

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA

*
DR. CARL BERNOFSKY * CIVIL ACTION
Plaintiff * NO. 98:-1577
*
VERSUS *
* SECTION "C" (5)
TEACHERS INSURANCE AND ANNUITY *
ASSOCIATION & THE *
ADMINISTRATORS OF THE TULANE * JUDGE BERRIGAN
EDUCATIONAL FUND *
Defendants *
*

**MOTION TO DISMISS PLAINTIFF'S
LONG TERM DISABILITY BENEFITS CLAIM
WITH INCORPORATED MEMORANDUM**

NOW INTO COURT, through undersigned counsel comes plaintiff, Dr. Carl Bernofsky ("Dr. Bernofsky"), who moves this Honorable Court to allow him to dismiss this action in light of the Court's recent determination that the long term disability benefits at issue are governed by ERISA.

The equities surely favor Dr. Bernofsky, who paid insurance premiums for nearly twenty years while he was employed by Tulane and contracted cancer prior to the date of his termination. Having paid the insurance premiums, he felt that if he incurred an unforeseen disability, he would be relieved of the burden of no income during the period of disability. However, such has not been the case.

Under ERISA, judicial review is limited to determining whether TIAA/Tulane's refusal to pay the submitted claim was arbitrary. Duhon v. Texaco, Inc., 15 F.3d 1302, 1306 (5th Cir.

1994). Given the deferential standard of review under ERISA, there is little chance in securing benefits which were denied him. Mindful of this limited judicial review, Dr. Bernofsky moves to dismiss his claim for disability benefits with each party to bear their own costs. The granting of such a motion will relieve the Court from rendering a decision on defendant's motion for summary judgment since the motion for summary judgment is moot if Dr. Bernofsky's motion to dismiss is granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been duly served upon counsel by placing same in the United States Mail, postage pre-paid, properly addressed, this 24th day of July, 1998.

Roger D. Phipps