



For Immediate Release
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Contact: Scott Mulhauser/Erin Shields
(202) 224-4515

**Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding Long-Term Disability Insurance**

Black's Law Dictionary defines "insurance" as:

"A contract whereby . . . one party undertakes to compensate the other for loss . . ."

Thus, an insurance policy is only good if the insurance company actually compensates the consumer, when there's a loss.

Today, we'll look at long-term disability insurance. We'll consider cases where insurance companies are failing to live up to their side of the bargain. And we'll hear ideas about how to fix that.

We'll learn about plans offered to employees through their employers. This occurs under ERISA, the Employee Retirement Income and Security Act.

And we'll compare what happens under ERISA with what happens under Social Security.

Abusive insurance company tactics start with having doctors with conflicts of interest review claims. Many of these doctors are employed either by the insurance company or by companies that do a lot of business with the insurance company.

These arrangements make it far too easy for the doctors to deny claims, terminate claims, or reject appeals.

Consider the case of Charles Tucker.

Charles's neurologist diagnosed him with multiple sclerosis. Charles's doctor said that the disease "basically disabled him from performing his occupation." Ten other doctors agreed.

Charles filed a claim with his long-term disability insurance company, Standard Insurance Company.

Meanwhile, a doctor who worked for Standard put a medical report in Charles's file. The company doctor never met Charles. The company doctor never examined him.

Even so, the company doctor concluded that “the diagnosis of multiple sclerosis is not supported . . . and the patient could return to a sedentary work activity.”

When Charles found out about this report, he was, understandably, quite upset. He contacted the news media, who contacted the insurer. Only then did Standard approve Charles’s claim.

Or consider the case of Rocky Whitten.

Rocky suffered a broken neck. As a result, Rocky had severe headaches, memory loss, pain, and significantly-reduced vision from all the medicines that he had to take.

Rocky’s doctor said that he was permanently disabled.

But Rocky’s insurance company, The Hartford, hired a private investigator. The private investigator put Rocky under video surveillance.

The private investigator took videos of Rocky getting in and out of a van, reading a magazine, and dipping corn chips into salsa at a restaurant.

So The Hartford sent Rocky a letter telling him that he was “physically capable of performing full-time sedentary occupations.” And The Hartford terminated his benefits.

Rocky appealed the decision through The Hartford’s internal appeals program. But the company’s internal appeals program turned him down. Soon his finances became desperate.

Rocky and his attorney prepared to sue The Hartford. And Rocky reached out to the news media. The media called the company. And miraculously, The Hartford paid Rocky’s back benefits and reinstated his monthly benefits.

Abuses like these are not uncommon. Thousands of cases clog the district courts.

Many claimants end up in desperate straits. Some lose their homes, their savings, and even their spouses or custody of their children.

How do insurance companies get away with these abuses? Unfortunately, loopholes in the law permit them.

First, ERISA preempts state insurance measures to address these abuses.

That means that claimants cannot get jury trials, pre-trial discovery, or the right to submit evidence to the court. And claimants cannot receive punitive or consequential damages.

Second, companies can include what's called a "discretionary clause" in their insurance plan document.

In most states, these clauses mean that it's not enough for a claimant to prove that the company's reasoning is weak when it decides to deny benefits. To win the case, the claimant has to prove that the company's reasoning is arbitrary or capricious. That's a significantly higher standard.

It's time to close these loopholes. It's time to end these abuses.

An insurance policy is only good if the insurance company actually compensates the consumer, when there's a loss. And insurance law is only good if it helps to make that happen. It's time to make sure that the law does that.

And so, let's hear what's happening in the long-term disability insurance industry. Let's hear what we might do to fix it. And let's do what we can to make sure that insurance is good for the consumer, when there's a loss.

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