

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 -----
4 No. 21-1514
5 -----

6 JOHN MCQUILLIN,
7 Plaintiff-Appellant,
8 VS.

9
10 HARTFORD LIFE AND ACCIDENT
11 INSURANCE CO.,
12 Defendant-Appellee.
13 -----

14
15 Oral Argument
16 May 5, 2022
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21 B E F O R E :

22 HON. JOHN M. WALKER JR.

23 HON. GUIDO CALABRESI

24 HON. JOSE A. CABRANES

25 Circuit/Appellant Judges

1 A P P E A R A N C E S:

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1 P R O C E E D I N G S

2 HON. JOHN M. WALKER, JR.: We'll
3 reserve the decision, and we'll turn to McQuillin
4 v. Hartford Life --

5 HON. GUIDO CALABRESI: Very well argued
6 by both sides.

7 HON. JOHN M. WALKER, JR.: -- Hartford
8 Life Accidental Insurance.

9 MAN 3: Thank you very much, Your
10 Honor. Thank you.

11 WOMAN 1: Thank you, Your Honor.

12 MR. DE HAAN: Good morning, Your
13 Honors. My name is John DeHaan, and I'm here on
14 behalf of the appellant/plaintiff, John
15 McQuillin, in this action seeking review of an
16 insurance carrier's denial of disability benefits
17 under ERISA.

18 Your Honors, this case comes down to
19 two basic issues. The first -- that need to be
20 evaluated in sequence. The first is whether or
21 not Hartford's April 23, 2020 letter was a
22 benefit determination as required by the
23 regulation 2560.503-1.

24 If it was not a benefit determination,
25 then Mr. McQuillin properly gained his remedies

1 exhausted on May 26th and filed suit. If, on the
2 other hand, it was -- it is determined that it
3 was a valid -- was a benefit determination, the
4 question must then be answered as to whether or
5 not it was an adverse benefit determination or
6 not. Again, if it was an adverse benefit
7 determination, then Mr. McQuillin will have
8 exhausted his administrative remedies and was
9 free to file suit under the regulations and under
10 the plan terms.

11 However, a review of the record here
12 and of the relevant regulations and plan language
13 makes it clear that Hartford's April 23rd letter
14 cannot be considered a benefit determination on
15 review, as that is defined in the regulation.
16 The letter --

17 HON. JOHN M. WALKER, JR.: In other
18 words, it's -- what you're saying is that the --
19 although it pertains to whether or not there's
20 going to be benefits at some point, the benefit
21 determination is specific in the sense that it
22 actually determines a number, an amount of
23 benefits.

24 MR. DE HAAN: Exactly, Your Honor.

25 HON. JOHN M. WALKER, JR.: This didn't

1 do that.

2 MR. DE HAAN: Or at the very least, it
3 has to make a substantive decision as to whether
4 any benefits are going to be paid.

5 HON. JOHN M. WALKER, JR.: Right.

6 MR. DE HAAN: There are a lot of
7 different decisions and determinations that
8 Hartford may have to make during the course of an
9 appeal process.

10 HON. JOHN M. WALKER, JR.: Right.

11 MR. DE HAAN: Whether to ask for an
12 IME, whether to have a vocational expert review
13 it, whether to ask for more information --

14 HON. JOHN M. WALKER, JR.: The thing
15 here is that, why would Hartford remand it back
16 to the factfinder instead of -- which I think was
17 totally within their power granting an extension?

18 MR. DE HAAN: The --

19 HON. JOHN M. WALKER, JR.: They could
20 have done that, right?

21 MR. DE HAAN: By granting an --

22 HON. JOHN M. WALKER, JR.: Granting a -
23 - wasn't there a possibility of another 45-day
24 extension?

25 MR. DE HAAN: Well, they would have to

1 show under Second Circuit law a -- special
2 circumstances for that.

3 HON. JOHN M. WALKER, JR.: Not just --
4 right, not just their own (indiscernible).

5 HON. GUIDO CALABRESI: They'd have to
6 give notice of it, and they'd have to show
7 reasons for it, but they haven't done any of
8 that.

9 HON. JOHN M. WALKER, JR.: Right.

10 MR. DE HAAN: Correct.

11 HON. JOHN M. WALKER, JR.: Right.

12 MR. DE HAAN: They did -- they never
13 notified plaintiff or plaintiff's counsel that
14 there was any need for extra time during the
15 appeal, and I might add, the appeal was submitted
16 on April 11th. Hartford's letter allegedly
17 determining the appeal was April 23rd. They
18 still had plenty of time left --

19 HON. JOHN M. WALKER, JR.: Sure.

20 MR. DE HAAN: -- on -- to render an
21 appeal. You know --

22 HON. JOHN M. WALKER, JR.: To render a
23 benefit determination.

24 MR. DE HAAN: To render a decision on -
25 - a substantive decision on this appeal, but they

1 chose not to. I don't really understand why they
2 would do that. It makes no sense to me, either.
3 The simple fact is the regulations contemplate a
4 claimant's, when they appeal an adverse
5 determination at the claim level, submitting not
6 just arguments to the carrier, but also
7 submitting new evidence. And --

8 HON. JOHN M. WALKER, JR.: So your
9 point then is that there was no -- under these
10 circumstances, there was nothing to exhaust.
11 There was no duty to exhaust. There wasn't
12 anything to exhaust. They had to presumably, you
13 know, make a -- some kind of a determination, a
14 benefit determination.

15 MR. DE HAAN: Well, the way plaintiff
16 and counsel below interpreted that April 23rd
17 letter primarily was more of like, a status
18 letter. We -- where Hartford was advising that
19 it agreed that its October 2019 letter, the
20 reasons for denying the claim were no longer
21 valid, but it was not awarding benefits.

22 HON. JOHN M. WALKER, JR.: Yeah.

23 MR. DE HAAN: Counsel waited for the
24 remainder of the 45-day appeal period before
25 filing suit to see if Hartford would say, okay,

1 we finished our substantive review and we're
2 awarding or denying benefits. Hartford did not
3 do anything else. Despite the fact that the
4 April 23rd letter advised that the claims
5 department would contact counsel shortly about
6 proceeding with that review, no contact was made
7 at all. No requests were made, nothing. So when
8 the 45 days ran, counsel deems the claim denied
9 on appeal and filed suit on day 46.

10 HON. JOHN M. WALKER, JR.: Are you
11 claiming here that the rule about -- that
12 absolves you -- absolves the plaintiff of having
13 to exhaust if the plan doesn't strictly adhere to
14 the 503-1 requirements, that that comes into play
15 here?

16 MR. DE HAAN: Well, it does, because
17 Hartford didn't render a decision substantively
18 on this claim. Arguably, in July of 2020, which
19 is well past any deadline, even if it had been a
20 valid remand to the claims department on April
21 23rd, the claims department then would have had
22 45 days from that, which would have been the
23 beginning of June. Hartford blew by every time
24 deadline there was once Mr. McQuillin filed his
25 appeal, which is ironic.

1 HON. JOHN M. WALKER, JR.: Just --
2 yeah, I know -- I don't think this is directly
3 relevant, but just to understand the total
4 picture, in terms of getting an extension, if
5 they had given a notice and said we -- we're
6 granting an extension, and the reason we're doing
7 it is because this case is more complicated now
8 because of the new evidence, and we're remanding
9 back for a determination at the first instance
10 level, would that have been adequate, would you
11 say?

12 MR. DE HAAN: Well, I don't think it
13 would be, because every claim is going to be
14 complicated on the -- you know, there's always
15 going to be a question of, what does the medical
16 evidence say, what are the vocational issues?

17 HON. JOHN M. WALKER, JR.: Well,
18 there's got to be a reason for the extension in
19 the law, and presumably, at some point, there
20 would be a justification for doing that. I would
21 think if all of a sudden at the last minute they
22 became aware of new information that altered
23 their thinking or at least caused them to go back
24 on the fence, that they could get an extension.

25 MR. DE HAAN: Perhaps, but that didn't

1 happen here, Your Honor.

2 HON. JOHN M. WALKER, JR.: I know.

3 MR. DE HAAN: It was -- the appeal,
4 again, was submitted on April 3rd, and Hartford
5 made their "decision" less than two weeks later
6 on April 23rd. They could have looked at the
7 appeal substantively.

8 HON. JOHN M. WALKER, JR.: So there was
9 another month -- another month, basically, in
10 which they could have finalized this?

11 MR. DE HAAN: Yeah, they had most of
12 their 45 days still on (indiscernible) when they
13 did this.

14 HON. JOHN M. WALKER, JR.: Yep.

15 MR. DE HAAN: They just stopped
16 everything at the appeals department and sent it
17 back. And then when they did make that April
18 23rd letter, the letter itself says it's not
19 making a substantive decision on the appeal. It
20 said -- you know --

21 HON. GUIDO CALABRESI: The basic
22 argument is that this whole structure, structure,
23 required a decision to be made on benefits, yes
24 or no and how many, within 45 days, or a suit can
25 be brought, unless there are very specific

1 reasons why a delay can be asked for, and then a
2 notification. And then none of that was done.

3 MR. DE HAAN: Yes, Your Honor, that is
4 appellant's position. In fact, I think the -- a
5 plain reading of the regulations mandates that.
6 The regulations specifically contemplate an --
7 claimant submitting new and -- new evidence on
8 the appeal. It specifically contemplates the --
9 whoever is charged with deciding that appeal as
10 having the power to consider it and make a
11 substantive decision.

12 In fact, if new evidence comes to light
13 either because of what the claimant submitted or
14 Hartford develops new evidence in the appeal
15 process, when Hartford develops new evidence --
16 perhaps they had a record review done of
17 something -- they have to, under the appeal
18 regulation, notify the claimant of the new
19 evidence they have and give them a chance to
20 respond before just simply saying, well, based on
21 this, we're now going to deny it.

22 So the -- it's very clear that the
23 regulation expects Hartford to make a substantive
24 decision. It's also clear, if you look at M4,
25 which is a definition of an adverse benefit

1 determination, that also clearly would indicate
2 that a substantive decision is required, because
3 it defines an adverse benefit determination as
4 pretty much anything except a full and complete
5 approval of the claim and payment of benefits.
6 It says "if benefits are not paid in whole or in
7 part."

8 So if Hartford had said, we're going to
9 approve this claim and pay you for a portion of
10 the benefits you were seeking but not all of it,
11 he could have filed suit then as well. Here,
12 they said "We agree that our original reason to
13 deny your claim really is no longer valid, but
14 we're still not going to pay you," which is
15 outrageous here.

16 HON. JOHN M. WALKER, JR.: So what is
17 exactly -- what is the remedy that you're asking
18 from us?

19 MR. DE HAAN: Well, this was, again,
20 decided on a motion to dismiss, so it short-
21 circuited the entire litigation process. There
22 was no judicial review of Hartford's decision.

23 HON. JOHN M. WALKER, JR.: You want to
24 vacate the motion to dismiss so your suit can go
25 forward?

1 MR. DE HAAN: Essentially, Your Honor,
2 yes, and have the Court's review of Hartford's
3 decision.

4 HON. JOHN M. WALKER, JR.: So it's not
5 a reverse. You want a vacatur of the judgment?

6 MR. DE HAAN: Yes.

7 HON. JOHN M. WALKER, JR.: Yes. And
8 then remand for what proceedings, exactly? Tell
9 us what you envisage if you're successful here.

10 MR. DE HAAN: Well, if this was
11 remanded to the district court, it would proceed
12 like a typical ERISA disability claim. Plaintiff
13 would seek some relevant discovery on the claim.
14 I would expect, given the way these things go,
15 there would be -- that would be hotly contested
16 before the district court.

17 HON. JOHN M. WALKER, JR.: And why --
18 why --

19 MR. DE HAAN: And then it would proceed
20 --

21 HON. JOHN M. WALKER, JR.: -- why is it
22 that you imagine that that is the case?

23 MR. DE HAAN: That just seems to be the
24 case with every ERISA claim I've been in that the
25 carrier comes in saying there should be no

1 discovery. I've even had carriers come in saying
2 that they should not be subject to the Rule 26
3 disclosures because it's an administrative
4 procedure being appealed from, even though it's
5 not. It's a contract dispute.

6 HON. JOHN M. WALKER, JR.: This is just
7 a threshold dismissal of the complaint.

8 MR. DE HAAN: Yes.

9 HON. JOHN M. WALKER, JR.: And it
10 reinstates the complaint for further -- for a
11 (indiscernible).

12 HON. GUIDO CALABRESI: You're just
13 being --

14 MR. DE HAAN: I'm sorry --

15 HON. GUIDO CALABRESI: You're just
16 being pessimistic. It may well -- it may be that
17 it -- well, we hold that you had a right to sue,
18 but then (indiscernible) lie down and play dead.

19 MR. DE HAAN: I didn't catch the last
20 part of that, Your Honor.

21 HON. GUIDO CALABRESI: (Indiscernible)
22 --

23 HON. JOHN M. WALKER, JR.: You missed
24 the last part?

25 MR. DE HAAN: I missed the last part.

1 HON. JOHN M. WALKER, JR.: Oh, he asked
2 whether your adversary was going to lie down and
3 play dead if you win.

4 MR. DE HAAN: Well, that would be nice,
5 but I would not expect it.

6 HON. JOHN M. WALKER, JR.: Thanks very
7 much. You've reserved some time.

8 MR. DE HAAN: Thank you, Your Honor.

9 HON. JOHN M. WALKER, JR.: I can give
10 you some extra time.

11 MR. DE HAAN: Thank you.

12 HON. JOHN M. WALKER, JR.: Mr. Begos?

13 MR. BEGOS: Good morning, Your Honors.
14 May it please the Court, Patrick Begos, for
15 Defendant Hartford Life and Accident Insurance
16 Company.

17 The district court here correctly held
18 that strict compliance with Section 503-1 does
19 not require a claim administrator to adhere to
20 requirements that are not expressed in the
21 regulation. As this Court previously held in the
22 context of letters of credit, a corollary to the
23 rule of strict compliance is that the
24 requirements must be explicit.

25 HON. GUIDO CALABRESI: Excuse me --

1 HON. JOHN M. WALKER, JR.: No, but --

2 HON. GUIDO CALABRESI: -- counsel, how
3 could it have been any clearer in the language,
4 in the regulation, and in your own
5 (indiscernible) that you had to give them answer
6 within 45 days as to whether there were benefits
7 or not? How could it have been made any clearer?

8 MR. BEGOS: Hartford Life did make a
9 determination on the administrative appeal, as
10 the district court held. It granted the
11 administrative appeal. It overturned --

12 HON. GUIDO CALABRESI: Oh,
13 (indiscernible) --

14 HON. JOHN M. WALKER, JR.: No, but how
15 is it a benefit -- what -- how is it a benefit
16 determination?

17 MR. BEGOS: It was a determination,
18 Your Honor. It was a benefit determination
19 saying that the prior denial that there was a
20 failure to --

21 HON. GUIDO CALABRESI: (Indiscernible).

22 HON. JOHN M. WALKER, JR.: Hold on.

23 Judge Calabresi, we can't hear you.

24 Your question is?

25 HON. GUIDO CALABRESI: My question is,

1 how could it have been made any clearer in these
2 regulations that what was required was a
3 decision, yes or no, on benefits, not a decision
4 to put it off? What language would you have
5 given us to make anything clearer than this was?

6 MR. BEGOS: Your Honor, the regulation
7 talks about benefit determinations and benefit
8 determinations on review. The benefit
9 determination that was appealed here was, I would
10 call it, a preliminary determination that the
11 plaintiff, the claimant, had not submitted
12 sufficient proof of loss, even to evaluate the
13 merits of his claim.

14 HON. JOHN M. WALKER, JR.: That was a
15 determination.

16 MR. BEGOS: That was a determination.

17 HON. JOHN M. WALKER, JR.: But it
18 wasn't a benefit determination.

19 MR. BEGOS: Well, I think it was a
20 benefit determination because it was
21 administratively appealed, so if that was not a
22 benefit determination that there was insufficient
23 proof of loss, then there was nothing for the
24 claimant to appeal.

25 If the claimant did appeal, chose to

1 appeal instead of providing additional
2 information at the claim level, which was an
3 option that was provided to him, he appealed, and
4 Hartford Life addressed the issue that was on
5 appeal, which was, was there a sufficient proof
6 of loss to evaluate the claim? Now, the claimant
7 cured the defect --

8 HON. JOHN M. WALKER, JR.: You're
9 saying that that's a benefit determination?

10 MR. BEGOS: I'm saying that's a benefit
11 determination under the terms of the regulations,
12 Your Honor.

13 The Department of Labor has said, and
14 if -- in its long-standing FAQs regarding these
15 regulations that claim fiduciaries have great
16 flexibility in deciding -- in designing their
17 claim organizations and claim procedures to
18 comply with the regulations.

19 It's my view, and it was the view of
20 the district court, that the determination that
21 was made on appeal was a determination, a benefit
22 determination on review, because it addressed the
23 issue that was being appealed. It overturned the
24 claim denial, the adverse benefit determination,
25 and then it properly returned the claim to the

1 claim department for the initial review of the
2 evidence that the claimant had submitted for the
3 first time on administrative appeal.

4 HON. GUIDO CALABRESI: Counsel, you
5 cite the Department of Labor, the Department --
6 and I'm not sure we give it deference, given the
7 whole situation of hour and so on, but the
8 Department of Labor tells us to read this exactly
9 the opposite of (indiscernible).

10 MR. BEGOS: The Department of Labor
11 tells the Court to use one version of a
12 definition of the word "determination" that
13 appears in one dictionary the Department of Labor
14 cites to.

15 As we explain in our brief, the
16 Department of Labor uses the word "determination"
17 over a hundred times in Section 503-1. And
18 sometimes it refers to a final determination.
19 Sometimes it refers to a determination that
20 requires further administrative review before it
21 becomes final, and in fact, as we cite in one
22 place in the regulation, the Department of Labor
23 refers to the word "determination" in the same
24 sentence using both senses. So --

25 HON. JOHN M. WALKER, JR.: So what did

1 the -- what triggered, under your theory, what
2 triggers the 45-day rule?

3 MR. BEGOS: The 45 days to decide the
4 administrative --

5 HON. JOHN M. WALKER, JR.: To decide --
6 to decide the issue.

7 MR. BEGOS: The receipt of the
8 administrative appeal by Hartford Life.

9 HON. JOHN M. WALKER, JR.: Got it.
10 Coming back, you mean, after the remand?

11 MR. BEGOS: I misunderstood. I thought
12 you were talking about the 45 days to decide the
13 appeal. So the regulation is clear that once the
14 appeal is received --

15 HON. JOHN M. WALKER, JR.: Yep.

16 MR. BEGOS: -- then Hartford Life has
17 45 days to make a determination, which I think it
18 did here.

19 HON. JOHN M. WALKER, JR.: Yep.

20 MR. BEGOS: And --

21 HON. JOHN M. WALKER, JR.: So that --

22 MR. BEGOS: -- that can be extended in
23 certain circumstances, when --

24 HON. JOHN M. WALKER, JR.: Right, but
25 then if it sent it back the way that it happened

1 here under your theory, it would start the whole
2 process over again. And then, I guess the -- I
3 guess, the 45-day period, in terms of the court
4 of first instance of the finder within Hartford,
5 that -- whatever that was, factfinder, that would
6 start again?

7 MR. BEGOS: That specific question is
8 not before the Court right now --

9 HON. JOHN M. WALKER, JR.: I understand
10 that, but that's what would have to happen,
11 right?

12 MR. BEGOS: Yes, I think that that is a
13 --

14 HON. JOHN M. WALKER, JR.: And then
15 there -- and then there's no end to the process.

16 MR. BEGOS: I think it's unclear under
17 the regulations, but I think Your Honor's reading
18 is a fair reading, that once it gets remanded,
19 that the clock starts again, and there are --

20 HON. JOHN M. WALKER, JR.: And then it
21 could happen again, and then it could --

22 MR. BEGOS: It could happen again. The
23 regulations -- Your Honor, there is no evidence
24 in this record that Hartford was interested in
25 delay. In fact, Hartford --

1 HON. JOHN M. WALKER, JR.: This is for
2 the benefit of the person -- of the claimant, all
3 these rules. They need a decision. They need --
4 they're looking for benefits. They want to know
5 up or down. That's the situation.

6 MR. BEGOS: Not --

7 HON. JOHN M. WALKER, JR.: Who would
8 deny them that?

9 MR. BEGOS: -- not only for the benefit
10 of the claimant, Your Honor. This is the -- for
11 the benefit of the claimant, for the benefit of
12 the courts, for the benefit of the plans and the
13 plans' sponsors. This Court and the Supreme
14 Court have established a firm policy of
15 exhaustion of administrative remedies, and that
16 policy as this Court has held --

17 HON. GUIDO CALABRESI: Counsel.
18 Counsel, what is the point of the -- of the --
19 you know, the fact that you can ask for an
20 extension under particular circumstances, giving
21 notification and explaining why, if you can just
22 do it as you have it done this way without doing
23 any of that? What's the point of ending that
24 there at all if you can do it without bothering?

25 MR. BEGOS: Your Honor, the point of

1 the remand here, in my view, and I think it's
2 clear from the record, is that Hartford did make
3 its determination well within the 45 days. So
4 the question of whether it could extend the time,
5 whether special circumstances existed to extend
6 the time to decide the appeal --

7 HON. GUIDO CALABRESI: You're --

8 MR. BEGOS: -- didn't apply, and after
9 the claim got remanded, as Judge Walker has said,
10 the plausible reading of the regulation is that
11 the clock starts again. But the plaintiff sued
12 before the clock ran after the remand.

13 HON. JOHN M. WALKER, JR.: Well, that's
14 under your theory. I'm not saying that that
15 necessarily is the way it should work. You had
16 another month, virtually, in -- to comply with
17 the original 45 days and get it back up there and
18 have a determination of -- a determination of the
19 actual number of benefits and whether they would
20 be done.

21 MR. BEGOS: As we've argued, and as the
22 amicus ACLI has argued, Your Honor, there is a
23 benefit to the claimant in doing things the way
24 Hartford did it. First of all, I would say
25 Hartford --

1 HON. JOHN M. WALKER, JR.: Well, you're
2 confusing benefit with benefit, right?

3 MR. BEGOS: Those with vantage --

4 HON. JOHN M. WALKER, JR.: An
5 advantage.

6 MR. BEGOS: -- to the claimant in doing
7 it the way Hartford did it. Had Hartford
8 considered the merits of the new evidence on
9 appeal and formed a determination up or down
10 whether the claimant was entitled to benefits,
11 the claimant would have had a very limited
12 opportunity to address the new rationale and to
13 address the new evidence.

14 So Hartford Life would have, during the
15 appeal period, presumably extended, would have
16 obtained peer reviews, might have obtained
17 vocational reviews, would have sought evidence
18 from -- presumably from treating physicians and
19 could have told the time limit entirely why it
20 was seeking that necessary evidence.

21 And then, at some short period -- it's
22 not specified in the regulations -- before
23 issuing an adverse benefit determination on
24 appeal, it would have sent a letter to the
25 claimant and said, here's our rationale for

1 denying your claim, here's the -- all the new
2 evidence that we've developed on administrative
3 appeal. And the claimant would have a very short
4 period of time to respond to that, to marshal
5 argument in response to that, to argue against
6 that. And then Hartford Life would have issued
7 its adverse benefit determination, and that would
8 have been it.

9 The way Hartford did it, and I think
10 it's the appropriate way and fairer to claimants,
11 is it said "We have this preliminary
12 determination, adverse determination, that you
13 didn't submit proof of claim. You've now done
14 it. We've considered that new evidence
15 sufficient to satisfy the proof of claim
16 requirement. We're going to return it to the
17 claim department. If the claim department then
18 issued an adverse benefit determination, the
19 claimant would have had the full 180 days that he
20 could have taken to marshal evidence in response
21 to the adverse claim determination, submit an
22 appeal, submit argument, and then he would have
23 had the appeal rights."

24 There's no advantage to -- he comes
25 into court with -- there is no denial of his

1 claim. There is no consideration of the evidence
2 that he submitted on appeal.

3 HON. GUIDO CALABRESI: But, counsel,
4 counsel, if we buy your position -- and I'm not
5 saying that Hartford in this case was trying to
6 delay, but if we buy your position, we are also
7 saying that someone in your position can continue
8 to put off giving a yes/no answer indefinitely.
9 And that -- I'm not saying that that would be
10 your motive, but that's a mighty odd way of
11 writing something which is meant to give evidence
12 to people, well, now the person who is supposed
13 to get the benefit will be able to put off doing
14 anything indefinitely. Is that --

15 MR. BEGOS: Your Honor --

16 HON. GUIDO CALABRESI: -- that's --

17 MR. BEGOS: -- I can't -- I've been
18 doing this for a long time, and I can't come up
19 with a particular situation where I could
20 envision a claim fiduciary repeatedly denying a
21 claim, and then on appeal, remanding for further
22 evaluation.

23 Most of the claims that have an adverse
24 benefit determination happen fairly regularly.
25 There is proof of loss submitted. It's evaluated

1 at the claim level. If there's an adverse
2 benefit determination, there's an appeal, and
3 it's --

4 HON. GUIDO CALABRESI: Counsel, I'm not
5 talking to motives. I'm just saying what a
6 sensible way of reading a regulation, that is,
7 reading a regulation gives one of the parties a
8 capacity to put off everything forever is a
9 difficult reading. Put it that way.

10 MR. BEGOS: I understand that would be,
11 Your Honor, and I don't believe that the reading
12 that I'm advancing gives Hartford Life or any
13 claim fiduciary the ability to put off a final
14 determination forever. And I would submit, Your
15 Honor, that the purpose of Section 503-1 is to
16 flesh out the full and fair review that leads to
17 the exhaustion of administrative remedies that
18 this Court has said is vitally important in ERISA
19 litigation and that allows these -- the district
20 court to receive a full record, a determination
21 that it can consider either on de novo --

22 HON. JOHN M. WALKER, JR.: That may be,
23 but the regulations really do not conflate this.
24 It's a one-off situation, these kinds of cases,
25 not -- I mean, this is a rare case.

1 MR. BEGOS: It -- it is. I guess it
2 depends on the law of large numbers, Your Honor.
3 It's not common in litigation, but it is not
4 uncommon in companies that are dealing with
5 thousands and thousands of claims.

6 And I have -- this is not on the
7 record, but I represent a number of companies,
8 and most if not all of the have this kind of
9 process in certain circumstances. And it tends
10 to be when there is, my words, a preliminary -- a
11 claim denial on a preliminary basis.

12 And that would be, like here, you
13 didn't submit proof of loss. It could be an
14 eligibility issue. You aren't employed for long
15 enough to be eligible for coverage under this
16 plan. It could be a preexisting condition issue,
17 where the condition that allegedly is disabling
18 occurred shortly before the claimant became
19 eligible. Those are, I call them, preliminary
20 issues. They do come up, and they do lead to
21 this kind of situation where there is an appeal
22 of this preliminary denial.

23 Now, if Your Honors -- the way that I
24 believe Your Honors are suggesting the regulation
25 should be read, it would suggest that a company

1 like Hartford, when it finds that there's no
2 proof of loss sufficient to evaluate the claim,
3 should still go ahead and say, and we're denying
4 the claim on the merits. Or when there's a
5 decision that there's a preexisting condition or
6 there's a lack of eligibility, Hartford should
7 still go ahead and demand all of the evidence
8 that the claimant might submit to support the
9 disability claim in the event that --

10 HON. GUIDO CALABRESI: Hartford could
11 perfectly well have said, unless you give us more
12 within 45 days, by 45 days we will deny your
13 claim, and you have 23 or however more days there
14 are to give us more, otherwise, it will be denied
15 then, and then you would be within the -- your
16 time will be good.

17 MR. BEGOS: Your Honor, I think that
18 would be less fair to the claimant. I think that
19 Hartford's procedure gives the claimant the
20 opportunity, a full opportunity, to contest an
21 adverse claim determination. And in the event a
22 final determination is adverse and the claimant
23 decides to sue, it gives the Court a full record
24 on which to review that. I think if the Court
25 reverses --

1 HON. JOHN M. WALKER, JR.: No, I never
2 that it was accommodated for in the regs, really.
3 And what you're really doing is saying, you know,
4 the regs have to be -- have to be interpreted in
5 a different way than might make you know, common
6 sense in terms of what a benefit determination
7 is. And then, you know, you're saying a benefit
8 determination really is just a determination,
9 that is has something to do with benefits. It
10 isn't a determination of the actual benefit up or
11 down. And that's what's troubling us.

12 MR. BEGOS: Well, Your Honor, the regs
13 that in connection with a disability claim, an
14 adverse benefit determination includes rescission
15 of coverage. Now, that's not a decision on
16 benefits. That's a decision that you're not
17 covered at all. So the regs do certainly
18 contemplate that an adverse benefit
19 determination, which is the words that the
20 Department of Labor uses, can apply to issues
21 that are not strictly, how are you entitled to
22 benefits and what amount are those benefits due
23 in?

24 Thank you.

25 HON. JOHN M. WALKER, JR.: Thank you

1 very much.

2 Mr. DeHaan?

3 MR. DE HAAN: Thank you, Your Honors.
4 First, the issue with proof of loss raised by
5 counsel as a procedural or preliminary type of
6 consideration is not really how these things play
7 out. The policy defines proof of loss in terms
8 of what type of evidence needs to be submitted,
9 but what Hartford here basically said was, the
10 evidence he submitted wasn't enough, it didn't
11 convince us.

12 And candidly, Hartford's actions
13 contradict their arguments today because if there
14 was some kind of preliminary failure to submit
15 evidence that Hartford needed on the initial
16 claim, Hartford could have asked for it. In
17 fact, they should have asked for it under ERISA.
18 They didn't.

19 Everything they asked Mr. McQuillin to
20 provide, he provided. It was enough for them to
21 -- for Hartford to approve benefits under the
22 short-term disability claim with the same
23 definition of disability that's applicable to the
24 elimination carried in the first 24 months of
25 benefits under the long-term policy. It was

1 enough for Hartford to approve Mr. McQuillin
2 under the New York state disability law benefit,
3 which actually has a slightly more stringent
4 definition of disability.

5 So how could proof of loss sufficient
6 to approve a claim under a more difficult
7 definition of disability suddenly not be enough?
8 But the -- also, again, they didn't ask him to
9 provide anything else. They said, here -- if you
10 want us to consider your disability claim,
11 complete these forms. And I might add at this
12 point, he was not represented by counsel. He was
13 doing this all on his own.

14 He completed the forms. He submitted
15 them. They asked him "Sign this authorization."
16 He signed it. He sent it back to them. Then
17 they denied the claim, and although they say
18 proof of loss was insufficient, isn't that really
19 just a way of saying, it didn't convince us that
20 you're disabled? It's a substantive decision on
21 disability.

22 Likewise, you know, Hartford is saying,
23 "Well, we suddenly got the missing information on
24 appeal, so it's fair to the claimant to send it
25 back to the same party to evaluate it who denied

1 it before." But again, that makes no sense
2 whatsoever.

3 If they were really so worried about
4 Mr. McQuillin and being fair to him when he was
5 unrepresented and then hired a counsel for the
6 appeal, and counsel contacted them and said "Can
7 we have an additional 90 days to complete appeal
8 submission?"

9 Hartford said, "No."

10 Then later, counsel asked "Can we at
11 least have another 30 days to complete this?"
12 Hartford didn't even take the time to respond to
13 that, so Mr. McQuillin and counsel scrambled.
14 They got everything together. They submitted it.

15 Hartford then, in the appeals
16 department, didn't even consider it
17 substantively. They just sent it back to the
18 exact same decision-maker who had previously
19 denied it to make another decision on that same
20 claim, which is really the substantive appeal
21 decision.

22 It really is just -- and to further
23 highlight this, counsel makes the argument,
24 "Well, the appeals department got this new
25 information and it -- you know, they could have

1 done all these grand things, an IME, a peer
2 review, have all these specialists look at it."

3 What did the -- what happened when it
4 went back to the claims department? There was no
5 further extensive development. They have an
6 employee of Hartford who is a nurse look at it,
7 not even a doctor. And this nurse disagreed with
8 a treating board-certified specialist who is
9 recognized as one of the best doctors in his
10 field, in the country, if not the world. And a
11 nurse disagreed with Mr. McQuillin's oncologist,
12 and that was the end of it.

13 So this was not about Hartford trying
14 to bend over backwards to give Mr. McQuillin
15 every benefit here. They were bending over
16 backwards to try to not give him any benefits.
17 That was the purpose.

18 HON. JOHN M. WALKER, JR.: All right,
19 thank you very much. We'll reserve decision,
20 well argued by both, and we're grateful to you.

21 (End of proceeding)

22

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.

Sonya M. Ledanski Hyde

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Date: August 31, 2022

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