What Does a Deferential Standard of Review Mean in ERISA Cases? The U.S. Supreme Court Gives Some Clarification

The federal courts have for a long time struggled with how to apply the deferential standard of review to actions taken by ERISA plan administrators in light of the United States Supreme Court holding in *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101 (1989). *Firestone* held that an ERISA plan administrator with discretionary authority to interpret a plan is entitled to deference in exercising that discretion. Courts have reached different results on an important issue: is a plan administrator that incorrectly interprets a plan document still entitled to an abuse of discretion standard of review when courts review the administrator's actions? The Supreme Court answered that question in the affirmative in *Conkright v. Frommert*, __ U.S. __ (April 21, 2010). The Court telegraphed how it would rule when it framed the issue as: "The question here is whether a single honest mistake in plan interpretation justifies stripping the administrator of that deference for subsequent related interpretations of the plan."

This is the Court's first foray into the post-*Glenn* era of ERISA. In *Metropolitan Life Insurance Co.* v. *Glenn*, 554 U.S. __, 128 S. Ct. 2343 (2008), the Court reaffirmed *Firestone*'s adoption of a deferential standard of review under section 1132(a)(1)(B). *Glenn* elucidated the Court's statement in *Firestone* and directed courts to proceed by "taking account of several different, often case-specific, factors, reaching a result by weighing all together." *Id.* at 2350. The Court observed that a conflict of interest "should prove more important (perhaps of great importance) where circumstances suggest a higher likelihood that it affected the benefits decision," and "should prove less important (perhaps to the vanishing point) where the administrator has taken active steps to reduce potential bias and to promote accuracy." *Id.*

Conkright involved Xerox Corporation's pension plan ("Plan") in which Xerox acted as the plan administrator ("Plan Administrator"). The Plan granted the Plan Administrator broad discretion to "[c]onstrue the Plan" and "to take such action as may be necessary to correct [any] defect, rectify [any] omission or reconcile [any] inconsistency".

Respondents were employees who left Xerox in the 1980's, received lump-sum distributions of retirement benefits earned up to that point, and were later rehired. To account for the past distributions when calculating respondents' benefits, the Plan Administrator initially interpreted the Plan to call for an approach that has come to be known as the "phantom account" method. Respondents challenged that method in an action under the Employee Retirement Income Security Act of 1974 ("ERISA").

The District Court granted summary judgment for the Plan, but the Second Circuit vacated and remanded, holding that the Plan Administrator's interpretation was unreasonable and that Respondents had not received adequate notice that the phantom account method would be used to calculate their benefits. On remand, the Plan Administrator proposed a new interpretation of the Plan that accounted for the time value of the money Respondents had previously received. The District Court declined to apply a deferential standard to this

interpretation, and adopted instead an approach proposed by Respondents that did not account for the time value of money. The District Court ordered the Plan Administrators to pay a lump sum in the amount of the difference between their total accrued benefits and the prior lump sum distribution, without any reference to phantom accounts or hypothetical investment gains.

Affirming in relevant part, the Second Circuit held that the District Court was correct not to apply a deferential standard on remand, and that the District Court's decision on the merits was not an abuse of discretion. The Second Circuit stated that it was unclear whether a *de novo* or arbitrary and capricious standard of review applied. It found, however, that "under either an arbitrary and capricious standard or as a matter of law," that the Plan Administrator's use of the phantom account method was a violation of ERISA.

The Supreme Court reversed, holding that the District Court should have applied a deferential standard of review to the Plan Administrator's interpretation of the Plan on remand. The Court addressed the standard for reviewing the decisions of ERISA plan administrators in light of *Firestone*. *Firestone* looked to "principles of trust law" for guidance. *Id.* at 111. Under trust law, the appropriate standard depends on the language of the instrument creating the trust. In *Firestone* the court held that when a trust instrument gives the trustee "power to construe disputed or doubtful terms, . . . the trustee's interpretation will not be disturbed if reasonable." *Id.* The Court explained that under *Firestone* and the Plan's terms, the Plan Administrator would normally be entitled to deference when interpreting the Plan. The Court of Appeals, however, crafted an exception to *Firestone* deference, holding that a court need not apply a deferential standard when a plan administrator's previous construction of the same plan terms was found to violate ERISA.

The Court found that the Second Circuit's "one-strike-and-you're-out" approach had no basis in *Firestone*. The Court explained that the Plan granted the Plan Administrator general interpretive authority without suggesting that the authority was limited to a first effort to construe the Plan and noted that although trust law does not resolve the specific question of whether courts may strip a plan administrator of *Firestone* deference after one good faith mistake, guiding principles underlying ERISA do. The Court placed significant importance on the conclusion that *Firestone* deference serves the "interest of uniformity, helping to avoid a patchwork of different interpretations of a plan, like the one here, that covers employees in different jurisdictions---a result that 'would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them.'" The Court, seemingly annoyed at the District Court's interpretation of the Plan that did not include the time value of money, recognized that according to actuaries this interpretation was "highly unforeseeable."

Respondents asserted that deference is less important once a plan administrator's interpretation has been found unreasonable, but the court rejected this, stating that the interests in efficiency, predictability, and uniformity do not suddenly disappear simply because of a single honest mistake.

The Court dismissed Respondents' claim that plan administrators will adopt unreasonable interpretations of their plans, receiving deference each time, thereby undermining the prompt resolution of benefit disputes, driving up litigation costs, and discouraging employees from challenging plan administrators' decisions. The Court explained that these concerns were "overblown." But, the Court acknowledged that multiple erroneous interpretations of the same plan provision, even if issued in good faith, could support a finding that a plan administrator is too incompetent to exercise his discretion fairly. The Court determined that applying a deferential standard of review also does not mean that the plan administrator will always prevail on the merits. It means only that the plan administrator's interpretation "will not be disturbed if reasonable."

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