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Employee Benefits Briefing

Supreme Court Rules That Structural Conflicts Must Be Weighed in Judicial Review of ERISA Benefit Claim Denials

On June 19, 2008, the Supreme Court issued a fractured (5–1–1–2) decision in *MetLife Insurance Co. v. Glenn*, ruling that employee benefit plan administrators who both make benefit decisions and pay benefit claims under a plan covered by the Employee Retirement Income Security Act of 1974 (ERISA) operate under a conflict of interest that must be weighed as a factor upon judicial review. However, the Court failed to provide a uniform and predictable framework for judicial review of conflicted decisions, holding instead that the weight given to the conflict will vary according to the particular "facts and circumstances" of each case. The ruling has implications for insurers and sponsors of self-funded plans.

The Court's decision attempts to clarify the Court's 1989 decision in *Firestone Tire & Rubber Co. v. Bruch*. In *Bruch*, the Court laid the modern framework for judicial review of ERISA benefit claims, holding that a deferential abuse of discretion standard applies if the plan language gives discretion to the fiduciary to interpret the plan. However, the Court also held in *Bruch* 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."

In the 19 years following the Court's decision, federal courts have struggled with this second holding in *Bruch*, with the circuits split on the issues of (1) whether dual-role administrators operate under an inherent conflict of interest, and (2) if a conflict does exist, how that conflict affects the court's review of the administrator's decision to deny benefits. On this second question, the circuit courts developed at least three different tests for analyzing conflicted claims, which led the Solicitor General to separately ask the Court to consider both questions in the *Glenn* case.

The Supreme Court's Decision

In *Glenn*, the Supreme Court held that dual-role administrators—including both insurers making claims decisions under group insurance policies and employers making claims decisions under a self-funded plan—have an inherent conflict that must be considered by the reviewing court on a case-by-case basis. In *Glenn*, the participant was a Sears employee who filed for disability benefits after a heart condition impaired her ability to work. MetLife, who served as both the administrator and insurer of the Sears long-term disability insurance plan, rejected Glenn's claim for extended benefits, and took the position that she was able to continue performing full-time work after her condition improved following medical treatment. Glenn sued MetLife under section 502(a)(1)(B) of ERISA, which allows federal courts to review the decision of a plan administrator to deny a participant's claim for benefits under an ERISA plan.

The district court ruled for MetLife, but the U.S. Court of Appeals for the Sixth Circuit reversed, holding that MetLife had abused its discretion in denying Glenn's claim. Because the plan granted MetLife discretionary authority, the Sixth Circuit reviewed the claim under an abuse of discretion standard, but ultimately set aside the claim due to the following factors: (1) the conflict of interest; (2) MetLife's failure to reconcile its own conclusion that Glenn could work in other jobs with the Social Security Administration's conclusion that she could not; (3) MetLife's focus upon one treating physician report suggesting that Glenn could work in other jobs at the expense of other, more detailed treating physician reports indicating that she could not; (4) MetLife's failure to provide

all of the treating physician reports to its own hired experts; and (5) MetLife's failure to take account of evidence indicating that stress aggravated Glenn's condition.

In an opinion written by Justice Breyer and joined by four justices, the Court held that a conflict will always exist where an administrator is responsible for both making benefit eligibility determinations and paying claims. In so holding, the Court rejected MetLife's attempt to argue that an insurance company stands in a materially different position compared to an employer-sponsor of a self-funded plan because insurers pass the cost of claims onto the insured. On the question of what standard of review should be applied, the Court expressly rejected the invitation to adopt a *de novo* or lesser standard of review for conflict cases, and instead held that, even when presented with a conflict, the courts review claims under a deferential standard of review and the conflict simply ranks as "but one factor among many that a reviewing judge must take into account." Accordingly, the Court held that the Sixth Circuit properly "weighed" the conflict of interest "as a factor determining whether there [was] an abuse of discretion."

Acknowledging the vague and ad hoc nature of its "one factor among many" test, the Court admitted that its analysis does not provide a "detailed set of instructions" for reviewing courts (which Chief Justice Roberts referred to as a "triumph of understatement"). The Court did provide a loose, two-step approach, where the reviewing court first identifies whether a conflict exists and determines how much weight to give the conflict when reviewing the claims record. The Court explained that little weight should be assigned where the administrator takes steps to minimize the conflict 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." However, "where circumstances suggest a higher likelihood that" the conflict "affected the benefits decision," the Court explained that the conflict will be weighed more heavily by the reviewing court.

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After identifying the conflict and the weight to assign, the reviewing courts should look to "other factors" associated with the claim denial. If the other factors are closely balanced, any one factor (including the conflict) can act as a tie-breaker. If the weight assigned to the conflict is minimal, however, the Court reasoned that the reviewing court's focus should remain on the other factors.

Practical Implications

The good news for administrators is that the Court clearly rejected a *de novo* standard for the review of ERISA benefits claims where the administrator both makes benefits decisions and pays claims, a position advocated by the ERISA plaintiffs' bar and several *amicus curiae* briefs. The bad news is that insurance companies and sponsors of self-insured plans who both decide and pay claims are now always operating under a legally recognized conflict of interest, which makes it somewhat harder to defend litigated claims.

Although this decision does not add more predictability for claims administrators, the Court did indicate that reviewing courts should give less weight to the conflict when the administrator has taken active steps to reduce potential bias and promote accuracy, for example, by creating ethical walls between claims administrators and those interested in the enterprise's finances and by imposing management checks that penalize inaccurate claims decisions regardless of whom they benefit. Dual-role administrators should consider these and similar approaches to limit the potential that a reviewing court will find that the administrator's conflict adversely affected its decision-making process.

Vedder Price's ERISA Litigation Group has extensive experience counseling and litigating benefit claims for all types of plans, including self-funded and insured health and welfare plans. We encourage our clients to contact **Charles B. Wolf**, **Thomas G. Hancuch**, **Patrick W. Spangler**, or any other Vedder Price attorney with whom you have worked. ■

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