

Where Untimely Death Occurred Outside Coverage Grant, Claimant's Recovery Under ERISA Section 502(a)(3) Was Limited to Reimbursement of Premiums

Insurance Law Update

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U.S. Court of Appeals for the Fourth Circuit

In *McCravy v. Metropolitan Life Ins. Co.*, ___ F.3d ___, 2011 WL 1833873 (4th Cir. (S.C.) May 16, 2011), the Fourth Circuit Court of Appeals held that a claim for breach of fiduciary duty under ERISA section 502(a)(3) necessarily sought legal, not equitable, relief, and therefore benefits under an accidental death and dismemberment (AD&D) plan were not recoverable as a remedy for a claimed violation of that section.

Debbie McCravy was enrolled in an AD&D plan issued by her employer. McCravy also obtained coverage for her daughter, who at the time was an “eligible dependent child.” The plan defined “eligible dependent child” as a dependent child of the insured who was unmarried and either younger than 19 years old, or younger than 24 years old and also enrolled in school full-time. After the death of McCravy’s daughter, McCravy submitted a claim to MetLife for AD&D benefits. MetLife denied the claim because her daughter was 25 years old when she died, and was therefore no longer an eligible dependent child. McCravy sued MetLife under ERISA Sections 502(a)(2) and (a)(3). The district court held that McCravy could not recover under section (a)(2) (a determination that McCravy did not dispute on appeal) and that, under section (a)(3), McCravy’s recovery was limited to reimbursement of the premiums she had paid after her daughter no longer was eligible for coverage. McCravy appealed.

The Fourth Circuit Court of Appeals affirmed. McCravy argued that under the doctrine of surcharge (the amount a court can charge a fiduciary that has breached its duty), the court should order payment of the benefits. The Fourth Circuit disagreed. Citing *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002), and *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006), the court held that McCravy was essentially seeking restitution, but because she was not the

rightful owner of any funds in MetLife's possession, the relief she was seeking was legal rather than equitable, and therefore was not recoverable under section (a)(3).

The Fourth Circuit also denied relief based on equitable estoppel principles. The court held that equitable estoppel cannot be used to effectively modify the written terms of a benefit plan. The court further rejected McCravy's argument that under equitable estoppel principles, MetLife should be required to pay benefits as though a conversion policy had been purchased at the end of the plan's coverage period, since the plan would have allowed her to convert her daughter's coverage to an individual policy. The court disagreed, holding held that such relief would likewise be an improper modification of the plan, because to afford such relief to McCravy would require a waiver of the requirement that McCravy apply for conversion coverage within 31 days after the date coverage terminated. The court also observed, in rejecting McCravy's equitable estoppel theories, that McCravy did not allege in her suit that she had reasonably relied upon a representation of coverage – which would be an essential element in an equitable estoppel claim. Accordingly, the court held that reimbursement of the premiums was McCravy's only remedy.

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