Further, the court found that USX failed to rebut the statutory presumption that the calculation was reasonable.

Coverage of Autism as a Medical Claim

Kunin v. Benefit Trust Life Insurance Co., 898 F.2d 1421 (9th Cir. 1990).

In this case, the court of appeals held that autism was not a mental illness within a coverage limitation. After Kunin incurred $50,000 in medical claims for the treatment of his child's autism, he filed the claims with his employer's group insurer. The insurer granted coverage under the policy but recognized only $10,000 in claims because of a provision in the group plan limiting its financial liability for "mental illness." Since the plan was covered by ERISA, Kunin challenged the determination of the insurer on the basis that the denial of complete coverage was arbitrary. The trial court found for Kunin and the Ninth Circuit Court of Appeals agreed.

Finding that the action of the insurer was unreasonable, the court stressed three facts. First, the insurer did not consult with specialists in making its determination that autism was a mental illness. Second, the insurer did not discuss the child's condition with the family's treating physicians. Third, testimony overwhelmingly demonstrated that autism resulted from physical conditions rather than behavioral problems. Thus, the court concluded that the evidence demonstrated that the insurer's characterization of autism as a mental illness was unreasonable.

The court also held that the limitation of coverage should be strictly construed against the insurer. The policy did not define the term "mental illness." The failure to define left the term ambiguous. Since the policy provision concerning mental illness operated to limit recovery, the court applied the general rule that the construction of limitations should be construed against the exclusion of coverage.

Medicare Reimbursement

American Hospital Association v. Sullivan, 1990 U.S. Dist. Lexis 6306 (D.D.C. 1990).

Several hospital associations successfully sued the secretary of Health and Human Services to enjoin changes in Medicare payment rules that required hospitals to accept government payments even when private insurance was available. HHS adopted the rule change to avoid a perceived conflict between two statutory provisions. One provision prohibited a plan provider such as a hospital from accepting payment on behalf of a Medicare patient except from Medicare. A second statute directed the provider to seek payment from an insurer if insurance covered the same charge. HHS took the position that all claims be presented to it and that the providers accept the Medicare fixed rate under its Prospective Payment System. If implemented, the rule change reduced hospital income by $17 million because Medicare payments do not cover the full cost of treatment.

The court stated that the regulation would fail if it was inconsistent with a clear legislative statement. In this case, the regulation was inconsistent since the statute concerning insurance payments plainly contemplated direct payments to the hospitals from insurers. The court further reasoned that the conflict with the direct payment restrictions could be avoided since it applied to payments for which the Medicare recipient was entitled and no entitlement existed to a payment covered by insurance. The court also noted that HHS had failed in attempts to have Congress adopt legislation that would provide the basis for its regulation.

Secured Creditor Liability under CERCLA

United States v. Fleet Factors Corp., 901 F.2d 1550 (11th Cir. 1990).

In the first appellate court decision on the matter, the Eleventh Circuit Court of Appeals concluded that a secured creditor could be liable for hazardous waste clean up costs if it assumed managerial responsibilities for the debtor. Fleet held a security interest for funds it advanced against a textile plant's accounts receivable, equipment, building, inventory, and fixtures. In 1979, the plant filed for bankruptcy, but the bankruptcy court permitted the financing arrangement to continue. In 1981, however, Fleet refused to provide further funds under the agreement and the plant failed. In May 1982, Fleet foreclosed on its security interest and liquidated the assets of the plant. It assisted in winding up the affairs of the business. Its activities included shipping approvals, setting prices on excess inventory, employee layoffs, office supervision, and tax preparation. It may also have directed the handling of some of the toxic materials held at the plant.

In 1984, the Environmental Protection Agency spent $400,000 to remove 700 fifty-five gallon drums of toxic chemicals and forty-four truckloads of asbestos containing materials. EPA sued the plant owners and operators as well as Fleet to recover the costs of the clean up under the liability provisions of the Comprehensive Environmental Responsibility and Liability Act (CERCLA). Fleet sought to avoid liability under an exemption for secured creditors. The trial court determined that Fleet had acted as an operator and was not eligible for the exemption. The court of appeals affirmed.

The appellate court began with the assumption that CERCLA was adopted to impose clean up costs on the party responsible for creating the problem. To that end, the statute covers owners and operators who release or dispose of toxic materials and others who treat, transport, or dispose of waste. The statute exempts secured parties who are not "participating in the management.". The court found that the remedial nature of the statute suggested a narrow interpretation of any exemption from coverage. Though the court recognized that a secured creditor could be involved in discrete financial decisions of the operator without being liable for clean up costs, it concluded that a secured creditor was participating and "liable if its involvement with the management of the facility is sufficiently broad to support the inference that it could affect hazardous waste decisions if it so