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Management Alert

Supreme Court Presumes Conflict of Interest in "Dual Role" Benefits Denial Cases

On June 19, 2008, the Supreme Court upheld the application of the deferential abuse of discretion standard of review for benefit decisions under ERISA-governed plans even in instances when the decision-maker on the claim also is responsible for paying benefits or is affiliated with the payer. This standard of review is very favorable to benefit decision-makers, as it generally requires a court to affirm the decision unless it is "downright unreasonable" in light of the record presented to the decision-maker. However, at the same time, the Supreme Court held that courts applying this standard of review must weigh the conflict of interest created by the dual payer/decision-maker role and must ascertain whether the conflict of interest has resulted in an unreasonable benefits determination. *MetLife v. Glenn*, 554 U.S. ___ (2008).

Resolving a conflict among federal appellate courts, the Supreme Court first explained the rule that it had first announced almost twenty years ago in *Firestone Tire & Rubber Co. v. Bruch*. In *Bruch*, the Supreme Court held that if "a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'factor in determining whether there is an abuse of discretion.'"[1] The *Glenn* Court then articulated a case-specific "totality of circumstances" test for courts to follow in determining whether a conflict of interest impermissibly taints a decision involving ERISA-governed benefits. Although the decision-maker in the *Glenn* case was an insurance company, the decision arguably applies to sponsors of self-funded plans whose employees act as fiduciaries to decide claims for benefits.

The *Glenn* decision will invite arguments by plaintiffs in benefits cases that the decision-maker was unduly influenced by a conflict of interest. Plaintiffs in these cases likely will also seek discovery as to the nature and extent of any conflict, discovery many courts have previously prohibited.

Background

Diagnosed by her doctors with severe dilated cardiomyopathy, Wanda Glenn applied for long-term disability (LTD) benefits under her employer's LTD plan (Plan). That Plan provided for benefits up to 24 months

[1] *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989).

if the Plan administrator found an employee disabled from her own occupation. After 24 months, the Plan provided for continued benefits only for an individual disabled from any occupation for which she appeared reasonably qualified by experience or training. MetLife, the Plan administrator, found Glenn disabled under the first definition, and paid her benefits for 24 months. After the initial approval, at MetLife's urging, Glenn filed for and received Social Security disability benefits. MetLife then demanded reimbursement from Glenn for the overpayment of benefits due to the retroactive nature of her Social Security award. MetLife also denied Glenn's continued LTD disability benefits after 24 months under the Plan's second definition of total disability.

Glenn exhausted her administrative remedies under the Plan and filed suit pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). The district court affirmed MetLife's denial of Glenn's claim. Glenn appealed that decision to the U.S. Court of Appeals for the Sixth Circuit.

The Sixth Circuit Decision

The Sixth Circuit began its analysis by noting that MetLife's dual role (decision-maker on, and payer of, claims) created an apparent conflict of interest, and that the conflict must be weighed as a factor in determining whether MetLife had arbitrarily denied Glenn's continued LTD benefits. *Glenn v. MetLife*, 461 F.3d 660, 662 (6th Cir. 2006). The district court had identified this conflict of interest as a relevant factor, but had not evaluated whether the conflict may have played a part in MetLife's decision. *Id.* at 663. In reversing the district court, the Sixth Circuit described the facts and circumstances that caused it to conclude that MetLife's denial decision "can only be described as arbitrary and capricious." Circumstances troubling the Sixth Circuit included MetLife's selective consideration of Glenn's treating physician's records, its failure to explain the conflict between its own decision and that of the Social Security Administration, and its refusal to consider the role that stress played in aggravating Glenn's condition and in preventing her return to gainful employment. *Id.*

The Supreme Court Decision

The Supreme Court accepted review of the case in order to address two distinct questions: (1) whether a plan administrator that both determines and pays claims under an ERISA plan is presumed to operate under a conflict of interest; and, if so, (2) how a reviewing court must take that conflict into account. *MetLife v. Glenn*, 554 U.S.___, at *4 (2008).

As to the first question, the Supreme Court unanimously agreed with the Sixth Circuit that an insurance company that both reviews claims and pays out benefits, like MetLife, has conflicting interests. *Id.* at *5-7. "The employer's fiduciary interest may counsel in favor of granting a borderline claim while its immediate financial interest counsels to the contrary." *Id.* at *5. The justices disagreed on whether the conflict should be presumed in other settings, such as when an employee of the plan sponsor decides claims that are paid from the sponsor's assets. However, the majority opinion appears to direct courts to presume a conflict of interest in those situations.

Answering the second question, the majority restated the Supreme Court's holding in *Firestone* "that a conflict should be weighed as a 'factor in determining whether there is an abuse of discretion.'" *Id.* at *7. The Supreme Court emphasized that the quoted statement in *Firestone* does not imply a change in the *standard* of review empowering a court to apply heightened scrutiny to a claim denial normally analyzed only for an abuse of discretion. *Id.* The Supreme Court added that the word "factor" means just that, "namely, that when judges review the lawfulness of benefit denials, they will often take account of several different considerations of which a conflict of interest is one." *Id.* at *8. Neither did the Supreme Court "believe it necessary or desirable for courts to create special burden-of-proof rules, focused narrowly upon the . . .conflict." *Id.* Instead, "conflicts are but one factor among many that a reviewing judge must take into account." *Id.* Applying its analysis to the case at hand, the majority agreed that the Sixth Circuit properly "weighed" the conflict of interest "as a factor." *Id.* at *9

This "one factor among many" formulation does not, as the majority candidly admitted, constitute "a detailed set of instructions" to lower courts. *Id.* But the Supreme Court did give some guidance, indicating that a review of the decisions of a conflicted plan administrator should involve a two-step process. First, a court must determine the proper weight to assign to the conflict of interest. The conflict may be of little or no importance if, for example, the administrator has taken steps to eliminate potential bias by "walling off claims administrators from those interested in firm finances, or imposing management checks that penalize inaccurate decision-making irrespective of whom the inaccuracy benefits." *Id.* However, "where circumstances suggest a higher likelihood that" the conflict "affected the benefits decision," it should be given more weight. *Id.*

Once the court has decided the "weight" of the administrator's conflict of interest, it must examine "other factors" associated with the claim denial. In Glenn's case, for example, the Supreme Court noted that the Plan administrator had received the bulk of Glenn's Social Security benefits after encouraging her to argue to the Social Security Administration that she could not work, calling into question its later rejection of the findings of the Social Security Administration. *Id.* The Supreme Court cautioned that, if these "other factors…are closely balanced," leaving the court uncertain as to whether the claim denial was reasonable, then the conflict of interest may serve as a "tiebreaker." *Id.*

Chief Justice Roberts wrote separately to say that he would not consider a conflict of interest unless evidence had been presented that the administrator's conflict had actually motivated or affected the benefits decision. *Id.*

In dissent, Justices Scalia and Thomas also reasoned that a court should not weigh an administrator's conflict of interest in the absence of evidence demonstrating that the administrator had in fact acted from an improper motive. *Id.* at *15. If improper motive infected the decision, the dissenting justices would have found that the fiduciary necessarily abused its discretion and would have adopted the *de novo* standard of review, under which no deference is accorded the fiduciary's decision.

Effect of the Decision on Plan Administration

As Justice Kennedy suggested in a separate opinion, the *Glenn* decision raises several questions that will affect future benefit denial cases without offering a bright-line test for conflicts of interest. Participants can now be expected to seek discovery as to alleged conflicts of interest in an effort to drive up litigation costs and to create an impetus for settlement. In addition, given the case-specific nature of review mandated by *Glenn*, it will take several years for the lower courts to develop guidance as to just how certain kinds of conflicts should affect the outcome of judicial review of benefit decisions. In this process, courts in different parts of the country will probably reach different conclusions, complicating the administration of nationwide benefit plans.

In light of *Glenn*, plan administrators should consult with experienced ERISA benefits counsel and ERISA litigators in order to determine what specific actions they may take to reduce the impact of potential or actual bias in benefits decisions and how best to anticipate plaintiffs' likely conflict of interest arguments. Among other steps, plan administrators may want to consider: (1) creating barriers between individuals charged with deciding claims and those responsible for corporate financial performance; (2) establishing incentives for decision-makers to resolve claims accurately, regardless of whether the outcomes favor the claimants or the company; and (3) maintaining detailed records that can be used to show that conflicts did not affect the outcome of the claim review process. These steps may be effective strategies to fend off discovery and to control litigation defense costs.

If you have any questions regarding this Management Alert, please contact the Seyfarth Shaw attorney with whom you work, or any Employee Benefits or ERISA Litigation attorney on our website, www.seyfarth.com.

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