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Litigation Lineup: Recent Decisions in Life and Disability Insurance Run into Policy Lapse, COVID-19, and Conflict of Interest Issues

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Life Policy Lapse Shortly Before Insured's Death In *Simon v. USAA Life Insurance Co.* (Mar. 29, 2024), the insurer denied death benefits under a term life insurance policy, which had lapsed for nonpayment of premium two days before the insured's death. The district court granted the insurer's motion to dismiss, and the Eleventh Circuit Court of Appeals affirmed. The insured passed away in October 2021, after a period of illness and incapacitation. In December 2021, the insured's wife and beneficiary found letters from the insurer advising of the premium due and lapse, and she mailed full payment of the missed premium. The insurer received the payment and deposited the funds, but approximately 45 days later notified the beneficiary that the policy had lapsed, refunded the premium payment, and advised that death benefits would not be provided. **Disability Denial Not Tainted by ERISA Conflict** In *Harmon v. Unum Life Insurance Company of America* (Mar. 12, 2024), the Sixth Circuit Court of Appeals affirmed the district court's judgment upholding a plan administrator's termination of long-term disability benefits. Due to a back injury, the plaintiff was approved for long-term disability benefits due to his restriction by a treating physician to lifting only five pounds, and the inability of his former employer (a fitness facility) to accommodate that restriction. After 24 months of payments, he was determined by the administrator to be unable to perform "any gainful occupation" based on its vocational consultant's review of job prospects in his labor market (Memphis, Tennessee) and finding that the jobs he could perform with his skill set and physical restrictions paid less than a gainful wage. Shortly after the administrator approved the plaintiff's claim, the Social Security Administration independently determined that he was not disabled and could perform sedentary work and some light work, such as the work of a cashier, ticket seller, or assembler. The plaintiff subsequently disclosed that he was living in Miami, Florida, and "lifting 10–15 pounds as part of his regular exercise regimen." The administrator had its clinical

consultant and in-house physician review his medical records, and they determined he was capable of light work. The administrator also "conducted a new vocational assessment, focusing on the Miami labor market and including the light work it and SSA determined [the plaintiff] could handle," which identified alternative occupations that paid a gainful wage. As a result, the plaintiff was "cleared for light work," and the administrator terminated his benefits. The policy included a 31-day grace period and stated that, "[i]f a premium is not paid when due, the policy will terminate except as indicated elsewhere in the policy." The policy allowed for reinstatement after lapse due to nonpayment of premium upon receipt of the unpaid premium and with satisfactory evidence that the insured was still insurable. Applying Alabama state law, the Eleventh Circuit agreed with the district court's conclusion that waiver or estoppel did not prevent the insurer from denying coverage. The insurer's retention of the late premium payment for approximately 45 days did not suggest the insurer had acted with unreasonable delay or had treated the policy as in force or in a manner inconsistent with its rejection of the claim. The Eleventh Circuit also agreed that the doctrine of equitable tolling did not apply to excuse the insured's failure to make a timely premium payment during a period of incapacity, explaining that the insurance contract was unambiguous and contained no provision for tolling of the due date for payments. **No Disability Payments for Alleged Brain Fog** In *McClendon v. United of Omaha Life Insurance Co.* (Mar. 15, 2024), the Eastern District of Arkansas entered summary judgment for the claims administrator after it denied the plaintiff's claim for long-term disability benefits for "long-COVID." The plaintiff, a pizza cook for a college, had not worked since he was diagnosed with COVID-19 in July 2020, claiming that he had long-COVID and was enduring brain fog. He received short-term disability benefits under his employer's plan, but the administrator denied his application for long-term disability benefits under the policy's "own occupation" provision, concluding that his medical records did not show he was unable to perform the material duties of his regular occupation. After a de novo review, the court agreed with the administrator's conclusion that the plaintiff "did not provide enough information for the company to determine the extent of any disability," noting that the "medical records submitted show uncertainty rather than clarity." Although the plaintiff's reports of brain fog were "consistent and long-standing," his extensive test results largely came back normal, and the testing and evaluations done by various specialists did not provide an objective basis for any disabling condition. Moreover, none of his doctors indicated that the plaintiff's "brain fog made him unable to do any important task required of a pizza cook on a full-time or part-time basis."

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