feel as Dr. Daley does that the pictures of the left knee are more than enough evidence for any medical practitioner to arrive at the same diagnosis?

Question 2: Do you feel that your firm can help me in any way in expediting the delivery of this mobility device as prescribed by Dr. Daley? If not, can you suggest the best way to proceed with this?

Point Three: As I'm sure you're not up-to-date on my prescriptions, I am now under three separate pain medications that are to try to help and control the pain. Two of the prescriptions are for four tablets daily, which means 120 tablets per month per prescription. The third prescription will be for three tablets daily of Procliden to help control the throbbing that I get from the deteriorated joints, which will mean 90 tablets per month. That will mean that I will take 330 tablets a month at an average cost of \$2.50 per tablet. That equals \$820 a month in medications out of \$1260 in unemployment. This is why I have requested your assistance in continuing the COBRA payments. I only receive \$1,262 and the state of Texas is trying to remove Marshall's disability that is not (SSI).

Question 3: I realize that it is a financial burden to assist with these COBRA payments, but without COBRA I cannot see a doctor or afford my medications. Will it be possible for you to continue your support in assisting with these COBRA payments?

Question 4: If it is not possible for you to continue your support, can you help in suggesting an avenue to pursue help in this matter?

Point Four: Dr. Daley is absolutely confused and perplexed over the obstinacy of Prudential. Dr. Daley states that the type of diagnosis he has given is absolutely proven by the photographs of the first scope. He states that he has been involved in over 5,000 cases involving long term disability or government disability deriving from this diagnosis. He states with Social Security Administration that advance arthritis with picture proof is an automatic disability and he has suggested that I possibly seek Social Security Administration's help until this case is resolved. He also stated that the insurance company was extremely unfair by using disability forms that precluded him from answering properly.

Question 5: In your opinion, would you advise me to file a disability claim with Social Security Administration?

Question 6: If so, can you assist in this matter?

Question 7: If not, can you please explain why?

Point Five: I read Karl's letter to Prudential and I must commend him on his great work. I am hopeful that Prudential will see that any jury would find them to be arbitrary and capricious but if they do not see the error of their ways, it brings to mind the problems that would occur stemming from a wait of two years of civil litigation.

Question 8: Is there any way I can help you in gathering enough information to change Prudential's mind?

Question 9: Do you believe that civil litigation is our only resolve with Prudential?

Question 10: Since my COBRA will run out June 30, 2003, what will happen with my medical until the case is resolved?

Point Six: It has been suggested to me that Prudential has had their wrists slapped in Texas numerous times for failure of following Texas guidelines for insurance practices. If this is the case, then it seems to me that there is possibly a quick solution or resolve to this problem. George, my fear is that this disease will render me chair-bound before I can financially afford to take care of myself.

Question 11: Have you heard of Prudential's wrongdoings in the past?

Question 12: If not, can I assist in any way in finding out if this is true?

Question 13: Karl had sent the letter to Prudential in early May. Has he heard back from Gina Hendricks or anyone at Prudential?

Point Seven: I am confused by the events of last week. I received a letter from Rod Jordan stating that negotiations had indicated a proposed settlement of \$7,000 minimum to all 4500 employees to be paid in the next couple of weeks. I then received a letter from EnronX.org stating that that letter was untrue and that Rod Jordan and the Steering were not a part of those negotiations. (Please see attached letter.) I then received a letter from Diana Peters praising Rod Jordan's work (which I agree with wholly). I then received another letter from EnronX announcing a meeting at Antioch Baptist Church coming this week. All of these letters are confusing, so I think it is better to come directly to the source.

Question 14: Is the Steering committee in any way involved in the negotiations for severance pay with Enron?

Question 15: Is it of your opinion that we will receive any more severance from Enron in the future?

Final Thoughts: I know that this is a long drafted letter but I felt it necessary to gain foresight and direction. It has been quite some time since you and I have communicated and I feel these questions are valid and will help to make me understand my future better. I apologize for any inconveniences that I have caused you but I feel confident that with your professional guidance these matters can be resolved quickly.

Sincerely,

Robin D. Hosea



Christine Latore
Manager

The Prudential Insurance Company Of America
Disability Management Services
Po Box 13480
Philadelphia, PA 19101

Phone: (800) 842-1718 Ext: 5190
Fax: (866) 285-8569
Hours: 08:00 AM 04:30 PM

August 01, 2002

Mr. Karl Baumgardner
1010 South Harrison
PO Box 31718
Amarillo, TX 79120

Claimant: Robin D Hosea
Control #/Br: 79332 / 00012
Claim #: 10418516
Date of Birth: 08/20/1953

Dear Mr. Baumgardner:

We have completed our evaluation of Ms. Robin Hosea's second appeal for Long Term Disability (LTD) benefits under Group Policy #79332 issued to Enron Corporation. Following our review of the information in file and submitted upon appeal, we have determined that our decision to disallow her LTD claim was appropriate. Therefore, we have upheld that decision. This letter will outline the reasons for our determination.

Group Policy Requirements

An employee is Totally Disabled for the purposes of the Group Policy #79332 only while satisfying all of the following requirements:

- (1) Due to sickness or accidental injury, both of these are true:
 - (a) You are not able to perform, for wage or profit, the material and substantial duties of your occupation.
 - (b) After the Initial Duration of a period of Total Disability, You are not able to perform, for wage or profit, the material and substantial duties of any job for which you are reasonably fitted by your education, training, or experience. The initial duration is equal to the first 24 months of benefits.
- (2) You are not working at any job for wage or profit.
- (3) You are under the regular care of a doctor.

In addition, the Group Policy indicates that the claimant must meet the above definition of Total Disability for a continuous period of 26 weeks before benefits become payable. Since Ms. Hosea stopped working on May 25, 2001, the Group Policy requires that she continue to meet the above definition of disability from May 25, 2001 through November 27, 2001, which is the date benefits were scheduled to begin.

Information Regarding Your Occupation

Ms. Hosea was employed by Enron, Corp. as a Senior Benefits Specialist. The physical requirements of her occupation are considered to be sedentary.

The claimant went out of work on May 25, 2001, due to knee pain and impending knee surgery. It was determined she did not satisfy the definition of Total Disability and her claim for benefits

was disallowed. Please refer to our letter dated November 10, 2001 for a full explanation of this decision.

On December 12, 2001, we received Ms. Hosea's letter of appeal requesting reconsideration of the disallowal. The medical in file and that submitted on appeal was reviewed with our medical department and it was determined that the records did not support an impairment from sedentary work throughout the elimination period. In addition, it was determined that the claimant was released to return to work on two occasions during the elimination period. Therefore, there was no continuous period of disability since she went out of work and we upheld our decision to disallow her claim. Please refer to our letter dated February 7, 2002 for details surrounding this decision.

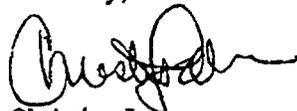
We received your appeal letter dated May 10, 2002 requesting reconsideration of our decision on behalf of Ms. Hosea. As per your letter, Dr. Daley has consistently and clearly stated that the claimant is unable to work. She has been prescribed a mobility cart and she is a candidate for knee replacement surgery.

On second appeal the documentation in file was reviewed by our medical director. The records in file do not support a basis for the claimant's inability to perform the material and substantial duties of her own occupation by November 27, 2001, which is the date Long Term Disability benefits were scheduled to begin. The normal post operative recovery for an arthroscopic procedure is expected to be six to eight weeks for a sedentary job. The claimant underwent an arthroscopic surgical procedure for chondral shaving and meniscectomy on June 14, 2001. Ms. Hosea's benefits were not scheduled to begin until approximately twenty-four weeks after surgery, which is far beyond the normal recovery duration of six to eight weeks. The documentation in file does not note any post operative complications. As per the physical therapy discharge summary obtained from Clear Lake Rehabilitation, Ms. Hosea was discharged on September 7, 2001 due to non-compliance. Although Dr. Daley's states in his office visit note dated November 12, 2001 that the claimant should not be doing any prolonged walking or standing, her own occupation does not require this level of activity. You state in the appeal letter that Ms. Hosea has been prescribed a mobility cart to get around without putting unnecessary weight on her knees. This device would not preclude the claimant from returning to sedentary work duties. Although Ms. Hosea may be a candidate for knee replacement surgery in her late 50's or early 60's, there is no evidence in file that she could not do sedentary work. Therefore, we have upheld our decision to disallow her Long Term Disability benefits.

You may appeal this decision to Prudential's Appeals Committee for a final decision. The Appeals Committee is the final level of review available. If you elect to do so, the appeal must be made in writing by you or your authorized representative. The appeal may identify the issues and provide other comments or additional evidence you wish considered, as well as any pertinent documents you may wish to examine. The decision of the appeals committee will be final, and cannot be further appealed. The written appeal should be submitted to my attention, and I will refer it to the Appeals Committee.

If you have any questions, please contact me at (800) 842-1718, extension 5190

Sincerely,



Christine Latore
Manager



P.O Box 188002
Chattanooga, TN 37421

August 1, 2002

Alliance Med, Inc.
P O Box 1609
Dickinson, TX 77539

*Faxed
Sharri
PWBA
8/2/02*

Re: Patient: **Robin Hosea**
Employee ID #: **276-50-9159**
Reference #: **0430221074065**

Dear Sir:

Intracorp, on behalf of Connecticut General Life Insurance Company, has completed a review of your request for coverage of an electric wheelchair for the above named patient.

Your plan provides coverage for specified Covered Services which are medically necessary. After a review of the information submitted, we have determined that the requested services are not covered under the terms of your plan. This coverage decision was made based on the following:

The information provided does not justify the medical necessity of a power wheel chair. Patient has arthritis of knees. No information about distances patient can walk. No information about patient's upper body strength preventing her from using a standard wheel chair. A motorized wheel chair is not medically necessary.

Decisions regarding your medical care are your responsibility together with your treating provider, and we recommend that you discuss alternative treatment options with him/her. If you or your provider has additional information which you believe supports the request for coverage, you would like additional information regarding the information used in making this coverage determination, or if you are not satisfied with this coverage decision, you or your authorized representative can start the appeal process by submitting a written request for review to the address above.

Please be sure to indicate "APPEAL REQUEST" on your letter.

We have a two-step appeals procedure for coverage decisions. If you request an appeal, please submit any additional medical documentation (such as treatment notes, letters of medical necessity, photos, etc) which you believe support your request for coverage. A Physician Reviewer who was not involved in the initial coverage decision will review your request. Physician Reviewers are licensed physicians or dentists, depending upon the care, treatment or service under review. If you are still dissatisfied, you may request a second level of review. Most requests for a second level review will be decided by an Appeals Committee, which will include physicians who were not involved in prior decisions.

We respond to appeals as quickly as possible, but usually within 30 days. If you or your treating physician believe waiting this time period would jeopardize your health or if severe pain management is needed, you may ask for a

faster response. Our physician reviewer, in consultation with your treating physician, will decide if an expedited appeal is necessary. If so, we will respond within 72 hours.

If your plan is governed by ERISA, you also have the right to bring legal action under section 502(a) of ERISA following our review.

I regret this response could not be more favorable. If you have any questions about this letter or the terms of your benefit plan, please call our Customer Service Department at the toll-free phone number listed on your CIGNA HealthCare ID card. If your physician would like to discuss this case with a Physician Reviewer, he/she may also contact our Customer Service Department who will assist with having the Physician Reviewer contact your physician. Otherwise, one of our representatives will be happy to help you.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur Brown". The signature is fluid and cursive, with the first name "Arthur" and last name "Brown" clearly distinguishable.

Arthur Brown, MD
Intracorp Physician Reviewer

Cc: Robin Hosea
P O Box 686
Seabrook, TX 77586

(bd)

SENATE

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Congress of the United States

JOINT COMMITTEE ON TAXATION
1015 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6453
(202) 225-3621
<http://www.house.gov/jct>

September 4, 2002

Robin Hosea
P.O. Box 686
Seabrook, TX 77586-0686

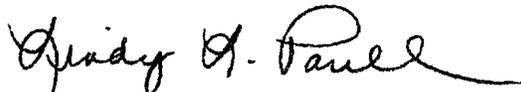
Dear Ms. Hosea:

Chairman Max Baucus and Senator Charles Grassley of the Senate Committee on Finance have directed the staff of the Joint Committee on Taxation ("Joint Committee") to conduct a review of the Federal tax returns, tax return information, and other relevant information and documents relating to the Enron Corporation and related entities ("Enron") as well as entities with significant relationships with Enron. In addition, Chairman Baucus and Senator Grassley have directed the Joint Committee staff to review the compensation arrangements of Enron employees, including tax-qualified retirement plans, nonqualified deferred compensation arrangements, and other arrangements. A copy of the letter to the Joint Committee from Chairman Baucus and Senator Grassley is enclosed (Attachment A).

In connection with this review, the Joint Committee staff would like to talk with you regarding certain statements attributed to you in press reports from earlier this year regarding the possible misuse of employee benefit funds at Enron. If you are represented by counsel, please have them contact us or provide us with their name, address, and telephone number.

I appreciate your assistance and cooperation in this matter. If you have any questions, please contact Carolyn Smith, Nikole Clark, or me at 202-225-3621.

Sincerely,


Lindy L. Paull

Enclosure

MAX BAUCUS, MONTANA, CHAIRMAN

JOHN D. ROCKEFELLER IV, WEST VIRGINIA
TOM DASCHLE, SOUTH DAKOTA
JOHN BREAUX, LOUISIANA
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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOHN ANGELL, STAFF DIRECTOR
KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

February 15, 2002

Lindy L. Paull, Esq.
Chief of Staff
Joint Committee on Taxation
1015 Longworth House Office Building
Washington, DC 20515

FEB 15 2002

Dear Ms. Paull:

Recent press reports have raised troubling questions about Enron Corp. and related entities' ("Enron") compliance with the Federal income tax laws, including the use of entities in tax haven countries, other special purpose entities, and questionable tax shelter arrangements. According to some press reports, Enron may have used such arrangements to improperly avoid paying corporate income taxes.

We are also concerned by reports that thousands of Enron employees have suffered pension losses in recent months while corporate insiders appear to have reaped substantial profits during that same period. Qualified pension plans and many other compensation arrangements receive considerable tax benefits and are otherwise facilitated by the Federal tax laws. Recent reports about Enron raise concerns that the objectives behind these tax law provisions are not being fulfilled.

Accordingly, pursuant to Internal Revenue Code section 8022, we direct the staff of the Joint Committee on Taxation to undertake a review of Enron's Federal tax returns, tax information, and any other relevant information as you deem necessary, from 1985 to the present, to assist us in evaluating if the Federal tax laws facilitated any of the events or transactions that preceded Enron's bankruptcy. The review should examine the adequacy of present tax law, particularly in the areas of tax shelters and offshore entities. It should also include a review of the compensation arrangements of Enron employees, including tax-qualified retirement plans, nonqualified deferred compensation arrangements, and other arrangements, and an analysis of the factors that may have contributed to any loss of benefits and the extent to which losses were experienced by different categories of employees.

We ask that you transmit your findings, and recommendations for reform, to the Senate Committee on Finance as soon as practicable. We also request that you keep the Committee updated on the progress on your study and advise us on any problems you may have in securing timely access to the information needed to perform this review.

Lindy L. Paull, Esq.

February 15, 2002
Page Two

We want to thank you and your staff for undertaking this important review and look forward to receiving your report.

Sincerely yours,



Charles E. Grassley
Ranking Member



Max Baucus
Chairman

hoseantx@msn.com

From: "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
To: "Robin Hosea (E-mail)" <hoseantx@msn.com>
Sent: Friday, October 18, 2002 11:12 AM
Subject: Complaint

Robin:

I am attaching a draft of the complaint. Please check for factual accuracy. George has yet to give his OK to this draft, but I wanted your input anyway.

Karl

<<Original Complaint.wpd>>

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

ROBIN HOSEA,

Plaintiff,

V.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

§
§
§
§
§
§
§
§
§
§

NO. _____

ORIGINAL COMPLAINT

TO THE HONORABLE COURT: _____

Robin Hosea, Plaintiff, complains of The Prudential Insurance Company of America, Defendant, and in support thereof shows the following:

INTRODUCTION

1. Plaintiff brings this action under Sections 502(a) and 404(a) of the Employee Retirement Income Security Act ("ERISA")(29 U.S.C. §§1132(a), 1104(a)), as a beneficiary of the Enron Long Term Disability Plan (the "Plan"), an employee benefit plan established by Enron. The defendant is the Plans' Insurer which has improperly denied plaintiff benefits under the Plan.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1132(e)(1) (ERISA § 502(e)(1)), which grants to United States District Courts jurisdiction over these claims.

3. This Court has personal jurisdiction over the defendant pursuant to 29 U.S.C. §1132(e)(2) because the defendant may be found in this District. Further, the defendant

systematically and continuously does business in this state, and the case arises out of the defendant's acts within this state.

4. Venue is proper pursuant to 29 U.S.C. §1132(e)(2), because the defendant may be found in this district.

PARTIES

5. Plaintiff Robin Hosea (hereinafter "Ms. Hosea") is a resident of Seabrook, Texas. Ms. Hosea was a participant in the Plan.

6. Defendant The Prudential Insurance Company of America, (hereinafter "Prudential") is a New Jersey corporation with its principal office and principal place of business located in Newark, New Jersey, which may be served with process through its registered agent, CT Corporation System, Shirley Dillon, 350 North St. Paul Street, Dallas, Texas 75201. Prudential served as the Plan's Insurer throughout the relevant time period.

7. Enron is not named as a defendant in this action as it has filed for protection pursuant to Chapter 11 of the U.S. Bankruptcy Code. Plaintiff reserves the right to add Enron if the bankruptcy stay is lifted with respect to her claims against Enron.

FACTUAL BACKGROUND

8. Prior to her employment with Enron Corporation, Ms. Hosea had worked for several financial institutions in their accounting and payroll departments for over 20 years. The duties she had performed at these other jobs included payroll and employee benefits accounting, essentially the same type of work she was hired to perform at Enron.

9. On November 6, 2000, Ms. Hosea began her employment at Enron Corporation as a Senior Benefits Specialist. Her duties included monthly expense reconciliations for nine separate cost centers; perform monthly reserve analysis reviews; review the general ledger coding

of all payment requests, wire transfers and trust payments as requested by her department; lead the annual financial audit from March to September; assist the director with the \$117 million budget preparation for the department; and coordinate the gathering and reporting of various other information as needed. Her office was located on the 16th floor of the building at which Enron Corporation conducted its corporate business. At all times while she was employed at Enron until she became disabled, she performed her duties in a satisfactory manner and missed only 2 days of work.

10. In the Spring of 2001, Ms. Hosea began experiencing severe pain in her left knee. She first was evaluated by Di Van Le, M.D., her primary care physician, on May 7, 2001. Her last day of work at Enron was May 24, 2001. Dr. Le executed a "Return to Work" note that indicated that Ms. Hosea could return to work on June 8, 2001, after her appointment with Phillip Daley, M.D. on June 7, 2001. Dr. Daley is an orthopedic surgeon who evaluated Ms. Hosea at that time for arthroscopic surgery on her left knee.

11. At the time of Ms. Hosea's visit to Dr. Daley on June 7, 2001, Dr. Daley executed a note that stated, "No work until released from doctor's care. Left knee surgery pending 6-14-01." As of the date of the filing of this Complaint, Dr. Daley has never released Ms. Hosea from his care. In fact, Dr. Daley has consistently and repeatedly indicated on his treatment notes for Ms. Hosea that she cannot return to work.

12. Dr. Daley performed the arthroscopic surgery on Ms. Hosea's left knee as scheduled on June 14, 2001. In the weeks after the surgery, it became clear that Ms. Hosea's problems were more extensive than first thought. Since June 7, 2001, Ms. Hosea has been diagnosed with severe arthritis, degenerative in nature, involving all surfaces of both knees, and had to undergo another arthroscopic surgery, this time on her right knee, in September 2002.

Knee replacement surgery was contemplated by Dr. Daley, but he determined that such surgery should not be performed for another 10 years due to Ms. Hosea's relatively young age. Further, Ms. Hosea has also been diagnosed with degenerative disc disease in her back with some bulging discs that do not at the present time require surgical intervention. On September 3, 2002, Dr. Daley again executed a note that stated, "No work 6-7-01 until the present time. (no rtw date @ this time)."

13. While under Dr. Daley's care from June 7, 2001, to the present, Ms. Hosea has been taking several medications that were prescribed by Dr. Daley. Those medications include Vioxx, Darvocet, and Ultram, powerful drugs that affect Ms. Hosea's ability to perform her job duties in a satisfactory manner.

14. Under the Plan at issue, total disability is defined as follows:

"Total Disability" exists when Prudential determines that all of these conditions are met:

(1) Due to Sickness or accidental injury, both of these are true:

(a) You are not able to perform, for wage or profit, the material and substantial duties of your occupation.

(b) After the Initial Duration of a period of Total Disability, you are not able to perform for wage or profit the material and substantial duties of any job for which you are reasonably fitted by your education, training or experience. The Initial Duration is shown in the Schedule of Benefits.

(2) You are not working at any job for wage or profit.

(3) You are under the regular care of a Doctor."

15. As of the date of the filing of this Complaint, Ms. Hosea is not working at any job for wage or profit, and has not worked since her last day at Enron on May 24, 2001. She is, and at all times relevant to this action has been, under the regular care of a doctor. Because of her incapacitating knee problems and the somnolent and narcotic effect of the medications that she is

required to take to make the terrific pain she endures bearable, Ms. Hosea is not able to perform any form of accounting or bookkeeping duties for wage or profit or any other jobs for which she is reasonably fitted by education, training or experience. Ms Hosea's condition clearly meets the definition in the Plain of "total disability."

16. In August 2001, Prudential sent Ms. Hosea forms to complete for processing her claim. Ms. Hosea timely and properly completed the forms and forwarded them to Prudential. After several weeks, Prudential denied Ms. Hosea's claim and notified Ms. Hosea of this action in a letter dated November 10, 2001. In that letter, Prudential stated that it determined that Ms. Hosea does not "meet the definition of Total Disability as defined" in the policy. The apparent bases for this determination were Dr. Daley's listing of Ms. Hosea's level of functioning as "sedentary" in the Attending Physicians Statement provided to Dr. Daley by Prudential and dated September 6, 2001, and Dr. Daley's November 12, 2001, office note in which he indicated that Ms. Hosea should avoid "prolonged standing and walking."

17. Ms. Hosea appealed the November 10, 2001, decision by Prudential via two letters dated December 5, 2001 and December 28, 2001. By letter dated February 7, 2002, Prudential again denied Ms. Hosea her LTD benefits. Prudential referred to its November 10, 2001 letter decision, then added further grounds for the denial, stating that the medications Ms. Hosea was taking "would not cause significant sedation or impair cognitive functioning" and that she had sedentary work capacity as of September 6, 2001, according to the Attending Physician Statement form that Prudential provided to Dr. Daley for him to check.

18. By letter dated May 10, 2002, Ms. Hosea again appealed Prudential's decision, pointing out that Dr. Daley had consistently and continuously stated in all his notes and statements that Ms. Hosea could not and should not return to her "sedentary" job and that Ms.

Hosea is a candidate for knee replacement surgery. In this latest appeal, Ms. Hosea disputed Prudential's reliance upon Dr. Daley's description of her functioning capabilities as "sedentary" because the only document in which he ever indicated that capability was in checking a box on a form that Prudential was responsible for preparing and because such description was the lowest functioning level that Prudential's form allowed the physician to check. In all other descriptions on that same form and in his other notes, Dr. Daley continuously and consistently indicated that Ms. Hosea could not and should not return to work.

19. On August 1, 2002, Prudential denied, for the third time, Ms. Hosea's claim for benefits. After again referring to its previous denial letters, Prudential stated that Ms. Hosea should have recovered from her June 14, 2001 surgery in time to return to work by November 27, 2001 (the date the benefits were scheduled to begin), that she was discharged from Clear Lake Rehabilitation on September 7, 2001 for noncompliance, and that her occupation does not require her to do any prolonged walking or standing. Further, Prudential stated that the fact that Ms. Hosea had been prescribed a mobility cart would not preclude her from doing her sedentary job.

20. Again, Prudential chose to use only those statements that suited its purposes. Even if Ms. Hosea could have recovered from her June 14, 2001, surgery by November 27, 2001, her debilitating condition encompassed more than just the left knee problem that necessitated the June 14, 2001 surgery. As Dr. Daly repeatedly stated in his notes, Ms. Hosea has numerous problems that continue to prevent her from working, even at a "sedentary" position, to the date of the filing of this suit. Further, Ms. Hosea was "discharged" from Clear Lake Rehabilitation on September 7, 2001, because her condition *prevented* her from continuing the rehabilitation program, not because of any failure on Ms. Hosea's part to follow the orders of her health care providers.

21. At all relevant times, Prudential failed to take into account the evaluations and prognoses of Ms. Hosea's attending physician and other health care providers in making its decisions. Instead, Prudential has insisted upon denying benefits by selectively extracting only that language from the physician's notes and other records that coincide with its unsupported position that Ms. Hosea can perform the duties and responsibilities of her job at Enron.

ENRON'S LONG TERM DISABILITY PLAN

22. At all relevant times, Ms. Hosea was a participant or beneficiary of the Plan within the meaning of ERISA §3(7) (29 U.S.C. §1002(7)).

23. At all relevant times, the Plan was and continues to be an "employee welfare benefit plan" or "welfare plan" within the meaning of ERISA §3(1) (29 U.S.C. §1002(1)).

24. At all relevant times, Enron was the sponsor of the Plan. Its Sponsor Identification Number is 47-0255140 and Plan Number is 505.

25. Prudential acted as a fiduciary of the Plan pursuant to ERISA §3(2)(21)(A) (29 U.S.C. §1002(21)(A)). Defendant exercised control in the management and disposition of the Plan's assets by reviewing and determining the viability of the coverage claims made by employees.

26. Enron was designated as the plan administrator of the Plan, thereby making it a fiduciary pursuant to ERISA §402(a)(1) (29 U.S.C. §1102(a)(1)).

27. The Plan provides that employees who elected to receive Long Term Disability (LTD) coverage are eligible for benefits when they meet the definition of disability and complete the elimination period as described in the Plan. The Plan's definition of disability is stated above. The elimination period is 1,040 consecutive hours, or approximately 26 weeks. During that

period of time, no LTD benefits are payable to the employee. Once the elimination period has passed, the disabled employee is entitled to receive benefits under the Plan.

28. Ms. Hosea has been totally disabled as defined in the plan for well over 1,040 hours, dating back to May 24, 2001. Prudential, as the insurer and a fiduciary of the Plan, has the duty to approve Ms. Hosea's benefits and begin payment of those benefits in the manner and method that is mandated in the Plan. Prudential has failed and refused, and continues to fail and refuse, to approve Ms. Hosea's benefits or to begin payment of those benefits in spite of Ms. Hosea's clear eligibility for LTD benefits under the terms of the Plan and Prudential's policy.

DEFENDANT'S BREACHES OF FIDUCIARY DUTY

29. ERISA is a comprehensive statute covering virtually all aspects of employee benefit plans, including long term disability benefits. ERISA requires all covered plans be in writing, and that plan administrators furnish to each participant a document called a "summary plan description." The summary plan description must apprise participants of their rights in a manner calculated to be understood by the average plan participant. ERISA §102 (29 U.S.C. §1022(a)).

30. Under ERISA, "fiduciary" is defined broadly to include all people or entities who exercise any discretionary authority with respect to the management of a plan or payment of benefits. ERISA §3 (29 U.S.C. §1002(21)).

31. ERISA imposes on a plan fiduciary a duty of prudence, which requires the fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in

the conduct of an enterprise of a like character and with like aims." ERISA §404(a)(1)(B) (29 U.S.C. §1104(a)(1)(B)).

32. ERISA imposes on a plan fiduciary a duty of loyalty, which requires each fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of ... providing benefits to the participants and their beneficiaries." ERISA §404(a)(1)(A) (29 U.S.C. §1104(a)(1)(A)).

33. By failing to pay Ms. Hosea the benefits she is clearly entitled to under the Plan, Prudential breached its fiduciary duties of prudence and loyalty. Prudential has acted contrary to the interests of Ms. Hosea, a Plan participant and beneficiary, by denying her the benefits that she is entitled to receive.

REMEDIES

34 Ms. Hosea brings this action pursuant to ERISA Section 502(a)(2) (29 U.S.C. §1132(a)(2)), which authorizes a plan participant to bring a civil action for appropriate relief under ERISA Section 409 (29 U.S.C. §1109). Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan" Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate"

35 Ms. Hosea is entitled to: (1) recover losses to the Plan resulting from the breaches of fiduciary duties in an amount to be proven at trial; (2) injunctive and other appropriate equitable relief to remedy these breaches; (3) reasonable attorneys' fees and expenses as provided by ERISA Section 502(g) (29 U.S.C. §1132(g)); (4) taxable costs; and (5) prejudgment and post-judgment interest at the highest rate allowed by law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- (1) Declaring that defendant has violated the duties, responsibilities and obligations imposed upon it as a fiduciary as described above;
- (2) Under ERISA Section 501(a)(3) (29 U.S.C. §1132(a)(3)), an injunction enjoining defendant from any act or practice violating the statute and/or the Plan, including restitution, rescission, an accounting, imposition of a constructive trust, disgorgement, and/or all other appropriate equitable relief to redress defendant's violations of ERISA;
- (3) Awarding plaintiff both compensatory and punitive damages;
- (4) Awarding plaintiff pre-judgment and post-judgment interest, as well as her reasonable attorneys' fees, expert witness fees and other costs; and
- (5) Awarding such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: October ____, 2002.

Respectfully submitted,

WHITTENBURG WHITTENBURG SCHACHTER & HARRIS, P.C.
George Whittenburg, No. 21397000
Karl L. Baumgardner, No. 01931940
Venu Nair, No. 24031351
1010 S. Harrison, P.O. Box 31718
Amarillo, Texas 79120-1718
(806) 372-5700 Fax 372-5757

Of Counsel

ATTORNEYS FOR PLAINTIFF

hoseantx@msn.com

From: "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
To: "Robin Hosea (E-mail)" <hoseantx@msn.com>
Sent: Thursday, November 07, 2002 9:28 AM
Subject: Lawsuit

Robin:

I wanted to let you know that George has approved the Complaint and I am in the process of getting it filed in Dallas with the help of our Dallas office. Due to some people in our Dallas office being out of town, it may be tomorrow or Monday before it actually gets filed.

Karl

2/14/2003

hoseantx@msn.com

From: "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
To: "Robin Hosea (E-mail)" <hoseantx@msn.com>
Sent: Tuesday, November 12, 2002 10:08 AM
Subject: Lawsuit

Just wanted to let you know the lawsuit against Prudential was filed in Dallas yesterday. We filed in state court instead of Federal Court. Prudential can remove it to Federal Court if it wants to, but they have to pay for it. This is how George thought would be best and quickest. Prudential will be served with the citation probably late this week or early next week.

Karl

2/14/2003

IN THE COUNTY COURT AT LAW NO. 3

IN AND FOR DALLAS COUNTY, TEXAS

ROBIN HOSEA,

Plaintiff,

V.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

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§
§
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§

DALLAS COUNTY

NO. 02-13557-C

ORIGINAL PETITION

TO THE HONORABLE COURT:

Robin Hosea, Plaintiff, complains of The Prudential Insurance Company of America, Defendant, and in support thereof shows the following:

INTRODUCTION

1. Plaintiff brings this action under Sections 502(a) and 404(a) of the Employee Retirement Income Security Act ("ERISA")(29 U.S.C. §§1132(a), 1104(a)), as a beneficiary of the Enron Long Term Disability Plan (the "Plan"), an employee benefit plan established by Enron. The defendant is the Plan's Insurer which has improperly denied plaintiff benefits under the Plan.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. §1132(e)(1) (ERISA § 502(e)(1)), which grants to state courts concurrent jurisdiction over these claims.

3. This Court has personal jurisdiction over the defendant because defendant systematically and continuously does business in this state, and the case arises out of the defendant's acts within this state.

4. Venue is proper pursuant to Texas Civil Practice & Remedies Code §§ 15.002 and 15.032 because the defendant has a principal office located in Dallas County.

PARTIES

5. Plaintiff Robin Hosea (hereinafter "Ms. Hosea") is a resident of Seabrook, Texas. Ms. Hosea was a participant in the Plan.

6. Defendant The Prudential Insurance Company of America, (hereinafter "Prudential") is a New Jersey corporation with its principal office and principal place of business located in Newark, New Jersey, which may be served with process through its registered agent, CT Corporation System, Shirley Dillon, 350 North St. Paul Street, Dallas, Texas 75201. Prudential served as the Plan's Insurer throughout the relevant time period.

7. Enron is not named as a defendant in this action as it has filed for protection pursuant to Chapter 11 of the U.S. Bankruptcy Code. Plaintiff reserves the right to add Enron if the bankruptcy stay is lifted with respect to her claims against Enron.

FACTUAL BACKGROUND

8. Prior to her employment with Enron Corporation, Ms. Hosea had worked for several financial institutions in their accounting and payroll departments for over 20 years. The duties she had performed at these other jobs included payroll and employee benefits accounting, essentially the same type of work she was hired to perform at Enron.

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budget preparation for the department; and coordinate the gathering and reporting of various other information as needed. Her office was located on the 16th floor of the building at which Enron Corporation conducted its corporate business. At all times while she was employed at Enron until she became disabled, she performed her duties in a satisfactory manner and missed only 2 days of work.

10. In the Spring of 2001, Ms. Hosea began experiencing severe pain in her left knee. She first was evaluated by Di Van Le, M.D., her primary care physician, on May 7, 2001. Her last day of work at Enron was May 24, 2001. Dr. Le executed a "Return to Work" note that indicated that Ms. Hosea could return to work on June 8, 2001, after her appointment with Phillip Daley, M.D. on June 7, 2001. Dr. Daley is an orthopedic surgeon who evaluated Ms. Hosea at that time for arthroscopic surgery on her left knee.

11. At the time of Ms. Hosea's visit to Dr. Daley on June 7, 2001, Dr. Daley executed a note that stated, "No work until released from doctor's care. Left knee surgery pending 6-14-01." As of the date of the filing of this Complaint, Dr. Daley has never released Ms. Hosea from his care. In fact, Dr. Daley has consistently and repeatedly indicated on his treatment notes for Ms. Hosea that she cannot return to work.

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Ms. Hosea has also been diagnosed with advanced arthritis in her left hip and degenerative disc disease in her back with some bulging discs that do not at the present time require surgical intervention. On September 3, 2002, Dr. Daley again executed a note that stated, "No work 6-7-01 until the present time. (no rtw date @ this time)."

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"Total Disability" exists when Prudential determines that all of these conditions are met:

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 - (b) After the Initial Duration of a period of Total Disability, you are not able to perform for wage or profit the material and substantial duties of any job for which you are reasonably fitted by your education, training or experience. The Initial Duration is shown in the Schedule of Benefits.
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15. As of the date of the filing of this Complaint, Ms. Hosea is not working at any job for wage or profit, and has not worked since her last day at Enron on May 24, 2001. She is, and at all times relevant to this action has been, under the regular care of a doctor. Because of her incapacitating knee problems and the somnolent and narcotic effect of the medications that she is required to take to make the terrific pain she endures bearable, Ms. Hosea is not able to perform any form of accounting or bookkeeping duties for wage or profit or any other jobs for which she

is reasonably fitted by education, training or experience. Ms. Hosea's condition clearly meets the definition in the Plan of "total disability."

16. In August 2001, Prudential sent Ms. Hosea forms to complete for processing her claim. Ms. Hosea timely and properly completed the forms and forwarded them to Prudential. After several weeks, Prudential denied Ms. Hosea's claim and notified Ms. Hosea of this action in a letter dated November 10, 2001. In that letter, Prudential stated that it determined that Ms. Hosea does not "meet the definition of Total Disability as defined" in the policy. The apparent bases for this determination were Dr. Daley's listing of Ms. Hosea's level of functioning as "sedentary" in the Attending Physicians Statement provided to Dr. Daley by Prudential and dated September 6, 2001, and Dr. Daley's November 12, 2001 office note in which he indicated that Ms. Hosea should avoid "prolonged standing and walking."

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because the only document in which he ever indicated that capability was in checking a box on a form that Prudential was responsible for preparing and because such description was the lowest functioning level that Prudential's form allowed the physician to check. In all other descriptions on that same form and in his other notes, Dr. Daley continuously and consistently indicated that Ms. Hosea could not and should not return to work.

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20. Again, Prudential chose to use only those statements that suited its purposes. Even if Ms. Hosea could have recovered from her June 14, 2001 surgery by November 27, 2001, her debilitating condition encompassed more than just the left knee problem that necessitated the June 14, 2001 surgery. As Dr. Daly repeatedly stated in his notes, Ms. Hosea has numerous problems that continue to prevent her from working, even at a "sedentary" position, to the date of the filing of this suit. Further, Ms. Hosea was "discharged" from Clear Lake Rehabilitation on September 7, 2001, because her condition *prevented* her from continuing the rehabilitation program, not because of any failure on Ms. Hosea's part to follow the orders of her health care providers.

21. At all relevant times, Prudential failed to take into account the evaluations and prognoses of Ms. Hosea's attending physician and other health care providers in making its

decisions. Instead, Prudential has insisted upon denying benefits by selectively extracting only that language from the physician's notes and other records that coincide with its unsupported position that Ms. Hosea can perform the duties and responsibilities of her job at Enron.

ENRON'S LONG TERM DISABILITY PLAN

22. At all relevant times, Ms. Hosea was a participant or beneficiary of the Plan within the meaning of ERISA §3(7) (29 U.S.C. §1002(7)).

23. At all relevant times, the Plan was and continues to be an "employee welfare benefit plan" or "welfare plan" within the meaning of ERISA §3(1) (29 U.S.C. §1002(1)).

24. At all relevant times, Enron was the sponsor of the Plan. Its Sponsor Identification Number is 47-0255140 and Plan Number is 505.

25. Prudential acted as a fiduciary of the Plan pursuant to ERISA §3(2)(21)(A) (29 U.S.C. §1002(21)(A)). Defendant exercised control in the management and disposition of the Plan's assets by reviewing and determining the viability of the coverage claims made by employees.

26. Enron was designated as the plan administrator of the Plan, thereby making it a fiduciary pursuant to ERISA §402(a)(1) (29 U.S.C. §1102(a)(1)).

27. The Plan provides that employees who elected to receive Long Term Disability (LTD) coverage are eligible for benefits when they meet the definition of disability and complete the elimination period as described in the Plan. The Plan's definition of disability is stated above. The elimination period is 1,040 consecutive hours, or approximately 26 weeks. During that period of time, no LTD benefits are payable to the employee. Once the elimination period has passed, the disabled employee is entitled to receive benefits under the Plan.

28. Ms. Hosea has been totally disabled as defined in the plan for well over 1,040 hours, dating back to May 24, 2001. Prudential, as the insurer and a fiduciary of the Plan, has the duty to approve Ms. Hosea's benefits and begin payment of those benefits in the manner and method that is mandated in the Plan. Prudential has failed and refused, and continues to fail and refuse, to approve Ms. Hosea's benefits or to begin payment of those benefits in spite of Ms. Hosea's clear eligibility for LTD benefits under the terms of the Plan and Prudential's policy.

DEFENDANT'S BREACHES OF FIDUCIARY DUTY

29. ERISA is a comprehensive statute covering virtually all aspects of employee benefit plans, including long term disability benefits. ERISA requires all covered plans be in writing, and that plan administrators furnish to each participant a document called a "summary plan description." The summary plan description must apprise participants of their rights in a manner calculated to be understood by the average plan participant. ERISA §102 (29 U.S.C. §1022(a)).

30. Under ERISA, "fiduciary" is defined broadly to include all people or entities who exercise any discretionary authority with respect to the management of a plan or payment of benefits. ERISA §3 (29 U.S.C. §1002(21)).

31. ERISA imposes on a plan fiduciary a duty of prudence, which requires the fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." ERISA §404(a)(1)(B) (29 U.S.C. §1104(a)(1)(B)).

32. ERISA imposes on a plan fiduciary a duty of loyalty, which requires each fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of ... providing benefits to the participants and their beneficiaries." ERISA §404(a)(1)(A) (29 U.S.C. §1104(a)(1)(A)).

33. By failing to pay Ms. Hosea the benefits she is clearly entitled to under the Plan, Prudential breached its fiduciary duties of prudence and loyalty. Prudential has acted contrary to the interests of Ms. Hosea, a Plan participant and beneficiary, by denying her the benefits that she is entitled to receive.

REMEDIES

34 Ms. Hosea brings this action pursuant to ERISA Section 502(a)(2) (29 U.S.C. §1132(a)(2)), which authorizes a plan participant to bring a civil action for appropriate relief under ERISA Section 409 (29 U.S.C. §1109). Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan" Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate"

35 Ms. Hosea is entitled to: (1) recover losses to the Plan resulting from the breaches of fiduciary duties in an amount to be proven at trial; (2) injunctive and other appropriate equitable relief to remedy these breaches; (3) reasonable attorneys' fees and expenses as provided by ERISA Section 502(g) (29 U.S.C. §1132(g)); (4) taxable costs; and (5) prejudgment and post-judgment interest at the highest rate allowed by law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

(1) Declaring that defendant has violated the duties, responsibilities and obligations imposed upon it as a fiduciary as described above;

(2) Under ERISA Section 501(a)(3) (29 U.S.C. §1132(a)(3)), an injunction enjoining defendant from any act or practice violating the statute and/or the Plan, including restitution, rescission, an accounting, imposition of a constructive trust, disgorgement, and/or all other appropriate equitable relief to redress defendant's violations of ERISA;

(3) Awarding plaintiff both compensatory and punitive damages;

(4) Awarding plaintiff pre-judgment and post-judgment interest, as well as her reasonable attorneys' fees, expert witness fees and other costs; and

(5) Awarding such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

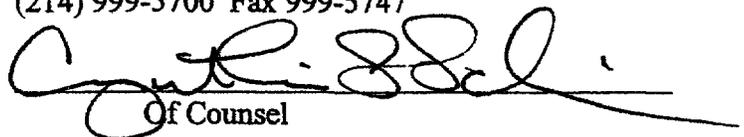
DATED: November 11th, 2002.

Respectfully submitted,

WHITTENBURG WHITTENBURG
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Of Counsel

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEVERED ENRON EMPLOYEES COALITION
(SEEC), LARENCE R. JORDAN, DEBORAH S.
DEFFORGE, and DIANA PETERS, on behalf of
themselves and all others similarly situated, and
on behalf of the Enron Corporation Savings Plan,

PLAINTIFFS,

vs.

THE NORTHERN TRUST COMPANY,
NORTHERN TRUST RETIREMENT
CONSULTING, L.L.C., PHILIP J. BAZELIDES,
ROBERT A. BELFER, NORMAN P. BLAKE, JR.,
RONNIE C. CHAN, JOHN H. DUNCAN, LOU PAI,
KEN RICE, MARK FREVERT, JOSEPH SUTTON,
CLIFFORD BAXTER, JOSEPH M. HIRKO,
RICHARD A. CAUSEY, JAMES V. DERRICK,
MARK E. KOENIG, CINDY K. OLSON, STEVEN
J. KEAN, RICHARD B. BUY, MICHAEL S.
McCONNELL, JOE H. FOY, J. MARK METTS,
STAN HORTON, WENDY L. GRAMM, KEN L.
HARRISON, ROBERT K. JAEDICKE, MARY K.
JOYCE, KENNETH L. LAY, ANDREW FASTOW,
JEFF McMAHON, CHARLES A. LeMAISTRE,
REBECCA P. MARK-JUSBASCHE, JOHN
MENDELSON, JEROME J. MEYER, PAULO V.
FERRAZ PEREIRA, JAMES S. PRENTICE,
FRANK SAVAGE, JEFFREY K. SKILLING, JOHN
A. URQUHART, JOHN WAKEHAM, HERBERT S.
WINOKUR, ARTHUR ANDERSEN, L.L.P. and/or
ANDERSEN, L.L.P., JOHN DOE NOS. 1
THROUGH 10, and JANE DOE NOS. 11
THROUGH 20,

DEFENDANTS.

H -02-0267
Civil Action Number _____

CLASS ACTION COMPLAINT

BREACH OF FIDUCIARY DUTY
AND VIOLATION OF ERISA
(Jury Demanded)

Judge _____

COMPLAINT

INTRODUCTION

1. Plaintiffs bring this class action under the Employee Retirement Income Security Act ("ERISA") §502(a) (29 U.S.C. § 1132(a)) and §404(a) (29 U.S.C. §1104(a)), on behalf of all current and former Enron Corporation ("Enron" or the "Company") employees and the beneficiaries of the Enron Corporation Savings Plan (the "Plan" or the "401(k) Plan"), an employee benefit plan established by Enron, and on behalf of the Plan itself. Defendants are the Plan's former Trustee, the Plan's former recordkeeper, the administrators and trustees of the Plan, the Company's directors, and the Company's accountant, consultant and other inside and outside professionals (collectively, "Defendants").

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. §1132(e)(1) (ERISA § 502(e)(1)), which grants to United States District Courts jurisdiction over these claims.

3. This Court has personal jurisdiction over Defendants because pursuant to 29 U.S.C. §1132(e)(2) one or more of the Defendants may be found in this District. The Company is headquartered in Texas. Defendants systematically and continuously do business in this state, and the case arises out of Defendants' acts within this state.

4. Venue is proper pursuant to 29 U.S.C. §1132(e)(2), because Defendants administered the Plan in this district, some or all of the actionable conduct for which relief is sought occurred in this district, and one or more of the Defendants may be found in this district.

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11 Attorney for Plaintiff,
12 SUSAN J. SMITH

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11 SUSAN J. SMITH,) CASE NO:
12 an individual,)
13)
14) Plaintiff,) COMPLAINT
15)
16 vs.) 1. Recovery of ERISA Plan
17) Benefits;
18)
19 IDIOT LIFE LIFE INSURANCE)
20 COMPANY, the Insurer and "Claims)
21 Review" Fiduciary; of the BANK OF)
22 PANAMA CORPORATION LONG-TERM)
23 DISABILITY INSURANCE PLAN, an)
24 Employee Welfare Benefit Plan,)
25 established pursuant to 29 U.S.C.)
26 Section 1001, et seq. (ERISA),)
27)
28 Defendant.)

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2 **Venue**

3 2. The claim, as herein sued upon, arose and the breach,
4 as herein alleged, occurred in this judicial district.
5 Furthermore, defendant, IDIOT LIFE LIFE INSURANCE COMPANY
6 ("IDIOT LIFE") transacts business and "may be found" in this
7 judicial district. Therefore, venue is proper under 29 U.S.C.
8 1132(e) (2).

9 **The Parties**

10 3. Plaintiff, SUSAN J. SMITH, is an individual, currently
11 residing in the City of Sacramento, County of Sacramento, State
12 of California.

13 4. Plaintiff is informed and believes that Defendant,
14 IDIOT LIFE, is a corporation, whose corporate headquarters is
15 located in the State of New York.

16 5. At all relevant times herein mentioned, Bank of Panama
17 Corporation ("Bank of Panama") had in full force and effect an
18 Employee Benefit Plan, established pursuant to ERISA,
19 particularly described as the: "Bank of Panama Corporation Long-
20 Term Disability Insurance Plan" ("the Plan"). Plaintiff is
21 informed and believes that the Bank of Panama Corporation
22 Corporate Benefits Committee was the "Plan Administrator" of the
23 Plan. Plaintiff is further informed and believes that the Bank
24 of Panama Corporation Corporate Benefits Committee was appointed
25 by the board of directors of Bank of Panama. At all times
26 herein mentioned, plaintiff, SUSAN J. SMITH, was an employee
27 and/or former employee of Bank of Panama and was a Plan
28 Participant of the Plan by virtue thereof.

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2 6. At all times herein mentioned, the Plan was fully
3 insured by IDIOT LIFE. IDIOT LIFE issued a Policy of Long-Term
4 Disability Insurance, described as "Idiot LIFE Group Policy
5 34701-G" ("the Policy") to the Plan; and IDIOT LIFE exercised
6 discretionary authority, control and responsibility in the
7 administration of the Plan. Specifically, IDIOT LIFE exercised
8 the right to make final decisions regarding the payment of long-
9 term disability insurance claims under the Plan. Thus, IDIOT
10 LIFE is a deemed "fiduciary" under ERISA, pursuant to 29 U.S.C.
11 1002(21)(A) and 29 CFR 2560.503-1(g)(2). Plaintiff is informed
12 and believes that under the precise terms of the Plan, IDIOT
13 LIFE was the "claims review fiduciary"; hence, IDIOT LIFE is
14 also a "named fiduciary", pursuant to 29 U.S.C. Section 1133(2)
15 and 29 CFR 2560.503-1 (g).

16 ***Conflict of Interest and Standard of Review***

17 7. At all times herein mentioned, defendant, IDIOT LIFE,
18 had an inherent and substantial conflict of interest, by virtue
19 of the fact that IDIOT LIFE was both a fiduciary and a funding
20 source of the Plan. Accordingly, IDIOT LIFE had a pecuniary
21 interest in denying claims, regardless of merit. Thus,
22 defendant's denial of plaintiff's claim, coupled with its
23 breaches of fiduciary duty, as herein described, should be
24 afforded no deference whatsoever by this Court. See: Lang v.
25 Long-Term Disability Plan 125 F.3d 794, 798 (9th Cir. 1997);
26 Atwood v. Newmont Gold Co., Inc., 45 F.3d 1317, 1322-1323 (9th
27 Cir. 1995); and Friedrich v. Intel Corporation; 181 F.3d 1105
28 (9th Cir., 1999).

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2 8. Among the benefits provided to plaintiff under the Plan
3 were Long Term Disability ("LTD") benefits. Premium payments
4 for LTD coverage were paid partially by Bank of Panama and
5 partially by plaintiff.

6 9. Plaintiff is informed and believes that a
7 comprehensive description of the LTD benefits provided by the
8 Plan is set forth in a document entitled "Bank of Panama
9 Associate Handbook", which purports to be a Summary Plan
10 Description (SPD) booklet, applicable to Bank of Panama
11 employees, effective January 1, 2000. Eligibility requirements
12 for LTD coverage and a description of the LTD benefits provided
13 by the Plan are set forth at pages 67 through 69 of the SPD.

14 ***Plan Benefits for Long Term Disability***

15 10. The Plan provides that LTD benefits are equal to 60% of
16 plaintiff's monthly income, immediately preceding her disability.
17 (P. 69). LTD benefit payments under the Plan were to commence
18 after plaintiff was disabled for 180 days (P. 67). LTD benefit
19 payments under the Plan are to continue for as long as plaintiff
20 is "disabled", until the disability ends or until she reaches age
21 65 (P. 68).

22 11. In plaintiff's case, her gross monthly LTD benefit
23 equals approximately \$6,229.50. This amount would be offset by
24 monthly Social Security Disability Insurance benefits of
25 approximately \$1,344.00. This amount would be further offset by
26 any temporary workers compensation benefits received by
27 plaintiff.

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2 **Plan Definition of "Disability"**

3 12. The Plan provides a two-tier definition of
4 "disability" (P. 67). Following a 180 day waiting period, the
5 *first tier* applies to the next 24 months of disability, during
6 which time LTD benefits are to be paid if the employee cannot
7 perform "the material duties of (her) own occupation"
8 (hereinafter referred to as the "Own Occupation" or "Own Occ."
9 definition of "Disability"). Then, after 24 months the *second*
10 tier applies, and LTD benefits are to be paid if the employee is
11 "unable to perform each of the material duties of any gainful
12 work or service for which you are reasonably qualified, taking
13 into consideration your training, education, experience and past
14 earnings. The words material duties do not include an
15 incidental or insignificant occupational task." (hereinafter
16 referred to the "Any Occupation" or "Any Occ." definition of
17 "Disability").

18 **Plaintiff's Job Description**

19 13. Prior to the onset of her disability, plaintiff worked
20 for Bank of Panama, as a Senior Account Executive, processing
21 mortgage loans. She typically worked 6 to 7 days a week. Her
22 workday generally started at about 7:00 A.M, continuing until
23 11:00 P.M. or 12:00 midnight. During peak periods of refinances
24 and/or low interest rates, she often worked 18 to 20 hours a day.

25 14. Plaintiff's work involved taking phone pages from
26 potential loan applicants, in-progress borrowers, former
27 customers, realtors, Title and Escrow Company officers, builders,
28 developers, bank branch personnel, loan processors, underwriters,
mid-level managers and senior management. These calls would

1 generally go on all day long, until as late as 10:00 P.M. Each
2 call would usually require some specific action be taken by
3 plaintiff, as well as one or more follow-up return calls. She
4 would also complete paperwork and do follow-up work on a laptop
5 computer for several hours a day.

6 15. Plaintiff usually worked at least one day a week in the
7 mortgage company's home office in Sacramento. She usually spent
8 three days a week in the various bank branches, where she met
9 with clients to take loan applications, collected borrowers'
10 financial information and did preliminary pre-qualifications for
11 loan applications. Her work involved sitting in the desk area of
12 the bank, where she would use a laptop computer and calculator,
13 and counsel borrowers. During this time, she also copied and
14 faxed documents for borrowers, which involved standing at the
15 copier and fax machine. She also typically spent one day a week
16 at the regional office. Each loan counseling session and/or loan
17 appointment usually took between 1 ½ to 3 hours, but sometimes up
18 to 4 hours, because plaintiff often worked with "first-time"
19 borrowers and with borrowers of different nationalities (which
20 often required the services of a translator). After taking a
21 loan application (either by telephone or in person), it usually
22 took plaintiff about 1 to 2 hours to prepare all the attachments
23 and other necessary documentation, which had to be completed in
24 order to "upload" or "transmit" the loan to Bank of Panama's
25 processing/underwriting departments. She then made two copy
26 files of all signed forms, written and photocopy documents, and
27 sent one of these files to the processing center, while retaining
28 one file for her own file management.

1 16. In addition to the loan application duties, plaintiff's
2 job also involved "farming" for new business, multiple listing
3 meetings, and physical calls to realtors, builders, developers,
4 and title/escrow companies for loan signings of her borrowers.
5 Plaintiff's job involved driving to and from the bank branches,
6 usually about 50 miles each way and taking up to an hour's
7 driving time each way. However, sometimes she would drive to
8 meet at realtor locations, four of which involved a two-hour
9 drive each way. Plaintiff would often spend Saturdays and Sundays
10 going to realtors' offices, going to realtor "open houses",
11 making additional calls on builders and new housing developments,
12 and meeting with realtors' clients to do "pre-qualifications" for
13 loans and actual loan applications. She also prepared "Loan Pre-
14 approval" letters for the realtors she worked with. Her weekends
15 also involved heavy loads of paperwork, file maintenance, and
16 laptop computer work.

17 17. Accordingly, plaintiff's "typical" work week as a
18 Senior Loan Officer for Bank of Panama, involved very long hours
19 sitting, driving, and standing.

20 *Plaintiff's Disability*

21 18. On or about September 22, 1999, plaintiff slipped and
22 fell down, on a parking lot, while getting out of her Ford
23 Expedition automobile. She was 50 years old at the time.

24 19. Plaintiff had no history of back pain, prior to her
25 fall on September 22, 1999.

26 20. After her fall, on September 22, 1999, plaintiff
27 returned to work, but found that she was unable to perform the
28 duties of her job. She left work, on advice of her physician, on

1 or about May 1, 2000 and she has not been able to return to work
2 since.

3 21. The medical records, including medical examination
4 reports of numerous physicians, (including Idiot Life's own IME
5 physician) clearly establish that plaintiff suffers medical
6 problems that render her "disabled", as that term is defined by
7 the Plan.

8 22. Plaintiff has been diagnosed by her treating
9 physician, John Jones, M.D., as suffering pelvic obliquity,
10 secondary to pelvic joint dysfunction, inequality of leg
11 lengths, pelvic torsion and sciatic nerve contusion. This has
12 resulted in severe, disabling posterior hip and low back and
13 posterior leg pain, left sacroiliac joint pain, and severe work
14 restrictions.

15 23. According to the report of John Doe, D.C., dated July
16 7, 2000, his examination "revealed a loss of approximately one
17 half of plaintiff's lumbar range of motion on all planes.
18 All orthopedic tests that stress the S-I joint were positive.
19 She had hypoesthesia over the medial and lateral left leg. There
20 was pain on palpation over the S-I joints and L5."

21 24. According to Dr. Jones's report of December 20, 2000,
22 plaintiff "has had conservative care and has not responded to
23 this and continues to be quite symptomatic and is on fairly high
24 doses of pain and muscle relaxant medication." Dr. Jones
25 further stated in that report: "Mrs. Smith is unable to be
26 gainfully employed at this time, and her present medical
27 condition is secondary to her injury while working on 9/22/99."

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1 25. According to Dr. Doe's report of January 12, 2001:
2 "Ms. Smith's fall on September 22, 1999 caused a
3 lumbosacral and sacroiliac sprain/strain. This injury
4 essentially went untreated for quite some time. These
5 injuries were compounded by the extensive hours that Ms.
6 Smith worked. This lack of treatment and added stresses
7 put on the area from extended hours sitting, getting in and
8 out of her car and driving has caused scarring and almost
9 total dysfunction of the S-I joints.

10 This has lead to extreme pain if Ms. Smith has to sit or
11 stand for more than a very short period of time. Treatment
12 to date has been of minimal benefit, leaving her, in my
13 opinion, permanently totally disabled. There is no
14 position that Ms. Smith can be in for any period of time
15 without causing severe pain in the S-I Joints and radiating
16 pain down the left leg."

17 26. Presently, plaintiff is unable to perform her job
18 duties as a Senior Account Executive and is physically unable to
19 work.

20 ***Claim for Benefits***

21 27. Plaintiff became eligible to receive "Own Occ. LTD
22 benefits, commencing on or about October 27, 2000. Plaintiff
23 submitted a timely claim for disability benefits.

24 28. On or about October 27, 2000, plaintiff spoke,
25 telephonically, to IDIOT LIFE's "Case Management Specialist",
26 Fred Anderson, who told her that her medical records looked very
27 complete and that he did not see any problem with her receiving
28 LTD benefits. Mr. Anderson also stated that plaintiff should

1 receive a check for the last four days of October (27th - 30th)
2 immediately, as soon as he received the formal approval; and that
3 she should then receive the November LTD benefit check on the
4 21st of November, and then each month thereafter on the 21st of
5 the month. Mr. Anderson even double-checked to make certain that
6 plaintiff had signed up for "Direct Deposit". He advised that
7 her October check would be mailed to her, but that he believed
8 that IDIOT LIFE would have the November check in the system to be
9 direct deposited by November 21st.

10 *Improper Denial of Benefits*

11 29. Plaintiff spoke to Mr. Anderson again on November 10,
12 2000, at which time everything had changed. On that date, Mr.
13 Anderson told plaintiff that IDIOT LIFE had denied her LTD claim
14 based upon a review by IDIOT LIFE's examiner, who concluded that
15 her medical reports did not warrant any disability payment.

16 30. Plaintiff received a letter dated November 11, 2000
17 from Fred Anderson, IDIOT LIFE, which constitutes IDIOT LIFE's
18 notice of initial denial of her claim. Said letter stated in
19 pertinent part:

20 "Your job as described by your employer would appear to
21 be essentially sedentary with some driving to other offices.
22 The medical records provided would support your return to an
23 essentially sedentary occupation with avoidance of lifting
24 over twenty pounds and avoidance of climbing or twisting as
25 well as repetitive deep bending. These are tasks that are
26 rarely encountered in an otherwise sedentary position.

27 The United States Department of Health and Human Services
28 Guidelines, published by the Social Security

1 Administration, documents that people with low back pain,
2 even with sciatica, are capable of returning to otherwise
3 sedentary work with some able to perform on a light work
4 level.

5 In summary, the records provided would support your
6 capability of returning to your otherwise sedentary
7 position with avoidance of repetitive bending, lifting or
8 twisting, activities which do not appear to be job
9 requirements. Based upon this information, your claim for
10 Long Term Disability has been denied." (Emphasis added).

11 31. Notwithstanding the fact that IDIOT LIFE's initial
12 claim denial quoted above, purports to be based upon certain
13 "Guidelines, published by the Social Security Administration",
14 plaintiff's claim for SSDI benefits was approved by the Social
15 Security Administration, by letter dated November 26, 2000.

16 32. The decision of IDIOT LIFE, denying plaintiff's claim
17 for LTD benefits, was based entirely upon a one and a half page
18 "Physician Consultant Review" report, of IDIOT LIFE's reviewing
19 physician, Mark Myers, M.D., dated November 3, 2000. That report
20 states, in pertinent part:

21 "In summary, the records provided would support that this
22 person is capable of returning to an otherwise sedentary
23 position with avoidance of repetitive bending, lifting or
24 twisting. If accommodation or assistance is provided with
25 regard to her previous job, the records would support she
26 remains capable of performing at that level. The job
27 descriptions provided, however, are somewhat contradictory
28 and may require a more detailed examination for matching

1 this person's abilities to her job requirements." (Emphasis
2 added).

3 33. The November 11, 2000 Anderson denial letter fails to
4 comply with even the most rudimentary requirements of ERISA, the
5 regulations, and the case law of this Circuit. The letter does
6 not set forth specific reasons for a denial, with specific
7 reference to the pertinent plan provision of the plan relied
8 upon. Instead, it directs the reader to some unspecified Social
9 Security "guidelines", which are completely inapplicable to
10 plaintiff's LTD claim.

11 34. The denial of plaintiff's LTD claim, as set forth in
12 the November 11, 2000 Anderson denial letter, is based upon
13 erroneous findings of fact. First of all, the characterization
14 of plaintiff's job as being an "essentially sedentary" one is
15 inaccurate. Secondly, there is no medical evidence in the
16 administrative record establishing that plaintiff would be
17 capable of performing the duties of even a sedentary job.
18 Thirdly, there are no Social Security "guidelines", which would
19 support a denial of plaintiff's LTD claim. Fourthly, even if
20 there were such Social Security "guidelines", they would be
21 completely irrelevant to plaintiff's LTD claim, as the Plan does
22 not incorporate any such Social Security "guidelines" into its
23 definition of "disability". Fifthly, even if such "guidelines"
24 existed and were relevant, they would afford no basis for denial
25 of plaintiff's claim, as evidenced by the fact that the Social
26 Security Administration has, itself, approved plaintiff's SSDI
27 claim.

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1 35. Dr. Myers's report provides no basis for denial of
2 plaintiff's LTD claim, in that said report merely states that
3 plaintiff might be capable of performing the duties of her old
4 job "if accommodation or assistance is provided with regard to
5 her previous job". It is well settled in this Circuit that it
6 is irrelevant whether or not an LTD claimant might theoretically
7 be able to perform her own occupation, with "*accommodation*" or
8 "*assistance*". Saffle v. Sierra Pacific Power Company Bargaining
9 Unit 85 F.3d 455 (9th Cir. 1996) (holding that the plan "*abused*
10 *its discretion by erroneously factoring 'accommodation' into the*
11 *criteria for total disability for purposes of occupational*
12 *disability benefits*" Id at 460); See also: Canseco vs.
13 Construction Laborers Pension Trust for Southern California 93
14 F.3d 600, at 608-609 (9th Cir. 1996) (rejecting such implied
15 additional terms).

16 36. By letter dated January 23, 2001 to IDIOT LIFE,
17 Plaintiff's attorney, Michael McKuin, requested that a final
18 administrative review be conducted "by the appropriate named
19 fiduciary of the decision denying the claim", pursuant to 29 USC
20 Section 1133(2) and 29 CFR 2560.503-1 (g) and (h). Said letter
21 set forth a detailed recitation of facts and applicable law.
22 Mr. McKuin subsequently received a letter dated February 5,
23 2001, from Fred Anderson, IDIOT LIFE, acknowledging receipt of
24 the January 23, 2001 appeal letter.

25 37. Receiving no timely response to the January 23, 2001
26 appeal letter, Mr. McKuin sent a second letter to IDIOT LIFE,
27 dated April 2, 2001, which called attention to the time
28 requirements of 29 CFR 2560 (h), for issuing a "decision on

1 review".

2 38. Mr. McKuin subsequently received a letter dated April
3 11, 2001, from Dorothy Bush, Manager, IDIOT LIFE, advising that
4 "We are presently requesting additional information. We will
5 advise you within 60 days of our decision." Said letter did not
6 state what "additional information" was being "requested", or
7 from whom.

8 39. Mr. McKuin subsequently received a letter dated April
9 16, 2001, from Dorothy Bush, Manager, IDIOT LIFE, advising that
10 IDIOT LIFE was scheduling an "Independent Medical Examination"
11 (IME) of plaintiff. Mr. McKuin also received another letter,
12 dated April 16, 2001 from Medical Consultants Network, scheduling
13 the IME for May 8, 2001 with Rita Washington, MD, 630 Maple St.,
14 Sacramento, CA 95816.

15 40. Mr. McKuin directed a letter to Dorothy Bush, IDIOT
16 LIFE, dated April 25, 2001, which stated in pertinent part:

17 "Putting aside the fact that Idiot Life has not
18 'requested' an IME, but has cavalierly gone ahead and
19 unilaterally scheduled one. And further putting aside the
20 fact that Idiot Life unilaterally picked the May 8, 2001
21 date, without first clearing that date with Ms. Smith. And
22 further putting aside the fact that the Plan itself does
23 not provide for an IME at this late stage of the claim
24 review process, I must tell you that I seriously doubt that
25 Idiot Life's desire for a post-denial IME at this point in
26 time, would in any way qualify as a 'special circumstance',
27 justifying an extension to timely respond to the
28 administrative appeal."

1 "At this point, I believe that my client would be well
2 within her rights to refuse the IME. However, so as to
3 avoid the possibility of a future remand by a U.S. District
4 Court Judge on this issue, and the delay that such would
5 entail, I think it is a more prudent course of action for
6 her to go ahead and submit to the IME. However, in doing
7 so, it is to be expressly understood that Ms. Smith does not
8 waive any of her rights under the Plan or the law. My
9 client reserves the right to object to the inclusion of the
10 IME report into the Administrative Record, on all grounds
11 available to her at trial.

12 I hereby request that you provide me with a copy of the
13 IME report, immediately upon your receipt of it."

14 41. An IME was subsequently conducted on May 8, 2001 by
15 Rita B. Washington, M.D. and an undated report was prepared
16 thereon. Said report concludes, at Page 10 thereof, that if
17 accommodations were made to plaintiff's job, in Dr. Washington'
18 opinion, plaintiff could do her old job. Accordingly, Dr.
19 Washington' IME report provided no basis for upholding the
20 initial denial of Plaintiff's claim. (See Paragraph 35, above).

21 42. As of this date, IDIOT LIFE still has not issued its
22 final "decision on review", which was due, per the regulations,
23 on or about March 23, 2001. Thus, plaintiff has exhausted all
24 administrative remedies required by the Plan and ERISA, prior to
25 commencement of this action.

26 43. All of the evidence in the administrative record
27 establishes that plaintiff is "disabled" as that term is defined
28 by the Plan, and hence, plaintiff is entitled to receive

1 disability benefits under the Plan, and has been so entitled
2 since October 27, 2000. There is absolutely no evidence in the
3 administrative record, which would support IDIOT LIFE's
4 arbitrary denial of benefits.

5 44. IDIOT LIFE's denial of plaintiff's LTD claim is not
6 supported by substantial evidence. Said denial of benefits is
7 contrary to the terms of the plan; it is unreasonable; it is in
8 bad faith and it is arbitrary and capricious and an abuse of
9 discretion.

10 45. Plaintiff is entitled to recover from defendant the
11 entire amount of accrued back benefits that have not been paid
12 plus benefits that are expected to be accrued in the future.

13 ***Declaratory Relief Requested and Recovery of Benefits***
14 ***Sought by Plaintiff***

15 46. On the basis of the foregoing, an actual controversy
16 has arisen and now exists between plaintiff and defendant in
17 that plaintiff contends and defendant denies the following:

18 (a) That plaintiff is disabled, as defined by the Plan,
19 and is entitled to receive LTD benefits, as provided by the
20 provisions of her LTD plan;

21 (b) That defendant, IDIOT LIFE, is obligated, under the
22 terms, conditions, and provisions of the Plan Document
23 and/or policy, and/or the SPD, and/or ERISA, to pay
24 plaintiff the LTD benefits accruing to him under the terms
25 and provisions of the Plan and defendant, IDIOT LIFE has
26 failed to do so;

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1 (c) That defendant, IDIOT LIFE, is obligated to
2 immediately pay plaintiff all accrued past benefits as are
3 due in a sum to be proven at trial, but which plaintiff is
4 informed and believes is not less than \$25,672.00 as of the
5 date of filing of this Complaint;

6 (d) That defendant, IDIOT LIFE, is obligated to
7 immediately commence payment of monthly LTD benefits, in an
8 amount to be proven at trial, but which plaintiff is
9 informed and believes is not less than \$4,932.50 per month
10 (less any offsets for workers compensation payments) for
11 every month of plaintiff's continued disability.

12 (e) That defendant has acted in an arbitrary and
13 capricious manner and has abused its discretion.

14 Accordingly, defendant's denial of the claim
15 should be accorded no deference whatsoever by this Court;

16 47. Plaintiff desires a judicial determination of the
17 respective rights and duties of plaintiff and defendant, with
18 respect to the above-referenced claim and the amount thereof.

19 48. Such a declaration is necessary and appropriate at
20 this time and is specifically authorized by 29 USC Section
21 1132(a)(1)(B).

22 49. The actions and conduct of defendant has and will
23 directly and proximately cause a loss of income to plaintiff and
24 has and will deprive plaintiff of the protections of ERISA.

25 50. Plaintiff's injuries are irreparable, in that
26 plaintiff presently has no income or means of support, other
27 than her husband's income and her meager SSDI disability
28 benefit.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 98-

XXXX,
by her next friend,

COMPLAINT

XXXX

Plaintiff,

v.

XXXX,

Defendant.

INTRODUCTION
NATURE OF THIS ACTION

1. Plaintiff, XXXX ("Mrs. XXXX"), by her next friend and husband, XXXX ("Mr. XXXX"), brings this action against the defendant, XXXX Corporation ("XXXX"), for violation of the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. § § 1001 *et seq.* ("ERISA"). Mr. XXXX is a participant in an employee welfare benefit plan, the XXXX Plan ("the Plan" or "the XXXX Plan"). The plan is underwritten by XXXX and governed by ERISA. Mrs. XXXX is a beneficiary under the Plan. This Complaint challenges XXXX' unlawful practices of: (1) failing to provide a full and fair review of Mrs. XXXX's condition as required by 29 U.S.C. § 1133(2); and (2) denying Mrs. XXXX medically necessary care covered by the Plan. Specifically, Mr. XXXX is filing this action to recover benefits due to his wife under the Plan, to enforce her rights under the Plan, and to recover costs and attorney's fees as provided by ERISA.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this case under 29 U.S.C. § 1132(f), without regard to jurisdictional amount or diversity of citizenship.

PARTIES

3. The plaintiff, Mr. XXXX, is a 73 year-old man residing presently at XXXX. Mr. XXXX is a vested participant in a XXXX employee healthcare plan, within the meaning of 29 U.S.C. § 1002. Mrs. XXXX is a beneficiary of Mr. XXXX's XXXX Plan. Mr. XXXX has standing to bring this action under 29 U.S.C. § 1132(a).

4. The defendant, XXXX, is a for-profit corporation, with its principal place of business at XXXX. XXXX is licensed to do business in Massachusetts and underwrites the Plan under which Mr. XXXX is suing.

FACTS

5. Mr. XXXX was employed for 33 years as an electrical engineer by XXXX, a company acquired by XXXX. He retired on December 31, 1983. At all times relevant to this action, the XXXXs were covered by the Plan.

6. The Plan is an employee benefits plan within the meaning of 29 U.S.C. § 1002(1). The Plan is currently administered by XXXX/XXXX ("XXXX"). The Plan Number is XXXX.

7. In or about March 1992, Mrs. XXXX was diagnosed by Dr. XXXX as suffering from Amyotrophic Lateral Sclerosis ("ALS" or "Lou Gehrig's Disease"). XXXX is a specialist in ALS and is affiliated with XXXX.

8. ALS is a progressive, fatal neuromuscular disease characterized by degeneration of motor nerve cells in the brain and spinal cord, ultimately leading to total paralysis and the inability to talk or swallow. ALS does not affect the intellectual functioning.

9. According to the ALS Association of Massachusetts, "treatment of ALS is aimed at symptomatic relief, prevention of complications and maintenance of maximum optimal function and optimal quality of life... [T]his... requires nursing management of a patient who is alert but functionally quadriplegic with intact sensory function, bedridden and aware he or she is going to die."

10. By June 1993, Mrs. XXXX had become paralyzed everywhere but her face and was unable to eat or breathe on her own. At present, Mrs. XXXX is fed through a tube and is dependent upon a mechanical respirator. Her mental functioning, sight and hearing remain normal, enabling her to comprehend what is happening around her.

11. Since the time of her diagnosis, Mrs. XXXX has repeatedly expressed her desire to be cared for at home rather than in an institution.

With the exception of several brief hospitalizations in the past six years, Mrs. XXXX has been able to receive treatment for her disability at her home through full-time skilled nursing care.

12. The XXXX Plan, from March 1992 until April 30, 1998, covered the costs associated with her home health care needs.

13. In January 1994, Mrs. XXXX made the decision to undergo a tracheotomy and to remain on medical ventilation, both life-sustaining procedures, due to assurances from the XXXX Benefits Payment Office ("XXXX") case manager that the XXXX Plan would support her home health care needs.

14. Under the XXXX Plan, a beneficiary can only recover expenses for medically necessary covered services and supplies.

15. To be medically necessary under the Plan, care "must be generally accepted by medical professionals in the U.S. as proven, effective and appropriate based upon recognized standards of the health-care specialty involved."

16. The Plan does not consider custodial or maintenance care to be medically necessary covered expenses.

17. In November 1994, Mrs. XXXX became eligible for benefits under Medicare. At that time, her case was reviewed by XXXX, and home health care coverage was re-approved under the Plan.

18. On or about February 12, 1998, XXXX, provider of Mrs. XXXX's home health care services, wrote to XXXX requesting pre-certification for continued benefits for home health care and private duty nursing for Mrs. XXXX.

19. On or about March 16, 1998, XXXX informed Mr. XXXX of the termination of his wife's home health care benefits.

20. On or about March 30, 1998, Mr. XXXX notified XXXX that he was formally appealing their decision.

21. On or about April 13, 1998, Dr. XXXX notified Mr. XXXX that XXXX had decided to uphold the denial of benefits.

22. Dr. XXXX stated that Mrs. XXXX's home health care was not medically necessary, but rather custodial in nature.

23. In determining that Mrs. XXXX's care was custodial, Dr. XXXX focused on Mrs. XXXX's "lack of progress" in her health status.
24. On information and belief, Dr. XXXX is not a specialist in ALS.
25. On or about April 14, 1998, Mr. XXXX informed XXXX of his desire to appeal the decision.
26. On or about April 14, 1998, XXXX notified XXXX, as plan fiduciary, of Mr. XXXX's appeal of its decision.
27. On or about May 19, 1998, XXXX upheld XXXX's decision on the grounds that the terms of the Plan do not cover custodial care and that Mrs. XXXX's needs for skilled nursing care was custodial under the Plan.
28. As part of the appeal, Mr. XXXX presented as evidence, statements of Dr. XXXX, Mrs. XXXX's primary care physician, XXXX, a registered nurse in charge of coordination of care for Mrs. XXXX, and Dr. XXXX, a doctor who has been involved in ALS patient management and clinical research for the last 19 years, all expressing the opinion that continued full-time, skilled nursing care was medically necessary, and not custodial, in Mrs. XXXX's case.
29. At no time did XXXX have persons of equivalent knowledge about ALS and, in particular, Mrs. XXXX's case, review the administration of her benefits. Neither XXXX nor persons under XXXX' direction consulted Mrs. XXXX's medical providers during the appeal process.
30. The decision was made by the XXXX Benefits Administrative Committee ("the Committee"). The Committee comprises four senior company executives. The members of the Committee lack the impartiality necessary for a fair and just determination. No one on the Committee is qualified to determine medical necessity in the care of Mrs. XXXX.
31. The Committee determined that one skilled visit per day was sufficient for Mrs. XXXX under the Plan. It stated that the Plan will cover up to 2 hours per day of services by a R.N. or up to 4 hours per day of services by an L.P.N. to perform limited services.
32. In refusing to cover other services, XXXX asserted that the Plan only provides for those services that perform an exclusive medical function, and not those services that require non-skilled yet health-related assistance, such as "activities of daily living".
33. Due to the unlawful denial of benefits under ERISA, Mrs. XXXX has lost her right to home health care benefits under her Plan.

CAUSES OF ACTION

34. XXXX' actions in denying Mrs. XXXX medically necessary care covered by the Plan constitute an unlawful denial of benefits under 29 U.S.C. § 1132(a)(1)(B) of ERISA.

35. Under the standards applicable to ERISA actions, recovery of a reasonable attorney's fee and costs of the action by the plaintiff is asked for pursuant to section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that the Court:

- (1) Declare, adjudge and decree that the defendant is obligated to pay the plaintiff the home health care benefits due to her under the Plan.
- (2) Award the plaintiff the costs of this action and reasonable attorney's fees; and
- (3) Award such other relief as may be just and reasonable.

Dated: _____, 1998

Attorneys for the
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(#428940)
Mala M. Rafik
(#638075)
Rosenfeld &
Associates
44 School Street,
Suite 715
Boston, MA 02108
(617)723-7470

THE AMMENDED COMPLAINT
UNITED STATES FEDERAL COURT
DISTRICT OF MASSACHUSETTS

JUDY E. MORRIS, MD)

)

Plaintiff) Civil Action No. CA 98-30204 FHF

) v.)

) UNUM CORPORATION OF AMERICA,) et al.)

Defendants

FIRST AMENDED COMPLAINT FOR DAMAGES FOR VIOLATION OF
ERISA AND FOR DECLARATORY AND INJUNCTIVE RELIEF

Dr. Judy Morris, acting Pro Se, for reasons previously specified brings this Court ordered amended complaint to her previously filed complaint against UNUM Insurance Company and 59 other defendants. Plaintiff brings this amended complaint to comply with orders of District Court Judge Frank H. Freedman to attempt to comply with Rule 8 of the Fed. Rules of Civ. P. For the sake of expediency plaintiff is filing here a lawsuit for disability benefits under an ERISA Long Term Disability Plan provided by her employer. However, plaintiff reserves all rights and obligations afforded by the 14th Amendment of the US Constitution and the legal system to re-introduce at the appropriate time any or all causes of actions previously submitted regarding her individual disability policy and her RICO allegations. Plaintiff wishes to remind the court that she has an Individual Disability Policy which UNUM has also failed to honor, that contains almost the exact same nexus of facts (in fact UNUM conducted one 'investigation' for both of plaintiff's claims), that should be joined with this action if the judge will grant leave for this. Otherwise plaintiff will be forced to file this action in state court with the added expense and inconvenience to all litigants. Plaintiff reserves her constitutional right to a jury trial.

1. This Court has jurisdiction over this amended complaint pursuant to 29 U.S.C. § 1132 and 28 U.S.C. § 1331.

2. The Plan ('Harrington Plan') is an employee benefit plan as defined by 29 U.S.C. §§1002 and 1003.

3. The breach which is the subject of this complaint occurred in the State of Massachusetts. Venue is proper in this Court pursuant to 29 U.S.C. §1132(e)(2). Plaintiff,

Judy Morris, MD is a resident of Monson, MA, Hampden County. Plaintiff is a 41 year old physician, Board Certified in Family Practice, but practicing Emergency Medicine full time since 1989.

GENERAL ALLEGATIONS

4. On or about March, 1995, plaintiff began her employment at Harrington Memorial Hospital. At that time she was given as a benefit of employment, the Harrington Plan for the benefit of its employees, as part of her employment contract. The Plan continued to be in full force and effect at all times relevant to this amended complaint.

5. At all times relevant to this amended complaint Plaintiff was a participant in the Plan.

6. On or about October 28, 1996, the Plaintiff was determined to be disabled from her occupation according to the terms of her Plan. Plaintiff was determined to be completely disabled from her specialty of Emergency Medicine by her treating physician, Dr. Patricia McIlvaine, and by her employer, Harrington Hospital. Effective February 1, 1997, Plaintiff was eligible to receive benefits under the Plan. Prior to this time of disability determination, Plaintiff was employed by Hospital as a full time Emergency Room Physician.

7. The Plan provides that a disabled individual is to receive an annual disability benefit, payable in monthly installments, in an amount equal to 60% of the individual's pre-disability earnings if the person is completely disabled from the specialty she was practicing at the time the disability began, and continues to be disabled from that specialty even if she is able to return to work in another occupation.

8. Plaintiff cooperated with UNUM in all reasonable requests during the pendency of her claim, submitting requested proofs of loss from herself and her treating physician, and all other requested documents, and in fact, requested repeatedly that she be told if further documentation of her disability was needed to perfect her claim.

9. Plaintiff has a disability, Chronic Fatigue Syndrome and Fibromyalgia, that is, in many cases, generally considered to be permanent and has no know cure and recovery/remission is extremely variable.

10. On or about April, 1997, after conducting a joint 'investigation' of both of plaintiff's claims, plaintiff was handed 2 denial letters for her disability claims from UNUM representative Steve Harris. The letter from the Group Insurance Adjuster Frankie Puthoff, stated that Plaintiff was disabled only until February 14, 1997 and the reason stated conflicted with the written reports of plaintiff's treating physicians. Plaintiff was advised in this letter that in order to appeal this decision she would need to supply UNUM with 'more compelling' evidence of her disability.

11. UNUM repeatedly refused to answer plaintiff's questions about how she could perfect her claim.

12. Plaintiff submitted 2 second opinions confirming her diagnosis, laboratory evidence of her disease and material from the Centers for Disease Control and National Institutes of Health and other mainstream experts, regarding treatment recommendations for her disability which clearly precluded plaintiff from returning to work in her occupation as an Emergency Physician.

13. On or about August, 1997, plaintiff's attorney (at that time) received a letter parroting UNUM's previous denial of April and ignoring the further evidence submitted by plaintiff.

14. UNUM has consistently failed to engage in any meaningful interaction with this Plaintiff, despite Plaintiff's repeated and well documented attempts. UNUM's employees attempted to encourage plaintiff to return to her former employment against the expressed recommendations of plaintiff's doctors that returning to this occupation would be hazardous to plaintiff and to the patients she would be treating.

15. Plaintiff had exhausted all administrative remedies available to her under the terms of the Plan and believes any further administrative remedies if administered by UNUM would prove futile.

16. Plaintiff is and continues to be disabled as defined by the Harrington Plan.

COUNT I [CLAIM FOR BENEFITS DUE UNDER U.S.C. §1132 (a)(1)(B)]

17. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 16 inclusive.

18. Pursuant to the terms of the Harrington Plan that has been, and continues to be in effect, Plaintiff was and is entitled to receive monthly disability benefits in the amount of 60% of her former salary. The policy does not grant discretion to UNUM to override the opinions of plaintiff's treating physicians. It only requires that plaintiff submit to UNUM 'proof of claim.'

19. In accordance with the procedures set forth in the Summary Plan Description of the Plan, Plaintiff has made written demands upon UNUM, for payment of her full benefits under the Plan.

20. UNUM has failed to respond to Plaintiff's request for payment of benefits due under the Plan and Plaintiff has exhausted all of her administrative remedies under the Plan.

COUNT II [BREACH OF FIDUCIARY DUTY UNDER U.S.C. §1104(a)(1)(D) and §1132(a)(2)]

21. Plaintiff alleges and incorporates the allegation contained in paragraphs 1 through 20 inclusive.

22. By reason of its general administration of the Plan and its exercise of discretion over the assets of the Plan, UNUM owes fiduciary duties to the participants and beneficiaries under the Harrington Plan.

23. UNUM has breached its fiduciary duties to Plaintiff by failing to administer the Harrington Plan in accordance with the written documentation governing the Harrington Plan.

COUNT III [BREACH OF FIDUCIARY DUTY UNDER 29 U.S.C. § U.S.C. 1104(a)(1)(A) and §1132(a)(2)]

24. Plaintiff alleges and incorporates the allegations contained in paragraphs 1 through 23, inclusive.

25. By reason of its general administration of the Plan and its exercise of discretion over the assets of the Plan, UNUM owes fiduciary duties to the participants and beneficiaries under the Plan.

26. UNUM has breached its fiduciary duties to Plaintiff by failing to administer the Plan for the exclusive purpose of providing benefits for the participants and their beneficiaries and has thus operated under a Conflict of Interest requiring a de novo review of UNUM's Long Term Disability benefits denial to plaintiff.

27. UNUM has also breached its fiduciary duties to Plaintiff by using a statutorily deficient denial letter that failed to inform plaintiff of how she could perfect her claim under ERISA. Other courts have stated that when the letter is statutorily deficient, the standard of review must be de novo.

COUNT IV [CLAIM TO ENJOIN ACTION UNDER 29 U.S.C. §1132 (a)(3)]

28. Plaintiff alleges and incorporates the allegations contained in paragraphs 1 through 27 inclusive.

29. UNUM has breached its fiduciary duties to Plaintiff by failing to administer the Plan in accordance with the written documentation governing the Harrington Plan.

30. Plaintiff has made repeated written demands upon UNUM that her benefits be paid in full or she be given an understandable reason why they have not, and instructions on how she can perfect her claim, in accordance with Plan documents and ERISA 29 U.S.C. §

1132. UNUM has consistently failed to comply with the requirement that plaintiff be given a 'description of any additional material or information necessary to complete the claim and an explanation of why that material or information is necessary.'

31. UNUM has failed to pay benefits or comply with Federal Law and Plan documents.

32. UNUM failed to conduct a 'full and fair' review of plaintiff's claim on appeal.

33. UNUM's initial 'investigation' was biased and slanted towards finding a pretense to deny plaintiff's claim, while not investigating nor interviewing any material or persons that would support plaintiff's claims and ignoring or dismissing the evidence that was submitted by plaintiff and her doctors.

34. As a proximate result of these breaches plaintiff has been denied benefits under the Harrington Plan.

35. Plaintiff is entitled to a retroactive award of benefits including pre-judgment interest, and cost of living increases and an award of future benefits, and cost of living increases and re-instatement in her employers health and benefits plans that were also denied to her. Plaintiff is entitled to be made whole as to her position had her benefits not been wrongly denied.

36. To prevent further unjustified action by UNUM, plaintiff is entitled to an injunction preventing the termination of benefits without court orders.

On Counts I, II, III, and IV:

WHEREFORE, the Plaintiff, Judy Morris, MD, demands that this Honorable Court enter a judgment against the Defendant, 1) enjoining or ordering injunction against the Defendant from refusing, terminating, suspending or otherwise not paying the monthly benefits and requiring Defendant to pay Plaintiff \$6703 per month as contractually stipulated benefits under the Harrington Plan in monthly distributions; (2) awarding Plaintiff a lump sum amount, representing unpaid benefits from the date of her disability through the date of the judgment; (3) awarding Plaintiff prejudgment interest and Cost of Living increases, at 4% annually, through the date of the judgment on the lump sum payment; (4) awarding Plaintiff her reasonable costs that she has incurred, and attorney's fees (if she hires an attorney) pursuant to 29 U.S.C §1132(g)(1); (5) for such other relief as the Court deems just and proper [Benefits on her Individual Policy, Premiums paid on Individual policy after disability date, costs plaintiff has incurred in bringing this action for relief, pre- and post-judgment interest, anticipated sanctions or penalties for defendant not complying with the Court's orders in a timely fashion] (6) That defendant abused its discretion in determining that Plaintiff was not entitled to benefits under the policy, and (7) That defendant is operating under a Conflict of Interest which significantly impairs its ability to function as a fiduciary for beneficiaries of its Plans and that it has been shown to put its own financial interests ahead of those of policyholders and beneficiaries. UNUM has failed in its fiduciary duties to administer group disability benefit plans 'solely in the interest of the participants and beneficiaries.' 29 U.S.C. 1104(a)(1). (8) That defendant has continued to use statutorily deficient denial letters and should be enjoined from continuing to do this.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in her favor and against Defendant. Signed under the penalties of perjury this 15 day of March,

1999. Judy E. Morris, MD

PRO SE

261 Bumstead Rd.

Monson, MA 01057

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was delivered in person March 15, 1999 to US District Court, District of Massachusetts, Springfield and served by United States Postal Mail, postage prepaid upon the following attorneys representing all defendants in Morris v. UNUM, et al. Mailed on March 16, 1999.

Judy E. Morris, MD

PRO SE

261 Bumstead Rd.

Monson, MA 01057

Patricia A. Peard, Esq. representing 'UNUM' Katherine A. Robertson, Esq. 'UNUM's' local counsel William J. Kayatta, Esq. representing Robert Crispin H. Gregory Williams representing State of Mass.,

Harshbarger, Melconian, DOI,

Ruthardt, Goetz, Marcinkus,

Marquez Tracy L. Devlin, Esq. representing IFB and Michael E. Michael Sloman, Esq. Gray Thomas H. Hayman, Esq. representing Betty Rae Poppo Robert Pierce, Esq. representing Harrington and

Mangion Christopher N. Jones Co-Counsel for Transunion Carolyn G. Sullivan representing Jack

hoseantx@msn.com

From: "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
To: "Robin Hosea (E-mail)" <hoseantx@msn.com>
Sent: Thursday, December 05, 2002 1:59 PM
Subject: CIGNA claim

Robin:

I think you should participate in the appeal via conference call. If you want me to also participate, I can do that as well. However, they might be more amenable to listen to you and interact with you if you do not have an attorney participating. That's just an educated assumption on my part. You can explain your problems, your condition, and your need for the chair. You can explain why a regular wheelchair or crutches will not suffice. You might even be able to send them this latest bone scan result for them to consider in their deliberations. I recommend you call the number in the letter to tell them you wish to participate in the conference call on the 18th. And ask if you can send further documentation relevant to your appeal, where to send it, and who to send it to. Let me know if you have questions or disagree with my analysis or recommendation.

Karl

2/23/2003

WHITTENBURG WHITTENBURG SCHACHTER & HARRIS, P.C.
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December 27, 2002

Robin Hosea
1406 Second Street
Seabrook, Texas 77586

Re: COBRA payment reimbursement

Dear Robin:

In accordance with our telephone conversation today, I am putting into writing our agreement regarding our firm's payment of your COBRA premiums. As of the date of this letter, we have paid 12 months of COBRA premiums at \$243.97 each for a total of \$2,927.64. In January 2003, the premium will increase to \$399.67 per month. You indicated that your COBRA coverage will expire at the end of June 2003, thus requiring a maximum of 6 more payments of the COBRA premiums to be made on your behalf.

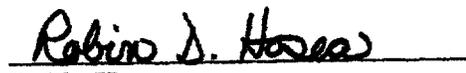
We are willing to continue making the COBRA payments with the understanding that you will reimburse our firm for all COBRA premium payments we have made in the past or will make in the future. You have agreed that the source of that reimbursement will come either from the lump sum you receive from Social Security or from monies recovered from Prudential in your lawsuit against that company, whichever you receive first. In the event you do not recover any monies from Social Security or Prudential, you will still be obligated to reimburse our firm for the COBRA premiums paid.

If you agree with the above terms of our agreement, please sign on the line below and return this letter to me in the enclosed, self-addressed, stamped envelope.

Respectfully,


Karl L. Baumgardner

AGREED:


Robin Hosea

cc: Victor N. Makris, Esq.

http://www.1400smith.com/cgi-bin/lookup.pl?w01c0402deb0731b

1400smith.com | don't be a stranger

Joseph W Whittenburg

Department EES Services Group

Relationship to Enron employee

Email See below

This record last modified Tue Dec 4 01:17:55 2001

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Fair warning: Using this site to mass-email people you don't know, especially for the purpose of soliciting or advertising, is **forbidden**. Our software can detect abuse of the site and you will be barred. The **appropriate** way to reach our entire community is to post information on the [Message Board](#).

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WHITTENBURG,GERALD,EUGENE	013647	10/07/1974	02/28/2003		ALPINE, CA
WHITTENBURG,JAMES,SMITH BYNUM	074698	09/01/1998	07/31/2003		AUSTIN, TX
WHITTENBURG,JOSEPH,WILLIAM	078860	11/13/2000	01/31/2003		HOUSTON, TX
WHITTENBURG,JULIE,ELIZABETH	071491	02/19/1997	05/31/2003		AUSTIN, TX

Records: 1 thru 6 of 6

Web posted **Sunday, August 5, 2001**
7:36 a.m. CT

Tovar - Whittenburg



Emily Dolores Tovar of Houston and Joseph William Whittenburg of Amarillo were married Saturday, May 26, at Chapel "San Francisco of Assisi" at Xcaret in Playa del Carmen, Mexico. The Rev. Joseph of Cancun, Mexico, officiated.

The bride is the daughter of Amy and Jesse Tovar of East Bernard.

Mr., Mrs. Joseph Whittenburg
Emily Tovar

Parents of the groom are Ann and George Whittenburg of Amarillo.

Matron of honor was Lisa Corbin of Lowell, Ark. Bridal attendants were Sheila Bohacek and Carolyn McGwire, both of East Bernard, Victoria Sanchez of Houston and Jennifer Woolman of Boston.

Best man was David Kershner of Houston. Groom's attendants were Robert Whittenburg of Dallas, James Whittenburg and Jake Whittenburg, both of Austin, and Ben Whittenburg of El Paso.

Flower girl was Hope Lawson of Washington, D.C. Ring bearer was Justin McGwire of East Bernard.

The bride wore a white, spaghetti-strap sheath gown with all-over embroidery and a full, detachable chapel train.

The bridal attendants wore short burgundy summer dresses, and the groom's attendants wore black Cuayabera shirts. The bride chose tropical flowers for her floral selection.

The open air chapel with a palapas roof provided a setting for the vows with a hilltop view of the Caribbean Sea. Violin and organ music combined with the sound of Mayan drums to blend the surrounding jungles and ruins into the backdrop for the wedding.

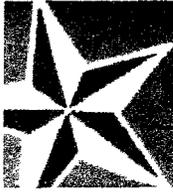
The wedding reception was held at the Xcaret da Isla Restaurant poised over a subterranean cenote with sharks and giant sea turtles swimming below.

The bride is a graduate of East Bernard High School. She graduated from Princeton University in Princeton, N.J., and the University of Houston School of Law. She is an attorney and manager with Arthur Andersen tax department.

The groom is a graduate of Tascosa High School. He graduated from the University of Texas at Austin and is a student at the University of Houston School of Law. He is a certified public accountant and senior specialist with Enron.

The couple reside in Houston.

<*p(0,\$,0,6.5,0,0,g)\$> Amarillo Globe-News, Aug. 5, 2001



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Last Discipline Date None On File

History Detail

This Attorney's status record indicates no prior disciplinary actions. For additional detail or certification of this information, you must contact the State Bar of Texas Office of the Chief Disciplinary Counsel at (877)953-5535

It is clear that David Dewhurst's campaign for Lieutenant Governor is generating overwhelming support among business leaders all over Texas because David is the only person running for this office this year with both successful business and government experience. The recent independent "Texas Poll" shows David with a significant lead over his opponent. Fiscally conservative Texans and owners of small and large businesses, regardless of party affiliation, are excited about the prospect of having a candidate who understands the needs of business, as well as the needs of the people of Texas. Working from this base, we know David, with your help, will win decisively this fall.

David is a self-made man. As a conservative businessman, one of the most effective Land Commissioners in Texas history and a generous man involved in community service, David represents everything right about Texas. David's background is a significant reason for this broad support - service in the Air Force and the CIA after graduation from college, then nurturing a company through good and bad times in the energy business, and finally emerging as one of the most successful entrepreneurs in Texas.

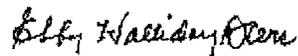
Like you, David discovered through hands-on experience how government at all levels helps - or hinders - the success of both small and large businesses.

With an opponent who never managed a business and has been a lifelong career politician, David is the sole candidate in the race who knows how major and minor issues decided every day in Austin can impact our businesses: eliminating sales tax exemptions, controlling the rising cost of health care coverage, and reforming our education system.

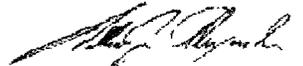
We admire David because, unlike most politicians, he actually kept his promises and got the job done after he was elected. At the General Land Office, he applied his proven business principles to earn more money for public education and provide dramatic new benefits for veterans, while reducing the agency's budget and workforce. He instituted conservation programs to protect Texas public lands and renourish beaches, thus increasing tourism. David will use that same business and government experience to make state government more productive and cost-efficient.

David's endorsements from the Texas business community are unparalleled. [Click to fill out a form](#) to add your support to a winning campaign that will mean a better Texas. Texans are uniting behind David Dewhurst's campaign to instill conservative business principles and values throughout the everyday conduct and deliberations of the business of state government. Your help in David's campaign would mean a great deal to Texas and to us personally.

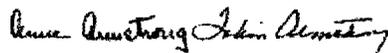
Sincerely,



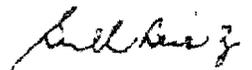
Ebbby Halliday Acers, Dallas



Willie J. Alexander, Houston



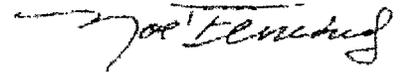
Anne and Tobin Armstrong



Guillermo Benavides, Laredo



Harlan Crow, Dallas



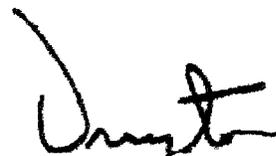
Noé Fernández, McAllen



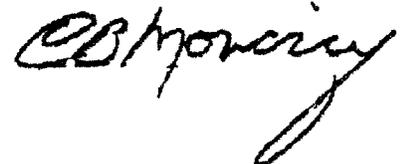
Ned S. Holmes, Houston



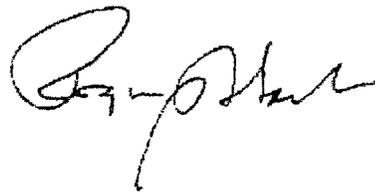
Edith McAllister, San Antonio



Drayton McLane, Houston



Kit & Charlie Moncrief, Fort Worth



Roger Staubach, Dallas



Massey Villarreal, Houston

Business Leaders for Dewhurst * PO Box 756 * Austin, Texas 78767
(512) 236-9798 * Fax (512) 236-9797
www.dewhurst.org

hoseantx@msn.com

From: "Robin Hosea" <hoseantx@msn.com>
To: <bas@spain-attys.com>
Cc: "Randy McClanahan" <randy@mclip.com>
Sent: Tuesday, January 28, 2003 7:27 PM
Subject: Final Attempt

**Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433
E-mail hoseantx@msn.com**

January 28, 2003

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Cc: "Randy McClanahan" <randy@mcclp.com>; <gwhittenburg@whittenburglaw.com>; <rhile@swbell.net>; <Mwdies@aol.com>; <sbaena@bitzin.com>
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Sent: Tuesday, January 28, 2003 7:27 PM

To: Broadus Spivey

Cc: Randy McClanahan

Subject: Final Attempt

Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433
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Sent: Friday, January 31, 2003 7:26 AM
Subject: RE: Final Attempt

Robin, I would appreciate either your or his providing me the examples that you refer to. And I would appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

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From: George Whittenburg
Sent: Friday, January 31, 2003 7:27 AM
To: Robin Hosea
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)
Subject: RE: Final Attempt

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Cc: Randy McClanahan; George Whittenburg; rhile@swbell.net; Mwdies@aol.com; sbaena@bizin.com
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Thank you.
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Sent: Tuesday, January 28, 2003 7:27 PM
To: Broadus Spivey
Cc: Randy McClanahan
Subject: Final Attempt

Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433
E-mail hoseantx@msn.com

January 28, 2003

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To: "George Whittenburg" <gwhittenburg2@whittenburglaw.com>
Cc: "Randy McClanahan" <randy@mcclp.com>; <rhile@swbell.net>; <Mwdies@aol.com>; "Broadus Spivey (E-mail)" <bas@spain-attys.com>; "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
Sent: Friday, January 31, 2003 11:07 AM
Subject: Re: Final Attempt

Hello George:

This Link http://www.dol.gov/dol/allcfr/PWBA/Title_29/Part_2560/29CFR2560.503-1.htm will possibly help you to understand exactly what has my main attention. The DOL/PWBA in a interpretation given 12/16/2002, states " Any claimants wishing to protest denial of ERISA based Long Term Disability Benefits, must provide all requests, demands, and court actions through the regulations set forth in 503-1 " . I am a bit confused as to why the Breach of Fiduciary Duty charge was used as I was simply denied benefits. In that context I am not suggesting that you are correct or incorrect, I am only confused. My medical records are extensive, including a disability Functionality Report from Dr. Phillip Daley stating that this is a clear case of Severe Advanced Chronic Degenerative Arthritis and he supports his findings with ortho pictures, x-rays, MRI, and Whole Body bone scan, blood tests and also 63 individual doctors reports. In 503-1 it is not a burden to prove the claimant permanently disabled, only that the claimant by doctors definition cannot do the job that they were specifically trained for and or greatly experienced in. I am on Vicodin, Darvocet, Ultram, Mobic, Tylenol 3, and Duragesic 25 patches. Three of these drugs are federally controlled narcotics and would certainly prohibit me from doing my higher level job. The doctor has written three separate reports indicating that my pain is permanent and that any knee replacement cannot occur for at least ten years. Within the regulations set forth I have a duty to provide all related medical documents to Prudential and I have always forwarded each individual report or test result immediately to your office to ensure your ability to provide that. It is also clear that in 503-1 that all related proof be provided before any court action.

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Robin, 29 CFR § 2560.503-1 is an applicable regulation that sets out requirements the plan must comply with. Subsections 503-1(c)(2) & (d) require LTD plans to provide claims procedures that "do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act." Enron's plan complies, and we filed your civil suit after two appeals, complying with the regulations and the plan. It is probably unrealistic for you and Marshall to try and become experts on these legal issues, so the important thing is for you to have a lawyer that you trust. Since you have not been willing to disclose to me the concerns that you "believe are completely founded," it is becoming unlikely that you can have the necessary trust in us. Consequently, we think you should try to find another lawyer to take over your case. In the meantime, if you have no further suggestions on the draft of our proposed amended complaint and do not instruct us otherwise, we will proceed with our plan to file the amended complaint.
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To: George Whittenburg
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Subject: Re: Final Attempt

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This is not a case of Marshall or I trying to become an ERISA expert, nor is this a case of me refusing to communicate. This is simply a case of a DOL person stating to me that in reply to my complaint filed against Prudential before you were retained, and the subsequent investigation of that complaint, that because I was now represented by an attorney, that the complaint would be disregarded and he then noted that in his interpretation of the regulations that his agency protects, I have alleged a defense that did not apply to my case. I communicated the concern to Karl, he stated that this was your decision and it was standard procedure in these cases. I then related this back to the DOL Civil Investigator and he then informed me that he had several case sites that would prove his position. As for me not wanting to discuss my concerns with you at this moment it is only prudent that I take the time to organize these concerns into a non aggressive letter that tries to limit any chance of hurting anyone's professional or emotional status.

Robin

— Original Message —

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner
Sent: Friday, January 31, 2003 11:47 AM
Subject: RE: Final Attempt

Robin, 29 CFR § 2560.503-1 is an applicable regulation that sets out requirements the plan must comply with. Subsections 503-1(c)(2) & (d) require LTD plans to provide claims procedures that "do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act." Enron's plan complies, and we filed your civil suit after two appeals, complying with the regulations and the plan. It is probably unrealistic for you and Marshall to try and become experts on these legal issues, so the important thing is for you to have a lawyer that you trust. Since you have not been willing to disclose to me the concerns that you "believe are completely founded," it is becoming unlikely that you can have the necessary trust in us. Consequently, we think you should try to find another lawyer to take over your case. In the meantime, if you have no further suggestions on the draft of our proposed amended complaint and do not instruct us otherwise, we will proceed with our plan to file the amended complaint. ~Geo.

— Original Message —

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Friday, January 31, 2003 11:08 AM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl

2/14/2003

Baumgardner
Subject: Re: Final Attempt

Hello George:

This Link http://www.dol.gov/dol/allcfr/PWBA/Title_29/Part_2560/29CFR2560.503-1.htm will possibly help you to understand exactly what has my main attention. The DOL/PWBA in a interpretation given 12/16/2002, states " Any claimants wishing to protest denial of ERISA based Long Term Disability Benefits, must provide all requests, demands, and court actions through the regulations set forth in 503-1 " . I am a bit confused as to why the Breach of Fiduciary Duty charge was used as I was simply denied benefits. In that context I am not suggesting that you are correct or incorrect, I am only confused. My medical records are extensive, including a disability Functionality Report from Dr. Phillip Daley stating that this is a clear case of Severe Advanced Chronic Degenerative Arthritis and he supports his findings with ortho pictures, x-rays, MRI, and Whole Body bone scan, blood tests and also 63 individual doctors reports. In 503-1 it is not a burden to prove the claimant permanently disabled, only that the claimant by doctors definition cannot do the job that they were specifically trained for and or greatly experienced in. I am on Vicodin, Darvocet, Ultram, Mobic, Tylenol 3, and Duragesic 25 patches. Three of these drugs are federally controlled narcotics and would certainly prohibit me from doing my higher level job. The doctor has written three separate reports indicating that my pain is permanent and that any knee replacement cannot occur for at least ten years. Within the regulations set forth I have a duty to provide all related medical documents to Prudential and I have always forwarded each individual report or test result immediately to your office to ensure your ability to provide that. It is also clear that in 503-1 that all related proof be provided before any court action.

George, I went to Mr. Spivey in confidence because of several concerns, That I believe are completely founded. I went to him because he is a person signed to the class action lawsuit and the immediate past president of the bar, I went to him in hopes that he could help me to understand the information I have. I am at this time sending you this concern because I need time to organize my thoughts on how to present my concerns without injury to either of us.

Robin

— Original Message —

From: George Whittenburg

To: Robin Hosea

Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner

Sent: Friday, January 31, 2003 10:01 AM

Subject: RE: Final Attempt

Robin, Section 404 of ERISA corresponds to Title 29, Section 1104 and covers more than bad investments. It also covers fiduciary duties. Section 502(a) of ERISA corresponds to Title 29, Section 1132(a), which provides for a civil action "by a participant or beneficiary" of the plan. We will await receipt of your examples and a listing of your specific concerns. We know that you are hurting -- physically, emotionally, and financially, but all we have done is try to help you. If you have lost confidence in us and want to get another lawyer to represent you in this action, we will cooperate in your substitution of new counsel. We are concerned, however, that because your case is a difficult one and far from a sure winner, you may not be able to find anyone else to take over for you. We don't want to get out of the case and leave

2/14/2003

you high and dry, but will abide by your wishes. If we are going to stay in the case, you will have to trust us and communicate with us. Please let us know your decision. ~Geo.

-----Original Message-----

From: George Whittenburg
Sent: Friday, January 31, 2003 7:27 AM
To: Robin Hosea
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)
Subject: RE: Final Attempt

Robin, I would appreciate either your or his providing me the examples that you refer to. And I would appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Thu 1/30/2003 10:47 PM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)
Subject: Re: Final Attempt

George,

As I now know that you are aware of my conversation with Mr. Spivey, I am sure that he can provide you with examples of my knowledge. My main concern is how a Title 29 503-1 became a 502-A, 404 as 404 is a claim of bad investment. All that I seek is to what I am rightfully entitled.

Let me state this simply. I am not a lawyer, I am not a judge nor am I a jury. I am a person concerned about certain events that have taken place over the last year. I am an educated professional and I have based my concerns on undeniable public information. I sincerely apologize if my concerns offend you, that was not my intent.

Sincerely,
 Robin Hosea

----- Original Message -----

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail)
Sent: Thursday, January 30, 2003 5:41 PM
Subject: RE: Final Attempt

Robin, I am saddened to learn that you are dissatisfied with our firm. Never has our position to represent you been conflicted or compromised, and we have always advised what we thought was best for you. We have even advanced money to cover your COBRA insurance payments so you would not be without medical insurance.

2/14/2003

I have also considered you and Marshall to be friends and would have hoped you would come to me to discuss any questions or problems in a forthright manner rather than going around behind my back. It is not too late to do that, so at least give me the opportunity to dispel any fears or misconceptions you have about me. ~Geo.

-----Original Message-----

From: Broadus Spivey [mailto:bas@spain-attys.com]

Sent: Thursday, January 30, 2003 6:52 AM

To: Robin Hosea

Cc: Randy McClanahan; George Whittenburg; rhile@swbell.net;

Mwdies@aol.com; sbaena@bilzin.com

Subject: RE: Final Attempt

Dear Ms. Hosea,

I acknowledge receipt of your e-mail of yesterday, 1-28-03. As we discussed on Saturday, I have not represented you on your case in Dallas (# 02-13557-C; Robin Hosea vs. Prudential, in Co. Ct. at Law #3), and I understand that only George Whittenburg and his firm have represented you on that matter. I am copying the other members of the team that is representing our clients (some former employees) in the ENRON case in Judge Harmon's Court in Houston because you copied Randy McClanahan on your e-mail, and I understand that other members of this team are aware of your complaints. As I told you and your husband, Marshall, I will treat as confidential the specific matters that you discussed with me on last Saturday. George Whittenburg called me on Tuesday about another matter, and as I told you that I felt obligated to do, I told him that I had met with you and your husband in my office on last Saturday. But, I did not reveal any of the details of the matters that your revealed to me, and I do not intend to unless you instruct me to, or I am obliged to do so. As I told you in our discussion, I cannot represent you in any dispute with George because I would have a conflict of interest, and I cannot represent you in the case in Dallas because that is outside the are of my practice.

Thank you.

Broadus

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]

Sent: Tuesday, January 28, 2003 7:27 PM

To: Broadus Spivey

Cc: Randy McClanahan

2/14/2003

Subject: Final Attempt

**Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433
E-mail hoseantx@msn.com**

January 28, 2003

Dear Mr. Spivey:

Mr. Spivey, in consideration of making every attempt to discuss my concerns about the LTD and SEEC class litigation in a quiet and non-obtrusive manner, I called you on January 24th by telephone. We agreed to a meeting at your office in Austin, Texas on January 25th. At that meeting Marshall and I presented what appeared, from the information we discovered, to be conflicts of interest and other conduct that I could only conclude amounted to deception, lack of diligence, and either incompetence or intentional harm. I believe that the information Marshall and I shared with you *in confidence* pointed to the harm being done to my LTD claim and the SEEC class as a whole and that the conduct concerning these law suits would continue to do further harm. Most of the information we obtained is from public sources. At the same time, I requested that you consider reasonable alternatives that would address my concerns and that would not harm the class action lawsuit as a whole.

I understand that you do not believe that you have fiduciary duty to me in the LTD case, but I believe your duty to me in that matter rests in your professional responsibility to the public. I came to you because of your state and national reputation and because I believed, as do others, that you esteem to a level of ethical conduct higher than any other person involved with the SEEC vs. Northern Trust case. Perhaps you can appreciate my fear in even approaching you with complaint about Mr. George Whittenburg, whom I know you know professionally and personally, as a colleague and friend.

My objective in approaching you was not to force you to take a stance against George Whittenburg, rather I hoped you would seriously consider the concerns I brought to your attention, the potential for harm, and alternatives that would lessen the harm to me, *as your client* in the class action, and *as a member of the public* in the LTD case. I also approached you hoping that you would consider my concerns seriously and expecting you to know that I believed that you had a responsibility to protect me and the class from negative exposure and harm.

2/14/2003

I, and the other SEEC litigants, have already experienced a heinous public and corporate betrayal. I do not wish to be at odds with the lawyers in either of these lawsuits. My request to you at this time is to reconsider what can be done to address the damage I believe has already done to my LTD suit and the steps that can and should be taken to avoid harm to the SEEC litigation. I remain willing to discuss options with you in the hopes of reaching a reasonable and just resolution. I intend to present this same request in writing to the other "partners" in the litigation.

Sincerely,
Robin D. Hosea

2/14/2003

hoseantx@msn.com

From: "George Whittenburg" <gwhittenburg2@whittenburglaw.com>
To: "Robin Hosea" <hoseantx@msn.com>
Cc: "Randy McClanahan" <randy@mclip.com>; <rhile@swbell.net>; <Mwdies@aol.com>; "Broadus Spivey (E-mail)" <bas@spain-attys.com>; "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
Sent: Friday, January 31, 2003 6:22 PM
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Robin, your comments about not wanting to hurt or offend anyone ring hollow to me. What were your thoughts when Marshall took the phone while you were talking to Randy McClanahan about all our law firms and said something to the effect that "You should all notify your carriers, I'm coming after you?" I am absolutely not concerned about your hurting my "professional or emotional status," to use your words. In light of your attitude, we cannot voluntarily continue to represent you, so you should immediately find another lawyer to take over your case. In the meantime, we will proceed to file the amended complaint unless you instruct us not to do so. Under the circumstances, we are no longer able to continue making your COBRA payments. We have made your February payment, which will give you and Marshall time to make other arrangements for future payments knowing that we will not advance any more COBRA money on your behalf. We wish you the best, and if you will promptly identify the lawyer who will be taking over your case, we will put his or her name in a motion to substitute counsel to provide a smooth transition. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Friday, January 31, 2003 12:28 PM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner
Subject: Re: Final Attempt

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This is not a case of Marshall or I trying to become an ERISA expert, nor is this a case of me refusing to communicate. This is simply a case of a DOL person stating to me that in reply to my complaint filed against Prudential before you were retained, and the subsequent investigation of that complaint, that because I was now represented by an attorney, that the complaint would be disregarded and he then noted that in his interpretation of the regulations that his agency protects, I have alleged a defense that did not apply to my case. I communicated the concern to Karl, he stated that this was your decision and it was standard procedure in these cases. I then related this back to the DOL Civil Investigator and he then informed me that he had several case sites that would prove his position. As for me not wanting to discuss my concerns with you at this moment it is only prudent that I take the time to organize these concerns into a non aggressive letter that tries to limit any chance of hurting anyone's professional or emotional status.

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2/14/2003

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Subject: RE: Final Attempt

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To: George Whittenburg

Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)

Subject: Re: Final Attempt

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Sent: Thursday, January 30, 2003 6:52 AM
To: Robin Hosea
Cc: Randy McClanahan; George Whittenburg; rhile@swbell.net; Mwdies@aol.com; sbaena@bilzin.com
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Thank you.
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-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Tuesday, January 28, 2003 7:27 PM
To: Broadus Spivey
Cc: Randy McClanahan
Subject: Final Attempt

Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433

E-mail hoseantx@msn.com

January 28, 2003

Dear Mr. Spivey:

Mr. Spivey, in consideration of making every attempt to discuss my concerns about the LTD and SEEC class litigation in a quiet and non-obtrusive manner, I called you on January 24th by telephone. We agreed to a meeting at your office in Austin, Texas on January 25th. At that meeting Marshall and I presented what appeared, from the information we discovered, to be conflicts of interest and other conduct that I could only conclude amounted to deception, lack of diligence, and either incompetence

2/14/2003

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Sincerely,
Robin D. Hosea

hoseantx@msn.com

From: "George Whittenburg" <gwhittenburg2@whittenburglaw.com>
To: "Robin Hosea" <hoseantx@msn.com>
Cc: "Randy McClanahan" <randy@mcllp.com>; <rhile@swbell.net>; <Mwdies@aol.com>; "Broadus Spivey (E-mail)" <bas@spain-attys.com>; "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
Sent: Monday, February 03, 2003 4:53 PM
Subject: RE: Final Attempt

Robin, I have not seen any information that you provided Mr. Spivey. Moreover, if you contend that anyone has breached your "wish for confidentiality," I do not want to see it. If, however, you instruct Mr. Spivey to provide the information to me, I will be happy to review it and respond to you. As I said last week, I would also appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Monday, February 03, 2003 4:43 PM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner
Subject: Re: Final Attempt

To all members of the S.E.E.C. legal Team,

Rather than provide each of you with a duplicate of the information that I provided to Mr. Spivey, in confidence, now that my wish for that confidentiality is breached, please contact Mr. Spivey for copies of the materials provided to him on January 25, 2003.

It is important for you to know that I chose to speak with Mr. Spivey because of his reputation and the obvious respect of his peers. I had hoped to avoid the kind of repercussions that have unfortunately occurred since my conversation with him and because of my concerns for the vitality of my Long Term Disability claim and the impact that the information provided to Mr. Spivey may have on the S.E.E.C. class action.

Please be advised, that because Mr. Whittenburg has announced his desire to withdraw as counsel, I am taking steps to obtain substitute counsel. However, in the spirit of concillation, I am hopeful that each of you will review the information provided to Mr. Spivey and consider alternatives over the next ten days. I will await your responses.

----- Original Message -----

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl

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Baumgardner

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Subject: Re: Final Attempt

George:

This is not a case of Marshall or I trying to become an ERISA expert, nor is this a case of me refusing to communicate. This is simply a case of a DOL person stating to me that in reply to my complaint filed against Prudential before you were retained, and the subsequent investigation of that complaint, that because I was now represented by an attorney, that the complaint would be disregarded and he then noted that in his interpretation of the regulations that his agency protects, I have alleged a defense that did not apply to my case. I communicated the concern to Karl, he stated that this was your decision and it was standard procedure in these cases. I then related this back to the DOL Civil Investigator and he then informed me that he had several case sites that would prove his position. As for me not wanting to discuss my concerns with you at this moment it is only prudent that I take the time to organize these concerns into a non aggressive letter that tries to limit any chance of hurting anyone's professional or emotional status.

Robin

----- Original Message -----

From: George Whittenburg

To: Robin Hosea

Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner

Sent: Friday, January 31, 2003 11:47 AM

2/14/2003

Subject: RE: Final Attempt

Robin, 29 CFR § 2560.503-1 is an applicable regulation that sets out requirements the plan must comply with. Subsections 503-1(c)(2) & (d) require LTD plans to provide claims procedures that "do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act." Enron's plan complies, and we filed your civil suit after two appeals, complying with the regulations and the plan. It is probably unrealistic for you and Marshall to try and become experts on these legal issues, so the important thing is for you to have a lawyer that you trust. Since you have not been willing to disclose to me the concerns that you "believe are completely founded," it is becoming unlikely that you can have the necessary trust in us. Consequently, we think you should try to find another lawyer to take over your case. In the meantime, if you have no further suggestions on the draft of our proposed amended complaint and do not instruct us otherwise, we will proceed with our plan to file the amended complaint. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]

Sent: Friday, January 31, 2003 11:08 AM

To: George Whittenburg

Cc: Randy McClanahan; rhile@swbell.net; Mwdles@aol.com; Broadus Spivey (E-mail); Karl Baumgardner

Subject: Re: Final Attempt

Hello George:

This Link

http://www.dol.gov/dol/allcfr/PWBA/Title_29/Part_2560/29CFR2560.503-1.htm will possibly help you to understand exactly what has my main attention. The DOL/PWBA in a interpretation given 12/16/2002, states " Any claimants wishing to protest denial of ERISA based Long Term Disability Benefits, must provide all requests, demands, and court actions through the regulations set forth in 503-1 ". I am a bit confused as to why the Breach of Fiduciary Duty charge was used as I was simply denied benefits. In that context I am not suggesting that you are correct or incorrect, I am only confused. My medical records are extensive, including a disability Functionality Report from Dr. Phillip Daley stating that this is a clear case of Severe Advanced Chronic Degenerative Arthritis and he supports his findings with ortho pictures, x-rays, MRI, and Whole Body bone scan, blood tests and also 63 individual doctors reports. In 503-1 it is not a burden to prove the claimant permanently disabled, only that the claimant by doctors definition cannot do the job that they were specifically trained for and or greatly experienced in. I am on Vicodin, Darvocet, Ultram, Mobic, Tylenol 3, and Duragesic 25 patches. Three of these drugs are federally controlled narcotics and would certainly prohibit me from doing my higher level job. The doctor has written three separate reports indicating that my pain is permanent and that any knee replacement cannot occur for at least ten years. Within the regulations set forth I have a duty to provide all related medical documents to Prudential and I have always forwarded each individual report or test result immediately to your office to ensure your ability to provide that. It is also clear that in 503-1 that all related proof be provided before any court

2/14/2003

action.

George, I went to Mr. Spivey in confidence because of several concerns, That I believe are completely founded. I went to him because he is a person signed to the class action lawsuit and the immediate past president of the bar, I went to him in hopes that he could help me to understand the information I have. I am at this time sending you this concern because I need time to organize my thoughts on how to present my concerns without injury to either of us.

Robin

— Original Message —

From: George Whittenburg

To: Robin Hosea

Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner

Sent: Friday, January 31, 2003 10:01 AM

Subject: RE: Final Attempt

Robin, Section 404 of ERISA corresponds to Title 29, Section 1104 and covers more than bad investments. It also covers fiduciary duties. Section 502(a) of ERISA corresponds to Title 29, Section 1132(a), which provides for a civil action "by a participant or beneficiary" of the plan. We will await receipt of your examples and a listing of your specific concerns. We know that you are hurting -- physically, emotionally, and financially, but all we have done is try to help you. If you have lost confidence in us and want to get another lawyer to represent you in this action, we will cooperate in your substitution of new counsel. We are concerned, however, that because your case is a difficult one and far from a sure winner, you may not be able to find anyone else to take over for you. We don't want to get out of the case and leave you high and dry, but will abide by your wishes. If we are going to stay in the case, you will have to trust us and communicate with us. Please let us know your decision. ~Geo.

— Original Message —

From: George Whittenburg

Sent: Friday, January 31, 2003 7:27 AM

To: Robin Hosea

Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)

Subject: RE: Final Attempt

Robin, I would appreciate either your or his providing me the examples that you refer to. And I would appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]

Sent: Thu 1/30/2003 10:47 PM

2/14/2003

To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com;
Broadus Spivey (E-mail)
Subject: Re: Final Attempt

George,

As I now know that you are aware of my conversation with Mr. Spivey, I am sure that he can provide you with examples of my knowledge. My main concern is how a Title 29 503-1 became a 502-A, 404 as 404 is a claim of bad investment. All that I seek is to what I am rightfully entitled.

Let me state this simply. I am not a lawyer, I am not a judge nor am I a jury. I am a person concerned about certain events that have taken place over the last year. I am an educated professional and I have based my concerns on undeniable public information. I sincerely apologize if my concerns offend you, that was not my intent.

Sincerely,
Robin Hosea

— Original Message —

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail)
Sent: Thursday, January 30, 2003 5:41 PM
Subject: RE: Final Attempt

Robin, I am saddened to learn that you are dissatisfied with our firm. Never has our position to represent you been conflicted or compromised, and we have always advised what we thought was best for you. We have even advanced money to cover your COBRA insurance payments so you would not be without medical insurance. I have also considered you and Marshall to be friends and would have hoped you would come to me to discuss any questions or problems in a forthright manner rather than going around behind my back. It is not too late to do that, so at least give me the opportunity to dispel any fears or misconceptions you have about me. ~Geo.

— Original Message —

From: Broadus Spivey [mailto:bas@spain-attys.com]
Sent: Thursday, January 30, 2003 6:52 AM
To: Robin Hosea
Cc: Randy McClanahan; George Whittenburg; rhile@swbell.net; Mwdies@aol.com; sbaena@bilzin.com
Subject: RE: Final Attempt

Dear Ms. Hosea,

2/14/2003

I acknowledge receipt of your e-mail of yesterday, 1-28-03. As we discussed on Saturday, I have not represented you on your case in Dallas (# 02-13557-C; Robin Hosea vs. Prudential, in Co. Ct. at Law #3), and I understand that only George Whittenburg and his firm have represented you on that matter. I am copying the other members of the team that is representing our clients (some former employees) in the ENRON case in Judge Harmon's Court in Houston because you copied Randy McClanahan on your e-mail, and I understand that other members of this team are aware of your complaints. As I told you and your husband, Marshall, I will treat as confidential the specific matters that you discussed with me on last Saturday. George Whittenburg called me on Tuesday about another matter, and as I told you that I felt obligated to do, I told him that I had met with you and your husband in my office on last Saturday. But, I did not reveal any of the details of the matters that you revealed to me, and I do not intend to unless you instruct me to, or I am obliged to do so. As I told you in our discussion, I cannot represent you in any dispute with George because I would have a conflict of interest, and I cannot represent you in the case in Dallas because that is outside the are of my practice.

Thank you.
Broadus

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Tuesday, January 28, 2003 7:27 PM
To: Broadus Spivey
Cc: Randy McClanahan
Subject: Final Attempt

Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433
E-mail hoseantx@msn.com
 January 28, 2003
 Dear Mr. Spivey:

Mr. Spivey, in consideration of making every attempt to discuss my concerns about the LTD and SEEC class litigation in a quiet and non-obtrusive manner, I called you on

2/14/2003

January 24th by telephone. We agreed to a meeting at your office in Austin, Texas on January 25th. At that meeting Marshall and I presented what appeared, from the information we discovered, to be conflicts of interest and other conduct that I could only conclude amounted to deception, lack of diligence, and either incompetence or intentional harm. I believe that the information Marshall and I shared with you *in confidence* pointed to the harm being done to my LTD claim and the SEEC class as a whole and that the conduct concerning these law suits would continue to do further harm. Most of the information we obtained is from public sources. At the same time, I requested that you consider reasonable alternatives that would address my concerns and that would not harm the class action lawsuit as a whole.

I understand that you do not believe that you have fiduciary duty to me in the LTD case, but I believe your duty to me in that matter rests in your professional responsibility to the public. I came to you because of your state and national reputation and because I believed, as do others, that you esteem to a level of ethical conduct higher than any other person involved with the SEEC vs. Northern Trust case. Perhaps you can appreciate my fear in even approaching you with complaint about Mr. George Whittenburg, whom I know you know professionally and personally, as a colleague and friend.

My objective in approaching you was not to force you to take a stance against George Whittenburg, rather I hoped you would seriously consider the concerns I brought to your attention, the potential for harm, and alternatives that would lessen the harm to me, *as your client* in the class action, and *as a member of the public* in the LTD case. I also approached you hoping that you would consider my concerns seriously and expecting you to know that I believed that you had a responsibility to protect me and the class from negative exposure and harm.

I, and the other SEEC litigants, have already experienced a heinous public and corporate betrayal. I do not wish to be at odds

with the lawyers in either of these lawsuits. My request to you at this time is to reconsider what can be done to address the damage I believe has already done to my LTD suit and the steps that can and should be taken to avoid harm to the SEEC litigation. I remain willing to discuss options with you in the hopes of reaching a reasonable and just resolution. I intend to present this same request in writing to the other "partners" in the litigation.

Sincerely,
Robin D. Hosea

hoseantx@msn.com

From: "Randy McClanahan" <randy@mclp.com>
To: "George Whittenburg" <gwhittenburg2@whittenburglaw.com>; "Robin Hosea" <hoseantx@msn.com>
Cc: "Randy McClanahan" <randy@mclp.com>; <rhile@swbell.net>; <Mwdies@aol.com>; "Broadus Spivey (E-mail)" <bas@spain-attys.com>; "Karl Baumgardner" <kbaumgardner@whittenburglaw.com>
Sent: Tuesday, February 04, 2003 5:03 AM
Subject: RE: Final Attempt

Broadus: Please provide me with "copies of the materials provided to [you, by Robin Hosea] on January 25, 2003" so that I may review them and respond to Robin's inquiry.

Thanks.

Randy

-----Original Message-----

From: George Whittenburg [mailto:gwhittenburg2@whittenburglaw.com]
Sent: Monday, February 03, 2003 4:54 PM
To: Robin Hosea
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner
Subject: RE: Final Attempt

Robin, I have not seen any information that you provided Mr. Spivey. Moreover, if you contend that anyone has breached your "wish for confidentiality," I do not want to see it. If, however, you instruct Mr. Spivey to provide the information to me, I will be happy to review it and respond to you. As I said last week, I would also appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Monday, February 03, 2003 4:43 PM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner
Subject: Re: Final Attempt

To all members of the S.E.E.C. legal Team,

Rather than provide each of you with a duplicate of the information that I provided to Mr. Spivey, in confidence, now that my wish for that confidentiality is breached, please contact Mr. Spivey for copies of the materials provided to him on January 25, 2003.

It is important for you to know that I chose to speak with Mr. Spivey because of his reputation and the obvious respect of his peers. I had hoped to avoid the kind of repercussions that have unfortunately occurred since my conversation with him and because of my

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concerns for the vitality of my Long Term Disability claim and the impact that the information provided to Mr. Spivey may have on the S.E.E.C. class action.

Please be advised, that because Mr. Whittenburg has announced his desire to withdraw as counsel, I am taking steps to obtain substitute counsel. However, in the spirit of conciliation, I am hopeful that each of you will review the information provided to Mr. Spivey and consider alternatives over the next ten days. I will await your responses.

— Original Message —

From: George Whittenburg

To: Robin Hosea

Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner

Sent: Friday, January 31, 2003 6:22 PM

Subject: RE: Final Attempt

Robin, your comments about not wanting to hurt or offend anyone ring hollow to me. What were your thoughts when Marshall took the phone while you were talking to Randy McClanahan about all our law firms and said something to the effect that "You should all notify your carriers, I'm coming after you?" I am absolutely not concerned about your hurting my "professional or emotional status," to use your words. In light of your attitude, we cannot voluntarily continue to represent you, so you should immediately find another lawyer to take over your case. In the meantime, we will proceed to file the amended complaint unless you instruct us not to do so. Under the circumstances, we are no longer able to continue making your COBRA payments. We have made your February payment, which will give you and Marshall time to make other arrangements for future payments knowing that we will not advance any more COBRA money on your behalf. We wish you the best, and if you will promptly identify the lawyer who will be taking over your case, we will put his or her name in a motion to substitute counsel to provide a smooth transition. ~Geo.

— Original Message —

From: Robin Hosea [mailto:hoseantx@msn.com]

Sent: Friday, January 31, 2003 12:28 PM

To: George Whittenburg

Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner

Subject: Re: Final Attempt

George:

This is not a case of Marshall or I trying to become an ERISA expert, nor is this a case of me refusing to communicate. This is simply a case of a DOL person stating to me that in reply to my complaint filed against Prudential before you were retained, and the subsequent investigation of that complaint, that because I was now represented by an attorney, that the complaint would

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be disregarded and he then noted that in his interpretation of the regulations that his agency protects, I have alleged a defense that did not apply to my case. I communicated the concern to Karl, he stated that this was your decision and it was standard procedure in these cases. I then related this back to the DOL Civil Investigator and he then informed me that he had several case sites that would prove his position. As for me not wanting to discuss my concerns with you at this moment it is only prudent that I take the time to organize these concerns into a non aggressive letter that tries to limit any chance of hurting anyone's professional or emotional status.

Robin

— Original Message —

From: George Whittenburg

To: Robin Hosea

Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner

Sent: Friday, January 31, 2003 11:47 AM

Subject: RE: Final Attempt

Robin, 29 CFR § 2560.503-1 is an applicable regulation that sets out requirements the plan must comply with. Subsections 503-1(c)(2) & (d) require LTD plans to provide claims procedures that "do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act." Enron's plan complies, and we filed your civil suit after two appeals, complying with the regulations and the plan. It is probably unrealistic for you and Marshall to try and become experts on these legal issues, so the important thing is for you to have a lawyer that you trust. Since you have not been willing to disclose to me the concerns that you "believe are completely founded," it is becoming unlikely that you can have the necessary trust in us. Consequently, we think you should try to find another lawyer to take over your case. In the meantime, if you have no further suggestions on the draft of our proposed amended complaint and do not instruct us otherwise, we will proceed with our plan to file the amended complaint. ~Geo.

— Original Message —

From: Robin Hosea [mailto:hoseantx@msn.com]

Sent: Friday, January 31, 2003 11:08 AM

To: George Whittenburg

Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner

Subject: Re: Final Attempt

Hello George:

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http://www.dol.gov/dol/allcfr/PWBA/Title_29/Part_2560/29CFR2560.503-1.htm will possibly help you to understand exactly what has my main attention. The DOL/PWBA in a interpretation given 12/16/2002, states " Any claimants wishing to protest denial of ERISA based Long Term Disability Benefits, must provide all requests, demands, and court

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Robin

— Original Message —

From: George Whittenburg

To: Robin Hosea

Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; [Broadus Spivey \(E-mail\)](mailto:BroadusSpivey(E-mail)) ; [Karl Baumgardner](mailto:Karl.Baumgardner)

Sent: Friday, January 31, 2003 10:01 AM

Subject: RE: Final Attempt

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2/14/2003

by your wishes. If we are going to stay in the case, you will have to trust us and communicate with us. Please let us know your decision.
~Geo.

-----Original Message-----

From: George Whittenburg
Sent: Friday, January 31, 2003 7:27 AM
To: Robin Hosea
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)
Subject: RE: Final Attempt

Robin, I would appreciate either your or his providing me the examples that you refer to. And I would appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Thu 1/30/2003 10:47 PM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)
Subject: Re: Final Attempt

George,

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Let me state this simply. I am not a lawyer, I am not a judge nor am I a jury. I am a person concerned about certain events that have taken place over the last year. I am an educated professional and I have based my concerns on undeniable public information. I sincerely apologize if my concerns offend you, that was not my intent.

Sincerely,
Robin Hosea

-----Original Message-----

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail)
Sent: Thursday, January 30, 2003 5:41 PM
Subject: RE: Final Attempt

Robin, I am saddened to learn that you are dissatisfied with our firm. Never has our position to represent you been conflicted or compromised, and we have always advised what we thought was best for you. We have even advanced money to cover your COBRA insurance payments so you would not be without medical insurance. I have also considered you and Marshall to be friends and would have hoped you would come to me to discuss any questions or problems in a forthright manner rather than going around behind my back. It is not too late to do that, so at least give me the opportunity to dispel any fears or misconceptions you have about me. ~Geo.

-----Original Message-----

From: Broadus Spivey [mailto:bas@spain-attys.com]

Sent: Thursday, January 30, 2003 6:52 AM

To: Robin Hosea

Cc: Randy McClanahan; George Whittenburg;
rhile@swbell.net; Mwdies@aol.com; sbaena@bitzin.com

Subject: RE: Final Attempt

Dear Ms. Hosea,

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2/14/2003

that is outside the are of my practice.
Thank you.
Broadus

-----Original Message-----

From: Robin Hosea [mailto:hoseanbx@msn.com]

Sent: Tuesday, January 28, 2003 7:27 PM

To: Broadus Spivey

Cc: Randy McClanahan

Subject: Final Attempt

**Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433**

E-mail hoseanbx@msn.com

January 28, 2003

Dear Mr. Spivey:

Mr. Spivey, in consideration of making every attempt to discuss my concerns about the LTD and SEEC class litigation in a quiet and non-obtrusive manner, I called you on January 24th by telephone. We agreed to a meeting at your office in Austin, Texas on January 25th. At that meeting Marshall and I presented what appeared, from the information we discovered, to be conflicts of interest and other conduct that I could only conclude amounted to deception, lack of diligence, and either incompetence or intentional harm. I believe that the information Marshall and I shared with you *in confidence* pointed to the harm being done to my LTD claim and the SEEC class as a whole and that the conduct concerning these law suits would continue to do further harm. Most of the information we obtained is from public sources. At the same time, I requested that you consider reasonable alternatives that would address my concerns and that would not harm the class action lawsuit as a whole.

I understand that you do not believe that you have fiduciary duty to me in the LTD case, but I believe your

2/14/2003

duty to me in that matter rests in your professional responsibility to the public. I came to you because of your state and national reputation and because I believed, as do others, that you esteem to a level of ethical conduct higher than any other person involved with the SEEC vs. Northern Trust case. Perhaps you can appreciate my fear in even approaching you with complaint about Mr. George Whittenburg, whom I know you know professionally and personally, as a colleague and friend.

My objective in approaching you was not to force you to take a stance against George Whittenburg, rather I hoped you would seriously consider the concerns I brought to your attention, the potential for harm, and alternatives that would lessen the harm to me, as *your client* in the class action, and as *a member of the public* in the LTD case. I also approached you hoping that you would consider my concerns seriously and expecting you to know that I believed that you had a responsibility to protect me and the class from negative exposure and harm.

I, and the other SEEC litigants, have already experienced a heinous public and corporate betrayal. I do not wish to be at odds with the lawyers in either of these lawsuits. My request to you at this time is to reconsider what can be done to address the damage I believe has already done to my LTD suit and the steps that can and should be taken to avoid harm to the SEEC litigation. I remain willing to discuss options with you in the hopes of reaching a reasonable and just resolution. I intend to present this same request in writing to the other "partners" in the litigation.

Sincerely,
Robin D. Hosea

2/14/2003

hoseantx@msn.com

From: "Richard Hile" <rhile@swbell.net>
To: "Robin Hosea" <hoseantx@msn.com>
Cc: "George Whittenburg (E-mail)" <gwhittenburg@whittenburglaw.com>; "Randy McClanahan" <randy@mcllp.com>; "Broadus Spivey" <bas@spain-attys.com>
Sent: Tuesday, February 04, 2003 9:38 AM
Subject: Re: Final Attempt

Martin and I do not want copies of documents regarding your lawsuit. We have not been involved in that lawsuit. George has not discussed your lawsuit with us and has not provided us with any documents regarding your claim. Broadus has not provided us with any of the documents you provided him.

— Original Message —

From: Robin Hosea
To: George Whittenburg
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner
Sent: Monday, February 03, 2003 4:43 PM
Subject: Re: Final Attempt

To all members of the S.E.E.C. legal Team,

Rather than provide each of you with a duplicate of the information that I provided to Mr. Spivey, in confidence, now that my wish for that confidentiality is breached, please contact Mr. Spivey for copies of the materials provided to him on January 25, 2003.

It is important for you to know that I chose to speak with Mr. Spivey because of his reputation and the obvious respect of his peers. I had hoped to avoid the kind of repercussions that have unfortunately occurred since my conversation with him and because of my concerns for the vitality of my Long Term Disability claim and the impact that the information provided to Mr. Spivey may have on the S.E.E.C. class action.

Please be advised, that because Mr. Whittenburg has announced his desire to withdraw as counsel, I am taking steps to obtain substitute counsel. However, in the spirit of conciliation, I am hopeful that each of you will review the information provided to Mr. Spivey and consider alternatives over the next ten days. I will await your responses.

— Original Message —

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner
Sent: Friday, January 31, 2003 6:22 PM
Subject: RE: Final Attempt

2/14/2003

Robin, your comments about not wanting to hurt or offend anyone ring hollow to me. What were your thoughts when Marshall took the phone while you were talking to Randy McClanahan about all our law firms and said something to the effect that "You should all notify your carriers, I'm coming after you?" I am absolutely not concerned about your hurting my "professional or emotional status," to use your words. In light of your attitude, we cannot voluntarily continue to represent you, so you should immediately find another lawyer to take over your case. In the meantime, we will proceed to file the amended complaint unless you instruct us not to do so. Under the circumstances, we are no longer able to continue making your COBRA payments. We have made your February payment, which will give you and Marshall time to make other arrangements for future payments knowing that we will not advance any more COBRA money on your behalf. We wish you the best, and if you will promptly identify the lawyer who will be taking over your case, we will put his or her name in a motion to substitute counsel to provide a smooth transition. ~Geo.

—Original Message—

From: Robin Hosea [mailto:hoseanb@msn.com]
Sent: Friday, January 31, 2003 12:28 PM
To: George Whittenburg
Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner
Subject: Re: Final Attempt

George:

This is not a case of Marshall or I trying to become an ERISA expert, nor is this a case of me refusing to communicate. This is simply a case of a DOL person stating to me that in reply to my complaint filed against Prudential before you were retained, and the subsequent investigation of that complaint, that because I was now represented by an attorney, that the complaint would be disregarded and he then noted that in his interpretation of the regulations that his agency protects, I have alleged a defense that did not apply to my case. I communicated the concern to Karl, he stated that this was your decision and it was standard procedure in these cases. I then related this back to the DOL Civil Investigator and he then informed me that he had several case sites that would prove his position. As for me not wanting to discuss my concerns with you at this moment it is only prudent that I take the time to organize these concerns into a non aggressive letter that tries to limit any chance of hurting anyone's professional or emotional status.

Robin

—Original Message—

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner
Sent: Friday, January 31, 2003 11:47 AM
Subject: RE: Final Attempt

Robin, 29 CFR § 2560.503-1 is an applicable regulation that sets out requirements the plan must comply with. Subsections 503-1(c)(2) & (d) require LTD plans to provide claims procedures that "do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit

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determination prior to bringing a civil action under section 502(a) of the Act." Enron's plan complies, and we filed your civil suit after two appeals, complying with the regulations and the plan. It is probably unrealistic for you and Marshall to try and become experts on these legal issues, so the important thing is for you to have a lawyer that you trust. Since you have not been willing to disclose to me the concerns that you "believe are completely founded," it is becoming unlikely that you can have the necessary trust in us. Consequently, we think you should try to find another lawyer to take over your case. In the meantime, if you have no further suggestions on the draft of our proposed amended complaint and do not instruct us otherwise, we will proceed with our plan to file the amended complaint. ~Geo.

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]

Sent: Friday, January 31, 2003 11:08 AM

To: George Whittenburg

Cc: Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail); Karl Baumgardner

Subject: Re: Final Attempt

Hello George:

This Link

http://www.dol.gov/dot/allcfr/PWBA/Title_29/Part_2560/29CFR2560.503-1.htm will possibly help you to understand exactly what has my main attention.

The DOL/PWBA in a interpretation given 12/16/2002, states " Any claimants wishing to protest denial of ERISA based Long Term Disability Benefits, must provide all requests, demands, and court actions through the regulations set forth in 503-1 " . I am a bit confused as to why the Breach of Fiduciary Duty charge was used as I was simply denied benefits. In that context I am not suggesting that you are correct or incorrect, I am only confused. My medical records are extensive, including a disability Functionality Report from Dr. Phillip Daley stating that this is a clear case of Severe Advanced Chronic Degenerative Arthritis and he supports his findings with ortho pictures, x-rays, MRI, and Whole Body bone scan, blood tests and also 63 individual doctors reports. In 503-1 it is not a burden to prove the claimant permanently disabled, only that the claimant by doctors definition cannot do the job that they were specifically trained for and or greatly experienced in. I am on Vicodin, Darvocet, Ultram, Mobic, Tylenol 3, and Duragesic 25 patches. Three of these drugs are federally controlled narcotics and would certainly prohibit me from doing my higher level job. The doctor has written three separate reports indicating that my pain is permanent and that any knee replacement cannot occur for at least ten years. Within the regulations set forth I have a duty to provide all related medical documents to Prudential and I have always forwarded each individual report or test result immediately to your office to ensure your ability to provide that. It is also clear that in 503-1 that all related proof be provided before any court action.

George, I went to Mr. Spivey in confidence because of several concerns, That I believe are completely founded. I went to him because he is a person signed to the class action lawsuit and the immediate past president of the bar, I went to him in hopes that he could help me to understand the information I have. I am at this time sending you this concern because I need time to organize my thoughts on how to present my concerns without injury to either of us.

Robin

2/14/2003

— Original Message —**From:** George Whittenburg**To:** Robin Hosea**Cc:** Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail) ; Karl Baumgardner**Sent:** Friday, January 31, 2003 10:01 AM**Subject:** RE: Final Attempt

Robin, Section 404 of ERISA corresponds to Title 29, Section 1104 and covers more than bad investments. It also covers fiduciary duties. Section 502(a) of ERISA corresponds to Title 29, Section 1132(a), which provides for a civil action "by a participant or beneficiary" of the plan. We will await receipt of your examples and a listing of your specific concerns. We know that you are hurting -- physically, emotionally, and financially, but all we have done is try to help you. If you have lost confidence in us and want to get another lawyer to represent you in this action, we will cooperate in your substitution of new counsel. We are concerned, however, that because your case is a difficult one and far from a sure winner, you may not be able to find anyone else to take over for you. We don't want to get out of the case and leave you high and dry, but will abide by your wishes. If we are going to stay in the case, you will have to trust us and communicate with us. Please let us know your decision. ~Geo.

— Original Message —**From:** George Whittenburg**Sent:** Friday, January 31, 2003 7:27 AM**To:** Robin Hosea**Cc:** Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)**Subject:** RE: Final Attempt

Robin, I would appreciate either your or his providing me the examples that you refer to. And I would appreciate your specifically setting out your concerns so that I can specifically address each one. ~Geo.

-----Original Message-----**From:** Robin Hosea [mailto:hoseantx@msn.com]**Sent:** Thu 1/30/2003 10:47 PM**To:** George Whittenburg**Cc:** Randy McClanahan; rhile@swbell.net; Mwdies@aol.com; Broadus Spivey (E-mail)**Subject:** Re: Final Attempt

George,

As I now know that you are aware of my conversation with Mr. Spivey, I am sure that he can provide you with examples of my knowledge. My main concern is how a Title 29 503-1 became a 502-A, 404 as 404 is a claim of bad investment. All that I seek is to what I am rightfully entitled.

Let me state this simply. I am not a lawyer, I am not a judge

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nor am I a jury. I am a person concerned about certain events that have taken place over the last year. I am an educated professional and I have based my concerns on undeniable public information. I sincerely apologize if my concerns offend you, that was not my intent.

Sincerely,
Robin Hosea

— Original Message —

From: George Whittenburg
To: Robin Hosea
Cc: Randy McClanahan ; rhile@swbell.net ; Mwdies@aol.com ; Broadus Spivey (E-mail)
Sent: Thursday, January 30, 2003 5:41 PM
Subject: RE: Final Attempt

Robin, I am saddened to learn that you are dissatisfied with our firm. Never has our position to represent you been conflicted or compromised, and we have always advised what we thought was best for you. We have even advanced money to cover your COBRA insurance payments so you would not be without medical insurance. I have also considered you and Marshall to be friends and would have hoped you would come to me to discuss any questions or problems in a forthright manner rather than going around behind my back. It is not too late to do that, so at least give me the opportunity to dispel any fears or misconceptions you have about me.
 —Geo.

— Original Message —

From: Broadus Spivey [mailto:bas@spain-attys.com]
Sent: Thursday, January 30, 2003 6:52 AM
To: Robin Hosea
Cc: Randy McClanahan; George Whittenburg; rhile@swbell.net; Mwdies@aol.com; sbaena@bilzin.com
Subject: RE: Final Attempt

Dear Ms. Hosea,

I acknowledge receipt of your e-mail of yesterday, 1-28-03. As we discussed on Saturday, I have not represented you on your case in Dallas (# 02-13557-C; Robin Hosea vs. Prudential, in Co. Ct. at Law #3), and I understand that only George Whittenburg and his firm have represented you on that matter. I am copying the other members of the team that is representing our clients (some former employees) in the ENRON case in Judge Harmon's Court in Houston because you copied Randy McClanahan on your e-mail, and I understand that other members of this team are aware of your complaints. As I told you and

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your husband, Marshall, I will treat as confidential the specific matters that you discussed with me on last Saturday. George Whittenburg called me on Tuesday about another matter, and as I told you that I felt obligated to do, I told him that I had met with you and your husband in my office on last Saturday. But, I did not reveal any of the details of the matters that your revealed to me, and I do not intend to unless you instruct me to, or I am obliged to do so. As I told you in our discussion, I cannot represent you in any dispute with George because I would have a conflict of interest, and I cannot represent you in the case in Dallas because that is outside the are of my practice.

Thank you.
Broadus

-----Original Message-----

From: Robin Hosea [mailto:hoseantx@msn.com]
Sent: Tuesday, January 28, 2003 7:27 PM
To: Broadus Spivey
Cc: Randy McClanahan
Subject: Final Attempt

Robin D. Hosea
1406 Second Street
Seabrook Texas, 77586
Home (281) 474-2433

E-mail hoseantx@msn.com

January 28, 2003

Dear Mr. Spivey:

Mr. Spivey, in consideration of making every attempt to discuss my concerns about the LTD and SEEC class litigation in a quiet and non-obtrusive manner, I called you on January 24th by telephone. We agreed to a meeting at your office in Austin, Texas on January 25th. At that meeting Marshall and I presented what appeared, from the information we discovered, to be conflicts of interest and other conduct that I could only conclude amounted to deception, lack of diligence, and either incompetence or intentional harm. I believe that the information Marshall and I shared with you *in confidence* pointed to the harm being done to my LTD claim and the SEEC class as a whole and that the conduct concerning these law suits would continue to do further harm. Most of the information we obtained is from public

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sources. At the same time, I requested that you consider reasonable alternatives that would address my concerns and that would not harm the class action lawsuit as a whole.

I understand that you do not believe that you have fiduciary duty to me in the LTD case, but I believe your duty to me in that matter rests in your professional responsibility to the public. I came to you because of your state and national reputation and because I believed, as do others, that you esteem to a level of ethical conduct higher than any other person involved with the SEEC vs. Northern Trust case. Perhaps you can appreciate my fear in even approaching you with complaint about Mr. George Whittenburg, whom I know you know professionally and personally, as a colleague and friend.

My objective in approaching you was not to force you to take a stance against George Whittenburg, rather I hoped you would seriously consider the concerns I brought to your attention, the potential for harm, and alternatives that would lessen the harm to me, as *your client* in the class action, and as a *member of the public* in the LTD case. I also approached you hoping that you would consider my concerns seriously and expecting you to know that I believed that you had a responsibility to protect me and the class from negative exposure and harm.

I, and the other SEEC litigants, have already experienced a heinous public and corporate betrayal. I do not wish to be at odds with the lawyers in either of these lawsuits. My request to you at this time is to reconsider what can be done to address the damage I believe has already done to my LTD suit and the steps that can and should be taken to avoid harm to the SEEC litigation. I remain willing to discuss options with you in the hopes of reaching a reasonable and just resolution. I intend to present this same request in writing to the other "partners" in the litigation.

Sincerely,
Robin D. Hosea

2/14/2003

6. On January 7, 2003, the Court entered its Scheduling Order in this cause which sets the deadline for motions to amend pleadings for noon, July 7, 2003, and the deadline for motions to join other parties for noon, June 2, 2003. This motion seeks leave of Court to amend pleadings and to join a party defendant.

7. Further investigation by Plaintiff's counsel since the filing of her Original Petition in the State Court Action has revealed the need to add the Barron Long Term Disability Plan (the "Plan") as a defendant in this cause in order for Plaintiff to recover fully for her damages. The amending of Plaintiff's pleadings to add this party will not result in any delay in the trial of this cause and will not result in a surprise upon or be otherwise prejudicial to Defendant Prudential because the proposed amendments do not make any new substantive allegations against Defendant Prudential, it is still early in the prosecution of this case, and the parties have not engaged in any significant discovery yet. Further, as indicated by the Certificate of Conference below, counsel for Prudential does not object to this Motion. The parties have only exchanged Initial Disclosures and documents. It will not take very much time, expense, and effort for the attorneys or representatives for the Plan to obtain a working knowledge of the facts, issues, and evidence in the case once the Plan has been added as a party.

8. Pursuant to local rule 15.1, Plaintiff's proposed Second Amended Complaint is attached as Exhibit 1 and incorporated by reference.

9. Pursuant to Rule 15 of the Federal Rules of Civil Procedure, leave to amend shall be freely given when justice so requires. In this case, justice requires that Plaintiff be allowed to join the Plan as a party defendant in order for Plaintiff to fully recover the damages she has suffered.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests the Court to grant this motion and to order that Plaintiff's Second Amended Complaint be filed in this cause, and to grant plaintiff

such other and further relief, at law or in equity, general or special, to which she may show herself justly entitled.

Respectfully submitted,

WHITTENBURG WHITTENBURG SCHACHTER & HARRIS, P.C.

George Whittenburg, No. 21397000
Karl L. Baumgardner, No. 01931940
1010 S. Harrison, P.O. Box 31718
Amarillo, Texas 79120-1718
(806) 372-5700 Fax 372-5757

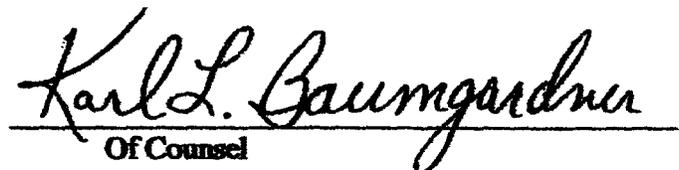
Laurel A. Fay, No. 24010396
600 N. Pearl Street, Suite 2300
Dallas, Texas 75201
(214) 999-5700 Fax 999-5747


Of Counsel

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

The undersigned certifies that on February 4, 2003, he conferred with Marcie Y. Flores, counsel of record for Prudential Insurance Company of America, who stated that she does not oppose the granting of this motion.


Of Counsel

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties by certified mail, return receipt requested, to them or their counsel of record on this 4th day of February 2003, addressed as follows:

William L. Banowsky, Esq.
Marcie Y. Flores, Esq.
Thompson & Knight, L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

Karl L. Baumgardner
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

ROBIN HOSEA,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

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CIVIL NO. 3:02-CV-2579-H

**ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT
AND TO JOIN A PARTY DEFENDANT**

Before the Court is Plaintiffs' Motion for Leave to Amend Complaint and to Join a Party Defendant. The Court finds that the Motion should be granted.

It is ORDERED that Plaintiff's motion is granted.

It is further ORDERED that the Clerk of this Court shall file Plaintiff's Second Amended Complaint in the records of this cause.

DATED: _____, 2003.

UNITED STATES DISTRICT JUDGE PRESIDING

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

ROBIN HOSEA,
Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA and
ENRON LONG TERM DISABILITY PLAN,

Defendants.

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CIVIL NO. 3:02-CV-2579-H

SECOND AMENDED COMPLAINT

TO THE HONORABLE COURT:

Robin Hosea, Plaintiff, complains of The Prudential Insurance Company of America and the Enron Long Term Disability Plan, Defendants, and in support thereof shows the following:

INTRODUCTION

1. Plaintiff brings this action under Sections 502(a) and 404 of the Employee Retirement Income Security Act ("ERISA")(29 U.S.C. §§1104(a), 1132), as a participant or beneficiary of the Enron Long Term Disability Plan (the "Plan"), an employee benefit plan established by Enron. The defendants are the Plans' Insurer which has improperly denied plaintiff benefits under the Plan and the Plan itself.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1132(e)(1) and (f).

3. Venue is proper pursuant to 28 U.S.C. §1391(b)(1) and (c) and 29 U.S.C. §1132(e)(2).

PARTIES

4. Plaintiff Robin Hosea (hereinafter "Ms. Hosea") is a resident of Seabrook, Texas. Ms. Hosea was a participant or beneficiary of the Plan.

5. Defendant Enron Long Term Disability Plan is an ERISA plan administered by Enron which may be served with process through its agent, Enron, Senior Vice President and General Counsel, P.O. Box 1188, Houston, Texas 77251-1188.

6. Defendant The Prudential Insurance Company of America, (hereinafter "Prudential") has appeared and answered in this cause. No service is necessary at this time. A copy of this Second Amended Complaint is being served upon Prudential's counsel of record as reflected in the Certificate of Service below.

7. Enron is not named as a defendant in this action as it has filed for protection pursuant to Chapter 11 of the U.S. Bankruptcy Code. Plaintiff reserves the right to add Enron if the bankruptcy stay is lifted with respect to her claims against Enron.

FACTUAL BACKGROUND

8. Prior to her employment with Enron Corporation, Ms. Hosea had worked for several financial institutions in their accounting and payroll departments for over 20 years. The duties she had performed at these other jobs included payroll and employee benefits accounting, essentially the same type of work she was hired to perform at Enron.

9. On November 6, 2000, Ms. Hosea began her employment at Enron Corporation as a Senior Benefits Specialist. Her duties included monthly expense reconciliations for nine separate cost centers; perform monthly reserve analysis reviews; review the general ledger coding of all payment requests, wire transfers and trust payments as requested by her department; lead the annual financial audit from March to September; assist the director with the \$117 million

budget preparation for the department, and coordinate the gathering and reporting of various other information as needed. Her office was located on the 16th floor of the building at which Enron Corporation conducted its corporate business. At all times while she was employed at Enron until she became disabled, she performed her duties in a satisfactory manner and missed only 2 days of work.

10. In the Spring of 2001, Ms. Hosea began experiencing severe pain in her left knee. She first was evaluated by Di Van Le, M.D., her primary care physician, on May 7, 2001. Her last day of work at Enron was May 24, 2001. Dr. Le executed a "Return to Work" note that indicated that Ms. Hosea could return to work on June 8, 2001, after her appointment with Phillip Daley, M.D. on June 7, 2001. Dr. Daley is an orthopedic surgeon who evaluated Ms. Hosea at that time for arthroscopic surgery on her left knee.

11. At the time of Ms. Hosea's visit to Dr. Daley on June 7, 2001, Dr. Daley executed a note that stated, "No work until released from doctor's care. Left knee surgery pending 6-14-01." As of the date of the filing of this Complaint, Dr. Daley has never released Ms. Hosea from his care. In fact, Dr. Daley has consistently and repeatedly indicated on his treatment notes for Ms. Hosea that she cannot return to work.

12. Dr. Daley performed the arthroscopic surgery on Ms. Hosea's left knee as scheduled on June 14, 2001. In the weeks after the surgery, it became clear that Ms. Hosea's problems were more extensive than first thought. Since June 7, 2001, Ms. Hosea has been diagnosed with severe arthritis, degenerative in nature, involving all surfaces of both knees, and had to undergo another arthroscopic surgery, this time on her right knee, in September 2002. Knee replacement surgery was contemplated by Dr. Daley, but he determined that such surgery should not be performed for another 10 years due to Ms. Hosea's relatively young age. Further,

Ms. Hosea has also been diagnosed with advanced arthritis in her left hip and degenerative disc disease in her back with some bulging discs that do not at the present time require surgical intervention. On September 3, 2002, Dr. Daley again executed a note that stated, "No work 6-7-01 until the present time. (no rtw date @ this time)."

13. While under Dr. Daley's care from June 7, 2001, to the present, Ms. Hosea has been taking several medications that were prescribed by Dr. Daley. Those medications include Vioxx, Darvocet, and Ultram, powerful drugs that affect Ms. Hosea's ability to perform her job duties in a satisfactory manner.

14. Under the Plan at issue, total disability is defined as follows:

"Total Disability' exists when Prudential determines that all of these conditions are met:

- (1) Due to Sickness or accidental injury, both of these are true:
 - (a) You are not able to perform, for wage or profit, the material and substantial duties of your occupation.
 - (b) After the Initial Duration of a period of Total Disability, you are not able to perform for wage or profit the material and substantial duties of any job for which you are reasonably fitted by your education, training or experience. The Initial Duration is shown in the Schedule of Benefits.
- (2) You are not working at any job for wage or profit.
- (3) You are under the regular care of a Doctor."

15. As of the date of the filing of this Complaint, Ms. Hosea is not working at any job for wage or profit, and has not worked since her last day at Enron on May 24, 2001. She is, and at all times relevant to this action has been, under the regular care of a doctor. Because of her incapacitating knee, hip, and back problems and the somnolent and narcotic effect of the medications that she is required to take to make the terrific pain she endures bearable, Ms. Hosea is not able to perform any form of accounting or bookkeeping duties for wage or profit or any

other jobs for which she is reasonably fitted by education, training or experience. Ms Hosea's condition clearly meets the definition in the Plain of "total disability."

16. In August 2001, Prudential sent Ms. Hosea forms to complete for processing her claim. Ms. Hosea timely and properly completed the forms and forwarded them to Prudential. After several weeks, Prudential denied Ms. Hosea's claim and notified Ms. Hosea of this action in a letter dated November 10, 2001. In that letter, Prudential stated that it determined that Ms. Hosea does not "meet the definition of Total Disability as defined" in the policy. The apparent bases for this determination were Dr. Daley's listing of Ms. Hosea's level of functioning as "sedentary" in the Attending Physicians Statement provided to Dr. Daley by Prudential and dated September 6, 2001, and Dr. Daley's November 12, 2001, office note in which he indicated that Ms. Hosea should avoid "prolonged standing and walking."

17. Ms. Hosea appealed the November 10, 2001, decision by Prudential via two letters dated December 5, 2001 and December 28, 2001. By letter dated February 7, 2002, Prudential again denied Ms. Hosea her LTD benefits. Prudential referred to its November 10, 2001 letter decision, then added further grounds for the denial, stating that the medications Ms. Hosea was taking "would not cause significant sedation or impair cognitive functioning" and that she had sedentary work capacity as of September 6, 2001, according to the Attending Physician Statement form that Prudential provided to Dr. Daley for him to check.

18. By letter dated May 10, 2002, Ms. Hosea again appealed Prudential's decision, pointing out that Dr. Daley had consistently and continuously stated in all his notes and statements that Ms. Hosea could not and should not return to her "sedentary" job and that Ms. Hosea is a candidate for knee replacement surgery. In this latest appeal, Ms. Hosea disputed Prudential's reliance upon Dr. Daley's description of her functioning capabilities as "sedentary"

because the only document in which he ever indicated that capability was in checking a box on a form that Prudential was responsible for preparing and because such description was the lowest functioning level that Prudential's form allowed the physician to check. In all other descriptions on that same form and in his other notes, Dr. Daley continuously and consistently indicated that Ms. Hosea could not and should not return to work.

19. On August 1, 2002, Prudential denied, for the third time, Ms. Hosea's claim for benefits. After again referring to its previous denial letters, Prudential stated that Ms. Hosea should have recovered from her June 14, 2001 surgery in time to return to work by November 27, 2001 (the date the benefits were scheduled to begin), that she was discharged from Clear Lake Rehabilitation on September 7, 2001 for noncompliance, and that her occupation does not require her to do any prolonged walking or standing. Further, Prudential stated that the fact that Ms. Hosea had been prescribed a mobility cart would not preclude her from doing her sedentary job.

20. Again, Prudential chose to use only those statements that suited its purposes. Even if Ms. Hosea could have recovered from her June 14, 2001, surgery by November 27, 2001, her debilitating condition encompassed more than just the left knee problem that necessitated the June 14, 2001 surgery. As Dr. Daly repeatedly stated in his notes, Ms. Hosea has numerous problems that continue to prevent her from working, even at a "sedentary" position, to the date of the filing of this suit. Further, Ms. Hosea was "discharged" from Clear Lake Rehabilitation on September 7, 2001, because her condition *prevented* her from continuing the rehabilitation program, not because of any failure on Ms. Hosea's part to follow the orders of her health care providers.

21. At all relevant times, Prudential failed to take into account the evaluations and prognoses of Ms. Hosea's attending physician and other health care providers in making its

decisions. Instead, Prudential has insisted upon denying benefits by selectively extracting only that language from the physician's notes and other records that coincide with its unsupported position that Ms. Hosea can perform the duties and responsibilities of her job at Enron.

ENRON'S LONG TERM DISABILITY PLAN

22. At all relevant times, Ms. Hosea was a participant or beneficiary of the Plan within the meaning of ERISA §3(7) (29 U.S.C. §1002(7)).

23. At all relevant times, the Plan was and continues to be an "employee welfare benefit plan" or "welfare plan" within the meaning of ERISA §3(1) (29 U.S.C. §1002(1)).

24. At all relevant times, Enron was the sponsor of the Plan. Its Sponsor Identification Number is 47-0255140 and Plan Number is 505.

25. Prudential acted as a fiduciary of the Plan pursuant to ERISA §3(2)(21)(A) (29 U.S.C. §1002(21)(A)). Prudential exercised control in the management and disposition of the Plan's assets by reviewing and determining the viability of the coverage claims made by employees.

26. Enron was designated as the plan administrator of the Plan, thereby making it a fiduciary pursuant to ERISA §402(a)(1) (29 U.S.C. §1102(a)(1)). Prudential, however, had sole authority to determine whether participants or beneficiaries of the Plan qualified for benefits under the Plan.

27. The Plan provides that employees who elected to receive Long Term Disability (LTD) coverage are eligible for benefits when they meet the definition of disability and complete the elimination period as described in the Plan. The Plan's definition of disability is stated above. The elimination period is 1,040 consecutive hours, or approximately 26 weeks. During

that period of time, no LTD benefits are payable to the employee. Once the elimination period has passed, the disabled employee is entitled to receive benefits under the Plan.

28. Ms. Hosea has been totally disabled as defined in the Plan for well over 1,040 hours, dating back to May 24, 2001. Prudential, as the insurer and a fiduciary of the Plan, has the duty to approve Ms. Hosea's benefits and begin payment of those benefits in the manner and method that is mandated in the Plan. Prudential has failed and refused, and continues to fail and refuse, to approve Ms. Hosea's benefits or to begin payment of those benefits in spite of Ms. Hosea's clear eligibility for LTD benefits under the terms of the Plan and Prudential's policy.

ERISA

29. ERISA is a comprehensive statute covering virtually all aspects of employee benefit plans, including long term disability benefits. ERISA requires all covered plans be in writing, and that plan administrators furnish to each participant a document called a "summary plan description." The summary plan description must apprise participants of their rights in a manner calculated to be understood by the average plan participant. ERISA §102 (29 U.S.C. §1022(a)).

Civil Enforcement under ERISA

30. Under ERISA, 29 U.S.C. § 1132(a)(1)(B), a participant or beneficiary may bring a civil action to recover benefits. Ms. Hosea, as a participant or beneficiary, sues to recover her long term disability benefits from the Plan and from Prudential that have been wrongfully withheld.

Breach of fiduciary duty under ERISA

31. Alternatively, in the event that Ms. Hosea has no other remedy under ERISA, she seeks recovery from Prudential for breaching its fiduciary duties owed her under ERISA.

"Fiduciary" is defined broadly in ERISA to include all people or entities who exercise any discretionary authority with respect to the management of a plan or payment of benefits. ERISA §3 (29 U.S.C. §1002(21)). Prudential clearly fits within that definition.

32. ERISA imposes on a plan fiduciary a duty of prudence, which requires the fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." ERISA §404(a)(1)(B) (29 U.S.C. §1104(a)(1)(B)).

33. ERISA imposes on a plan fiduciary a duty of loyalty, which requires each fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of ... providing benefits to the participants and their beneficiaries." ERISA §404(a)(1)(A) (29 U.S.C. §1104(a)(1)(A)).

34. By failing to pay Ms. Hosea the benefits she is clearly entitled to under the Plan, Prudential breached its fiduciary duties of prudence and loyalty. Prudential has acted contrary to the interests of Ms. Hosea, a Plan participant and beneficiary, by denying her the benefits that she is entitled to receive.

REMEDIES

35. Ms. Hosea brings this action against the Plan and Prudential pursuant to ERISA Section 502(a)(1)(29 U.S.C. §1132(a)(1)(B)), which authorizes a participant or beneficiary of a plan to bring a civil action "to recover benefits due him under the terms of the plan [or] to enforce his rights under the terms of the plan..." Under this cause of action, Ms. Hosea is entitled to recover the benefits due her, reasonable attorney's fees, and costs of action.

36. Alternatively, Ms. Hosea brings this action against Prudential pursuant to ERISA Section 502(a)(2) (29 U.S.C. § 1132(a)(2)), which authorizes a plan participant to bring a civil action for appropriate relief under ERISA Section 409 (29 U.S.C. § 1109). Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan" Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate"

37. Ms. Hosea, therefore, is entitled to: (1) recover her benefits under the Plan from the Plan and Prudential; (2) alternatively, to recover from Prudential losses to the Plan resulting from the breaches of fiduciary duties in an amount to be proven at trial and injunctive and other appropriate equitable relief to remedy these breaches; (3) reasonable attorneys' fees and expenses as provided by ERISA Section 502(g) (29 U.S.C. § 1132(g)); (4) taxable costs; and (5) prejudgment and post-judgment interest at the highest rate allowed by law.

CONDITIONS PRECEDENT

38. All conditions precedent to the bringing of this action have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- (1) Under Erisa Section 501(a)(1)(B)(29 U.S.C. § 1132(a)(1)(B)), judgment against the Plan and Prudential for recovery of her benefits under the Plan;
- (2) Alternatively, declaring that Prudential has violated the duties, responsibilities and obligations imposed upon it as a fiduciary as described above and, therefore, under ERISA Section 501(a)(3) (29 U.S.C. § 1132(a)(3)), granting an injunction enjoining Prudential from any act or practice violating the statute and/or the Plan, including restitution, rescission, an

accounting, imposition of a constructive trust, disgorgement, and/or all other appropriate equitable relief to redress Prudential's violations of ERISA;

- (3) Awarding plaintiff punitive damages;
- (4) Awarding plaintiff pre-judgment and post-judgment interest, as well as her reasonable attorneys' fees, expert witness fees and other costs; and
- (5) Awarding such other relief as this Court may deem just and proper.

Respectfully submitted,

WHITTENBURG WHITTENBURG SCHACHTER & HARRIS, P.C.

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Of Counsel

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties by certified mail, return receipt requested, to them or their counsel of record on this 4th day of February, 2003, addressed as follows:

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NATIONAL BOARD OF TRIAL ADVOCACY

4 February 2003

Robin & Marshall Hosea
1406 Second Street
Seabrook, TX 77586

By certified mail, return receipt requested

Dear Robin and Marshall:

In light of George's e-mail to you dated January 31, 2003, I return to you the original contract dated January 31, 2002, which is herewith terminated, and the original materials that you previously left with me.

You have no further contractual relationship with the law firms of Whittenburg, Whittenburg & Schachter, P.C., Dies & Hile, L.L.P., Spivey & Ainsworth, P.C. or McClanahan & Clearman, L.L.P., or with any of the attorneys in those firms with respect to any and all matters covered by the contract.

I enjoyed meeting you, and wish you every success.

Very truly yours,

MCCLANAHAN & CLEARMAN, L.L.P.

By: 
Randy J. McClanahan

RJMc/ksh
Enclosures

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

February 7, 2003

Robin Hosea
1406 Second Street
Seabrook, Texas 77586

Re: *Robin Hosea v. Prudential Insurance Co. of America*, Cause No. 3:02-CV-2579-H; in the
United States District Court for the Northern District of Texas, Dallas Division

Dear Robin:

We have prepared the enclosed Motion for Leave to Withdraw as Counsel for your review. We prepared it on the assumption that you have not yet found another attorney to represent you in this case. Please review the Motion and, if it is factually correct, please sign on the appropriate line on page 3 and return it to me in the enclosed, self-addressed, stamped envelope. If there are corrections to be made, send them to me via email. We will then forward to you a new draft for signature after making all necessary changes.

Respectfully,


Karl L. Baumgardner

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBIN HOSEA,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA and
ENRON LONG TERM DISABILITY PLAN,

Defendants.

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CIVIL NO. 3:02-CV-2579-H

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL

TO THE HONORABLE COURT:

George Whittenburg, Karl L. Baumgardner, and Laurel A. Fay and the law firm of Whittenburg Whittenburg Schachter & Harris, P.C. ("Movants") file their Motion for Leave to Withdraw as Counsel for Plaintiff pursuant to Local Rule 83.12.

1. This cause was removed to this Court on November 27, 2002. Plaintiff recently filed her unopposed Motion for Leave to Amend Complaint and to Join a Party Defendant which is still pending before the Court.

2. The Court's Scheduling Order provides for the following deadlines that are pertinent to this Motion: by noon April 14, 2003, the parties are to meet and file with the Court a joint report concerning discovery progress and the status of discovery negotiations, and motions, other than discovery motions, not specifically covered by the Scheduling Order must be filed. This motion is being filed well in advance of that deadline and in plenty of time for Plaintiff to retain counsel who can participate in timely preparing and filing the joint report.

3. Good cause exists under Rule 83.12 in that the Plaintiff has sought legal counsel regarding the possibility of asserting a claim against Movants for legal malpractice, has indicated her

dissatisfaction with Movants' handling of this case, has complained many times to other professionals about what she perceives as Movants' errors (without first consulting with or informing Movants of her concerns), and has exhibited a distrust of anything Movants have done or propose to do on her behalf. This course of events has damaged the relationship of trust and confidence between Movants and Plaintiff to the extent that Movants cannot continue to represent Plaintiff.

4. Movants have informed Plaintiff of the need for her to find other counsel and Plaintiff has indicated her intention to do so. As of the date of the filing of this Motion, however, Plaintiff has not retained other counsel, but, as evidenced by her signature below, consents to the withdrawal of Movants as her counsel of record in this case.

5. This motion is not made for purposes of delay, but in order that justice may be done.

WHEREFORE, Movants request that they be permitted to withdraw as counsel of record for Plaintiff Robin Hosea.

Respectfully submitted,

WHITTENBURG WHITTENBURG SCHACHTER & HARRIS, P.C.

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Of Counsel

MOVANTS