

Article 1 – Hundreds sue largest disability insurer

By Julie Appleby, USA TODAY

Joan Hangarter bought a disability policy in 1990 to protect her should she ever fall seriously ill. Yet, after becoming disabled, she and her children ended up on welfare when her insurer cut off her benefits.

"The person who sold me this policy said it would keep a roof over my head should I ever be unable to work," says Hangarter, 54. "I lost the roof over my head."

She is one of hundreds of policyholders who have filed lawsuits against the nation's largest disability insurer, UnumProvident, alleging that it unfairly cut off their benefits by targeting certain policies for cancellation, particularly high-cost cases and policies offered through employers, which come with fewer legal protections.

The lawsuits – and several recent large jury verdicts against Unum – have heightened scrutiny of the disability insurance industry. They have also renewed debate about a federal law that limits policyholders' legal recourse in such disputes.

In February 2002, Hangarter won a \$7.7 million jury verdict against Unum.

The company denies the allegations – and is appealing her case and other recent multimillion-dollar verdicts.

"We do not set targets to close claims," says Tom White, vice president of investor relations for Unum. "Nor do we target categories of illnesses or injuries."

State investigations

But the company, which made Fortune magazine's "most admired companies" list for the third year last month, is under investigation in several states, including Georgia, Florida and California.

Georgia officials this week are set to announce a "significant" disciplinary action against Unum, culminating an 18-month investigation of the company, says Insurance Commissioner John Oxendine.

California is conducting a "market conduct study" of Unum.

"Unum, for the last several years, has had an internal policy of canceling insurance policies that are already in place," says California Insurance Commissioner John Garamendi.

In November, U.S. District Judge Robert Larsen – in upholding Hangarter's verdict – said Unum created "a comprehensive system for targeting and terminating expensive claims."

For its part, Unum says it pays all legitimate claims. Like all insurers, spokesman White says Unum must be vigilant for fraudulent claims, people who are not really disabled seeking to collect.

The company pays 90% of all claims filed, White says. Of the remainder, 2% are denied because the patient doesn't meet criteria for disability in their policies, he says, while 8% are deemed ineligible for other reasons or recover.

He declined to disclose how many claims are initially approved, then denied within a year or two

In a couple of recent cases, policyholders had claims denied after a few months of receiving benefits. One involved former eye surgeon John Tedesco of Florida, who developed a hand tremor. He filed a claim with Unum, which paid his benefits for four months, then cut them. He was later diagnosed with Parkinson's disease, a degenerative disorder.

After suing Unum, Tedesco won a \$36.7 million jury verdict in 2001. Unum appealed, then settled with Tedesco for an undisclosed amount. A California eye surgeon, Randall Chapman, sued Unum after it cut off his payments three months after he filed a claim saying he could not work because of phobia-caused hand tremors. A jury in January said Unum should pay \$31.7 million to Chapman.

The doctor's phobia "was not visible to any of his patients. Nor was it detected by any of the physicians he worked with," says White, whose company is appealing the decision. White says his company has come under scrutiny for about three lawsuits over three years.

"That's a period of time where we've handled 1.2 million claims," says White. Unum insures about 25 million people, with 28% of the group disability sector and 43% of the individual policy market.

"Less than one half of one percent of all disability claims that we manage ever end up in litigation, and our record is that we win three of four cases," says White, who refused to say how many cases are pending against Unum. Plaintiff's lawyers, however, say the cases number in the thousands.

Federal law restrictions

Hangarter's case brings up another twist in disability insurance coverage.

For almost two years after her shoulder injury, Unum made monthly payments to Hangarter, who had been a self-employed chiropractor in San Francisco. But in March 1999, the insurer's medical examiner ruled that she could go back to work, seeing two patients a day.

When she protested, the insurer claimed that her policy was an employer-provided plan – and therefore exempt from most state laws. Until she was able to get a judge's ruling that her plan was an individual policy – covered by state law – she was unable to find a lawyer willing to take on her case because the expected payment under federal law would have been far lower than under state law.

Under federal law, policyholders who sue and win in cases where policies are unfairly terminated can collect only what was owed on policies, not economic losses or punitive damages. Most policies offered by employers fall under federal law rather than state law, which allows damage awards. "Even if you win (the federal cases), you've lost," says Frank Winkles of the Winkles Law Group in Tampa. "You've lost time, you've lost use of the money and maybe your house."

Disability insurance is not the only area affected by the federal law, the Employee Retirement Income Security Act of 1974, or ERISA. Designed to protect pensions, it has been interpreted by courts to also cover health insurance provided by many employers

Protections debated

The hotly debated "patients bill of rights," which remains stalled in Congress, would have expanded patients' right to sue in disputes with health insurers. Opponents say the proposal would raise premiums and lead to lawsuits against employers over health care disputes.

Now, the issue is arising again over disability insurance. A San Francisco attorney who represented Hangarter says disability policies offered through employers should come with a warning. "Over 150 million

Americans are being duped into buying employment-based health and disability policies that strip them of all protections against fraudulent insurance practices," says Ray Bourhis of Bourhis & Wolfson. He says state insurance commissioners should require such warnings.

But that very same federal law prevents commissioners from requiring a warning, says Garamendi from California.

Unum – then called Provident – discussed ERISA in a 1995 memo, recently released by attorneys suing the firm.

"The advantage of ERISA coverage in litigious situations are enormous," the memo says, citing 12 claims that settled for \$7.8 million in total. "If these 12 cases had been covered by ERISA, our liability would have been between zero and \$0.5 million."

Unum's White says ERISA has helped hold down costs. "There is protection under ERISA because claims are not subject to punitive damages," says White. "Because of that, our prices are affordable and coverage is extended to many Americans."

Garamendi says ERISA needs to be amended. He doubts prices would go up if it were. "What good is an insurance policy that you're not able to collect on? Or one that the company will come back and take away your benefit?" he says. "That's not a very good policy no matter what the price."