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Relevance	Case	Decision Date	Res
100%	Perlman v. Swiss Bank Corp., 195 F.3d 975 (7th Cir., 2000)	January 6, 2000	
66%	2. Pibouin v. CA, Inc. (E.D.N.Y., 2012)	March 31, 2012	

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At last we reach the question that occupied central ground in the district court: did UNUM make an arbitrary or capricious decision? Both **Perlman** and the district court treat the central issue as whether UNUM correctly understood her abilities in relation to the demands of her job. If **Swiss Bank** had told **Perlman** that her performance was unsatisfactory, then these would indeed be the right questions; UNUM would have needed to determine whether the shortcomings were caused by medical conditions (and ...

As to **Perlman's** comment at the March 1, 2006 meeting, the words themselves do not necessarily raise the specter of discriminatory animus. **Perlman** merely states that he "hates people with strong accents." One need only consider the case of a native-born

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Perlman v. Swiss Bank Corp., 195 F.3d 975 (7th Cir., 2000)

1 Perlman v. Swiss Bank Corp., 195 F.3d 975 (7th Cir., 2000)

2 Pibouin v. CA, Inc., 867 F. Supp. 2d 315 (E.D.N.Y., 2012)

3 Pibouin v. CA, Inc. (E.D.N.Y., 2012)

4 Hughes v. Life Ins. Co. of North America, 112 F.Supp.2d 780 (S.D. Ind., 2000)

5 Robbins v. Millman USA Long Term Disability Ins. Plan, 1:02-CV-01635-JDT-TAB (S.D. Ind. 6/25/2003) (S.D. Ind., 2003)

6 Semien v. Life Ins. Co. of North America, 436 F.3d 805 (7th Cir., 2006)

7 Bartel v. Sun Life Assur. Co. of Canada, 536 F.Supp.2d 623 (D. Md., 2008)

8 Doe v. Mamsi Life and Health Ins. Co., 448 F.Supp.2d 179 (D.D.C., 2006)

9 Trustmark Insurance Company (Mutual) v. Schuchman, CAUSE No. 99-1081 C TK (S.D. Ind. 6/2/2003) (S.D. Ind., 2003)

10 Nunnery v. Sun Life Financial Distributors, Inc., 526 F.Supp.2d 862 (N.D. Ill., 2007)

11 Berg v. Bcs Financial Corp., 372 F.Supp.2d 1080 (N.D. Ill., 2005)

Swiss Bank employed Judith **Perlman** in Chicago as a lawyer until September 1994, when she was laid off. **Perlman** has serious medical conditions, including migraines, which she developed while working for **Swiss Bank**. **Perlman** was diagnosed with a psychiatric condition during that period. She took shorter leaves in 1994 and 1995. **Perlman** and **Swiss Bank** have an accident work for a disability.

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assistance in coping with the stress caused by the accident and her medical conditions. But between September 1992 and September 1994 she worked full time. **Swiss Bank** was satisfied with her work, believes that she is physically and mentally able to continue, and contends that she quit for personal rather than medical reasons, seizing an opportunity to leave the labor force and move to the Wisconsin countryside.

UNUM Life Insurance Company administers **Swiss Bank's** disability plan, a "welfare benefit plan" covered by ERISA. For short-term disability UNUM acts solely as an administrator; payment comes from **Swiss Bank's** accounts. For disability after the first 26 weeks UNUM is both administrator and insurer; it pays any award. Immediately after quitting, **Perlman** applied for short-term benefits. After seeking and obtaining additional medical records, UNUM said no: its letter states that the medical conditions documented in the information **Perlman** had provided "do not prevent you from performing the material duties of your occupation." **Perlman** appealed to a higher level of UNUM's staff but was unsuccessful. A letter in July 1995 explained: "We do not see a change in your medical condition which necessitated you to stop work. The records do not show a level of impairment which would restrict or limit you from performing the duties of your regular job given that you have worked with these conditions in the past."

Section 502(a)(1)(B) of ERISA, 29 U.S.C. sec. 1132(a)(1)(B), makes decisions of this kind reviewable in federal court, and **Perlman** asked the district judge to direct UNUM to pay both short- and long-term disability benefits. The court concluded that it was authorized to consider both short- and long-term claims, even though **Perlman** had sought only short-term benefits from UNUM, because an award of short-term benefits is a condition to receipt of long-term benefits; the parties disagree about whether **Perlman** is disabled, not the duration of any disability. [979 F. Supp. 726, 731 n.6 \(N.D. Ill. 1997\)](#).

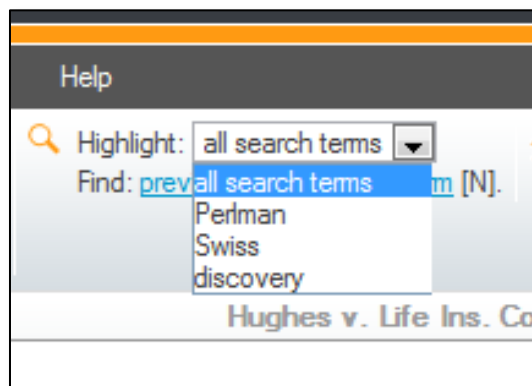
After stating that UNUM's decision was "arbitrary and capricious" because it failed to obtain the assistance of any outside experts, and did not perform a detailed study of **Perlman's** job duties, the judge directed UNUM to reconsider **Perlman's** application in light of the analysis in its opinion. Both sides have appealed—UNUM because it believes that its decision should have been sustained, **Perlman** because she believes that the court should have ordered UNUM to pay benefits without giving it an opportunity to compile a better record. A second set of cross-appeals concerns attorneys' fees. The district court held that **Perlman** is the prevailing party and ordered UNUM to pay \$44,020 under 29 U.S.C. sec. 1132(g)(1). [990 F. Supp. 1039 \(N.D. Ill. 1998\)](#); UNUM now contends that an award of fees is impermissible until after the court has directed the ERISA plan to pay benefits; **Perlman** contends that \$44,000 is too low (it is only a third of her request).

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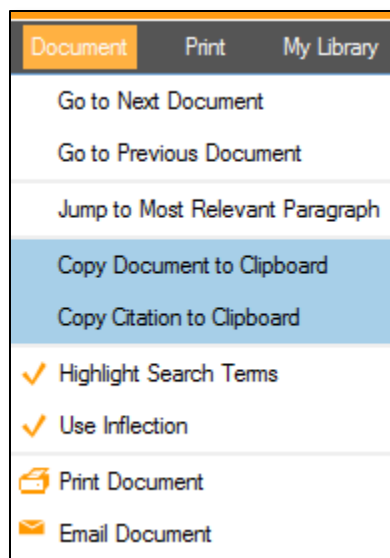
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not to be extended beyond its terms and provisions. [Weston v. Beverly, 10 Ga.App. 261\(1\), 73 S.E. 404](#); [Few v. Pou, 32 Ga.App. 620\(2\), 124 S.E. 372](#); [Hartsfield Co. v. Zakas Bakery, 50 Ga.App. 284, 177 S.E. 825](#).

Code Ann. § 46-805, authorizing a city, county or State official to be garnisheed, specifically states, 'And in no case shall judgment against said official * * * be entered by default, or on said answer, or in said garnishment proceedings, unless and until such assent and consent to said judgment is shown in said answer or in the trial of the garnishment case.' This language is clear and unambiguous and, in our opinion, can mean but one thing, and that is that no valid judgment can be rendered against such official until his assent and consent to said judgment is shown in his answer to the garnishment or in the trial of the garnishment case. This is what it says, and it is an elementary rule of construction that when a statute is clear and unambiguous it will be held to mean what it clearly expresses. [Barnes v. Carter, 120 Ga. 895, 898, 48 S.E. 387](#). Also see [Board of Tax Ass](#)

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App. 629] [Decatur County v. Catledge, 173 Ga. 656, 160 S.E. 909](#); [Standard Oil Co. of Kentucky v. State](#) [171, 375, 176 S.E. 1](#). Where a statute is clear and unambiguous in its terms, a court does not have the right to differ from what it declares. The wisdom of the statute is a matter for consideration by the legislature. [New](#) [Bery, 191 Ga. 334, 337, 12 S.E.2d 355](#), and citations. It is only by the provisions of the act of 1945, amending

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[Redwine v. Morgan, 88 Ga.App. 625, 77 S.E.2d 330 \(Ga. App., 1953\)](#)}}