



**TERESA E. NEATHERY, Plaintiff, vs. CHEVRON TEXACO CORPORATION  
GROUP ACCIDENT POLICY NO. OK 826458 et al., Defendants.**

**CASE NO. 05 CV 1883 JM (AJB)**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA**

*2006 U.S. Dist. LEXIS 96585*

**February 13, 2006, Decided  
February 14, 2006, Filed**

**SUBSEQUENT HISTORY:** Motion granted by, in part, Motion denied by, in part *Neathery v. Chevron Texaco Corp. Group Accident Policy No. OK 826458, 2006 U.S. Dist. LEXIS 96586 (S.D. Cal., July 7, 2006)*

**COUNSEL:** [\*1] For Teresa E Neathery, an individual, Plaintiff: Thomas M Monson, LEAD ATTORNEY, Susan Lee Horner, Miller Monson Peshel Polacek and Hoshaw, San Diego, CA.

For Chevron Texaco Corporation Group Accident Policy No. OK 826458 and Accident Policy No. SLG-000784, -group welfare benefits plans under ERISA, Defendant: Michael Bernacchi, LEAD ATTORNEY, Burke, Williams & Sorensen, LLp, Los Angeles, CA.

**JUDGES:** JEFFREY T. MILLER, United States District Judge.

**OPINION BY:** JEFFREY T. MILLER

**OPINION**

ORDER GRANTING PLAINTIFF'S (AMENDED) MOTION FOR SUMMARY ADJUDICATION OF THE ISSUE OF PLAINTIFF'S DEEMED EXHAUSTION OF "ADMINISTRATIVE REMEDIES" AND RIGHT TO SEEK REVIEW AND DECISION A COURT OF LAW

**Background**

Plaintiff Teresa Neathery is the beneficiary of an accidental death policy held by her late-husband through his employment with Chevron-Texaco. The parties dispute the exact cause of the accident and the cause of death, but the following facts basically describe the events. The decedent was Plaintiff's husband, an employee of Chevron-Texaco who died at work on May 18, 2004, when the truck he was driving veered for some reason to the side of the road. The truck struck the corner of an oil well pump cage and flipped onto its side. [\*2] The airbag of the truck deployed and the seatbelt pressed against his lap and stomach. At some point, the decedent's stomach contents were forced up into his throat and then back down. The decedent may have had some history of a gastric condition that had in the past caused him to vomit. The decedent was pronounced dead at the scene.

On June 24, 2004, Plaintiff submitted her claim for benefits under the accidental death policy to Chevron-Texaco, who forwarded the claim to Life Insurance Company of North America ("LINA"). LINA denied benefits on September 13, 2004, on the grounds that the decedent had "experienced a medical crisis while driving" from "an illness of unknown etiology that caused him to vomit and aspirate the material causing his suffocation." Lemucchi Decl. Ex. F at 4. The policy specifically excludes coverage for deaths caused by sickness or disease. Compl. Ex. A at 14.

In the adverse benefit determination letter, LINA stated that Plaintiff had 60 days in which to appeal the decision. Plaintiff's counsel challenged the 60-day limitation, arguing to LINA that Plaintiff's claim was a disability claim and, therefore, she was entitled to 180 days to perfect her appeal. Without [\*3] conceding that the claim fell under the regulations for disability claims, LINA allowed Plaintiff until mid-March 2005 to file an appeal. On February 25, 2005, Plaintiff requested, and received, an additional two months to compile all of the photographs and records for her appeal. Plaintiff submitted her appeal, which totaled approximately 600 pages, on May 19, 2005. On June 23, 2005, LINA informed Plaintiff that it was taking a 60-day extension because it needed to "perform a full and reasonable investigation of this claim." According to Plaintiff, the final communication from LINA was dated August 1, 2005, and responded to the questions and concerns of Plaintiff's counsel, but did not rule on Plaintiff's appeal.<sup>1</sup>

1 In connection with its papers responding to the present motion, Defendants have submitted a letter from LINA to Plaintiff's counsel, dated August 25, 2005, in which LINA asks for an additional 60 days to render a decision because it needed "an independent medical opinion." Defs. Resp. Ex. 11. Defendants also contend that LINA sent another letter on September 22, 2005, stating that a decision would be forthcoming in 30 days and that LINA was "waiting for the completion [\*4] of the independent forensic review." Id. Plaintiff's counsel is adamant that the August 25 and September 22 letters were never received. In any event, ERISA regulations do not provide for a second 60-day extension.

Plaintiff filed this lawsuit on September 30, 2005, having still not received a final decision on her appeal. In her complaint, Plaintiff stated that she had exhausted her administrative remedies as a matter of law. Compl. P 35. Defendants denied this allegation in their First Amended Answer. Am. Answer P 35. On January 6, 2005, Plaintiff filed this motion for summary adjudication on the issue of whether Plaintiff had exhausted her administrative remedies. Although Defendants maintain that this particular case may justify LINA's failure to meet the regulation deadlines, Defendants "do not technically oppose th purpose of the motion." Defs. Resp. at 2.

## Analysis

The ERISA statute and regulations do not require a claimant to exhaust her administrative remedies prior to filing a lawsuit. Courts, though, have enforced a "firmly established federal policy favoring exhaustion of administrative remedies in ERISA cases." *Kennedy v. Empire Blue Cross & Blue Shield*, 989 F.2d 588, 594 (2d Cir. 1993); [\*5] see *Sarraf v. Standard Ins. Co.*, 102 F.3d 991, 993 (9th Cir. 1996). A claimant is deemed to have exhausted her administrative remedies after the plan denies the appeal of an adverse benefit determination or when the plan fails to "establish or follow claims procedures consistent with the requirements of this section." 29 C.F.R. § 2560.503-1(i). Plaintiff argues that LINA failed to render a decision within the time provided by the regulations. Plaintiff also challenges the content of the communications from LINA as failing to convey information with the requisite specificity.

Among the numerous points that the parties dispute is whether Plaintiff's claim is a "disability claim" for purposes of ERISA. California insurance law defines disability insurance as insurance "appertaining to injury, disablement, or death." *Cal. Ins. Code § 106* (2005). Plaintiff argues that *Section 106* is a law regulating insurance and, therefore, is saved from preemption by ERISA's savings clause. See 29 U.S.C. § 1144(b)(2)(A). The classification can be important because under ERISA regulations, a disability claimant is given more time to prepare an appeal and the plan administrator is given less time in which [\*6] to render a decision. See, e.g., 29 C.F.R. § 2560.503-1(i)(3) (requiring that appeals of disability claims be decided in 45 days instead of 60 days). However, the Court does not need to classify Plaintiff's claim at this time because under the regulations pertaining either to disability claims or to claims in general, LINA has failed to render a timely decision.

In general, a plan must notify a claimant of its decision on the appeal no later than 60 days after receiving the claimant's request for review. See 29 C.F.R. § 2560.503-1(i)(1). The plan may extend this period by no more than 60 days if special circumstances so require. Id. Plaintiff mailed her appeal to LINA on May 19, 2005, and it was received on May 20, 2005. Therefore, LINA was obligated to notify Plaintiff of its decision by July 19, 2005, sixty days after receiving the appeal. With the sixty-day extension, LINA had to respond by September 20, 2005.<sup>2</sup> It is undisputed that LINA did not render a decision by this date.

2 The sixtieth day would be Saturday, September 17, 2005; accordingly, LINA would have until Monday, September 20, 2005, to issue its decision.

Defendants argue that, notwithstanding their failure to meet the [\*7] regulation deadline, they have been diligent in their review of Plaintiff's claim given the considerable expansion in the size of the record on appeal. There is no authority, though, for this sort of equitable tolling. Because LINA failed to determine Plaintiff's appeal by September 20, 2005, Plaintiff is deemed to have exhausted her administrative remedies.

See 29 C.F.R. § 2560.503-1(l).

Plaintiff's motion for summary adjudication of the issue of Plaintiff's deemed exhaustion of administrative remedies is hereby **GRANTED**.

**IT IS SO ORDERED.**

DATED: 2/13, 2006

**JEFFREY T. MILLER**

United States District Judge