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UnumProvident Memo Highlights Intent to Use Law to Save Money

By CHRISTOPHER OSTER

As state regulators scrutinize the claims practices of disability-income insurer UnumProvident Corp., a document obtained by policyholders' attorneys shows the insurer's intent to use a law meant to protect workers' retirement savings to help it save money on claims.

The memo, written in 1995, says Provident Corp., which merged with Unum Corp. in 1999, had formed a "task force" to identify policies covered by the Employee Retirement Income Security Act of 1974. "The advantages of ERISA coverage in litigious situations are enormous," reads the memo, written by Jeff McCall, at the time an assistant vice president in the claims department at Provident. "There are no jury trials. There are no compensatory or punitive damages."

UnumProvident said the memo was merely an attempt by the company to better comply with Erisa, which governs many of its claims practices. But the memo, a copy of which was reviewed by The Wall Street Journal, adds fuel to critics' complaints UnumProvident in some instances has been overzealous in denying claims.

The insurer says it pays all legitimate claims and that critics, including some former employees who recently have given sworn statements to plaintiffs' lawyers, have distorted its approach, which is geared toward getting employees back to work. The Chattanooga, Tenn., company's claims-handling procedures are being scrutinized by state insurance regulators in Georgia and California.

Erisa long has been a frustration for plaintiffs' lawyers. Under the law, a policyholder who sues an insurer alleging a claim was mishandled can't collect any court award other than restoration of policy benefits and in some cases attorneys' fees. Erisa doesn't allow awards for punitive damages.

Insurance policies endorsed by any employer—even if the employee pays the premium—are protected by Erisa. The act's main provisions require better disclosure by benefit plans of how the plans are operated and administered and establish safeguards to protect employee benefits.

The 1995 Provident memo says, "While our objective is to pay all valid claims and deny invalid claims, there are some gray

areas, and ERISA applicability may influence our course of action." The memo says a Provident manager had identified 12 claims settled for \$7.8 million, that, if governed by Erisa, "our liability would have been between zero and \$0.5 million."

Plaintiffs' lawyers said the memo reveals how UnumProvident—and other insurers—increasingly have used Erisa's loopholes to their advantage, allegedly by forcing policyholders to go to court to collect their benefits. Joseph Belth, professor emeritus for insurance at Indiana University in Bloomington, who has reviewed the memo, said, in general and in the UnumProvident instance, Erisa "was supposed to be protection for employees, but it's being used to protect insurance companies and employers."

But Glen Felton, vice president of employment law at UnumProvident, said some consumer ire should be directed toward plaintiffs' attorneys, who turn away Erisa cases and "look for cases that are non-Erisa, trying to get these exorbitant awards."

Plaintiffs' lawyers say Erisa leaves them little leeway, because it pre-empts state insurance laws and allows insurers to insert policy language that makes it easier to deny claims. "People shouldn't have to hire a lawyer to get a legitimate claim paid," said Ray Bourhis, a lawyer at Bourhis & Wolfson in San Francisco who last year won a \$7.7 million award against UnumProvident in a non-Erisa case. In upholding the jury award in November, a federal judge in California said the company had "a comprehensive system for targeting and terminating expensive claims." UnumProvident has appealed the decision.

In February, a federal judge in Maryland concluded UnumProvident's behavior, in denying the Erisa-covered disability-income claim of a Baltimore legal secretary, had "bordered on outright fraud" and that the company implemented "an unprincipled and unreasonable review process." Despite that view, the company only had to restore the benefits of the secretary, Valerie Watson.

UnumProvident later agreed to pay Ms. Watson's attorneys' fees, according to her attorney, James P. Koch of Baltimore. A spokesman for UnumProvident said the company wasn't immediately prepared to comment on the case.