Legal Alert: Supreme Court's Anticlimactic Decision in Glenn does not Streamline ERISA Litigation

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Yesterday, the U.S. Supreme Court issued its decision in *Metropolitan Life Ins. Co. v. Glenn* (June 19, 2008), which many had hoped would provide more clarity with regard to a court's role in reviewing a plan administrator's decision denying benefits, where the plan administrator also pays benefits under the plan. However, the Court's decision in *Glenn* merely "elucidates" the standards announced by the Court in *Firestone Tire & Rubber Co. v Bruch*, 489 U.S. 101 (1989), which held that a conflict of interest is a factor to be considered in determining whether to affirm a plan administrator's benefits determination. The Court did clarify that an entity administering an employee benefit plan, which both determines whether an employee is eligible for benefits and pays those benefits out of its own pocket, operates under an inherent conflict of interest, a question that was not specifically addressed by the Court's earlier decision in *Bruch.*

Background: In *Glenn,* MetLife served as both an administrator and the insurer of Sears, Roebuck & Company's long-term disability insurance plan, an ERISA-covered employee benefit plan. As the plan administrator, MetLife had discretionary authority to determine the validity of an employee's claim for benefits. As the plan's insurer, MetLife paid valid benefit claims. Glenn applied for long-term disability benefits, which MetLife granted Glenn for 24 months. However, MetLife denied benefits beyond 24 months, finding that Glenn was not qualified for such benefits.

Glenn filed suit in federal court, seeking judicial review of MetLife's denial of benefits. The trial court ruled in favor of MetLife and Glenn appealed to the Sixth Circuit. The Sixth Circuit held that MetLife's conflict of interest (based on its authority to determine who receives benefits and its obligation to pay those benefits) was a relevant factor in determining whether to uphold the decision denying benefits. Ultimately the Sixth Circuit reversed MetLife's denial of benefits.

The Supreme Court agreed to review the Sixth Circuit's decision to determine whether a plan administrator that also pays plan benefits operates under a conflict of interest and, if so, how the conflict affects a court's review of a benefit determination.

Conflict of Interest: The Court had long held that a conflict of interest is clear where it is the employer who both funds the plan and evaluates the claims, noting that the employer's fiduciary interest may counsel in favor of granting a borderline claim while its immediate financial interest counsels to the contrary.

"Thus, the employer has an 'interest . . . conflicting with that of the beneficiaries,' the type of conflict that judges must take into account when they review the discretionary acts of a trustee of a common-law trust."

The Court here found that, while the conflict is less clear when the plan administrator is a professional insurance company instead of the employer, a conflict nevertheless exists. However, the Court noted that the different circumstances faced by an insurer versus an employer may be considered in determining the significance of the conflict of interest.

"Elucidating" Firestone's Standard in Conflict of Interest Situations: The Court did not change the deferential standard to be used when reviewing the discretionary decision-making of a conflicted trustee. The Court held that the conflict of interest remains a factor "among the many a reviewing judge must take into account." Acknowledging that its decision does not provide "a detailed set of instructions" for reviewing a benefit determination, the Court held that any such formula would fail to take into account the "all the impalpable factors involved in judicial review."

Employers' Bottom Line:

Glenn does not dramatically change the analysis most courts will use in reviewing benefits determinations. It reaffirms the sliding scale of deference the majority of federal appeals courts have employed in reviewing benefit denials. The decision in *Glenn* will, however, have a more significant impact on cases in the Eleventh Circuit (covering appeals from federal district courts in Alabama, Georgia, and Florida) insofar as it renders the standard set forth in *Brown v. Blue Cross & Blue Shield of Ala*., 898 F.2d 1556 (11th Cir. 1990), essentially obsolete. In *Brown*, the Eleventh Circuit held that if the administrator's decision was deemed *de novo* wrong, the administrator would have to be given the chance to demonstrate that its decision was not tainted by self-interest. This was because "[e]ven a conflicted fiduciary should receive deference when it demonstrates that it is exercising discretion among choices which reasonably may be considered to be in the interests of the participants and beneficiaries."

Glenn appears to have eliminated this burden-shifting presumption that existed from the advent of *Brown*. Still, the presence of conflict will remain a factor in determining how much deference to afford the administrator's decision.

If you have any questions regarding the Court's decision in *Glenn*, please contact the Ford & Harrison attorney with whom you usually work or any member of our Employee Benefits and Executive Compensation Practice Group.