

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JOHN M. ORLANDO,)	
)	
Plaintiff,)	
)	No. 06 C 3758
v.)	
)	Magistrate Judge Cox
UNITED OF OMAHA LIFE)	
INSURANCE COMPANY, a Nebraska)	
corporation,)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION
FOR A DECLARATION OF THE STANDARD OF REVIEW**

Defendant, UNITED OF OMAHA LIFE INSURANCE COMPANY (“United of Omaha”), by its attorneys, Michael J. Smith and Warren von Schleicher, hereby submits its Response to Plaintiff’s Motion for a Declaration of the Standard of Review:

INTRODUCTION

The plaintiff, John Orlando (“Orlando”), seeks to recover disability benefits under a Group Policy that confers United of Omaha with discretionary authority. Orlando wants the benefit of the coverage provided in the Group Policy, but stripped of the discretionary authority conferred upon United of Omaha. Orlando, in short, wants the court to rewrite the terms of West Monroe’s employee benefit plan by nullifying United of Omaha’s discretionary authority. In order to try to achieve that objective, Orlando fuddles Seventh Circuit law governing the determination of the standard of review in ERISA cases. Orlando claims that United of Omaha’s discretionary authority is a nullity unless he personally was told that United of Omaha has discretion. It is difficult to imagine how employee benefit plans could function if the administrator’s discretionary authority switches on and off depending upon what each employee

claims to have been told. Employee benefit plans are supposed to be administered consistently according to the Plan documents, and not tailored to each employee's subjective understanding of the Plan. West Monroe's ERISA Plan is established by the terms of the Group Policy. The Group Policy, in turn, grants discretionary authority to United of Omaha. Orlando would have learned as much if he had inspected the Group Policy, as he was advised to do by his Certificate Booklet. The presence of discretionary language in the Group Policy clearly establishes that the proper standard of judicial review is the arbitrary and capricious standard.

ARGUMENT

I. The Group Policy Grants Discretionary Authority To United Of Omaha.

The Supreme Court, in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989), held that when an ERISA Plan vests the administrator with discretionary authority, courts review the administrator's benefit decision by applying the highly deferential "arbitrary and capricious" standard. In the absence of discretionary authority, courts apply the *de novo* standard. *Id.* Whether the administrator has discretionary authority hinges on the breadth of the powers granted to the administrator in the ERISA Plan. *Id.*, at 113.

Firestone precipitated a significant amount of litigation over whether discretionary authority may be *inferred* from the Plan's language, or whether discretionary authority must be *explicitly stated* in the Plan. Early post-*Firestone* decisions from the Seventh Circuit held that courts may infer discretionary authority from Plan language stating that the insured's proof of disability must be "satisfactory to the administrator." See *Donato v. Metropolitan Life Ins. Co.*, 19 F.3d 375, 379 (7th Cir. 1994) ("We cannot accept Ms. Donato's contention that a Plan's language must contain an 'explicit' grant of discretionary authority in order for a discretionary standard of review to apply.").

Ten years after *Firestone*, however, the Seventh Circuit rejected the notion that discretionary authority may be inferred from the Plan, and adopted the nationally uniform rule that discretionary authority must be stated expressly in the Plan. *See, e.g., Herzberger v. Standard Ins. Co.*, 205 F.3d 327, 332-333 (7th Cir. 2000). The Seventh Circuit reasoned that “employees are entitled to know what they are getting into, and so if the employer is going to reserve a broad, unchanneled discretion to deny claims, the employees should be told about this, and told clearly.” *Id.*, at 333. *See also Diaz v. Prudential Ins. Co. of America*, 424 F.3d 635, 637 (7th Cir. 2005) (overruling *Donato*).

In order to clarify the type of language that would be sufficient to confer discretionary authority, the Seventh Circuit drafted a “safe harbor” provision for inclusion in ERISA Plans :

We should do what we can to clarify the rights and duties of the parties to ERISA plans. Judges are quick to say what is prohibited, but perhaps too slow to say what is permitted and by doing so dispel legal risk. We have therefore drafted, and commend to employers, the following “safe harbor” language for inclusion in ERISA plans: “Benefits under this plan will be paid only if the plan administrator decides in his discretion that the applicant is entitled to them.” *An ERISA plan that contains such language will not be open to being characterized as entitling the applicant for benefits to plenary judicial review of a decision turning him down.*

Herzberger, 205 F.3d at 331 (internal citation omitted) (emphasis added). *See also Diaz*, 424 F.3d at 637 (“*Herzberger* holds that the critical question is notice: participants must be able to tell from the plan’s language whether the plan is one that reserves discretion for the administrator.”) (emphasis added). The Seventh Circuit touted its safe harbor language as “the surest way” to ensure judicial review under the arbitrary and capricious standard:

If a plan wishes to insulate its decision to deny benefits from plenary review, the surest way to do so (at least in this Circuit) is by including language that either mimics or is functionally equivalent to the “safe harbor” language we have suggested[.]

Diaz, 424 F.3d at 637.

Orlando does not dispute that the “Authority to Interpret Policy” provision of the Group Policy Rider—which grants “*discretion and final authority*” to United of Omaha—is the functional equivalent of the Seventh Circuit’s safe harbor language. Rather, Orlando takes issue with the adequacy of the Seventh Circuit’s safe harbor language itself, arguing that West Monroe could not possibly have understood what discretionary authority means. According to Orlando, United of Omaha should have taken the additional step of explaining to West Monroe the legal significance of granting discretionary authority. (Pl. Motion, pgs. 7-8). Orlando reasons that West Monroe cannot inform its employees that United of Omaha has discretionary authority if West Monroe “has absolutely no idea” what discretionary authority “even means.” (Pl. Motion, pg. 8).

Orlando’s argument completely defeats the Seventh Circuit’s purpose in creating safe harbor language for inclusion in ERISA Plans, which was to establish language that, as a matter of law, clearly communicates that the administrator has discretion. Why establish safe harbor language in the first place if the meaning and legal significance of that language could be subject to misunderstanding or debate? The Seventh Circuit, in *Diaz*, stated that the “surest way” to ensure judicial review under the arbitrary and capricious standard is to include the safe harbor language into the terms of the ERISA Plan. *Diaz*, 424 F.3d at 637. An ERISA Plan that includes the safe harbor language or its functional equivalent “will not be open to being characterized as entitling the applicant for benefits to plenary judicial review of a decision turning him down.” *Herzberger*, 205 F.3d at 331.

In the present case, the Group Policy’s “Authority to Interpret Policy” provision complies with the notice requirements of *Herzberger* and *Diaz*. No more is needed to ensure judicial review under the arbitrary and capricious standard. See *Kuchar v. AT&T Pension Benefit Plan-*

Midwest Program, No. 06 C 0059, 2007 WL 838985, at *3 (N.D. Ill. Mar. 13, 2007) (holding that the inclusion of discretionary language in the Plan “gives Plan participants adequate notice that the Plan Administrator will make decisions that are largely insulated from judicial review by reason of being discretionary.”).

II. Discretionary Authority In The Group Policy Controls Over Silence In the Summary Plan Description.

Notwithstanding the presence of discretionary language in the Group Policy, Orlando argues he was not personally told that United of Omaha has discretionary authority, because the summary plan description (the Certificate Booklet) distributed to employees of West Monroe does not contain discretionary language. Orlando bases his argument on language in *Herzberger* that states if a Plan “is going to reserve a broad, unchanneled discretion to deny claims, the employees should be told this, and told clearly.” *Herzberger*, 205 F.3d at 333.

Orlando interprets *Herzberger* too literally and out of context. *Herzberger* establishes that discretionary authority must be expressly stated in the Plan, and that the “surest way” to do so is to include the safe harbor language or its functional equivalent. Nothing within *Herzberger* states that employees literally must be told of the administrator’s discretionary authority by including the safe harbor language in the summary plan description (“SPD”).

Like the Group Policy in the present case, the Plan in *Utah Alcoholism Foundation v. Battelle Pacific Northwest Laboratories-Non-Bargaining Unit Employees’ Comprehensive Medical Benefits Plan*, 204 F.Supp.2d 1295 (D.Utah 2002) contained discretionary language, but the SPD was silent on the issue of discretion. The plaintiffs in *Utah Alcoholism Foundation*, who were Plan beneficiaries, argued that the SPD failed to give employees adequate notice that benefit determinations were subject to the administrator’s discretion, and that consequently, the *de novo* standard should apply:

[P]laintiffs contend that because this [discretionary] language appeared only in the Plan Document and was not included in the Summary Plan Description (SPD), it failed to give adequate notice and is therefore unenforceable.

Id., at 1300. As support for their argument, the plaintiffs in *Utah Alcoholism Foundation*, like Orlando in the case *sub judice*, cited *Herzberger*. *Id.*, at 1302.

The court in *Utah Alcoholism Foundation* rejected the plaintiffs' argument. The court noted that *Herzberger* established the type of language that must be included in ERISA Plans in order to confer discretionary authority, and did not address whether that language also must be included in the SPD. *Id.*, at 1302. The court in *Utah Alcoholism Foundation* held that the "failure to include discretionary language in the SPD ... did not negate such language in the plan document," and accordingly, the court applied the arbitrary and capricious standard of review. *Id.*, at 1301.

Moreover, the court in *Utah Alcoholism Foundation* concluded that ERISA does not mandate disclosure of discretionary authority in the SPD. Section 1022(b) of ERISA requires that the SPD must disclose "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. §1022(b). Discretionary authority establishes the standard of judicial review, and is not a "circumstance" that may result in the denial or loss of benefits. The court held, therefore, that "the failure to describe the plan administrator's authority to exercise discretion in adjudicating claims does not fall within [Section 1022(b)'s] definition." *Id.*, at 1302.

Every federal court that has addressed the issue has held that when discretionary language is contained in the Plan but not in the SPD, the terms of the Plan control.

The First Circuit, in *Fenton v. John Hancock Mutual Life Ins. Co.*, 400 F.3d 83, 90 (1st Cir.), *cert. denied*, 546 U.S. 873 (2005), held that "[t]he silence of the summary plan description

on the issue of the administrator's discretion does not create a direct conflict with any particular Plan provision and therefore does not warrant *de novo* review." (Citations omitted).

The Second Circuit, in *Tocker v. Philip Morris Companies, Inc.*, 470 F.3d 481 (2nd Cir. 2006), held that the ERISA statute and regulations, 29 U.S.C. §1022 and 29 C.F.R. §2520.102-3(j)(1), do not require disclosure of discretionary authority in the SPD. As stated by the court in *Tocker*:

[It is] obvious that the level of discretion reserved to a plan administrator is not a "condition [] which must be met *before* a participant will be eligible to receive benefits," 29 C.F.R. §2520.102-3(j)(1) (emphasis added). Nor is it a circumstance which may result in denial of benefits within the meaning of 29 U.S.C. §1022(b). Our cases make clear that the circumstances referred to in §1022 are conditions or facts that may be used by a plan administrator to deny benefits.

Id., at 488-489.

The Fourth Circuit, in *Martin v. Blue Cross & Blue Shield of Virginia, Inc.*, 115 F.3d 1201, 1205 (4th Cir.), *cert. denied*, 522 U.S. 1029 (1997), held that ERISA does not require discretionary language in the SPD. The inclusion of discretionary language in the Plan itself is all that is needed to vest the administrator with discretionary authority:

Although the SPD contains no such [discretionary] language, we find no conflict between the absence of discretionary language in the SPD and its presence in the Plan. Vesting the plan administrator with discretion in making coverage decisions simply does not conflict with the SPD's silence on the matter.

See also Mers v. Marriott Intern. Group Accidental Death and Dismemberment Plan, 144 F.3d 1014, 1023 (7th Cir.), *cert. denied*, 525 U.S. 947 (1998) ("[I]n the Seventh Circuit, an SPD's silence on an issue does not estop a plan from relying on the more detailed policy terms when no direct conflict exists."); *Wald v. Southwestern Bell Corp. Customcare Medical Plan*, 83 F.3d 1002, 1006 (8th Cir. 1996) ("We reject Wald's argument that ERISA's requirement that a

summary plan description (SPD) be sufficiently comprehensive to apprise participants of their rights under the plan, *see* 29 U.S.C. §1022(a)(1), requires the SPD to contain a description of the administrator’s discretion.”); *Cagle v. Bruner*, 112 F.3d 1510, 1517 (11th Cir. 1997) (holding that the arbitrary and capricious standard applies when discretionary language is contained in the plan, even though the discretionary language is not contained in the SPD); *Nash v. Mercedes Benz USA*, 489 F.Supp.2d 411, 417 (D.N.J. 2007) (“[T]he Court finds, as other courts have found, that where the pension plan contains language granting discretionary authority, silence in the summary plan description regarding the grant of discretion is not a conflict and apply the arbitrary and capricious standard.”).

Finally, the Certificate Booklet clearly informs Orlando that his coverage is “subject to the terms and conditions” of the Group Policy: “The benefits described in this Certificate are subject to the terms and conditions of the Policy.” (Def. Apdx. Ex. B, Certificate Booklet, Bates No. WMP 192). Orlando cannot legitimately contend that he relied on the absence of discretionary authority in the Certificate Booklet, because he clearly was informed that his disability coverage was subject to the terms and conditions of the Group Policy, which contained discretionary language.

III. United Of Omaha Delivered The Group Policy To West Monroe.

Orlando, in his Motion, represents to the court that “there is no evidence that West Monroe Partners received the Group Policy in which the ‘Authority to Interpret Policy’ endorsement is contained.” (Pl. Motion, pg. 9). The basis for Orlando’s statement is nothing more than the fact that the Group Policy was not among the documents produced by West Monroe in response to Orlando’s February 14, 2007 subpoena. Orlando wants the court to infer from this that West Monroe never received the Group Policy.

But there are a number of insurance documents that West Monroe failed to produce in response to Orlando's subpoena. For example, West Monroe failed to produce a letter from its president, Dean Fischer, about Orlando's disability claim (Exhibit A hereto). Additionally, email correspondence between West Monroe's human resources director, Paulette McKissic, and representatives of United of Omaha were not produced (Exhibit B hereto). In fact, Ms. McKissic testified that insurance documents were packed and unpacked numerous times during West Monroe's many office moves, and that she does not know if any United of Omaha documents were discarded. (Def. Apdx. Ex. C, McKissic Dep., pgs. 21-24). West Monroe changed its group disability insurer many years ago, so there was no reason for West Monroe to retain its expired United of Omaha insurance documents in any of its active files. The small quantity of documents produced by West Monroe in response to Orlando's subpoena, therefore, clearly is not a reliable measure of the universe of insurance documents that West Monroe received from United of Omaha.¹

Moreover, the Rule 30(b)(6) testimony of West Monroe's Paulette McKissic and United of Omaha's Donna Carling establish that the Group Policy was mailed to West Monroe on April 1, 2003, and that the grant of discretionary authority to United of Omaha is consistent with West Monroe's understanding of the group disability coverage that it purchased:

- (i) Ms. McKissic testified that she reviewed the terms of the Group Policy, and that its contents accurately reflected the terms of the coverage purchased by West Monroe. (Def. Apdx. Ex. C, McKissic Dep., pg. 55).
- (ii) During her deposition, Ms. McKissic specifically read the "Authority to Interpret Policy" provision of the Group Policy Rider

¹ By happenstance, just one day before Ms. McKissic's deposition, a West Monroe employee "stumbled upon" some "really old insurance documents" stored at a location where Ms. McKissic stated she "would have never looked for them." (Def. Apdx. Ex. C, McKissic Dep., pg. 16). Among those old documents was the Administration Manual for the Group Policy, which contains billing information, blank claim forms, and other general information about the administration of the Group Policy.

and testified that the grant of discretionary authority to United of Omaha was *consistent* with her understanding of the disability insurance coverage purchased by West Monroe. (Def. Apdx. Ex. C, McKissic Dep., pg. 55).

- (iii) Donna Carling testified that the Rider containing the “Authority to Interpret Policy” provision is part of *every* group disability insurance policy issued by United of Omaha in Illinois. (Def. Apdx. Ex. D, Carling Dep., pg. 44).
- (iv) Ms. Carling testified that on March 5, 2003, she received a telephone call from Paulette McKissic of West Monroe because “she [Ms. McKissic] was looking for her booklets and master contract material.” (Def. Apdx. Ex. D, Carling Dep., pg. 37).
- (v) On March 7, 2003, Ms. Carling sent the Certificate Booklet to Paulette McKissic as an email attachment. (Def. Apdx. Ex. D, Carling Dep., pgs. 37-38).
- (vi) In the March 7, 2003 email, Ms. Carling informed Paulette McKissic that the master contract and a token supply of Certificate Booklets would be sent to her by mail. (Def. Apdx. Ex. D, Carling Dep.-Ex. 7).
- (vii) Ms. Carling testified that on April 1, 2003, she mailed the Group Policy (which included the Rider) and a token supply of Certificate Booklets to Paulette McKissic. (Def. Apdx. Ex. D, Carling Dep., pgs. 46-47).
- (viii) At her deposition, Ms. Carling produced a copy of the April 1, 2003 cover letter that she had mailed to Ms. McKissic with the Group Policy. (Def. Apdx. Ex. D, Carling Dep.-Ex. 3).

The testimony of West Monroe and United of Omaha establishes, therefore, that West Monroe purchased the Group Policy, that the grant of discretionary authority to United of Omaha is consistent with West Monroe’s understanding of the group disability coverage that it purchased, and that United of Omaha delivered the Group Policy to West Monroe by U.S. Mail on April 1, 2003. This evidence establishes that West Monroe received the Group Policy on or about the date on which it was mailed. *See Schikore v. Bank America Supplemental Retirement Plan*, 269 F.3d 956, 962 (9th Cir. 2001) (holding that the common law “mailbox rule,” which

presumes that the addressee received documents that were mailed, applies in ERISA cases). *Accord Kuchar*, 2007 WL 838985, at *5; *Sanders v. Unum Life Ins. Co. of America*, No. 03 C 6026, 2007 WL 1455856 (N.D. Ill. May 14, 2007) (holding that under the common law of ERISA, documents mailed are presumptively received).

Finally, Orlando suggests that United of Omaha mailed the Group Policy to the wrong address. Instead of mailing the Group Policy to West Monroe's Chicago offices, United of Omaha mailed the Group Policy to "11 Muirwood Drive, Glen Ellyn, Illinois, 60137." (Pl. Motion, pg. 10). Orlando proclaims that "at no time was West Monroe Partners located at this address." (Pl. Motion, pg. 10).

The Glen Ellyn address, however, was the address specifically listed on the insurance application signed by West Monroe's president, Dean Fischer, and was the address to which all important insurance documents were mailed. (Def. Apdx. Ex. D, Carling Dep.-Ex. 4).

United of Omaha, for example, mailed the Administration Manual and monthly premium billing statements to West Monroe at the Glen Ellyn address. Indeed, these documents were produced by West Monroe on the day of Paulette McKissic's deposition, but only after having been found accidentally in an old filing cabinet at West Monroe. (*See* Group Exhibit C, attached hereto). Contrary to Orlando's effort to portray the Glen Ellyn address as some mysterious location having no connection whatsoever with West Monroe, the Glen Ellyn address, in fact, was and remains today the home address of Dean Fischer, the president of West Monroe:

Phonebook results for **Dean Fischer Illinois**²



Dean Fischer (630) 858-0518 11 Muirwood Dr, Glen Ellyn, IL 60137

² See <http://www.google.com/search?hl=en&rls=com.microsoft%3Aen-us%3AIE-SearchBox&rlz=117HPND&q=dean+fischer+Illinois>.

The documents and Rule 30(b)(6) testimony establish that United of Omaha delivered the Group Policy and other important insurance documents to the home address of West Monroe's president, Dean Fischer, precisely as Mr. Fischer had requested when he signed the insurance application. Accordingly, the Group Policy, which includes the "Authority to Interpret Policy" provision of the Rider, establishes the terms of West Monroe's ERISA Plan, and mandates judicial review under the arbitrary and capricious standard.

CONCLUSION

The Group Policy contains clear language granting discretionary authority to United of Omaha. The Seventh Circuit has held that an insurer's reservation of discretionary authority in an ERISA governed group insurance policy entitles the insurer to judicial review under the arbitrary and capricious standard. *See Rud v. Liberty Life Assur. Co. of Boston*, 438 F.3d 772, 775 (7th Cir. 2006) ("The policy is the plan, so far as disability benefits are concerned, and the recital [of discretionary authority] in the policy that we quoted thus determines the scope of judicial review[.]") (internal citation omitted). Because the Group Policy contains clear language granting discretionary authority to United of Omaha, the applicable standard of judicial review is the arbitrary and capricious standard.

WHEREFORE, defendant, UNITED OF OMAHA LIFE INSURANCE COMPANY, respectfully requests that the court issue an order declaring that the applicable standard of judicial review is the arbitrary and capricious standard.

Respectfully submitted,

Michael J. Smith
Warren von Schleicher
Smith, von Schleicher & Associates
39 S. LaSalle St., Suite 1005
Chicago, Illinois 60603
(312) 541-0300

By: /s/ Warren von Schleicher
Attorney for Defendant, United of Omaha
Life Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2008, I electronically filed the attached document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

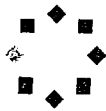
Thomas B. Orlando
torlando@fgpp.com

Respectfully submitted,

s/ Warren von Schleicher
Smith, von Schleicher & Associates
39 S. LaSalle St., Suite 1005
Chicago, Illinois 60603
(312) 541-0300
(312) 541-0933 Facsimile
warren.vonschleicher@svs-law.com
ARDC# 6197189

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR A DECLARATION OF THE
STANDARD OF REVIEW**

Exhibit A



WEST MONROE PARTNERS

West Monroe Partners LLC
175 West Jackson Blvd, Suite 2260
Chicago, Illinois 60604
tel 312.602.4000
fax 312.602.4010
www.westmonroepartners.com

Thomas B. Orlando
Foran Glennon Palandech & Ponzi PC
150 S. Wacker Dr., Suite 1100
Chicago, IL 60606

Dear Mr. Orlando:

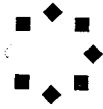
You have provided me with a copy of Mutual of Omaha's August 17, 2005 letter to you which comments upon my April 23, 2003 letter to John Orlando. As I understand the situation, Mutual of Omaha refuses to consider at least \$25,000 of John Orlando's salary as earnings because, according to Mutual of Omaha, "there is nothing in the policyholder letters, or other documents received, to show that these [5,000] units of ownership were purchased by Mr. Orlando, or paid to him, in exchange for services performed." You have asked for all information from West Monroe Partners regarding the circumstances surrounding the "award" of 5,000 fully vested units of ownership to John Orlando in early 2003.

As of April 23, 2003, John Orlando was an executive and a shareholder in West Monroe Partners. He possessed 25,000 units of unvested ownership. His salary was \$200,000 a year. At the time, instead of taking on short-term debt to meet payroll (which the company was in a position to do), the company permitted certain executives to receive additional units of ownership in lieu of cash as payment for services rendered to the company. This offer was not made to all employees. Rather, this offer was made, at the discretion of the company, only to those executives whose continued and increased ownership in the company would be of benefit to the company. In this sense, the program was an "award" to the executive and "a gesture of appreciation" by the Company.

However, the program existed solely in order to reduce the demands on the Company's cash flow by paying salary for services actually performed in units of ownership instead of in cash. Those who voluntarily accepted the offer would receive fully vested units of ownership, in lieu of cash, in exchange for services actually performed. I cannot overemphasize that the award of units of ownership was not a gift. Rather, the award was contingent on the executive's agreement to substitute salary in the form of cash with the offered units of ownership.

In Mr. Orlando's case, the Company offered 5,000 fully vested units of ownership as a substitute for \$25,000 in cash for services actually performed by

MO 00416



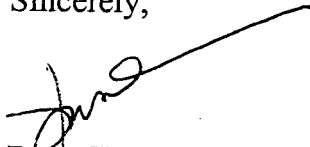
WEST MONROE PARTNERS

September 20, 2005
Page 2

Mr. Orlando. Had Mr. Orlando rejected the offer, which he was free to do, he would have been paid \$25,000 more in cash than the \$49,669.58 the Company reported as earnings for Mr. Orlando during 2003.

I hope this explanation clarifies the situation. You are authorized to submit this letter to Mutual of Omaha. In addition, I would be happy to answer any other questions either you or Mutual of Omaha

Sincerely,



Dean W. Fischer
President, West Monroe Partners

MO 00415

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR A DECLARATION OF THE
STANDARD OF REVIEW**

Exhibit B



Vicki Pruch
06/24/2004 01:51 PM

To: Anne Mulvaney/MutualOMA
cc: Linda Tranmer/MutualOMA@Mutual of Omaha
Subject: RE: West Monroe Partners - Group G00086F9
Claimant: John Orlando, SS #

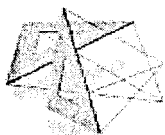
Mutual of Omaha

Hi Anne,

Mr. Orlando was approved for LTD with an effective date of 9/23/03. This makes him eligible for waiver of premium for the LTD coverage as of 10/1/03. He was not approved and paid until 5/7/04 and benefits were paid from 9/23/03-4/23/04. I advised the employer that he was eligible for waiver as of 10/1/03. They are due a refund of any premiums paid after 10/1/03. It is my understanding the a report goes to premium once a month with this information. Maybe it was the timing of the report that he still showed up on the billing.

Anyway, I hope this information helps...

Vicki Pruch
Senior Benefits Analyst
Group Disability Management Services
Phone (402) 351-4646
Fax (402) 351-2167
Anne Mulvaney



Anne Mulvaney
06/24/2004 01:48 PM

To: Vicki Pruch/MutualOMA@Mutual of Omaha
cc: Linda Tranmer/MutualOMA@Mutual of Omaha
Subject: RE: West Monroe Partners - Group G00086F9
Claimant: John Orlando, SS #

Hi, ladies! As you'll see from the email messages below, the above-referenced claimant is still appearing on the monthly billing. Please advise what the status is of this so I may respond to the administrator.

Thanks,

Anne

----- Forwarded by Anne Mulvaney/MutualOMA on 06/24/2004 01:46 PM -----



"Paulette A. McKissic"
<pmckissic@westmon
roepartners.com>
06/24/2004 12:20 PM

To: Anne.Mulvaney@Mutualofomaha.com
cc:
Subject: RE: West Monroe Partners - Group G00086F9

Anne,

The individual is John Orlando, SS worked with through the process was Vicki Pruch.

The individual I

Thanks
Paulette

-----Original Message-----
From: Anne.Mulvaney@Mutualofomaha.com
[mailto:Anne.Mulvaney@Mutualofomaha.com]

MO 00309

Sent: Thursday, June 24, 2004 12:00 PM
To: Paulette A. McKissic
Subject: Re: West Monroe Partners - Group G00086F9

Paulette,

Please provide the individual's name and SSN and I will check into this and will respond to you as soon as I have an answer. I will be out tomorrow, but if I don't hear back today, I'll contact you early next week.

Also if you have the name of the individual who informed you of the Premium Waiver, etc., please provide that name also.

Thanks,

Anne

"Paulette A. McKissic"
<pmckissic@westmonroepa
Anne.Mulvaney@Mutualofomaha.com
rtners.com>
To:
cc:
Subject: Group
G00086F9
06/24/2004 11:14 AM

Anne,

I have a former employee that we out on LOA about 12 months ago. His claim was initially denied but after appeal, was approved. I was advised that we would be credited for the premium paid as of the effective date of the retroactive approval and that we would no longer be invoiced for this person. This determination was made over a month ago. I just received an invoice and he is still showing up on the invoice and we have not been credited yet either. Can you help me figure out what needs to be done to get this fixed?

Thanks
Paulette

Paulette A. McKissic
pmckissic@westmonroepartners.com

MO 00308

(Embedded
image moved
to file:
pic20798.gif)

175 West Jackson Blvd, Suite
2260
Chicago, Illinois 60604

tel
312.602.4000 x 454
fax
312.602.4010
www.westmonroepartners.com

MO 00307



"Paulette A. McKissic"
<pmckissic@westmon
roepartners.com>

To: vicki.pruich@mutualofomaha.com
cc:
Subject: John Orlando

11/14/2003 10:55 AM

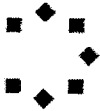
Vicki,

As a follow up to our earlier phone conversation, and per your request, I am sending this note to you regarding payment by John Orlando for his monthly premium payments.

Per discussion with John, payments for his long term disability coverage were made out-of-pocket until he began to receive payment of his deferred compensation. Please let me know if you need any additional information.

Regards,
Paulette A. McKissic

Paulette A. McKissic
pmckissic@westmonroepartners.com



WEST MONROE PARTNERS

175 West Jackson Blvd, Suite 2260
Chicago, Illinois 60604

tel 312.602.4000 x 454
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MO 00163

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR A DECLARATION OF THE
STANDARD OF REVIEW**

Group Exhibit C

MUTUAL of OMAHA INSURANCE COMPANY
UNITED of OMAHA LIFE INSURANCE COMPANY
Mutual of Omaha Plaza
Omaha, NE 68175
402 342 7600
mutualofomaha.com



January 22, 2003

Paulette McKissic
WEST MONROE PARTNERS, LLC
11 Muirwood
Glen Ellyn, IL 60137

RE: Group Long Term Disability Policy: GLTD-86F9

Dear Paulette:


Enclosed you will find an Administration Manual for the above-referenced policy that went into effect on January 1, 2003.

Also attached is a token supply of the following materials:

Enrollment Forms	Used to enroll new employees into the plan.
Application for Health Insurance	Used in the event an employee elects coverage as a late applicant. This form need to be submitted for coverage approval.
Change Request Forms	Used to report a change in the employee's coverage (ie: name change due to marriage)
Long Term Disability Claim Forms	Used to file a Long Term Disability Claim.

If you should have any questions or need further assistance, please do not hesitate to contact me at (708) 409-0888, ext. 225.

Sincerely,


Donna L. Carling
Account Assistant

cc: Steve Persky
Steven Persky & Associates

Chicago Group Operations - One Westbrook Corporate Center, Suite 800, Westchester, IL 60154
708-409-0888 Fax 708-409-3080

WMP 0226

MUTUAL of OMAHA INSURANCE COMPANY
UNITED of OMAHA LIFE INSURANCE COMPANY
Mutual of Omaha Plaza
Omaha, NE 68175
402 342 7600
mutualofomaha.com



February 17, 2003

Paulette McKissic
WEST MONROE PARTNERS LLC
11 Muirwood
Glen Ellyn, IL 60137

RE: Group Long Term Disability Policy: GLTD-86F9

Dear Paulette:

Enclosed you will find the following premium materials for the above-referenced policy:

Premium Billing Statements for January, February and March
Pre-Addressed Premium Envelopes
Supply of Employee Termination Reports
Salary Change Reports
Enrollment Correspondence Labels
Billing Statement Verification Letter

Please be sure to send the last page of the statement with your check to the Kansas City, MO address (envelopes enclosed). **Any additions, changes or terminations to the statement should not be included with the check.** These changes can be faxed to the attention of GPES (Group Enrollment Services) at (402) 351-8822 or mailed in a separate envelope using the labels provided addressed to Omaha, NE.

Also, please complete the Employee Termination Report as employees terminate and fax the termination reports to the attention of GPES within 60 days of termination. Completed enrollment Forms must be sent on new employees and a Change Request Form needs to be completed to enable changes to be updated on existing employees. **To ensure accurate handling of your employees coverage, please ensure that the all forms are submitted with complete information, including policy number, social security number, hire date, employee signature, date signed, etc.**

Chicago Group Operations - One Westbrook Corporate Center, Suite 800, Westchester, IL 60154
708-409-0888 Fax 708-409-3080

WMP 0131

Page 2

If you should have any questions or if I may be of any further assistance, please do not hesitate to contact me at (708) 409-0888, extension 225.

Sincerely,

A handwritten signature in cursive script that reads "Donna".

Donna L. Carling
Account Assistant

Enclosures

POLICY NUMBER GLTD-086F9
DIVISION 00001
PREMIUM DUE DATE 01/01/03
PAYING TO DATE 02/01/03
REGIONAL OFFICE CHICAGO
AGENCY
SPECIAL HANDLING N - NEW GROUP

DATE 02/03/03

REGULAR



Member of Omaha

UNITED of OMAHA

WEST MONROE PARTNERS LLC
PERSONAL & CONFIDENTIAL
ATTN PAULETTE MCKISSIC
11 HUIRWOOD
GLEN ELLYN, IL 60137



Mutual of Omaha

UNITED of OMAHA

POLICY NUMBER GLTD-086F9
 DIVISION 00001
 PREMIUM DUE DATE 01/01/03
 PAYING TO DATE 02/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

WEST MONROE PARTNERS LLC

REGULAR PAGE 1 DATE 02/03/03

ITEMS RECEIVED AFTER 01/27/03
 ARE NOT INCLUDED.

NAME OF INSURED	CERTIFICATE NUMBER	CLASS	EFF. DATE	PREMIUM	LTD	VOLUME	TOTALS
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REDACTED

REDACTED

ORLANDO, J 278-54-9462 01-00 01/01/03

217 42.50 12,500 42.50

REDACTED

REDACTED

TOTAL CURRENT MONTH DUE

\$442.95 130,299

\$442.95

CONSISTING OF:

CURRENT MONTH PREMIUM
 CURRENT MONTH ADJUSTMENTS

\$442.95
 \$0.00

\$442.95
 \$0.00

ACTIVE INSURED COUNT - 18

do we want to add Water Damage



United of Omaha

UNITED of OMAHA

POLICY NUMBER GLTD-086F9
 DIVISION 00001
 PREMIUM DUE DATE 01/01/03
 PAYING TO DATE 02/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

WEST MONROE PARTNERS LLC
 REGULAR PAGE 2
 DATE 02/03/03

CLASS	RATING BASIS	DEPENDENT CLASS	COVERAGE	CURRENT VOLUME AMOUNT	CURRENT NUMBER OF INSUREDS	CURRENT MONTH PREMIUM
01	00		LTD	130,299	18	\$442.95
				CURRENT MONTH PREMIUM		\$442.95
				CURRENT MONTH ADJUSTMENTS		\$0.00
				TOTAL CURRENT MONTH DUE		\$442.95

ACTIVE INSURED COUNT - 18

POLICY NUMBER GLTD-086F9 WEST MONROE PARTNERS LLC
 DIVISION 00001
 PREMIUM DUE DATE 01/01/03
 PAYING TO DATE 02/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

REGULAR PAGE 3 DATE 02/03/03



**** OUTSTANDING BALANCES ****
 NO OUTSTANDING BALANCES

 RETURN THIS PAGE WITH PAYMENT
 ITEMS RECEIVED AFTER 01/27/03 ARE NOT INCLUDED

PRIOR BILLING AMOUNT \$0.00
 AMOUNT RECEIVED PRIOR BILL \$0.00
 TOTAL OUTSTANDING BALANCE \$0.00
 CURRENT MONTH PREMIUM \$442.95
 CURRENT MONTH ADJUSTMENTS \$0.00
 TOTAL CURRENT MONTH DUE \$442.95
 TOTAL CURRENT MONTH PAID \$440.00
 TOTAL AMOUNT DUE \$2.95

ENTER AMOUNT REMITTED HERE _____

*** ** ** ** **
 *** PLEASE PAY PREMIUM AS BILLED AND ***
 *** INDICATE POLICY NUMBER ON YOUR CHECK ***
 *** ** ** ** **
 *** ADJUSTMENTS FOR TERMINATED AND/OR ***
 *** NON ELIGIBLE PARTICIPANTS WILL BE ***
 *** REFLECTED ON SUBSEQUENT BILLING. ***
 *** ** ** ** **

COMPLETE THE APPROPRIATE FORMS
 FOR CERTIFICATEHOLDER ADDITIONS OR CHANGES
 AND SUBMIT TO GROUP PREMIUM & ENROLLMENT SERVICES.

REGULAR DATE 02/03/03

POLICY NUMBER GLTD-086F9
DIVISION 0001
PREMIUM DUE DATE 02/01/03
PAYING TO DATE 03/01/03
REGIONAL OFFICE CHICAGO
AGENCY
SPECIAL HANDLING N - NEW GROUP

WEST MONROE PARTNERS LLC
PERSONAL & CONFIDENTIAL
ATTN PAULETTE MCKISSIC
11 MUIRWOOD
GLEN ELLYN, IL 60137



Mutual of Omaha

UNITED of OMAHA



Mutual of Omaha

UNITED of OMAHA

POLICY NUMBER GLTD-086F9
 DIVISION 00001
 PREMIUM DUE DATE 02/01/03
 PAYING TO DATE 03/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

WEST MONROE PARTNERS LLC

REGULAR PAGE 1 DATE 02/03/03

ITEMS RECEIVED AFTER 01/27/03
 ARE NOT INCLUDED.

NAME OF INSURED	CERTIFICATE NUMBER	CLASS	EFF. DATE	PREMIUM	LTD VOLUME	TOTALS
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REDACTED

REDACTED

ORLANDO, J	278-54-9462	01-00	01/01/03	42.50	12,500	42.50
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REDACTED

REDACTED

TOTAL CURRENT MONTH DUE
 CONSISTING OF:
 CURRENT MONTH PREMIUM
 CURRENT MONTH ADJUSTMENTS

442.95 130,299
 442.95
 0.00

ACTIVE INSURED COUNT - 18



Member of Omaha

UNITED of OMAHA

POLICY NUMBER GLTD-086F9 WEST MONROE PARTNERS LLC REGULAR PAGE 2 DATE 02/03/03
 DIVISION 00001
 PREMIUM DUE DATE 02/01/03
 PAYING TO DATE 03/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

CLASS	RATING BASIS	DEPENDENT CLASS	COVERAGE	CURRENT VOLUME AMOUNT	CURRENT NUMBER OF INSURED	CURRENT MONTH PREMIUM
01	00		LTD	130,299	18	\$442.95
				CURRENT MONTH PREMIUM		\$442.95
				CURRENT MONTH ADJUSTMENTS		\$0.00
				TOTAL CURRENT MONTH DUE		\$442.95

ACTIVE INSURED COUNT - 18



Mutual of Omaha

UNITED of OMAHA

POLICY NUMBER 6LTD-086F9 WEST MONROE PARTNERS LLC
 DIVISION 00001
 PREMIUM DUE DATE 02/01/03
 PAYING TO DATE 03/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

REGULAR PAGE 3 DATE 02/03/03

**** OUTSTANDING BALANCES ****
 DATE 01/01/03 AMOUNT \$2.95
 TOTAL \$2.95

 RETURN THIS PAGE WITH PAYMENT
 ITEMS RECEIVED AFTER 01/27/03 ARE NOT INCLUDED

PRIOR BILLING AMOUNT \$442.95
 AMOUNT RECEIVED PRIOR BILL \$440.00
 TOTAL OUTSTANDING BALANCE \$2.95
 CURRENT MONTH PREMIUM \$442.95
 CURRENT MONTH ADJUSTMENTS \$0.00
 TOTAL CURRENT MONTH DUE \$442.95
 TOTAL AMOUNT DUE \$445.90

ENTER AMOUNT REMITTED HERE _____

*** **
 PLEASE PAY PREMIUM AS BILLED AND
 INDICATE POLICY NUMBER ON YOUR CHECK
 ADJUSTMENTS FOR TERMINATED AND/OR
 NON ELIGIBLE PARTICIPANTS WILL BE
 REFLECTED ON SUBSEQUENT BILLING.
 **

COMPLETE THE APPROPRIATE FORMS
 FOR CERTIFICATEHOLDER ADDITIONS OR CHANGES
 AND SUBMIT TO GROUP PREMIUM & ENROLLMENT SERVICES.



MetLife of Omaha

UNITED of OMAHA

POLICY NUMBER GLTD-086F9
DIVISION 00001
PREMIUM DUE DATE 03/01/03
PAYING TO DATE 04/01/03
REGIONAL OFFICE CHICAGO
AGENCY
SPECIAL HANDLING N - NEW GROUP

REGULAR

DATE 02/03/03

WEST MONROE PARTNERS LLC
PERSONAL & CONFIDENTIAL
ATTN PAULETTE MCKISSIC
11 MUIRWOOD
GLEN ELLYN, IL 60137



Mutual of Omaha

UNITED of OMAHA

POLICY NUMBER GLTD-086F9
 DIVISION 00001
 PREMIUM DUE DATE 03/01/03
 PAYING TO DATE 04/01/03
 REGIONAL OFFICE CHICAGO
 AGENCY
 SPECIAL HANDLING N - NEW GROUP

WEST MONROE PARTNERS LLC

REGULAR PAGE 2 DATE 02/03/03

CLASS	RATING BASIS	DEPENDENT CLASS	COVERAGE	CURRENT VOLUME AMOUNT	CURRENT NUMBER OF INSUREDS	CURRENT MONTH PREMIUM
01	00		LTD	130,299	18	\$442.95
				CURRENT MONTH PREMIUM		\$442.95
				CURRENT MONTH ADJUSTMENTS		\$0.00
				TOTAL CURRENT MONTH DUE		\$442.95

ACTIVE INSURED COUNT - 18