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## Huntington attorney busy with ERISA cases

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By KELLY HOLLERAN

CHARLESTON — A former managing partner of a Charleston accounting firm and a former Kentucky worker are two of about 15 people attorney Mark Underwood has represented in suits this year against insurance companies, alleging they were denied benefits.

Wallace F. Suttle and James Kazee recently filed suits under the Employee Retirement Income Security Act, a federal law that applies to all workers who get benefits through their employment.

When people such as Suttle and Kazee are denied benefits, usually through no fault of their employer, they can make an ERISA claim.

Defendants in most ERISA cases are insurance companies, said Mark Underwood, attorney for both Suttle and Kazee.



Underwood

Suttle filed his complaint after he was denied long-term disability benefits through Companion Life Insurance Company on Feb. 22, 2006.

Suttle worked as president at his accounting firm until March 21, 2003, after he was diagnosed with coronary artery disease, according to a letter his doctor Brad McCoy wrote.

"Mr. Suttle reports that since seen last he remains chronically fatigued and has intermittent chest and jaw discomfort with cold air and exertion," the letter states. "He states this has lessened somewhat since he has gone on disability at work."

Suttle claims he received disability benefits from an individual disability policy through Unum Provident, which still continue today.

However, when he applied for long-term disability through his company policy, Companion Life Insurance, he was denied, according to the complaint he filed in federal court June 20.

He claims he appealed the insurance company's decision, but was denied for a second time on April 14, 2006.

The denials were due to "the opinions of his treating physician and the holding of the United States Social Security Administration," according to the complaint.

Suttle claims the denial was arbitrary, illegal, capricious, unreasonable, discriminatory and not made in good faith.

In a case similar to Suttle's, Kazee claims he stopped receiving disability after getting a denial letter on May 18, 2005, from a claims manager for Cigna Insurance Company.

Kazee had worked as a cable installer for Adelphia Communications until an accident occurred which bent his leg in a way that caused his foot to touch his shoulder, states a letter from Underwood to the Appeals Unit.

As a result of the April 21, 2003, incident, Kazee had severe knee damage, a torn lateral meniscus, knee pain and swelling from a 2004 surgery, severe nerve damage in his right knee, carpal tunnel syndrome in both hands, moderate to severe depressive disorder and anxiety/panic disorder, the letter states.

Three experts – Kazee's primary care physician, a medical doctor and a physical therapist – claim Kazee is permanently disabled, according to Underwood's letter.

Kazee filed for short-term disability on April 26, 2003, and received it through July 18, 2003, according to the complaint.

He had been on long-term disability since July 19, 2003, and was paid benefits for two years, according to a complaint filed Aug. 26 in federal court.

After he received the initial denial letter, Kazee's treating physician sent additional letters and



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forms on June 7, 2005, appealing the company's decision, the suit states.

But Kazee claims he received another denial letter on May 30, 2006, from an appeal claims manager for the insurance company.

Multiple unsupported reasons for the denial are given in both letters, Underwood's letter states.

"For example, one denies him based on lack of medical evidence to support his claim," the letter states. "The denial letter also states 'the information that we had on file did not support the restrictions and limitations preventing you from performing the duties of your own occupation.'"

The last statement was untrue because Cigna had already paid Kazee for 24 months before his first denial letter, Underwood's letter states.

Kazee and his counsel sent a second appeal letter Dec. 19, 2006, but Cigna Insurance has still not responded to the letter, according to the complaint.

"The failure to act upon the appeal letter by the Defendant's constitutes a constructive denial," the suit states. "An administrative appeal of the constructive denial would have been futile and thus the administrative remedies have been exhausted."

Kazee claims that according to the company's plan, he is totally disabled and is due to the benefits of the plan, according to the complaint.

"The decision denying the Plaintiff the rights and benefits due to the Plaintiff under the Plan was arbitrary, illegal, capricious, unreasonable, discriminatory and not made in good faith," the suit states.

In addition to prejudgment interest, attorney's fees and court costs, both Suttle and Kazee are seeking judgments ordering the insurance companies pay them all benefits due under the plan.

They also seek judgments either declaring all rights and benefits due them are vested and nonforfeitable or awarding them money for everything they are owed.

They are represented by Mark F. Underwood of Underwood & Proctor in Huntington.

Underwood represents a majority of West Virginia and southern Ohio ERISA cases. He said he files about 15 per year.

Two similar cases he has recently filed involve Tiffany Toothman and Stephen Larkin.

Toothman worked for Bob Evans and was denied disability through AIG, her insurance company. Her case was filed Sept. 4.

Larkin worked for Constellation Energy and was also denied disability through Cigna, his insurance company. His case was filed Sept. 8.

Most disability ERISA cases are very similar and most plaintiffs in disability cases seek the same judgments, Underwood said.

All ERISA cases must be filed in federal court, Underwood said.

*Suttle U.S. District Court case number: 2:08-0855*

*Kazee U.S. District Court case number: 3:08-cv-1038*

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