

UNUMPROVIDENT

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By: Bonny G. Rafel

Over the past 18 months, UnumProvident has become the centerpiece of most tables of discussion when disability is the main course. Why and how has this occurred? Much of the fanfare about this company is a function of how they have turned their claim payment department into a claim management department. Juries and judges across our nation have been audience to information as to how this company focuses on ways to deny claims rather than finding ways to pay claims. In order to understand the workings of this company, it is instructive to review some of the dozens of cases that have been decided. These are but a handful of the 2200 disability cases filed against UnumProvident, Paul Revere or Provident Companies from 1997-2002.¹ UnumProvident boasts that it writes about 30% of the nations' disability business.

60 Minutes investigated UnumProvident and on November 17, 2002, reported, "A number of people who worked at UnumProvident, the giant of the disability insurance business, whose clients include CBS told us that the company's management puts tremendous pressure on claims handlers to deny new claims and shut down existing ones."

Until April, 2003, Ralph Mohny was the Senior Vice President of Customer Care for UnumProvident Corporation. In his position, he was able to oversee and control the claims handling that UP performed for its subsidiary companies. UnumProvident touts that it is NOT an insurance company, but, its employees market, advertise, sell and underwrite the disability policies sold under the private labels of its subsidiaries. That would include the former Provident Companies, the former Paul Revere Companies and the former Unum Companies.² In Mr. Mohny's words, "the companies came together. Provident joined together with Paul Revere in 1997, and in 1998 the combined Provident and Paul Revere companies joined together with Unum. There are General Services Agreements between UnumProvident and its subsidiaries for the provision of the claims handling services. UnumProvident receives compensation for claims services it provides to each subsidiary."³

¹ A list of the claim litigation received was supplied by UnumProvident Corporation in *Avner v. Paul Revere Insurance Group, UnumProvident, et al.* 9/12/02 .

² Testimony of Ralph Mohny, *Hangarter v. Paul Revere, U.S.D.C. Northern District of California*, January 28, 2002.

³ This is according to the testimony of UnumProvident General Counsel, Susan Roth.

Is UnumProvident A Proper Party?

UnumProvident may be liable as the alter ego of its subsidiaries. *Chapman v. UnumProvident et al* (Sup. Ct. of Cal. (Marin) January 2003); *Greenberg v. Paul Revere, et al* (D. Ariz. 2002); *Simon v. UnumProvident et al* (E.D. Pa 2002). As Mr. Mohny recently admitted, “with the combination of Provident Companies with Unum in 1999, I had responsibility for all claims for the combined companies”..we have claim payment locations in Chattanooga, Portland, Worcester, Glendale and Canada..”⁴

Recent Decisions And Verdicts In Disability Claims Involving UP And Its Subsidiaries

Ceimo v. General American Life Insurance Company, Paul Revere Life Insurance Company, Provident Life and Accident Company and UnumProvident (U.S.D.C. Arizona) April, 2003.

- Punitive Damages: \$79,000,000. The jury found that the defendants intentionally denied Ceimo’s claim for benefits knowing they had no reasonable basis for doing so.
- Emotional Distress Damages: \$5,470,000

Georgia State Department of Insurance fined UnumProvident’s four subsidiaries⁵ a total of \$1,000,000 in March, 2003 for its claim handling practices. Georgia State Insurance Commissioner John Oxendine said his agency’s investigation showed the company had a corporate mentality of “looking for every technical legal way to avoid paying a claim”. UnumProvident was placed on a two year regulatory probation. The terms are as follows:

1. Each of the Respondents shall immediately pay a monetary penalty in the amount of \$250,000.
2. The market conduct examination of the Respondents, initiated by Certificate 2000-MC15 and initially covering the period of January 1, 1999 through November 30, 2000 (the “initial exam period”), shall be extended and continue through the period of regulatory probation. The scope of the examination will include further investigation of certain issues identified during the initial exam period and the monitoring of current claims handling practices as described below.

⁴ Testimony of Ralph Mohny, 3/27/03, *Ceimo v. General American Life Insurance Company, The Paul Revere Life Insurance Company and Provident Life and Accident Insurance Company*.

⁵ Unum Life Insurance Company of America, The Paul Revere Life Insurance Company, Provident Life and Accident Insurance Company and Provident Life and Casualty Company

3. As part of the continuing market conduct examination of the respondents, a quarterly review of Georgia claims by a qualified examiner with knowledge and experience in the area of disability insurance to be selected by the Commissioner shall be performed for each quarter for 2 years from the date of this Order. Claims to be reviewed will be claims and/or complaints (whether previous, pending, or future) submitted by Georgia residents, and the claims/or complaints selected shall include but not be limited to consumer complaints received by the Commissioner and Respondents and random samples of denied claims.
4. **Respondents agree to be sensitive to claims in which a narrow interpretation of policy provisions or legal principles may lead to an unfair result. Respondents will consider, and, on a case-by-case basis, will make exceptions to such narrow interpretations, particularly in claim cases involving more subjective determinations, in order to accomplish a fair result. Any such exception will be consistent with the medical findings in the case, normal and customary application of the relevant policy provisions and applicable legal principles.**
5. **Claims personnel will not overrule medical opinions relating to the disability status of a claim that is provided by a more highly trained and/or qualified professional without concurrence of an equally trained and/or qualified professional.**
6. Respondents shall provide improved communications to claimants regarding denial and the availability of the appeals process. Such communications shall accurately and clearly complain the disability definition and basis for denial and refer to specific language in the policy that is relevant to the decision.
7. Respondents shall maintain copies of applicable policy forms or provisions in the claim files. Additionally, Respondents shall adhere to Respondents' policy of maintaining copies of medical records in the claim files.
8. Respondents shall improve tracking and availability of claims files and complaint files.

9. Respondents shall meet all applicable time standards for appropriately responding to claims filings and correspondence.
10. Respondents shall respect the privacy of claimants and will, in the process of collecting, using and determining disclosure of claim information to any third parties, act in accordance with applicable laws, regulations, policy provisions and claim policies of the Respondents.
11. Respondents shall bear all costs associated with the extended examination.

FURTHER, by consenting to this Order, Respondents agree to comply with all of the above-referenced terms of this Order and to comply with all applicable Georgia law and regulations. Respondents admit no violation of Georgia law or regulations and do not admit that the inclusion of any matter in this Order implies failure of prior compliance.⁶

Ralph Mohny, now ex-Senior Vice President of Return to Work Services—Development, stated, in response to the fine, “Issues have been identified around the way we communicate with people who file claims and the way we manage our tracking and availability of claim files that will make us a more service-oriented company.”

Chapman v. UNUMProvident Corp, et al., Superior Court of California, County of Marin, Order filed March 25, 2003

- **Punitive Damages**: New trial unless plaintiff accepts an award Reduced from \$30,000,000 to \$5,000,000. There is clear and convincing evidence showing that defendant’s decision to deny the claim was based on their “unreasonably restrictive interpretation of the policy language of plaintiff’s occupational duties, and the creation of a claims handling procedure that appears designed to avoid performing a thorough, competent, and objective investigation of plaintiff’s claim, and which procedures were intended to place defendant’s financial interests ahead of, rather than equal to plaintiff’s contractual interests.”
- **Bad Faith**: There was abundant evidence presented at trial to support the finding that the defendants’ unreasonably denied plaintiff his residual benefits.

⁶ See Order entered by the Office of Commissioner of Insurance, State of Georgia, March 19, 2003

- Breach of Contract: Motion for new trial is conditionally granted on the ground that the evidence is insufficient to justify the verdict for total disability damages, because the jury should have reached the conclusion that Dr. Chapman was residually disabled.
- Punitive damages: Evidence established: that crucial areas of defendant's claims handling practices were incomplete and/or not objective; taken as a whole these procedures appeared to be designed to place defendant's interest ahead of the insured's and to avoid affording the insured a thorough investigation of his claim; and not all of the claims personnel were adequately trained or qualified for their important duties.
- Future damages: Upheld as they apply to residual disability benefits based on the tort of bad faith
- Emotional distress damages: New trial on this issue is granted unless plaintiff accepts a reduced verdict award \$125,000 to \$15,000.

Hangarter v. The Paul Revere Life Insurance Company et al

Order denying judgment as a matter of law or new trial was entered on June 5, 2002. The jury found the defendant breached the duty of good faith and fair dealing to Ms. Hangarter. The court's specific findings:

- Past and future damages: Defendants breached their contract with plaintiff. Past disability benefits and the present value of future disability benefits awarded.
- Counsel fees awarded
- Emotional and mental distress damages awarded
- Bad Faith:
 - Defendants set out to target claims such as plaintiff's with termination the goal, and evaluated her claim with the purpose of terminating her benefits
 - Defendants developed, with the expertise of Ralph Mohny, a "comprehensive system for targeting and terminating expensive claims like plaintiff's."
 - Defendants had goals to increase the net termination ratio (the ratio of the value of terminated claims compared with new claims) which provided the incentive for Provident to terminate claims with high reserves
 - Defendants conducted roundtables, the purpose of which was to target claims in order to meet net termination ratio targets and the proceedings were not documented in the claims files.
- Punitive Damages: Upheld award of \$5 million. The jury found sufficient egregious acts by Defendants to justify its award of punitive damages.

- conduct constituting the type of malice, oppression or fraud sufficient to justify punitive damages: the roundtables, the use of a biased medical examiner, failing to advise plaintiff of benefits to which she was entitled, and then terminating her benefits when she remained totally disabled.
- Defendants violated the Unfair Insurance Practices Act Insurance Code Section 790.03 and their bad faith in doing so constitutes a violation of Cal. Bus. & Prof. Code Section 17200.
- Injunction: The Court ordered defendants to obey the law, enjoins them from future employing biased medical examiners, destroying medical reports, and withholding form claimants information about their benefits.

Greenberg v. The Paul Revere Life Insurance Company

U.S.D.C. District of Arizona 7/1/02

Order of Judge Thomas J. Whelan

- Alter Ego: As UnumProvident employees made the decision to initiate the investigation of the claim, retained the medical experts to evaluate the disability, determined what information to provide to the medical experts, and ultimately made the decision to terminated policy benefits, they were liable for their actions even though the contract was between Greenberg and Paul Revere.
- Past and Future Damages: Past and future policy benefits are recoverable as part of the jury's compensatory damage award for breach of contract.
- Punitive Damages: Upheld award of \$2.4 million. Defendants knew the risk of harm to plaintiff by their terminating disability benefits. The actions by the defendants including the withholding of favorable information regarding Greenberg's disability from its medical examiner ignoring their own employee's recommendations regarding the handling of the file and evidence of the profitability to defendants by the wrongful termination was sufficient to support a finding that defendant's conduct was reprehensible.

Lain v. Unum Life Insurance Company of America 279 F.3d 337 (5th. Cir. 2002)

- ERISA claim: In evaluating how far to 'slide the scale' of the abuse of discretion standard, the court stated that "UNUM infused its inherent, institutional conflict of interest into its employees by providing substantial financial bonus incentives based partially on UNUM's financial achievement and its net earnings per share." *Id.* at *343.

Wurm v. Commercial Insurance Company of Newark, NJ, First Unum Life Insurance Co., et al Supreme Court of the State of New York, (9/5/01)

- Past and future damages: Awarded past and future damages under the theory of repudiation of the contract.
- Bad Faith: The jury was presented with sufficient evidence to reasonably conclude that First Unum believed that Dr. Wurm was totally and permanently disabled yet acted in bad faith in investigating her claim and in denying her benefits. (Bad faith requires an extraordinary showing of disingenuous or dishonest failure to carry out a contract and exists where the wrong complained of is morally culpable, or actuated by evil motives.)

Dishman v. Unum Life Insurance Company of America 269 F.3d 974 (9th Cir. 2001)

- Creative causes of action in an ERISA setting: ERISA did not preempt claim for tortious invasion of privacy committed by private investigative agencies hired by Unum when they falsely claimed to be a bank loan officer, falsely represented their identity to neighbors, impersonated him, and called his residence and hanging up the phone.

Hines v. Unum Life Insurance Company of America 110 F. Supp. 2d 458 (W.D. Virginia 2000)

- ERISA claim: Unum's reliance on a videotape showing Hines marginally active, and ignoring eight years of documented medical evidence of her dysfunction is borderline unconscionable at best. "any reasonable person would agree that this action reeks of partiality and Unum's attempt to hide behind the veil of administrative discretion cowers in the glare of the ire of this court". The record clearly established Unum's bad faith in administering the plan which supported finding in favor of Mrs. Hines and awarding reasonable counsel fees and costs. (29 U.S.C.A. §1132 (g) (1).)

Useful Topics To Cover And Information To Obtain During Discovery

- Roundtable reviews, both "mini" and regularly scheduled
- Best Practices
- Projected closures
- Return to Work Reports
- Weekly reports
- Performance Measurements
- Performance Recognition Rewards
- Compensation
- MICP (Management Incentive Compensation Program)
- Liability Acceptance Rates

- Expected Durations
- Expected Resolution Dates
- Actual to Expected Loss Ratios

Organizational Chart

Vice President of Customer Care

Site Heads: Portland, Worcester, Chattanooga, Glendale, Canada

Impairment Heads: Cancer, General Medical, Orthopedic, Psych, Cardiac

Managers

Directors

Consultants

Senior Customer Care Specialists

Customer Care Specialists

****UnumProvident fired Harold Chandler, as chairman, chief executive and president on March 30, 2003.