

February 23, 2012

## Summary Judgment Rulings in ERISA Retained Asset Account Cases

Earlier this month, U.S. District Courts in Pennsylvania and Maine ruled on summary judgment motions in two putative class actions challenging the use of retained asset accounts in connection with ERISA-governed plans. The court in *Edmonson v. Lincoln Nat'l Life Ins. Co.*, Civil Action No. 10-4919 (E.D. Pa.), granted the defendant-insurer's motion for summary judgment, while the court in *Merrimon v. Unum Life Ins. Co.*, Civil Action No. 2:10-CV-447-NT (D. Maine), granted partial summary judgment to plaintiffs.

### *Edmonson v. Lincoln Nat'l Life Ins. Co.*

On February 3, 2012, the U. S. District Court for the Eastern District of Pennsylvania granted the defendant-insurer's motion for summary judgment in *Edmonson v. Lincoln Nat'l Life Ins. Co.*, Civil Action No. 10-4919 (E.D. Pa.). Plaintiff's putative class action complaint alleged that, by establishing retained asset accounts to pay life insurance proceeds to beneficiaries and investing the funds backing those accounts in its general account, defendant breached its ERISA fiduciary duties. The court had previously denied defendant's motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim. (Please click [here](#) for Sutherland's April 6, 2011 Legal Alert.) However, after further development of the facts through discovery, the court held that defendant was entitled to summary judgment on plaintiff's breach of fiduciary duty claim because: (1) defendant lacked "any authority and control" over the management or disposition of the funds backing plaintiff's retained asset account; and (2) such funds were not ERISA "plan assets." (Please click [here](#) for the opinion.)

Consistent with *Faber v. Metropolitan Life Ins. Co.*, 648 F.3d 98 (2d Cir. 2011), the court held that when defendant established a retained asset account in plaintiff's name, credited it with the amount of death benefits owed to her, and provided plaintiff with a checkbook to draw on the account up to the full amount of the death benefits owed to her, defendant had both complied with the policy's requirement to pay benefits "immediately" and shifted all practical control of plaintiff's proceeds to plaintiff directly. The court noted that, a few months after her retained asset account was established, "Plaintiff withdrew the entire amount from the account in a single draft, effectively receiving precisely what she claims she was entitled under the plan – the payment of her death benefits in one lump sum."

Also consistent with *Faber*, the court deferred to a U.S. Department of Labor opinion letter (issued during the *Faber* litigation) concluding that the ERISA plan had no ownership interest in the funds backing the retained asset accounts. The court noted that once the retained asset accounts are "credited with the amount of death benefits due and a checkbook is provided to the account holder," the insurer's "only remaining obligations are to honor checks drawn on the account and pay interest on the account at a stipulated rate." After that point, the relationship between the defendant-insurer and plaintiff-beneficiary is "analogous to one between a creditor and debtor," which is fundamentally different from an ERISA fiduciary relationship.

### *Merrimon v. Unum Life Ins. Co.*

On February 3, 2012, the U.S. District Court for the District of Maine issued an order in *Merrimon v. Unum Life Ins. Co.*, Civil Action No. 2:10-CV-447-NT (D. Maine), granting partial summary judgment to plaintiffs on the claim for breach of fiduciary duty under 29 U.S.C. § 1104(a), granting summary judgment to defendant on the claim of self-dealing in plan assets, and granting plaintiffs' motion for class certification under Rule 23(b)(3). (Please click [here](#) for the opinion.)

© 2012 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

The court held that defendant breached its duty to administer the ERISA plans solely in the interests of beneficiaries, as required under 29 U.S.C. § 1104(a). The court noted that nothing precluded defendant from making payment of death benefits through retained asset accounts. The court also held that the assets backing the insurer's retained asset accounts were not ERISA plan assets. According to the court, however, defendant was obligated to consider whether a third party might have offered a higher interest rate on such accounts or whether defendant's own terms were consistent with what a third party might have offered, but failed to do so.

In addition to the ERISA claim, plaintiffs brought state law breach of contract and statutory late payment claims, asserting that, by setting up retained asset accounts instead of issuing checks, defendant failed to make the complete, timely payment that was due them under their contracts. The court rejected these claims, stating that “[b]y providing blank drafts, account balances, and a plain-language explanation of the RAAs to the Plaintiffs, Unum provided the Plaintiffs with unconditional access to their benefits, the same — considering the purpose of the Late Payment Statute — as if it had issued a check.”

The court granted plaintiffs' motion for class certification pursuant to Rule 23(b)(3), finding that common issues predominated based on the court's characterization of defendant's breach of contract as stemming from its decision to manage the retained asset accounts itself.

Characterizing its breach of fiduciary duty ruling as a controlling question of law on which there was substantial ground for differences of opinion, the court certified its opinion for interlocutory appeal under 28 U.S.C. § 1292. On February 13, 2012, the insurer filed a petition for leave to appeal with the U.S. Court of Appeals for the First Circuit.



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

**Authors**

<a href="#">Phillip E. Stano</a>	202.383.0261	<a href="mailto:phillip.stano@sutherland.com">phillip.stano@sutherland.com</a>
<a href="#">Steuart H. Thomsen</a>	202.383.0166	<a href="mailto:steuart.thomsen@sutherland.com">steuart.thomsen@sutherland.com</a>
<a href="#">Brendan Ballard</a>	202.383.0820	<a href="mailto:brendan.ballard@sutherland.com">brendan.ballard@sutherland.com</a>

**Related Attorneys**

<a href="#">Frederick R. Bellamy</a>	202.383.0126	<a href="mailto:fred.bellamy@sutherland.com">fred.bellamy@sutherland.com</a>
<a href="#">Thomas R. Bundy, III</a>	202.383.0716	<a href="mailto:thomas.bundy@sutherland.com">thomas.bundy@sutherland.com</a>
<a href="#">Nicholas T. Christakos</a>	202.383.0184	<a href="mailto:nicholas.christakos@sutherland.com">nicholas.christakos@sutherland.com</a>
<a href="#">Thomas W. Curvin</a>	404.853.8314	<a href="mailto:tom.curvin@sutherland.com">tom.curvin@sutherland.com</a>
<a href="#">Stephen E. Roth</a>	202.383.0158	<a href="mailto:steve.roth@sutherland.com">steve.roth@sutherland.com</a>
<a href="#">W. Mark Smith</a>	202.383.0221	<a href="mailto:mark.smith@sutherland.com">mark.smith@sutherland.com</a>
<a href="#">Gail L. Westover</a>	202.383.0353	<a href="mailto:gail.westover@sutherland.com">gail.westover@sutherland.com</a>
<a href="#">Mary Jane Wilson-Bilik</a>	202.383.0660	<a href="mailto:mj.wilson-bilik@sutherland.com">mj.wilson-bilik@sutherland.com</a>