Insurers That Fund ERISA Plans and Administer Claims Are Proper Defendants in Lawsuits for Benefits

June 27, 2011 by Misty Murray and Martin E. Rosen

In *Cyr v. Reliance Standard Ins. Co.*, 2011 U.S. App. LEXIS 12601 (9th Cir. 2011), an *en banc* panel of the Ninth Circuit Court of Appeals was presented with the issue of whether ERISA authorizes actions to recover plan benefits against a third-party insurer that funds the plan and administers claims for the plan. The specific statute involved, 29 U.S.C. § 1132(a)(1)(B), provides:

"A civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

Prior Ninth Circuit precedent held that such suits may only be brought against the plan, or in some cases the plan administrator, but that an ERISA participant or beneficiary could not sue a plan's insurer for benefits. See, e.g., *Ford v. MCI Communications Corp. Health and Welfare Plan*, 399 F.3d 1076, 108 (9th Cir. 2005); *Everhart v. Allmerica Financial Life Ins. Co.*, 275 F.3d 751, 754 (9th Cir. 2001); *Gelardi v. Pertec Computer Corp*., 761 F.2d 1323, 1324 (9th Cir. 1985).

In *Cyr*, the Ninth Circuit overruled these prior decisions.

The Court reasoned that in *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000), the Supreme Court had addressed the question of who can be sued under a different subsection of Section 1132(a), specifically subsection 1132(a)(3). Section 1132(a)(3) permits civil actions:

"by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

The *en banc* panel noted that the Harris Court "rejected the suggestion that there was a limitation contained within § 1132(a)(3) itself on who could be a proper defendant in a lawsuit under that subsection," reasoning as follows:

"[Section 1132(a)(3)] makes no mention at all of which parties may be proper defendants--the focus, instead, is on redressing the "act or practice which violates any provision of [ERISA Title I]." 29 U.S.C. § 1132(a)(3) (emphasis added).

Other provisions of ERISA, by contrast, do expressly address who may be a defendant. See, e.g., § 409(a), 29 U.S.C. § 1109(a) (stating that "[a]ny person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable" (emphasis

added)); § 502(l), 29 U.S.C. § 1132(l) (authorizing imposition of civil penalties only against a "fiduciary" who violates part 4 of Title I or "any other person" who knowingly participates in such a violation). And § 502(a) itself demonstrates Congress' care in delineating the universe of plaintiffs who may bring certain civil actions. See, e.g., §502(a)(3), 29 U.S.C. § 1132(a)(3) ("A civil action may be brought . . . by a participant, beneficiary, or fiduciary . . ." (emphasis added)); ("A civil action may be brought . . . by the Secretary . . ." [Harris, supra at 246-47; emphasis added]"

Thus, the Ninth Circuit saw "no reason to read a limitation into § 1132(a)(1)(B) that the Supreme Court did not perceive in § 1132(a)(3)."

The Ninth Circuit further noted that Section 1132(d)(2) also supported its conclusion. Section 1132(d)(2) provides that:

"[a]ny money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter." [Emphasis added.]"

The Ninth Circuit reasoned that the "'unless' clause [of Section 132(d)(2)] necessarily indicates that parties other than plans can be sued for money damages under other provisions of ERISA, such as § 1132(a)(1)(B), as long as that party's individual liability is established."

The Ninth Circuit's ruling in *Cyr* is not likely to have any significant impact. That is because often times third-party insurers that fund ERISA plans and administer claims were named as defendants in lawsuits involving disputes over ERISA benefits, notwithstanding prior case law. And even when the plans themselves were named as defendants, the insurers would often defend the litigation.