

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20039

STEPHEN L. BRYANT, RUBEN C. GARCIA,
HERBERT MOSLEY, CARL T. RICHARDSON,
CAROLE BREWER HORTON and WESLEY S. HOOD,

Plaintiffs-Appellants,

versus

PHILLIPS PETROLEUM COMPANY LONG TERM
DISABILITY INSURANCE PLAN and GENERAL
AMERICAN LIFE INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for
the Southern District of Texas
(CA-H-93-0940)

(August 23, 1994)

Before REAVLEY, DeMOSS and STEWART, Circuit Judges.

PER CURIAM:*

Long term disability insurance claimants brought an action challenging the reduction of disability benefits, which were reduced in an amount equal to workers' compensation after the claimants received a tort settlement award. The district court granted summary judgment for the defendants, Phillips Petroleum

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Co. Long Term Disability Insurance Plan & General American Life Insurance Co., on the ground that the settlement was "some other income benefit" which reduced disability benefits under the ERISA plan. We reverse and remand.

BACKGROUND

The plaintiffs were employed by Phillips when there was a plant explosion which killed and injured several employees. The plaintiffs, who were covered under the plan at the time, suffered traumatic stress syndrome as a result of the accident. From 1989 to 1991, the plaintiffs' long term disability benefits were reduced by the amount of workers' compensation received pursuant to a plan provision which provided that benefits may be reduced by "any amount you are entitled to receive under any workers' compensation law or other law of a similar character."

In 1991, the plaintiffs received personal injury settlements and their workers' compensation payments ceased. The plaintiffs' long term disability benefits were reduced after the settlement, however, in an amount equal to the maximum worker's compensation payment. The plaintiffs sued, arguing that the benefits should not have been reduced. The district court granted summary judgment for the defendants, concluding that the settlement was a properly deductible income benefit under the plan which would prevent awarding the plaintiffs a double recovery. The plaintiffs appeal, and argue that the tort settlement was not received under "workers' compensation law or other law of a

similar character," and benefits therefore should not have been reduced pursuant to the plan language.

DISCUSSION

We review the district court's summary judgment *de novo*. Godwin v. Sun Life Assurance Co. of Canada, 980 F.2d 323, 329 (5th Cir. 1992). The plan administrator's interpretation of the plan under ERISA is also reviewed under a *de novo* standard unless the plan gives the administrator "discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Wildbur v. Arco Chemical Co., 974 F.2d 631, 636 (5th Cir. 1992) (quoting Firestone Tire & Rubber Co. v. Bruch, 109 S. Ct. 948 (1989)). Although the district court failed to state what authority the plan administrator has in interpreting the plan, the record demonstrates that the administrator has discretionary authority. The Appendix to the plan states:

The plan Administrator shall have such powers and duties relating to the administration of the Plan as are delegated to him by the Plan and, in addition, shall have the following powers and duties: . . . to determine benefit eligibility and amount [and] to interpret and construe the plan.

Because the abuse of discretion standard is appropriate, we must first determine whether the administrator gave the plan a legally correct interpretation in denying benefits. Wildbur, 974 F.2d at 637. In order to determine whether the administrator's interpretation was correct, we consider: "(1) whether the administrator has given the plan a uniform construction, (2) whether the interpretation is consistent with a fair reading of

the plan, and (3) any unanticipated costs resulting from different interpretations of the plan." Id. at 637-38.

It is unclear from the record whether the administrator has given the plan a uniform construction, but the interpretation and denial of benefits based on the third party settlement was not consistent with a "fair reading" of the plan. See Jones v. Sonat, Inc. Master Employee Benefits Plan Admin. Comm., 997 F.2d 113, 115 (5th Cir. 1993) (concluding that committee's decision fails "fair reading" test where committee unfairly characterized a disability claimant's Jones Act settlement as one received pursuant to workers' compensation or legislation of a similar purpose). The settlement in the present case cannot be characterized as workers' compensation or compensation received under "other law of a similar character" pursuant to the plan language. The defendants' argument that Texas law *defines* a third party settlement as workers' compensation is unpersuasive; Texas law may allow settlement awards to offset worker's compensation, but that does not mean a tort settlement can be equated with workers' compensation for purposes of a reduction of disability benefits under ERISA. The plaintiffs were entitled to receive their settlement because of common law tort liability and not because of workers' compensation or a law of similar character.

Because we conclude that the administrator's interpretation of the plan was incorrect, we must remand the case and direct the district court to determine whether the administrator abused his

discretion. See Wildbur, 974 F.2d at 638.¹ The court should consider: (1) the internal consistency of the plan under the administrator's interpretation, (2) any relevant regulations expressed by the appropriate administrative agencies, and (3) the factual background of the determination and inferences of lack of good faith. Id.

REVERSED and REMANDED.

¹ The fact that an administrator's interpretation is incorrect does not necessarily establish an abuse of discretion. Id.