



H. Sanders Carter Jr.

Partner

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Sanders is a litigation partner with extensive trial experience in federal and state courts.

He represents the nation's leading life insurance companies throughout Georgia and in other states where he has been admitted *pro hac vice*. His practice is focused on representing insurers in actions to recover benefits under policies of life, health, disability, accidental death, managed healthcare insurance and annuity contracts.

He defends ERISA claims alleging breach of fiduciary duties and to recover employee benefits, and defends insurers in cases based on agent misconduct. He also represents life insurers and their subsidiaries in business disputes with third parties.

Services

- Litigation
- Employee Benefits & Compensation
- ERISA Litigation
- Insurance
- Life, Health & Disability Litigation
- Appellate Practice

Before Fox Rothschild

Sanders was a partner and Leader of the Life, Health, Disability, and ERISA Litigation Practice at Smith Moore Leatherwood LLP, which combined with Fox Rothschild in 2018.

Beyond Fox Rothschild

Sanders is the Publications Chair of the Life, Health and Disability Committee of the Defense Research Institute and the founding editor of *ERISA Report*, a DRI newsletter. He has written on life insurance and ERISA issues for many years and has spoken at seminars of the American Conference Institute, the Defense Research Institute, the Eastern Claims Conference, the Blue Cross/Blue Shield Association, the Southern Claims Conference and other organizations.

Bar Admissions

- Georgia

Court Admissions

- U.S. District Court, Northern District of Georgia
- U.S. District Court, Middle District of Georgia
- U.S. District Court, Southern District of Georgia
- U.S. Court of Appeals, Eleventh Circuit
- U.S. Court of Appeals, Fourth Circuit

Education

- University of Georgia (A.B.J.)
- University of Georgia School of Law (J.D.)

Memberships

- Association of Life Insurance Counsel
- International Association of Defense Counsel
- Defense Research Institute
 - Life, Health and Disability Committee
- American Bar Association
 - Litigation Section
 - Tort, Trial & Insurance Practice Section
 - Life Insurance Law Committee
 - Health and Disability Law Committee
 - Employee Benefits Committee
- Georgia Defense Lawyers Association
- State Bar of Georgia
- Atlanta Bar Association
- Lawyers Club of Atlanta

Honors & Awards

- Named to "The Best Lawyers in America" list for Insurance Law in Georgia by *Best Lawyers* (2010-2022)
- Martindale-Hubbell's top (AV) Peer Review Rating

Representative Experience

- *Richardson v. Liberty Life Assurance Co. of Boston*, 812 Fed.Appx. 970 (11th Cir. 2020) (insured's monthly disability benefits were properly reduced by his receipt of payments under his former employer's Financial Advisor Succession Program).
- *Crumbly v. Northwestern Mut. Life Ins. Co.*, 455 F. Supp. 3d 1376 (N.D. Ga. 2020) (beneficiary's lack of awareness that husband's life insurance policy had lapsed for nonpayment of premiums did not excuse failure to submit timely claim for waiver of premium benefits).
- *In Re Walker*, 2019 WL 913354 (M.D. Ga. Bankr. Feb. 21, 2019) (insured's repayment of disability benefits under ERISA plan, due to receipt of SSDI benefits, was made in the usual course of business, and was not a preferential transfer under bankruptcy law).
- *Nefsky v. Unum Life Ins. Co. of Am.*, 2017 WL 621269 (N.D. Ga. Feb. 15, 2017), motion for reconsideration denied, 2017 WL 3700305 (N.D. Ga. Aug. 8, 2017) (impaired vision in one eye did not cause dealer in watches, jewelry and silverware to be totally disabled).
- *Silverman v. Unum Life Ins. Co. of Am.*, 2016 WL 6211728 (N.D. Ga. July 12, 2016) (insured who was already totally disabled by sickness could not recover lifetime benefits based on subsequent injury that, standing alone, would have been totally disabling).
- *Joseph v. Northwestern Mut. Life Ins. Co.*, 2015 WL 1309648 (M.D. Ga. Mar. 24, 2015) (claim for disability benefits was barred by insured's failure to provide notice of claim and proof of loss within time required by the policy).
- *Royal v. New York Life Insurance Co.*, 2015 WL 339781 (S.D. Ga. Jan. 26, 2015) (claim for disability benefits was barred by insured's failure to file suit within time permitted by legal actions provision and by failure to provide timely proof of loss).
- *Burnett v. Combined Ins. Co. of Am.*, 2011 WL 6012523 (M.D. Ga. Dec. 1, 2011) (second disabling injury sustained during period of continuous total disability did not entitle insured to a new maximum benefit period).

- *Provident Life and Accident Ins. Co. v. Futch*, 2008 WL 4724827 (S.D. Ga. Oct. 24, 2008) (surgeon was not eligible to recover lifetime disability benefits, based on claim that bilateral osteoarthritis of the hips was due to accidental bodily injuries, rather than due to sickness).
- *White v. New York Life Ins. Co.*, 564 F. Supp. 2d 1372 (S.D. Ga. 2008) (lapse of life insurance policy for failure to pay premiums was not excused by insured's alleged mental incapacity).
- *Cowart v. Metropolitan Life Ins. Co.*, 444 F. Supp. 2d 1282 (M.D. Ga. 2006), *aff'd* 199 Fed. App'x 870 (11th Cir. 2006) (individual disability policy was part of ERISA plan and did not come within Department of Labor "safe harbor," in view of evidence that employer paid premiums).
- *Karp v. Guardian Life Ins. Co. of Am.*, 456 F. Supp. 2d 1375 (S.D. Ga. 2006) (termination of disability benefits under ERISA plan, and plaintiff's award of Social Security disability benefits, was not a "qualifying event" requiring former employer to offer continuation health insurance under COBRA).
- *Powers v. Paul Revere Life Ins. Co.*, 2005 WL 6075373 (N.D. Ga. Oct. 19, 2005) (letter to insured from insurance agent did not amend disability policy to add cost of living benefits).
- *Kocer v. New York Life Ins. Co.*, 340 F. Supp. 2d 1351 (N.D. Ga. 2004) (disability benefits were not payable to physician whose license to practice medicine was revoked, thereby resulting in "legal disability" before the onset of factual disability).
- *Worsham v. Provident Cos., Inc.*, 249 F. Supp. 2d 1325 (N.D. Ga. 2002) (merger clause of disability policy barred plaintiff's fraud and RICO claims based on representations allegedly made by agent).
- *Yessick v. Midland Life Ins. Co.*, 178 F. Supp. 2d 1301 (N.D. Ga. 2001) (proof of customary, computerized procedures was sufficient to establish that premium invoice and lapse notice were mailed to insured).
- *McAfee v. Transamerica Occidental Life Ins. Co.*, 106 F. Supp. 2d 1331 (N.D. Ga. 2000), *aff'd mem.*, 252 F.3d 1362 (11th Cir. 2001), *reh. denied*, 268 F.3d 1069 (11th Cir. 2001), *cert. denied*, 534 U.S. 994 (2001) (insured's death in shootout with police was not covered under accidental death insurance policy).

Life, Health, Disability & ERISA

Sanders co-leads Fox Rothschild's Life, Health, Disability & ERISA Team, which has deep experience representing insurance companies, ERISA plan sponsors and third-party administrators in cases in federal and state courts. Our cross-cutting representations span a number of key financial, life sciences, transportation, manufacturing, non-profit and education industries. And we are known as skilled advisers and litigators with decades of experience assisting clients with claims to recover benefits and for breach of fiduciary duties under ERISA, class actions, discriminatory underwriting claims, allegations of agent misconduct, and breach of contract claims to recover life, accidental death, disability and health insurance benefits.

Fox attorneys are leaders in organizations such as the Life, Health and Disability Committee of the Defense Research Institute and the Life Insurance Law Committee, Health and Disability Law Committee, and Employee Benefits Committee of the Tort Trial & Insurance Practice Section of the American Bar Association. They speak frequently at national seminars on life, health, disability and ERISA issues.

Team Experience

- ***Joseph v. Northwestern Mutual Life Insurance Co.***
(Middle District of Georgia) (whether insured under individual disability income insurance policy failed to comply with policy's notice of claim provision)
- ***Royal v. New York Life Ins. Co.***
(Southern District of Georgia) (whether insured under individual disability income insurance policy failed to comply policy's 90-day proof of loss provision and three-year legal actions provision)
- ***Smith v. Cox Enter., Inc.***
(Northern District of Georgia) (whether administrator of self-funded ERISA plan abused its discretion in denying claim for disability benefits)
- ***Dorsey v. Aetna Life Insurance Co.***
(Eastern District of Virginia) (whether self-funded plan was top hat plan exempt from disclosure obligations of section

104(b)(4) of ERISA and whether third-party administrator abused its discretion in denying claim for disability benefits)

- ***Medical Center, Inc. v Humana Military Healthcare Services***
(Middle District of Georgia) (whether TRICARE managed care support contractor properly offset amount of overpayments for medical claims against future claim payments owed to hospital)
- ***Burnett v. Combined Insurance Company of America***
(Middle District of Georgia) (whether second disabling injury sustained during period of continuous total disability entitled insured to a new maximum benefit period)
- ***Muhammad v. Humanadental Insurance Co.***
(Northern District of Georgia) (whether claim for breach of dental insurance contract was preempted by ERISA)
- ***Provident Life and Accident Insurance Co. v. Futch***
(Southern District of Georgia) (whether surgeon was eligible to recover lifetime disability benefits based on claim that bilateral osteoarthritis of the hips was due to accidental bodily injuries, rather than due to sickness)
- ***White v. New York Life Insurance Co.***
(Southern District of Georgia) (whether lapse of life insurance policy for failure to pay premiums was excused by insured's alleged mental incapacity)
- ***Le Roux v. Woodgrain Millwork, Inc.***
(District of Idaho) (whether claims against self-funded health benefits ERISA plan for equitable estoppel, breach of fiduciary duty, and class action were subject to dismissal under Fed. R. Civ. P. 12(b)(6))
- ***Mitchell v. Globe Life and Accident Insurance Co.***
(Northern District of Georgia) (whether beneficiary under accidental death insurance policy timely complied with notice of claim and proof of loss provisions of policy and established accidental death within meaning of policy)
- ***Cowart v. Metropolitan Life Insurance Co.***
(Middle District of Georgia), *affirmed* (11th Cir. 2006) (whether individual disability policy was part of ERISA plan or came within Department of Labor "safe harbor," in view of evidence that employer paid premiums)
- ***Karp v. Guardian Life Insurance Company of America***
(Southern District of Georgia), *affirmed* (11th Circuit) (whether termination of disability benefits under ERISA plan or award of Social Security disability benefits was a "qualifying event" requiring former employer to offer continuation of health insurance under COBRA)
- ***Moorman v. UnumProvident Corp.***
(11th Circuit) (whether disability insurance plan was "established and maintained" by employer and therefore governed by ERISA, and whether plan satisfied safe harbor exemption from ERISA based on actions of employer)
- ***Perry v. Unum Life Insurance Company of America***
(Northern District of Georgia) (whether insured could pierce corporate veil or establish tortious interference claim against insurer's parent company based on insurer's alleged breach of contract resulting from denial of benefits)
- ***Powers v. Paul Revere Life Insurance Co.***
(Northern District of Georgia), *affirmed* (11th Circuit) (whether letter to insured from insurance agent amended disability policy to add cost of living benefits)
- ***Kocer v. New York Life Insurance Co.***
(Northern District of Georgia) (whether disability benefits were payable to physician whose license to practice medicine was revoked, thereby resulting in "legal disability" before the onset of factual disability)
- ***Dixon v. Life Insurance Company of North America***
(11th Circuit) (whether death resulted "directly" from accident and "no other causes" where insured's preexisting cardiac

condition substantially contributed to automobile accident resulting in death)

- ***Transamerica Occidental Life Insurance Co. v. Miles***
(Northern District of Georgia), *affirmed* (11th Circuit) (whether term life insurance policy went into effect where application required owner's personal receipt of policy while in good health and applicant's health changed after policy was received by agent, but before policy was delivered to applicant)
- ***Worsham v. Provident Companies, Inc.***
(Northern District of Georgia) (whether merger clause of disability policy barred plaintiff's fraud and RICO claims based on representations allegedly made by agent)
- ***Yessick v. Midland Life Insurance Co.***
(Northern District of Georgia) (whether proof of customary, computerized procedures was sufficient to establish that premium invoice and lapse notice were mailed to insured)
- ***McAfee v. Transamerica Occidental Life Insurance Co.***
(Northern District of Georgia), *affirmed* (11th Circuit), *cert. denied*, 534 U.S. 994 (whether insured's death in shootout with police was covered under accidental death insurance policy)
- ***Suarez v. Massachusetts Mutual Life Insurance Co.***
(Northern District of Georgia), *affirmed* (11th Circuit) (whether loss of medical license was legal disability, precluding recovery of disability benefits based on subsequent factual disability)
- ***Adair v. Boston Mutual Life Insurance Co.***
(Middle District of Georgia) (whether insured's death from apparent medication overdose was by accidental means)
- ***Cosby v. Transamerica Occidental Life Insurance Co.***
(Northern District of Georgia), *affirmed* (11th Circuit) (whether insured's breach of common law duty to advise insurer of change in health warranted rescission of life insurance policy)