

THOUGHT LEADERSHIP

News

## E-MAILS SHOWING LEISURE TRAVEL & CONTINUED PRACTICE OF LAW SUPPORT CARRIER TERMINATING ATTORNEY'S DISABILITY BENEFITS

Newsbrief

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The Fifth Circuit recently reversed a district court's decision that an attorney's disability benefits were improperly cancelled holding the disability plan administrator was within its bounds to rely on a series of e-mails sent to the plan administrator by a former romantic partner of the attorney. In *Truitt v. Unum Life Insurance Company of America*, No. 12-50142, 2013 WL 4777327 (5th Cir. Sept. 6, 2013), the plaintiff stopped working in 2002 contending that she could no longer travel or repeatedly lift boxes weighting more than 25 pounds. She received disability benefits but the plan administrator notified her that it would continue review of her claim and might discontinue benefits if it received information that she was no longer disabled.

The plan administrator continued to obtain medical information concerning the plaintiff, and conducted surveillance. Having reviewed surveillance that showed her engaging in activities inconsistent with her reported 15 hours of "daily bed rest" and after obtaining an IME suggesting she could continue sedentary work, the plan administrator terminated benefits in 2006. It reinstated the benefits in 2007 after a further review of the file. The plan administrator terminated benefits again in 2009 after receiving and reviewing more than 600 pages of e-mails by a person identifying himself as having been in a personal relationship with the plaintiff for a number of years. The e-mails, which the Fifth Circuit excerpted over multiple pages of its opinion, documented extensive global leisure travel, participation in a lawsuit including trial, and apparent intent to deceive the plan administrator.

The plaintiff responded to the termination of benefits with an affidavit stating that she had been assaulted by an informant and that the informant was a computer "hacker" who had pleaded guilty to assault after allegedly choking her. The plan administrator stood by its decision and an administrative appeal and lawsuit followed. The district court concluded that the plan administrator's reliance on the e-mails was "arbitrary and capricious" and granted judgment based on the administrative record.

The Fifth Circuit panel reversed and remanded. First, the court held that the administrator was not under a duty to investigate the accuracy of the e-mails. The district court's holding that there was such a duty was contrary to settled authority that an administrator in Unum's position is not required to "reasonably investigate" a claim and that the proper analysis is limited to whether the record supports the administrator's decision. Second, the panel stated that there was no duty on the administrator to "consider the source" of the information used to reach its decision.

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Third, the panel noted that the administrator did not rely solely on the e-mails, but also on surveillance and the opinions of multiple medical experts. Finally, the panel reinstated the plan administrator's counterclaim for more than \$1 million in benefits previously paid and remanded for further proceedings.