

O. Appeal Item Number Eighteen (14)

The apparently retaliatory surveillance activities conducted by Cigna's agent XXXX Inc. constitute perhaps the most egregious breach of fiduciary duty in this case. The surveillance records demonstrate that XXXX, Inc. unlawfully invaded the constitutionally-protected privacy rights of Mr. XXXX, his pregnant wife and his infant daughter, resulting in extreme emotional distress.

It cannot be mere coincidence that Cigna's decision to order a surveillance operation to be conducted on Mr. XXXX in early January, 2006 at the same time that Cigna's denial of Mr. XXXX's waiver of premium ("WOP") benefits had been overturned, amidst much acrimony, as admittedly "premature." As has been illustrated throughout this appeal, Cigna claim managers resent their decisions being questioned and they certainly view with disfavor claimants who point out their misconduct to Cigna executives, including Mr. Mark Marsters, Vice President Cigna Group Disability. When Mr. XXXX lodged a complaint with Mr. Marsters regarding the unjustifiable denial of Mr. XXXX's WOP benefits and the actions and conduct of Sr. Claim Manager Natalie Fulton regarding same, the case was termed as "Sr. Officer Complaint" case and turned over to Cigna compliance officer, Ms. Brenda Warren. It strains logic to deduce that it is pure coincidence that the timing of Mr. XXXX's complaint, the reversal of the frivolous denial of his WOP benefits and Cigna's decision to conduct surveillance all simply happened to coincide. Rather, the surveillance seems to have been ordered in retaliation for Mr. XXXX's making the Senior Officer Complaint.

The claim file produced is devoid of a single document, or notation in the Azena system, indicating who ordered the surveillance (Marsters or Fulton?), why it was ordered and what instructions were given to the surveillance company. It also does not contain an agreement or contract with the company Cigna sent to videotape Mr. XXXX's residence, his pregnant wife and his two year old child. The video tape, which Ms. Warren belatedly produced more than a month and a half after she claimed to have produced "Mr. XXXX's entire claim file" in connection with this appeal, is quite disturbing. On several occasions, the surveillance team inexplicably videotaped close up shots of Mr. XXXX's pregnant wife and two year old daughter immediately outside the Reilly home from a 125 yard distance with zoom lens video camera, when Mr. XXXX was nowhere in sight. The surveillance team also chose to zoom in from a distance into a large picture window of Mr. XXXX's home. This type of invasion of privacy is not warranted in any case, much less in an eleven year old ERISA disability claim simply because a claimant lodges a Sr. Officer Complaint

The specious and probably illegal conduct waged against the XXXX family does not end there. Before Cigna finally agreed to admit to ordering surveillance, a number of strange, unexplained events occurred giving rise to a great deal of stress for Mr. and Mrs. XXXX, their unborn child and infant daughter. Indeed, in early January, the XXXX's began to experience an unusually high volume of telephone calls. Mrs. XXXX, who was eight (8) months pregnant, was able to answer one of the many phone calls made to their private residence, as opposed to most instances where the caller had simply hung up.

Mrs. XXXX heard a female voice claiming to be the Jury Commissioner of Montgomery County. The "Jury Commissioner" began digging for answers to highly personal and seemingly irrelevant questions regarding the address of the Reilly's home, whether there were "separate entrances to the residence" or "apartments on the property," work, daily schedule, and the "whereabouts" and finances of her husband Mr. XXXX. Although Mr. XXXX was home, he was suffering from the side effects of the potent regimen of medications he is required to take to minimize the excruciating pain of his badly damaged knees, so Mrs. XXXX asked for the woman's name and a number and she would have her husband call back.

Mrs. XXXX was startled and disturbed because this did not appear to be normal behavior for a Jury Commissioner, so she immediately recounted this story to Mr. XXXX. Due to the exigent circumstance, Mr. XXXX proceeded to call the number despite grappling with his medication's side effects. It was the main switchboard at the XXXX County Courthouse. He asked to be switched to the Jury Commission and was connected. When he reached the Jury Commissioner, Ms XXXX, he was shocked to learn that the Jury Commissioner's office had made no such calls. Mr. XXXX's shock was met with Ms. XXXX's serious concern that someone would impersonate an officer of the court and create undue emotional stress on an eight month pregnant woman. She instructed Mr. XXXX to inform her of any additional calls or any additional information. Mr. XXXX noted the date of his call to the commissioner and thanked her for her understanding.

During the weekend of January 14-15, 2006 there were rumblings throughout the neighborhood that a suspicious green van, with Illinois tags, had been parked in front of a fire hydrant at the end of Mr. XXXX's block. There was also a report of some strange activity involving a UPS delivery. When Mrs. XXXX heard this news, she recalled the van because it was so out of place on the block. Indeed, the XXXX's lived in a quiet suburban neighborhood comprised mainly of young families and retirees. Mrs. XXXX also began to question whether the van, and the person or persons who occupied the van, were responsible for the numerous hang-ups and bogus phone call to her home that happened to occur at the same time the dubious van had been parked down the street from the XXXX's house. She sat down with her husband Mr. XXXX and astutely asked him if it could be possible that all of these odd events were part of a surveillance operation conducted by Cigna. Mr. XXXX thought it was entirely possible considering the unprofessional dealings he recently had with Ms. Natalie Fulton and Ms. Barbie Rice regarding the WOP denial that left him no recourse but to lodge a "Sr. Officer Complaint."

On January 25, 2006, Mr. XXXX was waiting for the arrival of his WOP administrative file that Ms. Brenda Warren had agreed to produce. Both Mr. and Mrs. XXXX were still very upset by the phone calls and the rumblings on the block and wanted to know who was responsible. In an email communication to Ms. Warren that day, Mr. XXXX wrote "since you have elected to send the administrative file make sure it includes any surveillance materials." (Emphasis added). Mr. XXXX then followed-up with three additional requests. When the administrative file arrived without any

surveillance materials on January 28, 2006, Mr. XXXX was clearly upset because his pregnant wife was very shaken up and "felt violated" during the late stages of her pregnancy. He pressed Ms. Warren again:

Cigna's continued pattern of misrepresentation and infliction of mental anguish continues unabated. It started with Ms. Rice, passed onto Ms. Fulton and is currently focused on the Green Van, with Illinois tags, with sliding back window using an enhanced view. Does Cigna even care how much emotional distress you are causing my pregnant wife and our family? We have neighbors involved asking about the obtuse van and the stalker inside in addition to the other issues previously mentioned.

Can someone at Cigna take a deep breath and realize you are dealing with fellow human beings and not just some claimant number. We are on five months of this type of abusive and harassing behavior throughout a pregnancy and it has reached a dangerous rubicon.

Our family is sickened.

Still having received no response from Ms. Warren, on January 30, 2006 Mr. XXXX pressed again:

I am in receipt of a letter from MLS National Medical Evaluations sent via Fed Ex. The letter states that "friends and family members wait outside the examination room." We do not accept this condition. Cigna has gone to great length to cause us harm, during a pregnancy no less, that this is obviously an adversarial situation. We will have the evaluation witnessed and videotaped.

The green van parked in front of a fire hydrant and no parking zone for hours on end certainly went out of their way put neighborly suspicion on us and to seal the adversarial situation. The rubicon has now been crossed.

We renew our request for any surveillance material, video, documents and most importantly the Company's name that does the surveillance for Cigna.

As we have been to the hospital once already the baby can be born at any time and may cause the date of the IME to be a problem. I think any person with a sense of human dignity who analyzes this pattern of abuse days before a possible delivery will conclude the following: Cigna's behavior is nothing short of disgraceful.

Despite this appeal to fairness and compassion, the XXXXs still received no response. The XXXXs thought if Cigna had not performed the surveillance they would

have denied it. Cigna's silence was deafening and they had enough of Cigna's gamesmanship during a difficult pregnancy, so Mr. XXXX was forced once again to demand the surveillance records from Ms. Warren:

Regarding the surveillance, Cigna's refusal to provide the name of the firm performing these tasks on their behalf or a denial of same will force us at this time to seek redress with the help of XXXX County. The Jury Commission has stated they want to get the DA involved so we will be writing a letter to them informing of Cigna's lack of cooperation, the van, tags etc... Furthermore we find the rough shadowing, invasion of privacy using enhanced view, calls under false pretext, etc.... to be unacceptable and will be addressed after the baby is born.

Mr. XXXX's correspondence must have finally struck a cord. The very next day, on February 1, 2006, Ms. Brenda Warren wrote to Mr. XXXX admitting that XXXX, Inc. had been retained to conduct a four (4) day surveillance operation on behalf of Cigna for the time period January 8-11, 2006. The report and the video were enclosed with the letter. Ms. Warren dismissively directed Mr. XXXX to contact the "vendor" if he had any concerns.

Mr. and Mrs. XXXX were shocked when they read the report and viewed the video. The report confirmed their suspicion regarding the pretextual phone calls as the harassing phone calls were placed to the XXXXs' home during the dates of the surveillance. In addition, as noted in the surveillance report, the investigators had been unable to capture even a second of video of Mr. XXXX outside his home. Faced with the prospect of coming up empty-handed, in a desperate, last-ditch effort the surveillance crew resorted to the tactics of a bounty hunter by making the phony phone calls into the XXXXs' home asking if the house had "another entrance" or "an apartment" to "mail the jury information." Notably, the phone calls placed to the home were conspicuously absent from the report produced to the XXXXs.

The XXXX's did two things after they received the surveillance information. First, they notified the Jury Commissioner by phone and in writing of Cigna's surveillance operation on the dates of the pretextual phone calls. Montgomery County Jury Commissioner XXXX was not pleased. She wrote a letter dated February 21, 2006 to the XXXX County District Attorney, Mr. XXXX, wherein she stated:

I am just as concerned as Mr. XXXX is that investigators, or anyone, can misrepresent their identity in this fashion. You and I know how important it is for the public to have confidence in our judicial system. This kind of duplicity undermines our ability to function in a positive manner towards prospective jurors.

After Ms. XXXX's letter, Mr. XXXX was contacted by XXXX County Detective XXXX of the District Attorney XXXX office. Detective XXXX informed Mr. XXXX

that she was contacting witnesses and gathering information from XXXX Inc. and Cigna regarding this serious issue.

Second, distraught by seeing the unnecessary video of herself and her infant daughter, and plagued by the extreme emotional pain and feeling of having been violated, particularly given her fragile condition, Mrs. XXX contacted both Ms. Jenna Holder and Ms. Latonya Puckett of Cigna in an attempt to get some answers. Neither employee was sympathetic to this eight month pregnant woman nor had any answers. In fact, as the claim notes indicate, Ms. Puckett was more concerned with making sure Mr. XXXX attended a procedurally improper IME that Ms. Puckett had callously scheduled two days before his wife's due date and four days before the actual birth. Mr. XXXX sent a letter to XXXX on February 15, 2006 seeking all video of his wife and child since Ms. Warren had instructed him to contact the "vendor." XXXX never responded to Mr. Reilly

The investigative report claims to have "verified Mr. XXXX was home and inactive" the first three days of the surveillance. Since there is no video of Mr. Reilly the first three days, the *only* other way the investigators could have verified his presence in the home was *via* the pretext phone calls or by invading his family's privacy by peeping into his house windows. In addition, the summary letter dated January 17, 2006 from the XXXX investigator, Mr. XXXX, to Ms. Jenna Holder of Cigna states "we have obtained two minutes of film of the claimant entering and exiting his residence and driving. Please note that the claimant did move in a physically unrestricted manner throughout the entire investigation." With admittedly only two minutes of video over a four day surveillance operation the only way XXXX could make the claim Mr. XXXX "did move in a physically unrestricted manner *throughout the entire investigation,*" *i.e.*, for the entire four day operation was by peeping into Mr. XXXX's home and invading his and his family's privacy. There is no other plausible explanation. As stated, Mr. XXXX never left his home for the three consecutive days because he was taking narcotic medications for pain.

Mr. and Mrs. XXXX did not deserve to be harassed with phone calls, watched through their windows and their privacy invaded for any reason, much less simply because Mr. XXXX is a Cigna claimant that made a Senior Officer Complaint. We have repeatedly requested any and all materials associated with the surveillance including the communication between XXX County-XXXX Inc and Cigna discussed above, phone records, records indicating who ordered the surveillance, records communicating the order, records communicating the instructions, contracts, retainer agreements, policies and procedures. To date we have received none of the aforementioned even though the records and documents were at least **generated** in the course of making the adverse determination with regard to Mr. XXXX's long term disability and WOP benefits. The adverse determination letter states unequivocally that the "entire claim file" was used in making the adverse determination, as such, these documents had to be produced in order for Mr. XXXX have a "full and fair" review as provided in ERISA. Indeed, the shroud of impunity afforded by ERISA does not extend to insurer's tortuous invasion of privacy.