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And The Defense Wins

Ronald K. Alberts



benefits.

DRI member **Ronald K. Alberts** of the Los Angeles office of **Gordon & Rees LLP** teamed with a colleague to obtain a ruling in favor of their client Aetna Life Insurance Company of America (Aetna) in a federal court ERISA case involving the issue of whether Dependent Social Security (DSS) benefits the plaintiff received for his children could be off-set against the plaintiff's long term disability (LTD)

The LTD Plan provides that benefits are to be off-set by "other income benefits." The LTD Plan's definition of "other income benefits" includes "Disability, retirement, or unemployment benefits required or provided for under any law of a government. Examples are...Benefits under the Federal Social Security Act." The Plan also provides that "Other income benefits include those, due to your disability or retirement, which are payable to: you; your spouse; your children; your dependents."

The plaintiff filed an action in California Central District under ERISA, seeking payment of LTD benefits. The parties settled the underlying dispute regarding the monthly benefits. However, a controversy remained over whether Aetna could off-set the plaintiff's LTD benefits by the amount of DSS benefits that the plaintiff received for his children. The plaintiff argued that the LTD Plan language did not provide for such an off-set, that DSS benefits are not disability benefits, and that allowing such an off-set was contrary to public policy. Aetna countered that the LTD Plan language clearly provided for such an off-set, distinguished the legal authority cited by the plaintiff, and set forth legal authority supporting the off-set of disability benefits by DSS benefits.

The court held that DSS benefits accrued to the plaintiff's dependents due to the plaintiff's disability, and that the LTD Plan neither limited the benefit recipients to the insured, nor was silent as to the benefit recipient, but rather, provided that other income benefits included "Benefits under the Federal Social Security Act," and "specifically identifies plaintiff's dependents as payment recipients, due to the plaintiff's disability, to whom the off-set provision applies, *i.e.*, 'your children; your dependents.'" The court found the cases the plaintiff relied upon in support of his position unavailing, and held that "a plain reading of the LTD Plan in this case inescapably supports an offset of DSS benefits." The court held the instant LTD Plan "unambiguously defines what are to be considered 'other income benefits' and expressly provides for an offset of the amounts payable to the plaintiff's children and dependents." The court concluded the "Defendant is entitled, under the terms of the governing ERISA Plan, to offset Plaintiff's long term disability benefits by the monthly dependent social security income benefit amount paid to Plaintiff for the benefit of his children."

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