

## **Kantor & Kantor proves that Unum unlawfully denied long term disability benefits to policyholder suffering from fibromyalgia**

In January of this year, Kantor & Kantor secured a judgment against [Unum Life Insurance Co.](#), a Fortune 500 company and the largest group and individual disability carrier in the United States. (click here for a copy of the ruling [Mondolo v. Unum Life Ins. Co. of Amer., C-11-07435 CAS \(MRWx\) \(C.D. Cal., order filed January 16, 2013\)](#)). Our client, a resident of Los Angeles County, was suffering from [fibromyalgia](#) and [avascular necrosis](#) (bone death believed to be a result of leukemia treatment). She had been treating for these conditions at [U.S.C.'s Keck School of Medicine](#) and had been on disability since July 2009. After paying long term disability benefits for over a year, Unum terminated our client's disability benefits. Unum's Gilberto Del Real determined that our client was not disabled because she was capable of working in a sedentary occupation. After our client appealed, Unum's Stephanie LeSieur agreed that our client was capable of sedentary work.

Knowing that she was not able to work, our client sought the assistance of Kantor & Kantor to bring a lawsuit against Unum in Federal Court. Because her claim was governed by the Employee Retirement Income Security Act of 1974 ([ERISA](#)), we brought a civil suit under section 502(a) of that statute (also known as [29 U.S.C. § 1132\(a\)](#)). The lead attorney on the case was [Brent Dorian Brehm](#). He was assisted by Kantor & Kantor partner, [Alan E. Kassan](#).

Our client claimed that Unum's termination of her disability benefits was unlawful because she was too weak and in too much pain to tolerate the prolonged sitting or typing needed to continue working. During the litigation Unum insisted it had done no wrong. Yet Unum had a conflict of interest because it both decided if our client was entitled to benefits and paid those benefits. Thus, Kantor & Kantor sought discovery to shed light on Unum's conflict of interest.

Unum also sought discovery, which Kantor & Kantor opposed in court. After hearing the arguments advanced by Mr. Brehm, the court ruled that Unum's discovery "fail[ed] to meet basic relevancy principles required for all discovery in federal court."

Without the ability to take the discovery it wanted, Unum advanced a declaration signed by Ms. LeSieur under penalty of perjury. To avoid a motion to strike Ms. LeSieur's declaration, Unum agreed to allow her to be deposed by Mr. Brehm. Ms. LeSieur's testimony revealed that her declaration contained a plethora of false statements. She did not have the personal knowledge she swore to possess regarding many of matters she claimed to be true in her declaration.

The matter proceeded to a bench trial. Mr. Brehm argued that Unum's conflict of interest was a factor the Court must weigh in reaching its decision and that Unum had abused its discretion in terminating our client's LTD benefits. The court agreed; adopting most of the arguments Kantor & Kantor had advanced at trial.

A review of the Court's findings shows that Mr. Brehm was able to prove that Unum's structural conflict of interest had contributed to its decision to terminate his client's disability insurance benefits. He did this in three ways. First, by showing that Unum had failed to

adequately investigate how much sitting his client could tolerate without suffering significant pain, nor did it investigate the amount of typing required to work in today's computer dependent workforce. Second, by showing that Unum had ignored relevant evidence about his client's mental health due to an unreasonable interpretation of the insurance policy. Third, by showing that Unum has a history of biased claims administration.

While Unum's conflict of interest was important, perhaps the most important factor leading to Mr. Brehm's trial victory was knowing what issues he could concede and still prevail. One example: Unum claimed Mr. Brehm's client could sit between one-third and two-thirds of a work day. Rather than focusing on the evidence that this was not accurate, Mr. Brehm showed that even if it were accurate, Unum's conclusion that this was compatible with working was unsupported by facts. Mr. Brehm showed that the least demanding work, called "sedentary" work, required more sitting than Unum claimed his client possessed. Recognizing this, the Court found Unum had acted "illogically and irrationally" in terminating Ms. Mondolo's benefits. Similarly, Mr. Brehm showed that Unum had failed to consider his client's restriction regarding fine fingering (e.g. typing).