Appeals Court reverses judge's interpretation of LTD policy

Eric T. Berkman

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In brief

- Appeals Court ruled a disability policy's COLA rider stops increasing benefits after the insured turns 65.
- Policyholder sued Unum Life Insurance Co. for breach of contract over continued annual increases.
- Appeals Court rejected the lower court's ruling that the rider was ambiguous.
- Decision clarifies how COLA provisions interact with lifetime disability benefit riders in private insurance policies.

A cost-of-living-adjustment provision in a long-term disability insurance policy should not have been interpreted to provide lifetime annual benefit increases to the policyholder, the Appeals Court has ruled.

The COLA rider in plaintiff Maryanne Bombaugh's disability policy with defendant Unum Life Insurance Co. provided that, "[o]n each anniversary," it would increase the maximum disability benefit if, among other things, "the policy anniversary when your age is 65 has not occurred."

Unum stopped applying the COLA increase after Bombaugh turned 65, taking the position that the language in question cut off COLA adjustments at age 65.

Bombaugh filed a breach-of-contract action, contending that the language meant if she was under 65 at the start of her disability, the annual increases would continue after she turned 65.

A Superior Court judge found the rider's language ambiguous and, accordingly, construed it in Bombaugh's favor.

Writes for Appeals Court

But the Appeals Court reversed.

"[The COLA] provision sets forth a requirement that Bombaugh had to meet on each anniversary for Unum Life to increase her maximum disability benefit that year," Chief Justice Amy Lyn Blake wrote on behalf of the panel. "On the policy anniversary after Bombaugh turned sixty-five years old, she no longer met the requirement. Accordingly, Unum Life stopped increasing Bombaugh's maximum disability benefit in accordance with the terms of the policy."

Blake also noted that while Unum could have made the language clearer, that did not make the language ambiguous.

The 11-page decision is *Bombaugh v. Unum Life Insurance Company of America, et al.*, Lawyers Weekly No. 11-016-26.

Clear enough?

Plaintiff's counsel Mala M. Rafik of Boston said her client, a physician, purchased the policy with the understanding that it promised her COLA benefits that worked in tandem with a lifetime benefit rider that extended her disability benefits beyond age 65.

That was particularly important to her when she bought the policy because she was a doctor who expected to work past 65, Rafik said, adding that Bombaugh understood that the COLA benefit froze when it reached twice the base benefit amount and that it terminated if she was not disabled when she reached the policy anniversary after turning 65.

"That language is written under the heading 'Termination,'" Rafik continued. "That's what she read it to mean. That's what she purchased."

Rafik said such policies should really be about what consumers believe they are purchasing and what they are told at the time of the sale, not what the insurance company decides the policy provisions mean when the time comes to pay a claim.

Unum's attorney, Joseph M. Hamilton of Worcester, declined to comment.

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>
> **— Johanna L. Matloff, Boston**

But Johanna L. Matloff of Boston, who handles disability benefit disputes, said the case boiled down to state law contractual interpretation.

"Here, the language in the policy was clear enough to be enforceable as written," she said. "The takeaway for me is that a plaintiff's difficulty in reading and understanding the policy doesn't make it ambiguous."

Still, Matloff said, the insurer had to go through a summary judgment proceeding and an appeal that might have been avoided had the policy language been clearer than it was.

She also found it noteworthy that the case involved a private disability policy and speculated that the plaintiff's suit would have been disposed of more quickly had it been an ERISA case in which the plan administrator had been granted discretionary authority to interpret policy terms.

"The lower court would have had to defer to the plan administrator's interpretation of the policy unless it was arbitrary and capricious," she said. "It's really hard to satisfy the arbitrary and capricious standard and show that a plan administrator's interpretation is arbitrary and capricious if you're saying there's an ambiguity."

Swampscott insurance attorney Andrew F. Caplan, however, found the decision concerning.

Whenever a policy can reasonably be interpreted in more than one way, the interpretation most favorable to the policyholder must prevail, as insurance policies are contracts of adhesion and policyholders rarely have an opportunity to negotiate policy language, he said.

But here, Caplan said, the Appeals Court refused to find the policy ambiguous even though it acknowledged there were ways Unum could have made the wording "even clearer."

"The court unfortunately raises the bar for finding insurance policies ambiguous by observing that 'reading an insurance policy is often a formidable task, and difficulty in comprehension does not equate with ambiguity,'" he said, quoting the court.

Leah Small, a Providence insurance attorney who also practices in Massachusetts, said there did not seem to be anything the claimant or her counsel could have done to change the outcome.

As a practical matter, Small said she recommends that insureds read their policies carefully before they need them, ideally at the time they purchase them, in order to identify unclear provisions and how those might impact their financial plan.

"We frequently assist people who are still working to review their disability policies, analyze all the provisions, and help them understand what benefits would be available under different scenarios," she said.

COLA cutoff

Unum issued a disability income policy to Bombaugh, an obstetrician and gynecologist, in 1992.

Bombaugh intended for the policy to provide replacement income should she become unable to work as a doctor due to a disability.

The base policy provided that Unum would pay the maximum disability benefit following an "elimination period" should Bombaugh become totally disabled.

The policy also stated that the total disability benefit would not be paid beyond the maximum benefit period, defined as the later of the policy anniversary after Bombaugh turned 65 or 24 months after disability payments began.

Bombaugh paid an additional premium, however, for a lifetime sickness benefit rider and the COLA rider.

The lifetime sickness benefit rider extended Bombaugh's benefits for her lifetime if she became disabled before age 60 due to sickness The COLA rider stated that the monthly benefit would be increased annually to keep up with inflation if, among other things, "the policy anniversary when your age is 65 has not occurred."

Bombaugh v. Unum Life Insurance Company of America, et al.

THE ISSUE: Should a cost-of-living-adjustment provision in a long-term disability insurance policy have been interpreted to provide lifetime annual benefit increases to the policyholder?

DECISION: No (Appeals Court)

LAWYERS: Mala M. Rafik of Rosenfeld & Rafik, Boston (plaintiff)

Joseph M. Hamilton of Mirick, O'Connell, DeMallie & Lougee, Worcester (defense)

Bombaugh became unable to work as an OB/GYN in 2009 at age 54, and Unum began paying the maximum disability benefit.

Pursuant to the COLA rider, Unum increased the benefit annually but stopped increasing the benefit on the policy anniversary after Bombaugh turned 65.

Bombaugh filed suit in Superior Court in 2021 challenging Unum's interpretation of the policy.

Judge Valerie A. Yarashus, ruled that the COLA rider was ambiguous and thus had to be interpreted in the policyholder's favor. Accordingly, she entered judgment for Bombaugh.

Unum appealed.

Unambiguous language

In reversing the judgment, the Appeals Court panel rejected Bombaugh's argument that Unum's interpretation of the COLA rider did not give full effect to the lifetime sickness benefit rider.

“The lifetime sickness benefit rider addresses the duration of the maximum benefit period, not the amount of the maximum disability benefit,” Blake wrote. “Consistent with the lifetime sickness benefit rider, Unum Life continues to pay Bombaugh the maximum disability benefit, as that benefit had been adjusted under the cost-of-living adjustment rider.”

Similarly, the panel found that the COLA rider was not, in fact, ambiguous.

It noted that the rider additionally stated that if policyholders were disabled on the policy anniversary when their age was 65, future payments would be based on the maximum disability benefit in effect at that time.

“This language … frames the policy anniversary after an insured has turned sixty-five years old as a point at which the maximum disability benefit is calculated differently,” Blake said. “When read in conjunction with … language providing that Unum Life will increase the amount of the maximum disability benefit if ‘the policy anniversary when your age is 65 has not occurred,’ the two provisions establish that the cost-of-living adjustment increases stop on the policy anniversary after an insured has turned sixty-five years old.”

Unum’s interpretation that the COLA increases stop but that an insured continues to receive the increases that previously accrued gave full effect to both provisions, Blake continued.

“Bombaugh’s interpretation — that she should continue to receive cost-of-living increases after her sixty-fifth birthday — does not,” she said.

At the same time, the panel acknowledged ways that Unum could have been clearer that the COLA adjustments would stop after Bombaugh turned 65.

For example, it credited Bombaugh’s suggestion that the COLA rider could have provided specifically that increases to the maximum disability benefit would freeze on the policy anniversary after the insured turned 65.

“However, the fact that different language could have been even clearer does not render the language used ambiguous,” Blake wrote. “The judgment entered in favor of Bombaugh on her breach of contract claim is reversed, and a new judgment shall enter dismissing the complaint.”