

ERISA & DISABILITY BENEFITS NEWSLETTER

ABOUT OUR FIRM

The Disability Insurance Team at Eric Buchanan & Associates helps individuals nationwide who have been denied disability insurance benefits and employee benefits. Our insurance and employee benefits team helps people apply for, or fight denials of, disability insurance benefits, life insurance, health insurance, and similar insurance benefits.

For more information, visit our website at www.buchanandisability.com.

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SIXTH CIRCUIT OFFERS TENNESSEE PLAINTIFFS GREATER REMEDIES AGAINST INSURANCE COMPANIES
BY: DACEY COCKRILL

On December 21, 2018, the Sixth Circuit issued an important decision for the plaintiff's bar in *Lindenberg v. Jackson National Life*. The three important holdings of *Lindenberg* that could significantly change the landscape for plaintiffs who have been injured by insurance companies are:

- (1) Tennessee's bad faith statute does not prohibit a claimant from recovering punitive damages as a common law remedy for bad faith.
- (2) A plaintiff may get punitive damages for an egregious breach of contract where the insurer acts intentionally, fraudulently, maliciously, or recklessly.
- (3) The Tennessee Civil Justice Act, T.C.A. § 29-39-104, which caps punitive damages at two times the compensatory damages or \$500,000, whichever is greater, violates the Tennessee constitution's right to a jury trial.

Tamarin Lindenberg brought the claim against Jackson National for breach of contract and statutory and common law bad faith after Jackson National refused to pay her ex-husband's life insurance benefits. 912 F.3d 348, 353 (6th Cir. 2018). The jury at the district court level awarded Mrs. Lindenberg \$350,000 in actual damages (the amount of the disputed life

insurance), \$87,500 in bad faith damages, and \$3 million in punitive damages. *Id.* at 354-55. Jackson National sought to reduce this award under the Tennessee Civil Justice Act. *Id.* at 355. Mrs. Lindenberg filed a motion to certify the issue, but the Tennessee Supreme Court declined to provide an opinion. *Id.* The District Court for the Western District of Tennessee then entered judgment for Mrs. Lindenberg but reduced the punitive damages award to \$700,000, twice the amount of her actual damages. *Id.*

First, the court held that plaintiffs may seek punitive damages as a common law remedy for bad faith. Tennessee's bad faith statute, T.C.A. § 56-8-113, limits statutory remedies to 25% of the insurer's liability for the loss, but the statute is not exclusive. The court explained, "The law in Tennessee now provides that the *statutory* remedy for bad faith is the exclusive statutory remedy for an insurer's bad faith refusal to pay on a policy, but a plaintiff may freely pursue common law claims and remedies alongside a statutory bad faith claim." *Id.* at 359. In fact, the statute itself explicitly says that it does not abrogate any common law remedies. *Id.* at 359-60. Tennessee's bad faith statute reads:

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...[T]his title shall provide the sole and exclusive statutory remedies and sanctions applicable to an insurer...for alleged breach of, or for alleged unfair or deceptive acts or practices in connection with, a contract of insurance...Nothing in this section shall be construed to eliminate or otherwise affect any...[r]emedy, cause of action, right to relief or sanction available under common law.

T.C.A. § 56-8-113 (West 2018).

The court also held that a plaintiff can get punitive damages in an egregious breach of contract case where the plaintiff proves by clear and convincing evidence that the insurer acted intentionally, fraudulently, maliciously, or recklessly. *Id.* at 362 (citing *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 211 n. 14 (Tenn. 2012)(internal citations omitted)). The court relied on the Tennessee Supreme Court's explanation of the intent required to meet this burden. *Id.*

A person acts intentionally when it is the person's conscious objective or desire to engage in the conduct or cause the result. A person acts fraudulently when (1) the person intentionally misrepresents an existing, material fact or produces a false impression, in order to mislead another or to obtain an undue advantage, and (2) another is injured because of reasonable reliance upon that representation. A person acts maliciously when the person is motivated by ill will, hatred, or personal spite. A person acts recklessly when the person is aware of, but consciously disregards, a substantial and unjustifiable risk of such a nature that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances.

Id. at 363 (quoting *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). Because Jackson National knew its refusal to pay could lead to litigation, the court found that punitive damages were appropriate.

Finally, the Sixth Circuit held that Tennessee's punitive damages cap violated the Tennessee constitution's guarantee of trial by jury. The Tennessee constitution guarantees that "the right to trial by jury shall remain inviolate", which, the court explained, guarantees the right to a jury trial as it existed at common law in 1796 when the Tennessee constitution was adopted. *Id.* at 364. The court looked at historical precedent to determine that punitive damages were part of the right to trial by jury at that time. *Id.* at 364-65. Relying on two older Tennessee Supreme Court cases, the court found that punitive damages have been treated as a finding of fact that must be determined by the jury. *Id.* at 365-66. Therefore, by limiting punitive damages, the Tennessee Civil Justice Act had unconstitutionally invaded the right to trial by jury. *Id.* at 366.

Lindenberg confirms that plaintiffs who have been mistreated by insurance companies can seek punitive damages as a common law remedy for bad faith and egregious breach of contract. Since Sixth Circuit also held that the Tennessee Civil Justice Act violates the Tennessee constitution, any award of punitive damages is no longer capped. This case is important because no Tennessee state court has directly addressed the continued availability of common law extra-contractual damages since Tennessee enacted its statutory remedy and Tennessee District Courts had come to different conclusions regarding the issue. *Lindenberg* approves a broader array of remedies for claimants whose insurance benefits have been unfairly denied and will hopefully create more equitable and just results against insurers who act in bad faith. Since *Lindenberg* is the Sixth Circuit's interpretation of Tennessee law, the Tennessee Supreme Court could reach a different result.

NEED A SPEAKER?

The attorneys at Eric Buchanan & Associates, PLLC are available to speak to your organization regarding ERISA long-term disability, group long-term disability, private disability insurance, ERISA benefits, denied health insurance claims and life insurance claims.

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ERIC BUCHANAN & ASSOCIATES, PLLC: UPCOMING SPEAKING ENGAGEMENTS

Eric Buchanan will be speaking at the following events:

- **May 2, 2019 - National Association of Insurance & Financial Advisors and National Association of Health Underwriters Insurance Leaders Forum in Lincoln, NE**
Topic: How to be a Hero to Your Clients: How to be the “Good Guy” when claims are denied. Issues that occur when health, life, and disability claims are denied and end up in litigation, and how brokers and insurance sales people can best set it up so their customers are protected and the insurance agent/broker is the “good guy.”
- **May 3, 2019 - Nebraska Association of Trial Attorneys Subrogation Workshop in Lincoln, NE**
Topics: ERISA subrogation, health care, long term disability and other ERISA benefits
- **May 30, 2019 - National Association of Insurance & Financial Advisors Chapter Meeting in Jackson, MS**
Topic: How to be a Hero to Your Clients: How to be the “Good Guy” when claims are denied. Issues that occur when health, life, and disability claims are denied and end up in litigation, and how brokers and insurance sales people can best set it up so their customers are protected and the insurance agent/broker is the “good guy.”

Eric’s disability and benefits team can help!



Eric Buchanan & Associates, PLLC is a boutique plaintiffs’ firm located in Chattanooga, Tennessee. We help individuals nationwide obtain disability insurance benefits and other ERISA employee welfare benefits (such as life, health or disability benefits offered through work). Attorneys are our number one source of cases. If you have a client who could use our help, we would appreciate your referral.

**We appreciate the opportunity to work with you on any of these cases.
Contact our Intake Team at intaketeam@buchanandisability.com.**

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