

ATTACK ON SSDI OFFSETS

AS WE ALL KNOW:

- LTD INSURANCE POLICIES CONTAIN AN OFFSET REDUCING THE GROSS BENEFIT BY ANY SOCIAL SECURITY DISABILITY INCOME BENEFIT THE CLAIMANT RECEIVES
- THIS OFFSET REDUCES THE COST OF LTD INSURANCE
- AVOIDS “DOUBLE DIPPING”

LTD INSURERS' ASSISTANCE

- LTD INSURERS IDENTIFY CLAIMANTS WHO THEY BELIEVE WILL LIKELY BE ENTITLED TO OBTAIN SSDI BENEFITS
- POLICIES REQUIRE CLAIMANTS TO APPLY FOR SSDI BENEFITS IF DIRECTED TO DO SO BY INSURER; AND APPEAL ANY INITIAL DENIAL
- MANY LTD INSURERS HIRE OR OFFER TO HIRE ASSISTANCE (ATTORNEYS; SSDI VENDOR) TO HELP CLAIMANT APPLY FOR SSDI BENEFITS (NO COST TO CLAIMANT)
- LTD INSURERS, BASED ON THEIR EXPERIENCE, MAKE GOOD JUDGMENTS ON WHICH CLAIMANTS WILL MEET SSDI CRITERIA

LITIGATION CHALLENGES

- AN INCREASING NUMBER OF COURTS ARE QUESTIONING LTD INSURERS' DECISIONS TO DENY A DISABILITY CLAIM IN THE FACE OF A FAVORABLE SSDI AWARD – RECENT EXAMPLE OF BROWN VS. HARTFORD LIFE INS. CO. (10TH CIRCUIT DECISION)
- SSDI AWARDS REQUIRE A FINDING THAT THE CLAIMANT HAS BEEN DISABLED FOR MORE THAN 5 MONTHS, AND (IMPLICITLY) IS LIKELY TO BE DISABLED FOR A LONG TIME
- DOUBLE EDGED SWORD OF HELPING CLAIMANTS OBTAIN SSDI BENEFITS AND THEN DENYING THE LTD CLAIM

PUBLIC ATTACKS

- NEW YORK TIMES ARTICLES IN 2008:
 - 4/08 Articles BY MARY WILLIAMS WALSH, BLAMING LTD INSURERS FOR SSDI APPLICATION BACKLOG. THIS ARTICLE ALSO CLAIMED LTD INSURERS ARE FORCING MANY PEOPLE WHO FILE DISABILITY CLAIMS WITH THEM TO ALSO APPLY TO SOCIAL SECURITY — EVEN PEOPLE WHO CLEARLY DO NOT QUALIFY FOR THE GOVERNMENT PROGRAM.
 - IGNORING PREVIOUS CONGRESSIONAL TESTIMONY OF SSA COMMISSIONER THAT THE GROWING DELAYS IN THE APPEAL PROCESS OVER THE LAST DECADE RESULTED IN PART FROM LITIGATION AND FINANCING SHORTAGES THAT PREVENTED THE HIRING OF NEW ADMINISTRATIVE LAW JUDGES.

SENATOR CHARLES GRASSLEY

- ARTICLES PROMPTED SENATOR CHARLES GRASSLEY, RANKING REPUBLICAN ON SENATE FINANCE COMMITTEE TO BEGIN AN INVESTIGATION INTO LTD INSURERS' SSDI PRACTICES.
- SEN. GRASSLEY SENT A LETTER TO 9 LARGEST LTD INSURERS ASKING THEM SERIES OF QUESTIONS ABOUT THEIR SSDI CLAIM PRACTICES.
- BASED ON RESPONSES, SENATOR GRASSLEY SENT A LETTER TO THE SSA COMMISSIONER DETAILING HIS FINDINGS AND URGING HIM AND THE FEDERAL TRADE COMMISSION TO INVESTIGATE PRIVATE INSURERS PRACTICES. HE REPORTED THE FOLLOWING FINDINGS:

SENATOR GRASSLEY'S FINDINGS

- FRAUD AGAINST THE SSDI PROGRAM DIMINISH THE EFFECTIVENESS OF THIS PROGRAM.
- PRIVATE INSURERS ARE NEEDLESSY CONTRIBUTING TO THE SSDI BACKLOG.
- INSURERS ARE FORCING INDIVIDUALS TO FILE FOR SSDI ALTHOUGH REASONABLY THEY ARE NOT ELIGIBLE, THEREBY HURTING PEOPLE AT A TIME WHEN THEY ARE MOST VULNERABLE. SOME LTD INSURERS THREATEN BENEFIT TERMINATION IF PERSON DOES NOT APPLY FOR SSDI BENEFITS.
- INSURERS EXPECT CLAIMANTS TO APPLY FOR SSDI BENEFITS AS A CONDITION TO OBTAINING THEIR LTD BENEFITS.

FINDINGS (CONTINUED)

- LTD INSURERS' SCREENING PROCESS FOR SSDI APPLICATIONS DOES NOT RESULT IN INCREASED APPROVAL RATES AS COMPARED TO OTHER APPLICANTS.
- INSURERS STATED THAT THEY ESTIMATE ACTUARIAL PROBABILITY THAT A CLAIMANT MAY BE AWARDED SSDI BENEFITS IN SETTING RESERVES.
- SENATOR GRASSLEY ACCEPTED AS TRUE THE TESTIMONY OF MARY FULLER, A FORMER UNUM CLAIMS VP, THAT UNUM'S MOTIVE WAS TO REDUCE ITS FINANCIAL RESERVES BASED ON SSDI APPLICATION FILINGS, WHETHER OR NOT THE SSDI CLAIM HAS ANY MERIT.

INCORRECT CONCLUSIONS IN SENATOR GRASSLEY'S FINDINGS

- A DETAILED EMPIRICAL STUDY WOULD HAVE DETERMINE THAT IN VAST MAJORITY OF INSTANCES IN WHICH INSURERS REQUIRE CLAIMANT TO FILE SSDI APPLICATIONS, THE FACTS SUPPORTED A REASONABLE BELIEF THAT THE CLAIMANT WOULD BE ENTITLED TO THESE BENEFITS.
- INSURERS GENERALLY PAY CLAIMANTS THEIR FULL LTD BENEFITS WITHOUT ESTIMATED SSDI REDUCTION IN RETURN FOR THE CLAIMANT'S PROMISE TO REPAY ANY OVERPAYMENT.
- OF COURSE, RESERVES ARE SET, IN PART, BASED ON HISTORICAL DATA OF PERCENTAGE OF CLAIMANTS WHO RECEIVE SSDI BENEFITS. THIS IS AN ACTUARIAL SOUND AND LEGITIMATE PRACTICE.

INCORRECT CONCLUSIONS IN SENATOR GRASSLEY'S FINDINGS

- OFFSETS KEEP PREMIUMS LOW AND LTD COVERAGE AFFORDABLE FOR EMPLOYERS AND EMPLOYEES.
- RELIANCE ON A FEW EXAMPLES (SEVERAL INDIVIDUAL CLAIMANTS AND MATERIALLY FALSE PUBLIC STATEMENTS FROM PLAINTIFF'S ATTORNEYS OF RESULT IN UNUM LAWSUIT ARE NOT A LEGITIMATE BASES FOR SENATOR GRASSLEY'S BROAD CONCLUSIONS.
- RELIANCE ON MARY FULLER'S OPINION IN UNUM LAWSUIT UNJUSTIFIED AND MISPLACED.

SO WHAT?

- THE POTENTIAL IMPACTS OF SENATOR GRASSLEY’S “FINDINGS”, CONTINUING LITIGATION; AND NEWSPAPER ARTICLES ARE SIGNIFICANT:
 - PLAINTIFFS’ ATTORNEYS USING SENATOR GRASSLEY’S “FINDINGS” AS SUPPORT FOR INCREASING LAWSUITS SEEKING TO REQUIRE INSURERS TO
TO
PAY LTD BENEFITS WHENEVER THE CLAIMANT IS APPROVED FOR SSDI BENEFITS.
 - DESPITE MANY PROBLEMS WITH THESE FINDINGS, COURTS MAY ACCEPT THEM “FINDINGS” TO SUPPORT DECISIONS FAVORING CLAIMANTS.
 - INCREASED FEDERAL OVERSIGHT OF LTD INSURERS’ SSDI PRACTICES.

PRACTICAL LESSONS

- PERCEPTION CAN BE VIEWED, INCORRECTLY, AS REALITY.
- BE PREPARED FOR MORE LITIGATION AND PUBLIC SCRUTINY.
- ENSURE THAT SSDI APPLICATIONS ARE BEING REQUIRED ONLY IN CLAIMS WHERE REASONABLE GROUNDS EXIST TO CONCLUDE THE CLAIMANT SHOULD BE ENTITLED TO AN SSDI AWARD.
- IF THE LTD CLAIM IS SUBSEQUENTLY DENIED, MAKE CERTAIN DENIAL LETTER AND CLAIM FILE DOCUMENTATION EXPLAIN FACTUAL BASES IN DETAIL FOR THIS DECISION.