



## Robbery Without a Gun

*Ben W. Glass, III*

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Sometimes it feels as if the only thing that purchasing insurance actually ensures is that one will eventually have an unpleasant dispute with the insurer over payment on a claim. from Judge Richard D. Cudahy of the 7th Circuit: *Great West Casualty Co. v. National Casualty Co.*, 385 F.3d 1094 (7th Cir. 2004). A hyperbolic wag is reputed to have said that E.R.I.S.A. stands for Everything Ridiculous Imagined Since Adam. . . . [T]his court is willing to believe that ERISA has lurking somewhere within it a redeeming feature. However, this is not the case in which to find it. *Florence Nightingale Nursing Serv. v. Blue Cross & Blue Shield*, 832 F. Supp. 1456 at 1457 (N.D. Al. 1993) This case, thus, becomes yet another illustration of the glaring need for Congress to amend ERISA to account for the changing realities of the modern health care system. Enacted to safeguard the interests of employees and their beneficiaries, ERISA has evolved into a shield of immunity that protects health insurers, utilization review providers, and other managed care entities from potential liability for the consequences of their wrongful denial of health benefits. Thus, the practical impact of ERISA in this case is to immunize [insurers] from any potential liability for the consequences of their denial of benefits. Although the alleged conduct of [the insurance company] . . . in this case is extraordinarily troubling, even more disturbing to this Court is the failure of Congress to amend a statute that, due to the changing realities of the modern health care system, has gone conspicuously awry from its original intent. *Andrews-Clarke v. Travelers Ins. Co.*, 984 F. Supp. 49 (D. Mass. 1997). The Court is appalled by how UNUM handled Dishman s claim. When UNUM decided to discontinue Dishman's disability payments, it had no concrete knowledge about his financial situation. It had no reason to believe that Dishman and his wife had any means of support other than his monthly benefit. It had received no information which suggested that his medical condition or his capacity for full time employment had changed since the date upon which his disability claim was allowed. The decision to suspend payments was made on such clearly pre- textual bases, that it is impossible to avoid the conclusion that it made in bad faith. . . . *Dishman v. UNUM Life Ins. Co.* (C.D. Cal. 1997) 1997 WL 906146

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