

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LESLIE ITZENSON, as guardian : CIVIL ACTION
of minor ALISON PAIGE DEPHILLIPO:
:
v. :
:
HARTFORD LIFE AND ACCIDENT :
INSURANCE COMPANY : NO. 99-4475

MEMORANDUM ORDER

This is an ERISA action to recover benefits under an employee benefit plan administered by defendant. The case essentially turns on the reasonableness of defendant's interpretation of the term "accidental" under the plan. As noted in the court's order of May 25, 2000, plaintiff's ability to withstand summary judgment may depend on whether she can produce evidence to show that defendant interpreted this term inconsistently in making other benefit determinations.

The parties are locked in a discovery dispute in connection with plaintiff's attempt to acquire such evidence. Presently before the court is plaintiff's Motion to Compel Production of Documents Concerning Other Claims and for Sanctions, and defendant's responsive Motion for a Protective Order.

Plaintiff's decedent was killed when a motorcycle he was operating collided with a tree. His blood alcohol content was double the legal limit for operating a motor vehicle in Pennsylvania. Plaintiff initially requested defendant's files regarding accidental death benefit claims in the "same" circumstances. Defendant responded by producing the file for the

only claim for accidental death benefit involving the operation of a motorcycle by a beneficiary while intoxicated, which claim was denied. Defendant also produced an affidavit of its Claims Supervisor in which she avers that defendant "uniformly denied claims for accidental death benefits which involve motorcycles being operated by an individual who is legally intoxicated."

Plaintiff then broadened her request to claims involving "similar" circumstances defined to include any motor vehicle incident. While the operation of a motorcycle when intoxicated arguably entails even greater risk to the operator than to one driving an automobile when intoxicated, it cannot be said that defendant's handling of claims involving the latter is irrelevant. When defendant resisted this request, the court granted plaintiff's motion to compel production on May 25, 2000, as limited by a subsequent order of July 13, 2000. The discovery deadline was extended to August 15, 2000 to permit compliance and for defendant to produce a corporate designee for deposition to help explain the requested records and defendant's application of the policy term at issue.

Plaintiff asserts that defendant has willfully failed to provide the additional files or produce a designee. Defendant asserts that plaintiff has failed to pursue opportunities to obtain access to the desired files or to expend the time, effort and resources to follow through on her discovery requests. Defendant asserts that it "has no way to determine which claims involve evidence of intoxication" without an individual review of

the file for each of three thousand claims per year. Each party has attributed unflattering motives to the other.

The time has come to end discovery and to proceed to resolve defendant's pending motion for summary judgment.

It is difficult to believe that in the computer era when insurers compile an array of claims related statistics for internal purposes that defendant is incapable of at least identifying files with claims for death benefits involving the operation of a motor vehicle, if not those in which there was evidence of intoxication. Defendant apparently was able promptly to identify such a file involving a motorcycle. Even if some files have to be reviewed to identify claims denied because of, or granted despite, the intoxication of the driver-beneficiary, there has been no showing that this cannot be achieved with a quick review of the final claims decision document.

On the other hand, the time has come for plaintiff to refute defendant's assessment of her motives and to participate in this process. It has become apparent that the only realistic way to proceed without endless disputes about what is achievable and who is at fault for not achieving it is to require both parties to collaborate in good faith and share the burden in the retrieval of the requested information.

The court will extend the discovery deadline for a final time and require defendant to use every practicable means to identify files over the past five years regarding pertinent claims and to produce them to plaintiff. Insofar as defendant

truly cannot segregate out files without pertinent claims, the court will direct defendant to make available a representative with requisite knowledge and skill to assist plaintiff's representative in reviewing and identifying as promptly as possible each unsegregated file which in fact involves a death benefits claim on behalf of a beneficiary determined to be driving while intoxicated at the time of death. While plaintiff may, she is not required to review all such files. She may reasonably elect to review a random sampling or to look only at three or four years. Plaintiff may wish to consider that the more ancient a contrary interpretation is, the less may be its probative value. Plaintiff, of course, may copy for her use any document produced in this process.

Plaintiff's counsel did attempt to arrange for a deposition of a corporate designee by correspondence dated eight days before the discovery deadline. Such a deposition should be scheduled promptly if plaintiff still wishes to take it.

Sanctions will be imposed on any party who fails to comply with the order which follows and to make every effort finally to achieve an orderly conclusion of discovery herein.

ACCORDINGLY, this day of October, 2000, upon consideration of plaintiff's Motion to Compel Production of Documents and to Impose Sanctions (Doc. #24, all parts) and defendant's responsive Motion for a Protective Order (Doc. #25), **IT IS HEREBY ORDERED** that these Motions as presented are **DENIED**, the discovery deadline is extended to November 17, 2000 and

defendant shall use every practicable means promptly to identify files over the past five years regarding pertinent claims and produce them to plaintiff; defendant shall provide a representative with requisite knowledge and skill to assist plaintiff's representative in reviewing and identifying each file that truly cannot be segregated which in fact involved a death benefits claim on behalf of a beneficiary who was determined to be driving while intoxicated at the time of death; and, upon proper notice, defendant shall promptly produce a corporate designee for deposition. This case will be relisted for trial, if appropriate, upon resolution of defendant's motion for summary judgment.

BY THE COURT:

JAY C. WALDMAN, J.