



## Life, Health, Disability & ERISA Litigation

The Life, Health, Disability & ERISA Litigation Group at Hinshaw & Culbertson LLP represents leading insurers, welfare and pension benefit plans, self-insured retention groups, plan administrators, fiduciaries, and managed health care organizations across the United States. Our clients know and respect us for our ability to provide practical advice and tailored solutions. These are skills we have mastered through a comprehensive appreciation for and understanding of our clients' business and legal challenges; the law (including local, regional and national trends); and rules and customs in the many jurisdictions throughout the country where we practice regularly.

Our Life, Health, Disability & ERISA Litigation Group is regional counsel for several companies. Given our team's experience and national footprint, we also are ideally positioned to represent clients nationally.

### Experience

The lawyers in Hinshaw's Life, Health, Disability & ERISA Litigation Group have a track record of obtaining favorable results in the full range of matters involving group and individual life, health and disability policies. We also provide skilled representation and counsel in disputes arising from agreements between benefit plans and the companies that provide administrative and other services for them. We have successfully litigated claims for plan benefits, statutory penalties, equitable relief, and fiduciary breaches arising from plans governed by ERISA and state law.

Our experienced litigators in this arena handle matters for many of the nation's leading insurance companies and managed care organizations. Our team has extensive court and regulatory experience and a thorough understanding of federal and state regulations in the dozens of jurisdictions across the United States where we practice.

### Depth

With more than 25 attorneys located from coast to coast who focus their practices in this field, our Life, Health, Disability & ERISA Litigation Group is among the largest in the United States. Collectively, we have centuries of invaluable experience. We bring this breadth and depth to bear as we provide skilled representation and offer effective solutions.

### Geographic Scope

The attorneys in our Life, Health, Disability & ERISA Litigation Group practice in jurisdictions across the United States—including California, the entire greater

### Service Area Contacts

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Midwest, and Florida. We have handled cases in most U.S. district courts, almost every federal circuit, and the U.S. Supreme Court. Our regional and local depth enables us to partner with our clients to plan for and achieve the best possible outcomes, whether in the context of counseling and advice, alternative dispute resolution, or litigation.

## Dedicated to Advancing the Industry

The excellent reputation in the industry that we have earned is best demonstrated by the fact that the nation's leading companies consistently seek our counsel and entrust us with their legal matters. But it also has been achieved through our many other efforts to advance the industry. These include:

- Hinshaw's biennial Definitive Disability Conference, which has become one of the industry's most anticipated educational events
- Leadership positions within leading industry organizations, including: DRI's Life, Health and Disability Committee; the American Bar Association Employee Benefits Committee; the International Association of Defense Counsel; and Stafford Publications' Insurance Law Advisory Board
- Presentations on timely topics at national industry events, including DRI's Life, Health, Disability and ERISA Seminar
- Tailored, continuing education credit-qualifying presentations onsite at our clients' offices
- Educational articles on important issues in leading industry publications such as DRI's *The Voice*, and *Westlaw Journal Insurance Coverage*

## Life and Disability Insurance

We routinely take on cases involving plaintiffs who challenge the denial, termination or computation of benefits under individual life and disability insurance policies. Our substantive knowledge of this area and tenacious courtroom advocacy have enabled us to compile a track record of favorable outcomes for the disability and life insurers we represent. Our victories occur in mediation, at the trial and summary judgment stages of litigation, and before appellate courts across the United States. We regularly handle cases involving:

- Accident versus sickness, total versus partial disability, regular and appropriate care, independent medical evaluations/functional capacity evaluations, legal versus factual disability, mental/nervous limitation issues, etc.
- Accidental death and dismemberment claims
- Agent/Producer misrepresentation and fraud
- Churning and twisting claims
- Class actions
- Competing claimants and interpleaders
- Conditional receipt issues and temporary insurance
- Disputed policy lapse, alleged improper notice, assertions of waiver and estoppel
- Life and disability claims

Ruel W. Smith  
Corey J. Swinick

### Related Services

Commercial Litigation  
Employee Benefits

### Related Industries

Insurance & Reinsurance



- Long term care claims
- Misrepresentation and "vanishing premium" disputes
- Policy rescissions
- Post-claim underwriting claims
- Stranger-owned life insurance (STOLI) disputes
- Suicide exclusion
- Suitability issues

## ERISA

Much of our group's practice focuses on the litigation of disputes—including class actions—arising under ERISA. Our seasoned ERISA attorneys have put in the time and dedication that is essential to becoming conversant with the nuances of the act's statutory scheme. This equips our team to provide valuable, practical advice and solutions. We handle disputes over every type of benefit that is provided for under ERISA-governed pension and welfare benefit plans, including contested claims for life insurance, accident insurance, disability benefits and pension benefits.

Having handled thousands of ERISA matters—including employee benefit disputes relating to disability insurance, health insurance and managed care, life insurance and waiver of premium, and pension and retirement plans—we have a comprehensive understanding of how benefit plans work. We bring our unique knowledge and experience to bear in every instance, whether it is a straightforward dispute over a claimant's benefits or one involving claims of prohibited transactions and breach of fiduciary duty in the handling of a large pension plan.

Examples of specific ERISA issues we have deep experience with include:

- Abuse of discretion
- Accidental death
- Attorneys' fees recovery
- Claims for statutory penalties based on untimely production of plan documents, summary plan descriptions, and administrative records
- Complete preemption under ERISA § 502(a)
- Computation of benefits and offsets for personal injury recoveries, workers compensation, and Social Security Disability Insurance
- Conflict of interest
- Conversion to individual coverage
- Deadlines for internal appeals and filing suit on denied claims
- Eligibility
- Equitable relief
- Estoppel
- Exempt plans
- Exhaustion of administrative remedies
- Express preemption under ERISA § 514
- Pre-existing condition limitations
- Recovery of benefit overpayments
- Standard of review, including issues presented by Department of Insurance regulations that limit or ban grants of discretionary authority



## Managed Care Litigation

Hinshaw's Life, Health, Disability & ERISA Litigation Group attorneys also have deep experience with the managed care industry and the complex body of laws regulating it. We have litigated the full spectrum of issues that arise in the operation of health care plans—from contested medical-necessity determinations to denials of stop-loss coverage, claims for recoupment based on improper medical billing practices, and disputes over performance under administrative-service only (ASO) agreements. Our experience with this industry and the nationwide scope of our practice enable us to efficiently litigate, defend and resolve disputes involving health benefit plans across the country.

Hinshaw's litigators and regulatory lawyers who practice in this area are located in offices throughout the United States and have successfully handled hundreds of matters for many of the nation's leading insurance companies and managed care organizations. Our experience includes resolution of complex disputes involving the largest nonprofit health care service plan in California and one of the largest government plans in the Midwest, as well as health plans in other jurisdictions. Given the national scope of our practice, we can provide highly skilled representation to benefit plans and managed care companies from coast to coast.

## Employee Benefits Disputes

Our managed care practice includes experienced courtroom advocates who regularly litigate disputes involving health plan benefits in courts across the country, at both the trial and appellate level. We regularly defend cases involving:

- *Amara*-based equitable relief claims under ERISA § 502(a)(3)
- The application of standard plan exclusions, including exclusions for experimental therapies, services for the convenience of the member, services rendered to ineligible persons, and services for which the plan member is not obligated to pay
- Claims for breach of fiduciary duty under ERISA §§ 409 and 502(a)
- Claims for common-law fraud, consumer fraud and Racketeer Influenced and Corrupt Organizations Act (RICO) violations based on conduct occurring in the administration of health benefit plans
- Claims for statutory penalties under ERISA § 502(c) based on the failure to produce plan documents
- Contested medical-necessity determinations

Disputes over a denial of benefits by a health care plan governed by state law often precipitate the assertion of state law claims for bad faith, fraud, or other claims for extracontractual damages. We regularly defend against these claims—in both state and federal courts—including in jury trials when resolution through summary judgment or settlement is unobtainable.

## Service Provider Litigation

Our group regularly litigates disputes arising from the provision of services to health care benefit plans and their employer sponsors. This includes defending and prosecuting claims between the managed care companies that administer health benefit plans and those plans' employer sponsors.

We have successfully defended high-exposure actions in which plan sponsors asserted that third-party administrators breached ASO agreements by overpaying claims; failed to furnish accurate claims information; or failed to disclose plan documents as allegedly required by ERISA § 104(b)(4), 29 U.S.C. § 1024. We have also litigated and resolved complex disputes arising from stop-loss insurance policies and preferred provider organization (PPO) contracts.

## Fraudulent and Abusive Billing

Managed care companies review reimbursement claims submitted by in- and out-of-network medical providers to determine whether the claims are reimbursable under a plan. If a claim is covered, the managed care company administering the plan must determine how much should be paid, often with funds provided by the plan sponsor, rather



than the managed care company itself. Our group has extensive experience investigating, defending against and prosecuting disputes over reimbursement claims and the billing practices of both in-network and out-of-network medical providers. We regularly litigate claims for the recoupment of overpaid funds by plans and managed care companies in cases involving medical providers that have overbilled a plan or insurer, or obtained reimbursements that were not due under the plan. We also have extensive experience defending reimbursement actions filed by both in-network and nonparticipating medical providers and facilities.

## Class Action Litigation

Hinshaw has a national class action litigation practice and our clients frequently call on us to defend putative class proceedings arising from the administration of pension and welfare benefit plans. We have achieved favorable results for plan fiduciaries, third-party administrators, plan insurers, and managed care companies in putative class actions filed in courts across the country.

## News

[Hinshaw Recognized as "Distinguished in Litigation" in BTI Consulting's Litigation Outlook 2024 Survey](#)  
November 16, 2023

[Hinshaw Receives Recognition in 2024 "Best Law Firms" Directory](#)  
November 2, 2023

[Tomislav Kuzmanovic Appointed Partner-in-Charge of Hinshaw's Milwaukee Office](#)  
October 16, 2023

[101 Hinshaw Lawyers Recognized in 2024 Editions of Best Lawyers in America and Ones to Watch](#)  
August 17, 2023

[Hinshaw Adds Experienced ERISA/LHD Litigators in Chicago](#)  
April 26, 2023

[U.S. News – Best Lawyers Recognizes Hinshaw in 2023 "Best Law Firms" Directory](#)  
November 2, 2022

[Robert Pohls Named a "Top 50 Attorney in San Francisco" by Attorney Intel](#)  
September 26, 2022

[Hinshaw Recognized in 2022 U.S. News – Best Lawyers "Best Law Firms" Directory](#)  
November 4, 2021

[Sixty-Seven Hinshaw Lawyers Recognized in 2022 Edition of Best Lawyers](#)  
August 19, 2021

[Hinshaw Recognized in 2021 U.S. News – Best Lawyers "Best Law Firms" Directory](#)  
November 5, 2020

[Sixty-Five Hinshaw Lawyers Recognized in 2021 Editions of Best Lawyers and Best Lawyers: Ones to Watch](#)  
August 20, 2020

[Client Success: Ninth Circuit Affirms Judgment for Unum Life In ERISA Disability Benefits Case](#)  
May 22, 2020

[Peter Isola Reviews Two California Supreme Court Decisions Concerning Expert Witnesses](#)  
April 28, 2020



[Client Success: Unum Life Prevails at Ninth Circuit in ERISA Disability Benefits Case](#)  
November 1, 2019

[Hinshaw Partner Leonor M. Lagomasino Elected to Three-Year Term as a National Director of DRI](#)  
October 25, 2018

[Hinshaw & Culbertson Expands in California](#)  
January 9, 2018

[Hinshaw Announces Election of Seven New Partners](#)  
June 30, 2017

[Royal Oakes Quoted in Article on Insurance Concerns for the Rio Olympics](#)  
July 5, 2016

## Events

[Dan Ryan to Present at DRI's 2021 Life, Health, Disability, and ERISA Seminar](#)  
April 16, 2021  
Virtual Event

[Misty Murray to Address COVID-19 and Disability Claims in Webinar](#)  
November 5, 2020  
Virtual Event

[Fourth Biennial Definitive Disability Conference](#)  
October 17 – 18, 2019  
Marriott Long Wharf | Boston, Massachusetts

[Hinshaw's Leo Lagomasino to Present at DRI's Life, Health, Disability, and ERISA Seminar](#)  
April 3, 2019  
Swissotel | Chicago, Illinois

[Leonor Lagomasino and Ken Yeadon to Participate in DRI's Life, Health, Disability and ERISA Seminar](#)  
April 12, 2018  
The Westin Copley Place Boston  
Boston, Massachusetts

[Third Biennial Definitive Disability Conference](#)  
October 12, 2017  
Boston, Massachusetts

## Publications

[California Expands "No Pharmacist Left Alone" Pharmacy Staffing Requirements and Also Enacts New Safety Measures](#)  
November 17, 2023  
Health Care

[The LHD/ERISA Advisor – October 2021](#)  
October 2021

[District Court Finds Reduction in Monthly LTD Benefit Due to IRA Rollover Appropriate Under Plan Terms](#)  
October 13, 2021  
The LHD/ERISA Advisor

[Court Rules LTD Benefits Properly Terminated After Plaintiff Failed to Undergo Recommended Surgery for Disability](#)



October 12, 2021  
The LHD/ERISA Advisor

[Court Rejects Insurer's Interpretation of its Own Policy Language on Limitations Period](#)

October 8, 2021  
The LHD/ERISA Advisor

[ERISA Exhaustion Requirement Not Satisfied by Verbal Appeal When Plan Required Written Appeal](#)

October 6, 2021  
The LHD/ERISA Advisor

[DOL Letter Indicates ERISA Plan Administrators Must Produce an Audio Recording or Transcript of Call Between Claimant and Plan Representative Upon Request](#)

October 6, 2021  
The LHD/ERISA Advisor

[Fifth Circuit Holds Amputation Not An Accident Under AD&D Policy Where Employee's Underlying Medical Conditions Contributed to the Loss](#)

October 1, 2021  
The LHD/ERISA Advisor

[Ninth Circuit Joins Fourth Circuit in Holding that Equitable Estoppel is Barred Where Use Would Contradict Express Terms of an ERISA Plan](#)

September 28, 2021  
The LHD/ERISA Advisor

[Texas District Court Upholds Denial of LTD Benefits Because Claimant Did Not Prove Functional Limitations Within Benefit Waiting Period](#)

September 22, 2021  
The LHD/ERISA Advisor

[The LHD/ERISA Advisor – June 2021](#)

June 2021

[Citing Plan Ambiguity, Tenth Circuit Rules Becoming Disabled After Receiving Notice of Termination Did Not Preclude Employee From LTD Benefits](#)

June 16, 2021  
The LHD/ERISA Advisor

[Insurer's Likelihood to Deny Claim Does Not Excuse Claimant's Obligation to Exhaust Administrative Remedies Prior to Filing Suit](#)

June 14, 2021  
The LHD/ERISA Advisor

[Court Blocks Plaintiff's Attempt to Conduct Discovery Into Claim Review History of Medical Reviewer](#)

June 7, 2021  
The LHD/ERISA Advisor

[Second Circuit Issues Statute of Limitations Ruling Favorable to Healthcare Plan Administrators](#)

June 7, 2021  
The LHD/ERISA Advisor

[Sixth Circuit Upholds Denial of Accidental Death Benefits Under "Substantial Factor" Test](#)

May 28, 2021  
The LHD/ERISA Advisor

[Sparsely Pleaded Parity Act Lawsuit Survives Motion to Dismiss](#)

May 26, 2021



The LHD/ERISA Advisor

[Health Plan May Not Exclude Specific Autism Treatments](#)

May 26, 2021

The LHD/ERISA Advisor

[The LHD/ERISA Advisor – March 2021](#)

March 2021

[Ninth Circuit Affirms District Court May Consider Social Security Administration Ruling That Was Not Before the Plan Administrator](#)

February 25, 2021

The LHD/ERISA Advisor

[Court Affirms Principle that Challenges to Benefits Determination Involving Mental Illness Limitation Require Specific, Concrete Evidence of Physical Factors](#)

February 25, 2021

The LHD/ERISA Advisor

[ERISA Plan Entitled to Seek Reimbursement from Plan Beneficiary Who Recovered Damages in Tort Action Related to Underlying Accident](#)

February 25, 2021

The LHD/ERISA Advisor

[Sixth Circuit Upholds Denial of LTD Benefits by Decision Makers Employed by Another Entity Within the Plan Administrator's Corporate Family](#)

February 25, 2021

The LHD/ERISA Advisor

[Court Ruling that ACA Gender Transition Mandate Violates Religious Liberty Illustrates Interplay Between ACA and ERISA](#)

February 25, 2021

The LHD/ERISA Advisor

[Ninth Circuit Rules in Favor of Medical Provider in Dispute with Insurer Regarding Anti-Assignment Provisions](#)

February 25, 2021

The LHD/ERISA Advisor

[California Federal Court Rules in Favor of Equitable Tolling of Benefit Plan Limitations Period](#)

February 25, 2021

The LHD/ERISA Advisor

[Remand Order Constitutes Sufficient Degree of Success on the Merits to Justify Attorneys' Fees Award](#)

February 25, 2021

The LHD/ERISA Advisor

[Denial of Mental Health Treatment Benefits Ruled Improper under Milliman Care Guidelines](#)

January 25, 2021

The LHD/ERISA Advisor

[The LHD/ERISA Advisor](#)

October 5, 2020

[Utah Court Rules ERISA Plan Was Wrong to Deny Coverage for Mental Health Care Received at Residential Treatment Facility](#)

October 5, 2020

The LHD/ERISA Advisor

[Material Misrepresentations in Life Insurance Policy Application Justified Rescission by Insurer](#)





October 5, 2020  
The LHD/ERISA Advisor

[Tenth Circuit Finds District Court Applied Wrong Standard of Review in Evaluating Plan Administrator's Medical Necessity Determination](#)

October 5, 2020  
The LHD/ERISA Advisor

[Second Circuit Allows Breach of Fiduciary Duty Claim to Proceed Based on Misrepresentation of Benefits by ERISA Plan Administrator](#)

October 5, 2020  
The LHD/ERISA Advisor

[ERISA Plaintiff Has Statutory Standing to Bring Action to Recover Spousal Healthcare Benefits](#)

October 5, 2020  
The LHD/ERISA Advisor

[Third Circuit Rules State Law Reimbursement Claims Brought by Out-of-Network Medical Provider Not Precluded by ERISA](#)

October 4, 2020  
The LHD/ERISA Advisor

[Summary Judgment in Favor of Insurer Reversed by California Appellate Court in Application of "Genuine Dispute" Doctrine](#)

October 4, 2020  
The LHD/ERISA Advisor

[Ninth Circuit Holds Attorneys' Fees Cannot be Recovered as "Other Equitable Relief" under ERISA](#)

October 3, 2020  
The LHD/ERISA Advisor

[Insurance Coverage During Involuntary Legal Holds Under California Law](#)

October 2, 2020  
The LHD/ERISA Advisor

[Ninth Circuit Finds ERISA Complaint Sufficiently Alleges Insurer had Waived Anti-Assignment Defense](#)

October 2, 2020  
The LHD/ERISA Advisor

[District Court Holds Breach of Contract Claims are Time-Barred](#)

September 29, 2020  
The LHD/ERISA Advisor

[The LHD/ERISA Advisor](#)

June 3, 2020

[The LHD/ERISA Advisor](#)

January 31, 2020

[Six Things Insurers Need to Know About the DOL's Proposed Procedural Protections for Disability Claimants](#)

December 8, 2015  
Life, Health & Disability Law Alert