

Megan E. Glor, OSB No. 930178  
Email: megan@meganglor.com  
John C. Shaw, OSB No. 065086  
Email: john@meganglor.com  
Megan E. Glor, Attorneys at Law, P.C.  
707 NE Knott Street, Suite 101  
Portland, OR 97212  
Telephone: (503) 223-7400  
Facsimile: (503) 751-2071

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**EDWARD M. SCHECHTER**

**Plaintiffs**

v.

**THE STANDARD INSURANCE  
COMPANY,**

**Defendant.**

**Case No. 3:18-cv-1179**

**COMPLAINT**

Plaintiff Edward M. Schechter (“Plaintiff” or “Mr. Schechter”), brings this action under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, to recover appropriate remedies as a result of the wrongful denial of long-term disability (“LTD”) benefits and other conduct resulting in a loss of benefits to him by Defendant The Standard Insurance Company (“Defendant” or “The Standard”), and for his Complaint, states as follows.

### **The Parties**

1. Mr. Schechter, currently a resident of Philadelphia, Pennsylvania, was employed by Duane Morris LLP as Chief Marketing Officer from 2002 through May 20, 2009, when he began to have difficulty in performing the material duties of his job with consistency and dependability that he thought was caused by an auditory processing disorder and/or head trauma.

2. As a Duane Morris LLP employee, Mr. Schechter participated in long term disability plan, insured by Group Long Term Disability Insurance Policy 141017-A (the “LTD Policy”) issued and administered by the Standard.

3. The Standard is a Stock Life Insurance Company located at 1100 Southwest Sixth Avenue, Portland, OR 97204. During all relevant times, claims under the LTD Policy were administered at its offices located at 900 SW Fifth Avenue, Portland, OR 97204.

4. The Standard is a “fiduciary” within the meaning of 29 U.S.C. §§ 1002(21) and 1102 in that the Standard exercised discretionary authority or discretionary control respecting management of the LTD Policy and/or exercised authority and control respecting management or disposition of its assets and/or had discretionary authority or discretionary responsibility in the administration of the LTD Policy.

### **Jurisdiction and Venue**

5. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.

6. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) because Defendant resides in this District and Mr. Schechter’s claim was administered in this District.

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## Facts

7. Mr. Schechter developed a career as a self-made, highly functioning and successful sales and marketing executive since 1982 when he started a national sales program for ComputerLand. In 1992, he was recruited to Arthur Andersen to turn around its failing Tax Technology Practice and subsequently developed its Global Marketing and Sales practices. He earned an MBA from the Northwestern University's Kellogg Graduate School of Management in 1998, while employed at Arthur Andersen. A year later, A.T. Kearney, an international consulting company, hired him as their first Americas Marketing Director and member of its executive board.

8. In 2002, he joined Duane Morris, LLP, a global law firm, as Chief Marketing Officer. In this role, Mr. Schechter enabled the firm to become one of the fastest growing law firms in size and profitability in the US. He was named Chief Marketing Officer of the Year among all US law firms by Thomson Reuters, and Duane Morris was named "Best United States Law Firm in Marketing and Sales" by American Lawyer Media. He also held leadership roles in industry organizations and taught graduate level programs at Harvard Business School and the University of Pennsylvania Law School.

9. As a salaried administrative staff member of Duane Morris, LLP, Mr. Schechter was a Class 2 participant in the LTD Policy, which pays LTD Benefits to an employee who is "Disabled" under the "Own Occupation Definition of Disability," defined as follows:

### A. Own Occupation Definition Of Disability

During the Benefit Waiting Period and the Own Occupation Period you are required to be Disabled only from your Own Occupation.

You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation.

Note: You are not Disabled merely because your right to perform your Own Occupation is restricted, including a restriction or loss of license.

During the Own Occupation Period you may work in another occupation while you meet the Own Occupation Definition Of Disability. However, you will no longer be Disabled when your Work Earnings from another occupation meet or exceed 80% of your Indexed Predisability Earnings.

10. For a Class 2 employee, the Own Occupation Period is from the end of the 180 day Waiting Period to the end of the Maximum Benefit Period.

11. The LTD Policy also has an Assisted Living Benefit to a participant who requires “Substantial Supervision for your health or safety due to Severe Cognitive Impairment as a result of Physical Disease or Injury.” A participant receiving benefits under the LTD Policy is eligible for a COLA Benefit each year. The LTD Policy pays a survivors benefit to certain survivors of a participant who dies while LTD Benefits are payable.

12. After suffering a fall and head trauma on December 26, 2005, Mr. Schechter began to have increasing difficulties with conversations, memory and regular work activities, such as organizing, planning, doing spreadsheets and writing, which had been his areas of strength.

13. He attributed his difficulties to an auditory processing disorder diagnosed in January 2008.

14. Despite his difficulties, he learned to compensate for his progressive cognitive processing and auditory disabilities, such as shifting responsibilities to others.

15. Despite these strategies, Mr. Schechter was forced to leave his position at Duane Morris, LLP because he could not perform the material duties of this job with any degree of consistency or dependability.

16. After leaving Duane Morris, LLP, he did not immediately apply for benefits under the LTD Policy. Instead, inasmuch as his treating providers in this time frame were unable to accurately diagnose the cause of his cognitive impairment and he denied the severity of his impairment, he tried to find a new position. These attempts were ultimately unsuccessful; he was later told that despite his impressive credentials, he could not remain cogent during interviews.

17. From 2010 until 2014, Mr. Schechter attempted to utilize his past experience to provide strategic and business development services as a consultant to businesses. He only managed to land a few clients in this consulting practice.

18. Overwhelmed by his lack of professional success and income, and an impending divorce, but without an accurate diagnosis of his condition, he was unable to complete routine paperwork, such as tax information for his accountant or documentation for government assistance programs.

19. Mr. Schechter closed his consulting practice in 2015 but tried to ameliorate his economic circumstances by working at Home Depot and Panera, but was unable even to complete the simple tasks required by those jobs.

20. Finally, with the assistance of his brother, who is a physician, he underwent neuropsychological evaluations and DaT scans and began to accept that he was suffering from a

neurocognitive disorder, although the precise diagnosis remained elusive. He was able to obtain assistance in applying for benefits.

21. In May, 2017, Mr. Schechter submitted a claim under the LTD Policy.

22. The claim included a very long explanation of Mr. Schechter's attempts to get medical diagnosis and treatment for his cognitive decline and extensive medical records including: a January 2008 Audiological Evaluation; Neuropsychological Evaluations performed in 2014 and 2015; Hahnemann Hospital Records for a December 2005 admission for chronic cough; a 2016 DAT Scan/SPECT Brain with findings "worrisome for early Parkinson's type changes"; records of sleep specialist eventually diagnosing severe obstructive sleep apnea;

23. In a letter dated June 12, 2017 (the "Adverse Determination"), the Standard denied Mr. Schechter's claim based on the delay in Mr. Schechter's submission of proof of loss.

The letter was conclusory in stating the reason for the denial:

The medical and financial information provided at this time is wholly inadequate to allow The Standard to contemporaneously assess and evaluate your claim. Because The Standard's ability to evaluate your claim was prejudiced by your delay in providing proof of loss, the time limit contained in the policy for providing proof of loss is enforceable, and your claim is denied on that basis.

24. The Adverse Determination further stated Mr. Schechter's right to request a review of the decision within 180 days:

If you request a review, you will have the right to submit additional information in connection with this claim. Additional information you may wish to provide would be information documenting why the claim was filed untimely. Please include any such new information along with your request for review.

If you request a review, it will be conducted by an individual who was not involved in the original decision. If necessary, the person conducting the review will consult with a medical professional with regard to this claim....

25. On November 16, 2017, the Social Security Administration determined that Mr. Schechter was disabled under their rules on May 21, 2009, the day after his last date of work at Duane Morris, LLP.

26. Mr. Schechter, with the assistance of counsel, timely requested a review of the decision denying his claim under cover of letter dated December 11, 2017 (the “Appeal Letter”).

27. The Appeal Letter noted that an insurance company seeking to be relieved of its obligations on the ground of late notice has the burden of showing prejudice. The Appeal Letter went on to explain that the Standard cannot establish prejudice because, *inter alia*, the Social Security Administration, finding that Mr. Schechter’s primary impairment is a neurocognitive disorder, had found Mr. Schechter disabled on May 21, 2009, even though his application for benefits was not made until July 1, 2017.

28. The Appeal Letter included Mr. Schechter’s Social Security Disability Determination, the records submitted to Social Security, and a Report by Rosemary D. Laird, MD, MHSA, to document Mr. Schechter’s disability dating back to May 21, 2009 and why it took him so long to submit the claim.

29. The Social Security file included much of the same information that was submitted with Mr. Schechter’s claim, including:

- January 4, 2008 Audiological Evaluation, diagnosing an auditory processing disorder and a February 2017 Audiological Evaluation confirming an Auditory Processing Disorder, for which Mr. Schechter was able to compensate for many years;
- Gastroenterology records from 2009, noting a dyskinesia and concern for early onset Parkinson’s disease;

- December 7, 2010 Neurological Evaluation, notice adventitious movements of his tongue and difficulty with word retrieval, attributed to medication and obstructive sleep apnea;
- 2012-2017 Psychotherapy records;
- July 2, 2014 Neuropsychological Evaluation showing difficulty on tasks of executive functioning and noting “significant right frontal and temporal memory impairment (particularly visual memory) that cannot be attributed to his previous diagnoses of [Central Auditory Processing Disorder or CAPD]”;
- November 9, 2015 Neuropsychological Evaluation concluding that “the severity of Mr. Schechter's memory deficits and the pattern of decline in memory raised some concern for bona fide neurocognitive dysfunction, likely involving frontal-subcortical networks.”
- Hahnemann University Hospital Records, including a September 1, 2016 DAT Scan/SPECT Brain study “worrisome for early Parkinson’s type changes.”
- Neurological evaluations from May 2016 to August 2017 noting “Parkinson’s Multisystem degeneration or atrophy” and “Cognitive deficits, from brain injury”;
- Documentation of Mr. Schechter’s ongoing sleep disorder which may have contributed to his inability to concentrate at work.
- Records of admission to Main Line Hospital from May to June 2017 for “inability to function”;
- Records of admission to Albert Einstein Medical Center Behavioral Health in September 2017, which included a discharge summary diagnosing Frontotemporal

dementia and Parkinson’s disease: “Pt has bradykinesia, masked facies and tremor. His past records show diagnosis of PD since last 5 years and his clinical finding are conclusive of PD. Henceforth, it is possible that his cognitive impairment may be contributed by dementia secondary to PD. Possibility of Lewy Body dementia cannot be ruled out ....”;

30. In her Report, Dr. Laird opined that the same records submitted to the Standard provide clear evidence of Mr. Schechter’s slow and steady cognitive decline from his high baseline of intellectual abilities. However, she noted that only now the evidence clearly establishes that these symptoms were caused by the unifying diagnosis of Lewy Body Dementia (LBD). She noted that more recent evaluations, not submitted to Social Security but attached to her report, further supported her opinions, including an opinion by Neurologist Dr. H. Branch Coslett, a July 2017 Neuropsychological Evaluation by the Kessler Institute, and a study by Yasui et al.

31. Citing a study by Zweig et al, Dr. Laird also explained that the gradually emerging diagnosis of executive function loss caused by LBD explains Mr. Schechter’s delay in pursuing his claim for benefits. She noted that delayed diagnosis is common because of the complexity of the diagnosis and because he suffered impairment of his executive function needed to keep track of deadlines and apply for needed benefits. Thus, his delay was caused by and a symptom of his disability.

32. In a letter dated March 12, 2018 (the “Appeal Denial”), the Standard upheld its decision to deny Mr. Schechter’s LTD claim. The Appeal Denial was conclusory in stating that “Mr. Schechter’s filing of an LTD claim, due to cognitive deficits, 8 years after the date of onset

has prejudiced The Standard in evaluating any functional impairment he may have had at the time he ceased work and is claiming Disability.”

33. The Appeal Denial ignored the medical records discussed by Dr. Laird that showed that in retrospect, Mr. Schechter’s medical records showed that his impairment of executive function, reported in his medical records as far back as 2008 were caused by LBD.

34. To ascertain whether the Standard undertook a medical review or reviewed additional information in its Appeal Denial, in a letter dated March 19, 2018, Mr. Schechter, through counsel, requested all documents pertaining to his claim, as required under 29 C.F.R. § 2560.503-1(h)(2)(iii).

35. The Standard did not respond to this request.

36. In a letter dated June 1, 2018, Mr. Schechter, through counsel, noted the failure to respond to this request and the lack of an opportunity to respond to any new or additional information, such as a medical review, as required under 29 C.F.R. § 2560.503-1(h)(4). The letter suggested that either there was no medical review, and the Standard reached its decision without appropriate consideration of the evidence or the Standard has violated the regulations.

37. Nonetheless, the June 1, 2018 letter enclosed a report of Dr. Coslett, a professor of neurology at the University of Pennsylvania, who had evaluated Mr. Schechter on 3 occasions and had reviewed the medical information submitted to the Standard.

38. In his report, Dr. Coslett opined that Mr. Schechter’s cognitive deficits were present in May of 2009, and that his condition is in the family of “parkinsonian disorders,” that is, “alphasynucleinopathies” but that a definitive diagnosis would require brain biopsy or autopsy.

39. Dr. Coslett found that Mr. Schechter's condition renders him "unable to perform the complex decision making, problem solving and planning required of this previous jobs." He further explained that making a contemporaneous diagnosis would be difficult because the behavioral and cognitive deficits characteristic of neurodegenerative conditions emerge slowly and insidiously; they are often unrecognized for years and are only apparent in retrospect. The common clinical phenomenon of anosognosia, or denial of illness, further complicates the already difficult task of identifying neurodegenerative diseases in the early stages. Many patients with neurodegenerative diseases ... are unaware of their deficits and, indeed, explicitly deny that they have problems with memory, cognition and other aspects of behavior. Finally, in this context, I note that I don't believe that Mr. Schechter's condition was diagnosable in 2009. While the diagnosis of Dementia with Lewy Bodies was considered by Dr. Kerson in 2010, there was simply insufficient evidence to make a formal diagnosis. As a Cognitive/Behavioral Neurologist whose practice is focused on neurodegenerative diseases, my personal experience has been that these conditions are often diagnosable only after years have elapsed and the deficits become more pronounced.

40. Consistent with the opinion of Dr. Laird, Dr. Coslett concluded within a reasonable degree of medical certainty that, "Mr. Schechter is suffering from a neurodegenerative disorder ... that is of sufficient severity that he is unable to hold a job. ... I believe that Mr. Schechter's condition was present in 2009 but that there was insufficient evidence to make a firm diagnosis at that time."

41. The June 1, 2018 letter requested that given the undisputed evidence, including the decision of the Social Security Administration, the opinion of Dr. Laird and the opinion of Dr. Coslett, that the Standard approve Mr. Schechter's benefits under the LTD Policy.

42. After receiving the letter enclosing Dr. Coslett's report, under cover of letter dated June 11, 2018, which admitted that a medical review had not been performed, the Standard sent to Mr. Schechter's counsel a letter enclosing Mr. Schechter's LTD claim file.

43. The June 11, 2018 letter announced that the Standard was going to send the claim file back to the Benefits Department that rendered the Adverse Determination and vaguely requested raw data and test scores associated with a 2018 neuropsychological evaluation, even though no such evaluation had occurred in 2018.

44. The June 11, 2018 letter thus admits that the Standard had no evidence to dispute that Mr. Schechter had disabling cognitive impairment, likely due to a parkinsonian disorder such as LBD, when it sent the Appeal Denial.

45. Mr. Schechter has exhausted all administrative procedures.

**Claim for Benefits Under 29 U.S.C. §1132(a)(1)(B)**

46. The foregoing paragraphs are incorporated herein by reference as if set forth at length.

47. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), Plaintiff may bring an action to recover benefits due him under the terms of the LTD Policy, to enforce his rights under the terms of the LTD Policy, or to clarify his rights to future benefits under the terms of the LTD Policy.

48. The Standard denied benefits to Mr. Schechter because he delayed in providing proof of loss.

49. If an insurer is not prejudiced by an insured's delay in providing proof of loss, the insurer cannot escape its policy obligation to insured by virtue of such delay.

50. There is no evidence of prejudice to the Standard due arising from Mr. Schechter's delay in providing proof of loss, and the Standard identified no evidence of prejudice to it during the administrative process.

51. The medical information submitted by Mr. Schechter was undisputed and consistently showed that he was disabled as of May 21, 2009, that his delay in providing proof of loss was symptomatic of his disability, that his disabling condition was diagnosable only after years had elapsed and his deficits became more pronounced, and that the Standard suffered no prejudice as a result in the delay in submitting proof of claim. The Standard never pointed to any medical record or evidence that it was prevented from obtaining as a consequence of said delay.

52. The medical information submitted by Mr. Schechter was undisputed that after leaving Duane Morris, LLP, he attempted to treat his condition and find a new position, his delay in providing proof of loss was symptomatic of his disability and that his disabling condition was diagnosable only after years had elapsed and his deficits became more pronounced, and he acted reasonably in failing to provide proof of loss at an earlier time.

53. The Standard failed to undertake a medical review of the information submitted by Mr. Schechter and thus failed to undertake a “full and fair” review of the Adverse Determination that took into account all comments, documents, records, and other information submitted by the claimant relating to the claim” as required by 29 U.S.C. § 1133, and 29 C.F.R. § 2560.503-1(h)(2)(iv), and otherwise failed to provide a full and fair review as required by 29 U.S.C. § 1133, and 29 C.F.R. 2560.503-1, the Department of Labor regulations thereunder by failing adequately to consider the facts and circumstances regarding Mr. Schechter’s benefit claims and adequately to investigate the facts supporting his claim.

54. The Standard breached its fiduciary duties under ERISA § 404, 29 U.S.C. § 1104, insofar as it failed to discharge its duties with respect to the LTD Policy solely in the interest of Mr. Schechter, a participant, and for the exclusive purpose of providing benefits to participants.

55. Therefore, Mr. Schechter is entitled to all benefits due him under the LTD Policy.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays that this Court:

- (a) Grant judgment in his favor and against Defendant;
- (b) Order that Defendant pay all benefits due under the LTD Policy from Mr. Schechter's date of disability to the date of judgment, including interest thereon;
- (c) Declare Plaintiff's rights under the terms of the Plan, and clarify his rights to future benefits under the terms of the Plan;
- (d) Order that Defendant pay the costs of suit, including Plaintiff's attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g); and
- (e) Award all such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Megan E. Glor

MEGAN E. GLOR, OSB # 930178  
Megan E. Glor, Attorneys at Law, P.C.  
707 NE Knott Street, Suite 101  
Portland, OR 97212  
Telephone: (503) 223-7400  
Facsimile: (503) 751-2071

Attorneys for Plaintiff