Legal Alert: U.S. Supreme Court to Review Conflict of Interest Standard in ERISA Plan Administrators' Benefit Determinations

1/22/2008

In a decision that could significantly impact ERISA plan administrators, the U.S. Supreme Court has granted *certiorari* in *Metlife v. Glenn* (U.S., No. 06-923, *cert. granted* 1/18/08), a case in which the Sixth Circuit reversed the decision of a plan administrator denying benefits under a long term disability plan. In *Metlife,* the Supreme Court will determine whether the Sixth Circuit erred when it held that the fact that an ERISA plan administrator also funds plan benefits, without more, constitutes a conflict of interest that should be considered by courts in reviewing a plan administrator's benefit determination. Additionally, if the Court determines that this situation creates a conflict of interest, it will address how that conflict should be taken into account by a court reviewing a discretionary benefit determination.

When Does a Conflict of Interest Exist?

In 1989, the U.S. Supreme Court stated that when a plan administrator with discretion operates under a conflict of interest, that conflict must be weighed as "a factor" in determining whether the plan administrator abused its discretion in making a benefits determination. *See Firestone Tire & Rubber Co. v. Bruch* (1989). Since the Court's decision in *Bruch,* a split has developed among the federal appeals courts with regard to when a plan administrator will be found to be operating under a conflict of interest.

The Sixth Circuit follows the majority approach, which holds that the mere fact that the plan administrator also funds plan benefits creates a conflict of interest that a court must consider in reviewing a plan administrator's benefit determination. The Third, Fourth, Fifth, Ninth, Tenth, and Eleventh Circuits agree with this position, which does not require a showing that the plan administrator's decision was actually influenced by this conflict of interest.

However, the First and Seventh Circuits take a contrary position, holding that the mere fact that a plan administrator also pays claims does not present a conflict of interest that must be taken into account when reviewing a discretionary benefit determination. While acknowledging a potential conflict of interest in this situation, the Seventh Circuit has held that there is no need to adjust the level of scrutiny because market forces will counterbalance that potential. *See, e.g., Perlman* v. *Swiss Bank Corp. Comprehensive Disability Prot. Plan*, 195 F.3d 975, 981 (7th Cir. 1999).

In the Second and Eighth Circuits, a plan administrator's dual roles does not trigger a heightened standard of review unless there is evidence that the plan administrator was **in fact** influenced by a conflict of interest.

How Much Weight Should a Conflict of Interest be Given?

The federal appeals courts have also disagreed on how much weight a conflict of interest, if found, should be given when reviewing an administrator's determination. The courts have essentially developed three approaches to this issue: 1) abuse of discretion review on a "sliding scale"; 2) *de novo* review; and 3) burden-shifting.

The majority of appeals courts, including the Sixth Circuit, apply the abuse of discretion standard on a sliding scale, reviewing the plan administrator's decision for reasonableness and affording deference based upon the seriousness of the conflict.

The Second Circuit reviews a plan administrator's decision *de novo* if it finds that the plan administrator was **in fact** influenced by a conflict of interest.

Finally, both the Tenth and Eleventh Circuits utilize a burden-shifting approach. The Tenth Circuit shifts the burden to the plan administrator to demonstrate that its interpretation of the terms of the plan is reasonable and that its application of those terms to the claimant is supported by substantial evidence. The Eleventh Circuit's burden-shifting approach is more complicated and, as noted in our January 16 Legal Alert, has been characterized by a panel of the Eleventh Circuit as "unworkable."

Bottom Line:

Since the Supreme Court's decision in *Bruch* almost twenty years ago, it has become increasingly more common for ERISA plan administrators to fulfill dual roles of making plan benefit determinations and funding plan benefits. The conflicting standards of review used by the various federal appeals courts have created confusion and lack of uniformity in this area. The Court's decision in this case will provide welcome and necessary guidance and should impose consistency among the circuits in reviewing ERISA plan administrators' benefit determinations.

If you have any questions regarding this case or other employment related benefits issues, feel free to contact any of the following attorneys in Ford & Harrison's Employee Benefits Practice Group: Joelle Sharman, jsharman@fordharrison.com, 404-888-3975, Michael Coval, mcoval@fordharrison.com, 404-888-3892, Tiffany Downs, tdowns@fordharrison.com, 404-888-3961, or Jeff Rickman, jrickman@fordharrison.com, 404-888-3925, or the Ford & Harrison attorney with whom you usually work.