



benefit litigation — not
just about the merits

Laura Knight,
Ruby Loftus Screwing a Breech Ring (1943)



life, health & disability

Eva Bonnier,
Reflections in Blue (1887)

A close-up portrait of an elderly woman with a weathered face, looking slightly to the left. She is wearing a vibrant red headscarf and a dark garment. The background is dark and textured. The word "retirement" is overlaid in white text.

retirement

E. Caruana Dingli,
Elderly country-woman with a red head-scarf (1920)

Latest Coronavirus updates from Sedgwick



Every day, we take care of people facing uncertain situations

Whether they have a workplace injury, need time away for the birth of a child, experience a medical situation that will lead to time off, are in an auto accident, suffer product or property damage, we are here to let them know that it's going to be ok. Caring counts.®

A black and white photograph of a baby sitting inside a large, upright tire. The baby is looking towards the camera with a neutral expression. The tire is positioned vertically, and the baby is seated within its circular opening. The background is a dark, solid color.

MICHELIN. BECAUSE SO MUCH IS RIDING ON YOUR TIRES.

At Michelin, we are guided by a single overriding concept: first one or two as we are concerned the most important pieces of equipment you can put on your car.

Therefore, making the best tires possible, regardless of cost, has become an obsession with us.

That is why we make our own steel for our steel belted radials. Why each tire model is so long in the development stage. And even longer in the testing and manufacturing stages.

That is also why Michelin performs as well as they perform. And last as long as they last.

And, of course, why they cost more to buy.

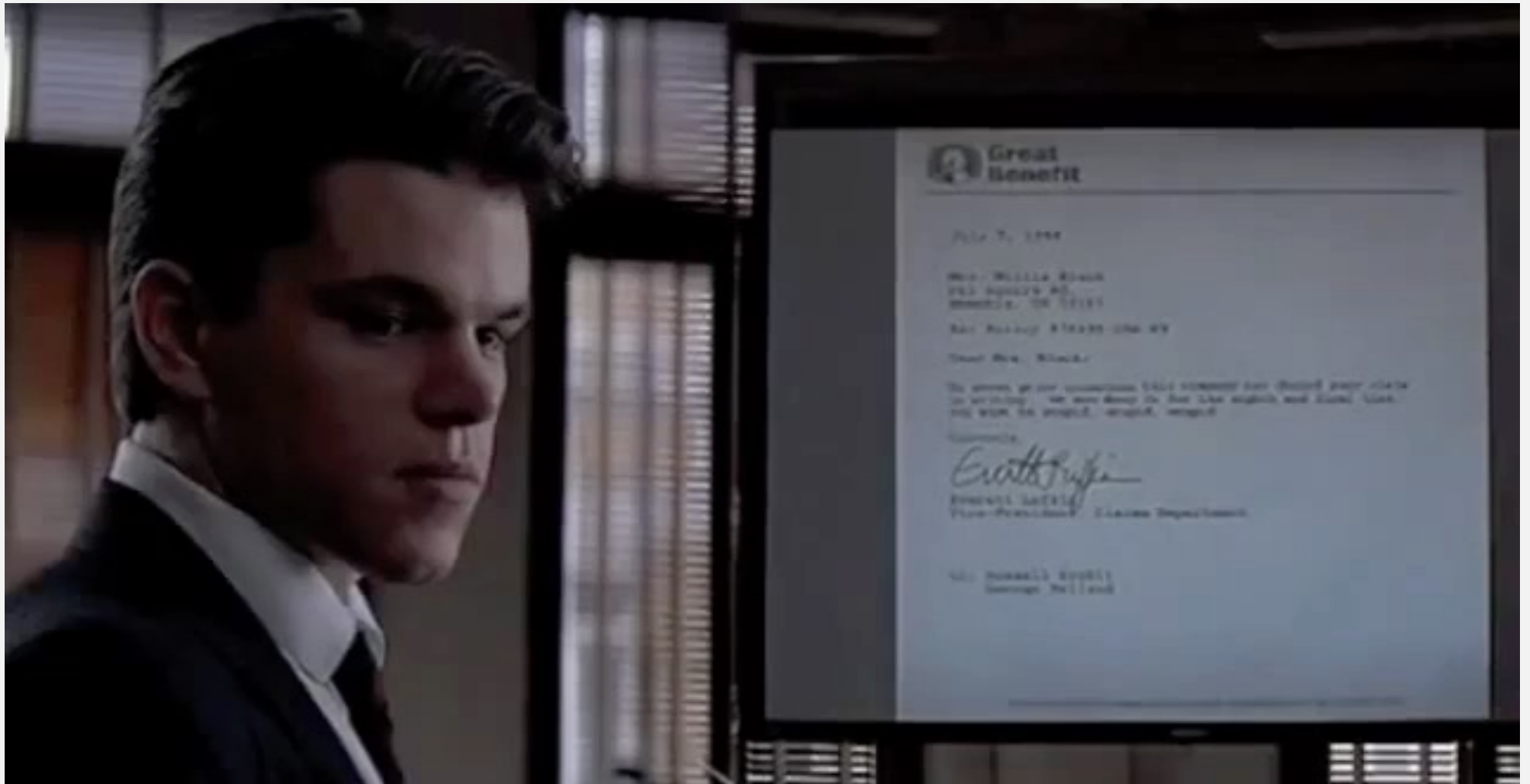
Though you may find as many Michelin buyers as they and up costing less to own.



MICHELIN

The Rainmaker,

Constellation Films, Director Francis Ford Copolla



Just Okay is Not Okay, AT&T





what are claimants up
against and what to do?

Laura Knight,
Ruby Loftus Screwing a Breech Ring (1943)

A close-up photograph of a person's face, focusing on their nose and mouth. They are wearing dark, wrap-around sunglasses. The lenses reflect a bright, outdoor scene, possibly a beach or a sunny day. The word "perspectives" is written in a large, white, sans-serif font across the upper part of the image, partially overlapping the sunglasses and the person's forehead.

perspectives

Nadine,
Sunglasses

→ judges

→ law clerks

→ clients

→ focus groups

→ us



king for a while:
claims handlers

The Master of Sardoa,
Saint Louis, King of France (16th Century)

administrative appeal & later evidence

Marcus Stone,
An Appeal for Mercy



discretion?



Stefano Novo,
The Difficult Decision



communications to employer

Gabe Leonard,
Like a Boss (2018)

cut-off doctors



Joseph Tomanek,
The Doctor (1933)

Exhibit 7

1 **A.** Yes. With State Farm there were certain doctors
2 that was on a list like do not use doctors because
3 they were looking for certain things. They were
4 looking for doctors to generate reports according to
5 what they were looking for. So we would call those
6 cutoff doctors.

7 **Q.** That do not use list that you just talked about
8 there, is that do not use list is that on the OMS
9 system?

10 **A.** No.

12 **A.** It's posted in the scheduling at each schedulers'

13 desk. It's not an internal thing in OMS.

14 **Q.** So the do not use list, there is a do not use list

15 for certain carriers?

16 **A.** Yes.

2 **Q.** And then when you say the insurance carriers were
3 looking for specific doctors you called them cutoff
4 doctors?

5 **A.** Yes.

6 **Q.** What do you mean by that?

7 **A.** They're the doctors that are going to give you the
8 report that you're looking for saying they can
9 return back to work or, you know, that they're fine.

10 **Q.** And then who are -- was there a list of doctors that
11 were indicated as cutoff doctors?

12 **A.** It's something that we knew from the, you know,
13 years of experience who the doctors were.

22 **Q.** When you say cutoff doctors, where did you get that

23 term from?

24 **A.** Clients.

25 **Q.** And so when you say clients, who are the clients?

1 **A.** It depends. It depends on the client. It depends
2 on the adjuster what they're looking for. It could
3 have been AAA. It could be Liberty. It could be
4 Meemic. It could be Allstate.

5 **Q.** When you say the term cutoff doctor, are you
6 referring to -- and I know you did scheduling too
7 for a long time.

8 **A.** Yes. I didn't create that term. It was a term that
9 the clients would use when they would call.

10 **Q.** So would they specifically say I need a cutoff
11 doctor?

12 **A.** They would tell you, yes.

15 **A.** Yes, or they would call and say I'm looking for

16 Doctor Lawley. I need to, you know, have this

17 person to discontinue because -- or I'm looking for

18 Doctor Drouillard.

4 **Q.** How much influence does MES have with the doctors'
5 reports?

6 **A.** You mean percentage-wise?

7 **Q.** Yeah.

8 **A.** I would say 90 percent.

9 **Q.** When you say 90 percent, what do you mean by that?

10 **A.** Influence-wise they're -- if those reports come back
11 favorable -- very few of those reports are going to
12 come back favorable. Ninety percent of those
13 reports or more are going to come back saying that
14 they're fine. There's nothing wrong with them.
15 They can return to work.

12 **Q.** What about -- what would happen if there was a
13 positive report? You indicated that about 90
14 percent of the time there was cutoffs.

15 **A.** It's rare. If there is a positive report it's being
16 discussed. It's being discussed by the QAs. It's
17 being discussed by managers. It's being discussed
18 by the doctors. You're going to know if there's a
19 positive report.

20 **Q.** Why is that so odd that there's a positive report?

21 **A.** 'Cause it's positive.



quality
assurance

QUALITY CONTROL MUSIC

20 **Q.** To your knowledge are there changes on IME reports

21 done often at MES --

22 **A.** Yes.

23 **Q.** -- by quality assurance?

24 **A.** Yes.

25 **Q.** Why is that?

1 **A.** Because if the questions are not answered, they will
2 change it. If it doesn't come back a lot of times
3 the way the clients want it to come back, they take
4 it back to the doctor to get what that client is
5 looking for.

training?



Joseph Tomanek,
The Doctor (1933)

12 **Q.** Quality assurance people are they trained medically
13 at all to your knowledge? I mean are they doctors
14 or nurses or --

15 **A.** No.

16 **Q.** -- anything like that?

17 **A.** No.

18 **Q.** Is there a training program over at MES for the
19 quality assurance people?

20 **A.** Yes, about two weeks.

21 **Q.** And that's all they have?

22 **A.** Yes.

tracked medical review outcomes



Joseph Tomanek,
The Doctor (1933)

Individual Case Report

1/1/2011 - 8/16/2011



8/16/2011 11:48:42 AM

Page 1 Of 1

MES Case#	Client Case#	Claimant	Referred By	Service	Sub Service	Reviewer Specialty	Referral Date	Report Sent Date	TAT Business Days	Outcome
147830-GRABHORN LAW OFFICE, PLLC Client Code - 0										
31811003006	20110107CTD6803	20110107CTD6803	Michael Grabhorn	Initial	Record Review	Orthopaedic Surgery	1/7/2011	1/21/2011	10	Non-Approval
31811015708	20110107CTD6803	20110107CTD6803	Michael Grabhorn	Appeal	Record Review	Orthopaedic Surgery	2/4/2011	2/17/2011	9	Non-Approval
Customer - Total Referral - 2				Customer - Total Closed Cases - 2				Customer Average TAT - 9.50		
TOTAL CASES - 2				Total Closed Cases - 2				Average TAT - 9.50		

off the books
payments?



9 **A.** There's some doctors that get 1099s and there's some
10 doctors that do not get 1099s at MES.

11 **Q.** Who don't get 1099s?

12 **A.** The doctor's are built in the system where there's a
13 doctor, for example, like Doctor Drouillard or
14 Doctor Steinbock, one of those type of doctors,
15 there's an asterisk by that doctor's name, they get
16 a separate check.

17 **Q.** Where is this? Why is there a separate check?

18 **A.** It depends on the circumstance with the doctor.
19 Like there was a time when the doctors were going
20 through like divorces or personal issues where they
21 didn't want it to show on a 1099.



misrepresenting
medical

Giovanni Batista Cima Da Conegliano,
Christ Among the Doctors (1504)

Just Okay is Not Okay, AT&T

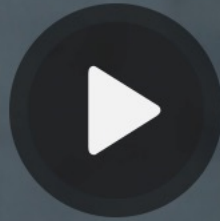


lack of medical knowledge

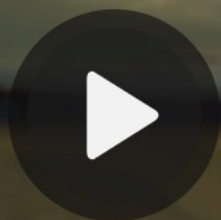


©Andre Mironov, CC-BY-SA-4.0,
Knowledge and Belief (2008)

60
MINUTES



60
MINUTES



*Could You Survive Three M16 Bullets
to the Chest?*
Smithsonian Channel



A detailed view of a section from the painting 'Christ Among the Doctors' by Giovanni Battista Cima da Conegliano. The image focuses on two hands holding an open book. The left hand is positioned at the top left, holding the book's edge, while the right hand is at the bottom right, with the index finger pointing to a specific line of text on the right page. The book's pages are filled with dense, handwritten text in a Gothic script. The background consists of a rich, reddish-brown fabric with a dark, swirling pattern. The lighting is soft, highlighting the texture of the paper and the skin of the hands.

requiring more
than policy does

Giovanni Batista Cima Da Conegliano,
Christ Among the Doctors (1504)

A close-up of the puppet Count Dracula from Sesame Street. He has purple skin, large pointed ears, and a wide, toothy grin showing a red tongue. He is wearing a black tuxedo with a white shirt and a red bow tie. The background is a stone wall with some green foliage.

Count Dracula Reasons 1, 2, 3, 4 ...

Daytonaoyster32,
Sesame Street Count Dracula

healthcare sharing ministries



The painting depicts a crowded courtroom scene. In the center, a man with a long white beard and a green shawl over a white tunic stands with his arms outstretched, gesturing emphatically. He is surrounded by a dense crowd of men, many of whom are also gesturing with their hands raised. The setting is an ornate room with classical columns and a high ceiling. In the foreground, a curved stone balustrade is visible. The overall atmosphere is one of intense drama and conflict.

false promises

James Tissot,
The False Witnesses (between 1886 to 1894)

2011 USSCT

Amara

- summary of plan is not the plan
- equitable relief including surcharge [money] available for false statements and material omissions
- injury and causation required, not detrimental reliance

CIGNA Corp. v. Amara,
563 U.S. 421 (2011)



where to start? — first
30 minutes

Laura Knight,
Ruby Loftus Screwing a Breech Ring (1943)

full or partial exemptions

- governmental plan
- church plan, subject to election
- excess benefit plan

29 U.S.C. § 1003

→ maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws

29 U.S.C. § 1003

→ maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens

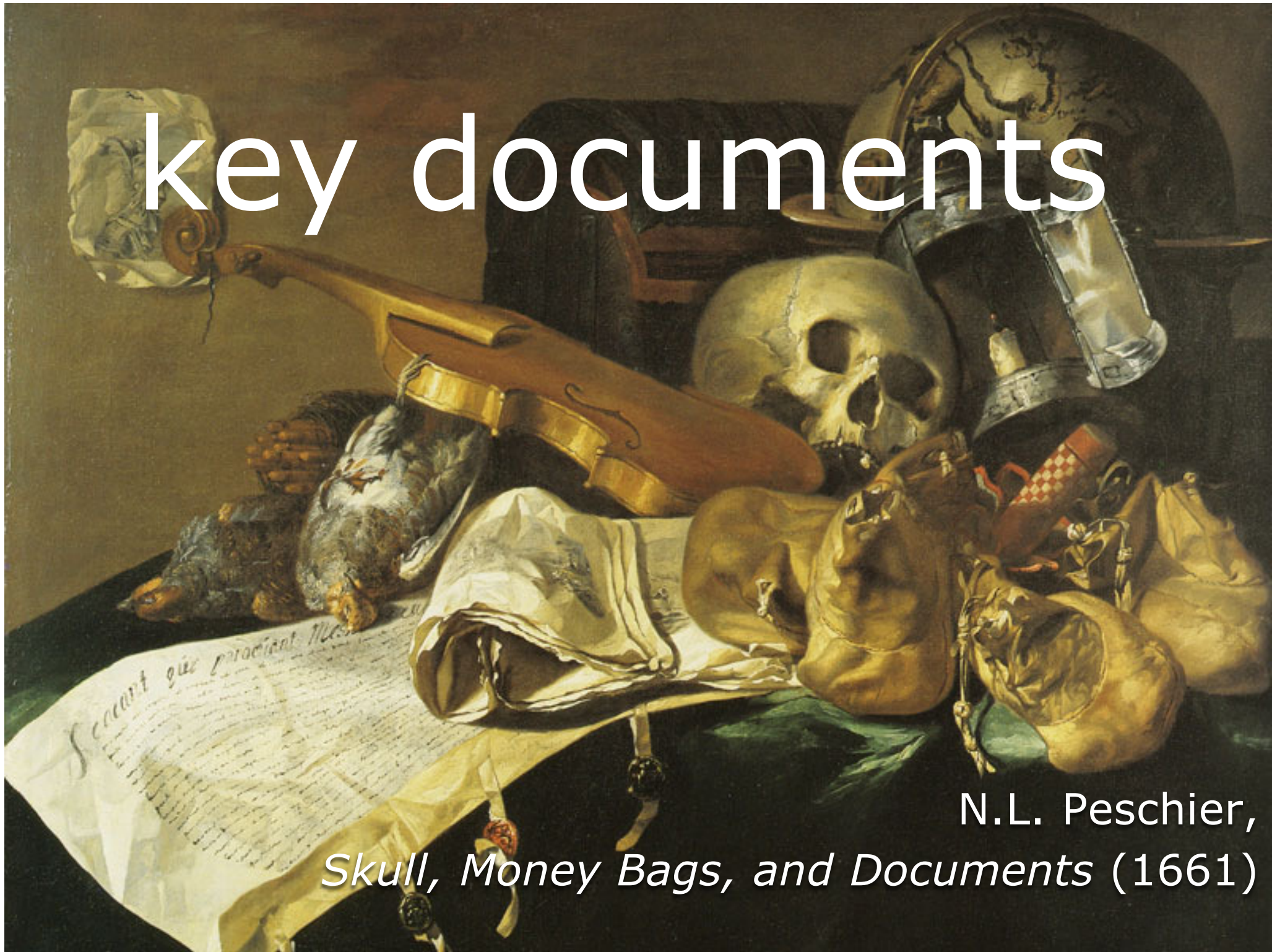
29 U.S.C. § 1003

payroll practices

→ normal compensation, out of employer general assets, for periods employee is physically or mentally unable to perform duties, or is otherwise absent for medical reasons

29 C.F.R. § 2910.3-1

key documents



N.L. Peschier,
Skull, Money Bags, and Documents (1661)

→ policy or plan

→ summary plan

description

→ relevant documents

→ contractual
limitations period
→ choice of law
→ forum selection
clause

claim procedure and relevant documents

29 C.F.R. § 2560.503-1
[most cited are (h) & (m)]

appeal time left

IT'S NOT OVER
UNTIL THE FAT
LADY SINGS
OR THE THIN
LADY DANCES

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watch the clock



Janice Duryea,
Clock at Kay County Courthouse in Newkirk, Oklahoma

2013 USSCT Heimeshoff

→ contractual limitations
period enforceable [maybe]
→ can start and end during
appeal

*Heimeshoff v. Hartford Life & Accident Ins. Co.,
571 US 99 2013)*



starter pack on where
to go from here?

Laura Knight,
Ruby Loftus Screwing a Breech Ring (1943)

- witness statements
- medical records
- medical articles & video on causation

don't forget

→ fatigue, pain

→ medication effects

→ other conditions

that affect treatment

small hierarchy of other opinions



Nicolai Abildgaard,
Hierarchy at its Peak at the time of the Crusades (1784)

1999 5Cir Vega

Any decision to deny benefits must have been based on evidence that “clearly support[ed] the basis for its denial.”

Vega v. National Life Ins. Servs., Inc.,
188 F.3d 287, 299 (5th Cir. 1999).

2002 5Cir Lain

“without some concrete evidence in the administrative record that supports the denial of the claim, [the insurer] abused its discretion.”

*Lain v. Unum Life Ins. Co. of Am.,
279 F.3d 337, 342 (5th Cir. 2002).*

2008 USSCT Glenn

conflict of interest

*Metropolitan Life Ins. Co. v. Glenn,
554 U.S. 105 (2008).*

Here, Davidson does not argue that the additional discovery she seeks will necessarily determine that a less deferential standard of review is appropriate in the case, although she avers that it may. Instead, she contends that the discovery is relevant to whether defendants abused their discretion in denying her claim given the procedural irregularities involved and possible conflict of interest. I agree.

In this action, Davidson claims that Sedgwick delegates the decision-making authority regarding disability to an outside medical consulting firm, Dane Street LLC, who reviews medical records and is known to render biased opinions on the ultimate issue of disability. With respect to her own claim for benefits, Davidson alleges that Dane Street's reports show that it conducted a skewed review of the medical evidence and made inconsistent findings and conclusions regarding disability, and that Sedgwick wrongfully relied on these biased reports to deny her benefits. Davidson also contends that Sedgwick itself engaged in an inconsistent pattern of document retrieval and review throughout the administrative process.

2011 5Cir Crosby

YES, you can get
some discovery

2018 5Cir Ariana M.

“[T]he Fifth Circuit once deferred to factual determinations — regardless of presence or absence of discretionary language in the policy —, that is no longer the case

Ariana M. v. Humana Health Plan of Tex., Inc.,
884 F.3d 246 (5th Cir. 2018)

State Bans on Discretionary Clauses

*Life, Health, Disability:
Texas Insurance Code § 1701.062*



can I master benefit
laws?

Laura Knight,
Ruby Loftus Screwing a Breech Ring (1943)

Kid Gives Inspiring Speech

<https://youtu.be/c47otcg13>

