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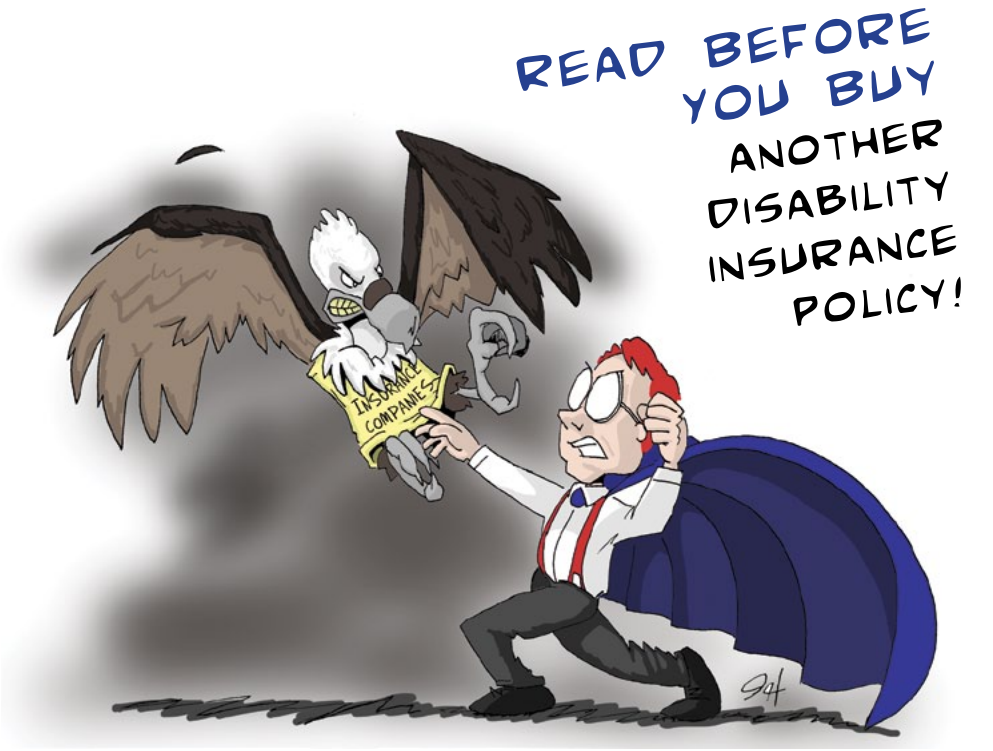

What Everyone Should Know BEFORE Buying a Long Term Disability Policy

By Disability Insurance Attorney Ben Glass

Author of ***Robbery Without a Gun:*** *Why Your Employer's Long-Term Disability Plan May be a Scam*

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SPECIAL REPORT

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By Attorney Ben Glass

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WHO IS BEN GLASS?

Ben Glass is a Fairfax, Virginia attorney and a nationally recognized expert on representing individuals in claims against their disability insurance companies.

In practice since 1983 and certified by the National Board of Trial Advocates, Mr. Glass is also a consultant to small business owners who are considering buying a group disability policy for their employees.

INTRODUCTION

Check Your Insurance Policy Right Now!

"One third of all Americans between the ages 35 and 65 will become disabled for more than 90 days."

"One in seven workers will be disabled for more than five years."

"The loss of income can be so devastating that it forces some people to foreclose on their home or even declare bankruptcy."

These are the headlines and talking points that disability insurance companies use to sell their policies to you. They are right; most people should purchase some form of disability insurance. The problem is that some disability policies have so many "weasel clauses," that the likelihood that they would actually send you a check if you were not able to work is low. To make matters worse, some of these clauses make challenging your insurance company's denial of benefits almost impossible.

People are often shocked to find that even though their doctors fully support their disability and in some cases they have been awarded disability benefits by the Social Security Administration, their policies are so bad that the insurance company does not have to pay benefits. Employer-provided policies tend to be much more difficult to collect benefits under than individual policies.

Check your disability insurance policy right now. The "weasel language" discussed here is not required by law and most policies do not have any of this language. The language renders the policy just about useless. Unfortunately, many of the worst insurance policies are bought by employers and used as a "benefit for employees." If you have a policy with the language discussed here, you will probably want to go kicking and screaming to Human Resources. If you are an employer you can go scream at your agent.

It is better to pull out your policy now than to go to an attorney later with your health records in one hand and one of these sham policies in the other.

WEASEL LANGUAGE #1

(The Six Most Dangerous Words You Will Ever See in Any Insurance Policy):

"We Have Discretion to Determine Benefits"

Imagine this: You make a claim for disability benefits under your employer's group disability policy. The claim is denied by the insurance company. You are allowed an appeal of that claim, but your appeal goes back to the same company that just denied your claim.

If they (surprise!) deny your claim again, you are allowed to file suit, but if you do, you will find that the playing field is not level if the insurance company has "discretion to determine benefits."

You won't have a jury decide your case. Instead, a judge will decide your case and he must rule in favor of the insurance company unless he finds their decision to be totally unreasonable. In other words, he can rule against you even if he believes you are actually correct. To make matters worse, you are not allowed to question any of the people who made the decision (to

see, for example, if they are actually qualified to review your situation or if they are biased in favor of the insurance company) or call any of your own doctors as witnesses at a trial. In fact, there is no trial.

"We have discretion to determine benefits" means "We win even if we are wrong."

WEASEL LANGUAGE #2

"We will Pay Only if You Can't Perform 'Each and Every' Material Duty of Your Occupation"

(In Other Words, "Only if You are in a Coma")

Courts have held that the "each and every" language means that you will only be paid if you cannot perform "every" material duty of your regular occupation. In other words, if you were a journalist, and you were not able to travel, meet with people or type at a computer, but you could still read, then you would not be disabled from your occupation as a journalist because you could perform at least one of the substantial duties of your occupation.

In one case, the claimant was the assistant manager of computer information systems for his company. He worked 40 hours a week. The physical requirements of his job included using a personal computer, talking on the phone, and attending meetings. He was frequently required to stand, walk and sit, and the job could not be performed by alternating between sitting and

standing. He became injured and everyone agreed that his injury limited him to doing "some sedentary work for up to three hours in an eight-hour day." In fact, he was limited to working three hours a day. Unfortunately, his policy had the "each and every" weasel language.

The insurance company argued that if he could perform even one material duty (i.e., working a little bit for three hours a day) he was not disabled and entitled to payments.

The court bought this argument! It said that the "plain language" of the policy meant that the claimant lost. At a hearing in this case, the judge likened this policy to a "coma policy." In other words, it was a policy that only paid if you were in a coma.

This was a disability policy bought and paid for by the claimant's employer. The Court basically ruled that the employer was perfectly free to buy a crummy policy for its employees and that it was the employees' responsibility to read the policy and go buy a private policy if they didn't like what the employer bought.

WARNING TO EMPLOYEES:

Read your policy today—

BEFORE you have a claim!

WEASEL LANGUAGE #3

"We'll Protect You if You Cannot Work in Your 'Own Occupation' Less Than Two Years"

You should have at Least Two Years of Protection

Most disability insurance policies work this way: You can be paid benefits for two years if you are not able to work at your own occupation. After two years, you are entitled to benefits only if you are not able to work at any occupation.

The theory behind this is that two years is enough time to be able to become newly trained to be able to produce income in some other business or employment.

99.9% of all policies have this standard two-year protection for your own occupation. Amazingly, however, some policies afford less than two years of protection, with some providing as little as six months of benefits. What this means is that if your sickness or illness prevents you from working in your own occupation, but after six months there is some job in the marketplace that you could do, then your benefits would be cut

off. Believe me when I tell you that the insurance companies work day and night to "find" a job that theoretically you would be able to do. In some cases, claimants who had no use of their arms were told by the insurance company that they could work as telemarketers with automatic dialing and voice recognition capability. It does not matter to the adjuster that the closest job may be the 11:00 p.m. to 7:00 a.m. shift 80 miles away.

The insurance company will work hard to 'find' you a job making cold calls as a telemarketer.

WEASEL LANGUAGE #4

"Income Protection of Less Than 60 Percent of Prior Earnings"

Most long-term disability insurance policies promise to pay somewhere between 60 and 66 percent of your prior earnings. This is standard. Of course, what they forget to tell you is that if your employer paid the premiums, income taxes will still be taken out of this amount, so the protection is actually much lower. If you get Social Security benefits, this reduces the benefits from your employer's policy even more.

Some policies provide less than 60 percent of prior earnings coverage. Employers who buy policies with such limited coverage should be spending the money upgrading the lunch room food because, after taxes, these policies offer almost no benefit at all. At the very least, employees need to know that policies providing less than 60 percent of benefits are not standard and there are much better policies available on the market, probably at the same rate.

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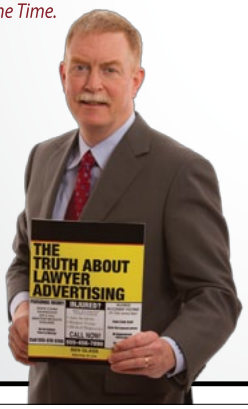

THAT'S WHAT EVERYONE SAYS.

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WEASEL LANGUAGE #5

"We will Stop Your Payments if You are Able to Work Part Time, But Do Not"

"Good news, we found you a part-time job as the overnight security guard!"

While the sales agents selling these policies focus on the benefits that will be paid if a person meets a definition of disability, hardly anyone will explain the "termination of benefits" clause in the policy. This is very, very important, as people lose their benefits because of these clauses.

The most heinous of these termination clauses says that all of your benefits will terminate if you are able to work part time, but do not. Think about this for a minute. It does not say that it will terminate benefits if you can make 60 percent of pre-disability earnings on your own. It does not say it will terminate your benefits if you can work 60 percent of the time you used to be able to work. It says it will terminate benefits if you are able to work part time, but do not.

Almost anyone could work "part time," couldn't

they? Does "part time" mean an hour or two a week? I have seen cases where the medical records and the doctors all agreed that the claimant could not work more than two hours at a time during the week because of severe pain and fatigue. It is no longer surprising that some insurance companies will insist that the ability to work "up to two hours at a time" is an ability to work "part time." All they need is one doctor to say that you can do this, and the fact that you do not go out to work these hours means that all of your benefits are terminated. Remember, they do not need to actually prove that there is any employer who would hire you.

Any individual or employer who buys a policy which allows benefits to be terminated if the claimant "can work part time, but does not" must have been sleeping when the policy was being explained to them.

You are probably better off donating your money to charity than buying a "can work part time, but does not" policy.

WEASEL LANGUAGE #6

"We Discriminate Against the Mentally Ill"

Insurance adjusters rejoice when they see the word "depression" in your records if you have one of these policies.

The next outrage to be aware of in long-term disability policies is the blatant discrimination against the mentally ill. Some policies limit payment of benefits if mental illness is the disability keeping the person from working. Courts have held that this blatant discrimination against the mentally ill is legal. (This is especially true in employer-provided policies. An employer is not required to offer any policy and courts have said, time and time again, that if an employer does offer a disability policy, it can offer any policy it wants. In other words, it doesn't have to provide a policy that actually pays benefits if you are disabled.)

What happens with these policies is that when you make a claim, the insurance company will seek to label your claim a "mental illness." Have chronic pain? You are depressed. Suffer from fibromyalgia? "It's all in your head." Suffer from

lyme disease? Your "mental illness" is causing you to "exaggerate your complaints."

Many policies go a step further, however. For example, some policies limit payments for disability benefits if "mental illness plays any part" in the disability. This is a very dangerous clause. (Think about it—the one thing that almost always happens when an otherwise productive member of society gets ill and can't work is that they become depressed. Insurance companies LOVE TO SEE "DEPRESSION" in the medical records. It's their ticket out of paying you!)

Insurance companies also love to see "cognitive" problems arising out of head trauma. You hit your head in a car accident, for example. You suffer a brain injury. Some insurance companies will attempt to label your "brain injury" as "mental illness."

Do you see how dirty their little game is? Many policies do not discriminate against the mentally ill. You need to look for a policy that does not contain a "mental illness" limitation of benefits.

Some insurance companies will attempt to label your "brain injury" as "mental illness."

WEASEL LANGUAGE #7

"We Won't Pay for Self-Reported Conditions"

"Pain? What pain? You can't feel THAT bad!"

Another outrageous limitation that appears in some policies is a limitation for so-called "self-reported conditions." Sometimes the insurance policy will list specific conditions like chronic fatigue, fibromyalgia, chronic pain, headache, migraines and the like, but other times it will not. What these insurance companies then turn around and do in denying claims is say that "there is no objective evidence that you are in pain" or there is no objective evidence that you are really fatigued. Therefore, the diagnosis is being made upon your own report of pain or fatigue and, thus, we are going to either not cover this benefit or limit it severely.

There are many well-recognized and documented diagnosable conditions related to pain and/or fatigue. There are physician specialists who make these diagnoses after exhaustive testing. The fact

that there is sometimes not any one test or lab study that can be done to "make the diagnosis" should not be a reason for an insurance company to limit or eliminate benefits.

Note: This language is still relatively rare, and only the cheapest companies include this clause. If you are an employer, you need to be on the lookout, especially when the insurance company sends you a big batch of paperwork in advance of a policy renewal. The instinct is to not read the fine print.

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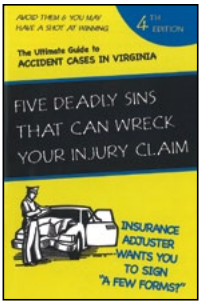

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About Ben Glass

Ben Glass is an attorney in Fairfax, Virginia. He is the author of numerous consumer books on the law, including "Robbery Without a Gun, Why Your Employer's Long-Term Disability Insurance Policy May be a Sham" (available at RobberyWithoutAGun.com).

Mr. Glass has been featured or quoted in numerous publications, including *The Washington Post, Washington Post Magazine, Newsweek, USA Today, ABC News Online, Wall Street Journal*, and "The Next Big Thing" radio show.

Mr. Glass has been interviewed on television, including ABC, NBC, Fox and Cox, as well as the show, "Leading Experts TV."

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