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By Electronic Transmission

Pyllis C. Borzi, Assistant Secretary of Labor
Employee Benefits Security Administration
Room M-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Claims Procedure Regulations for Plans Providing Disability Benefits
RIN No.: 1210-AB39
Regulation: 29 C.F.R. §2560.503-1

Dear Secretary Borzi:

I write on behalf of past and present clients, each of whom is an ERISA plan participant and disability benefit claimant who was denied benefits.

After law school, I went on to earn an LL.M. in Labor and Employment Law from Georgetown University Law Center, and in conjunction therewith, also earned its Certificate in Employee Benefits Law. I began private practice in New York, representing individuals whose disability claims had been denied, approximately 90% of these individuals were participants in ERISA-covered employee benefit plans. I later moved my practice to suburban Boston. I believe, based upon what I have been told by prospective clients and colleagues alike, that I am the only attorney who routinely handles ERISA disability benefits litigation on behalf of individual plan participants north of Boston. Over the past twenty years I have represented hundreds of such clients at all stages: administrative claim review, through federal litigation, as well as appeal. Approximately 80-90% of my practice is dedicated to representing ERISA disability claimants.

When I started out, the federal courts were still of the view that a claimant was entitled to a trial in the review of his benefit denial, and full discovery was allowed without question, just as in any other civil suit in federal court. Much has changed, however, over time, and an ERISA

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plan's participant's opportunity for success in the litigation of claim denial review has been steadily narrowed. The above-noted dearth of competing plaintiff-side ERISA benefit attorneys is due to the difficulty in achieving positive results in these cases due to the unbalanced application of the governing law. Simultaneously, because the entities charged with the administration and management of employee benefit plans and their assets operate under a conflict of interest, the trend has been an increase in unreasonable claim practices. This has made the internal, or "administrative" review of claims all the more important. Accordingly, the proposed changes to the regulations would strengthen them, particularly to the benefit of plan participants.

I would also like to provide three additional comments.

First, the DOL should codify *Abram v. Cargill*, 395 F.3d 882 (8th Cir. 2005). A full and fair review—that which is *required* by ERISA—is meaningless where an insurer simply waits to hire its own paid medical reviewers, and then relies upon their paid opinions without the opportunity for input or rebuttal by the claimant. This type of "sandbagging" is a practice which must be stopped, for ERISA to be true to its intent.

Second, the regulations should require significant deference to favorable Social Security Disability ("SSDI") decisions because obtaining SSDI is more difficult. SSA uses different criteria for determining disability, than that found in the typical ERISA Long Term Disability ("LTD") Plan. It is a tougher standard for a claimant to meet. Under most LTD plans, the claimant must show only an inability to work in any occupation, taking into account training, education, experience, and (in some cases) pre-disability earnings. This is far less strict than SSA's standard.

Finally, I join my colleagues who have suggested that the plan administrator be required to alert a claimant, *specifically, and in writing*, to the limitations period's *actual date*, for bringing suit in federal court. The administrator is in the best position to do so. Alternatively, I propose the regulation be amended to provide that:

a plan will be deemed to be reasonable only if— it includes a provision such that its contractual limitation period begins to run only as of the date of its final denial upon review, and be for a period of no less than one year.

Respectfully submitted,

/s/ Stephen L. Raymond

Stephen L. Raymond