



District Court Provides Additional Guidance on Scope of Discovery Under *Glenn*

In the last several years, the scope of discovery in ERISA cases has been a point of contention between plaintiff and defense counsel. Plaintiffs typically want free range to conduct discovery on any potentially relevant information addressing the conflict of interest issue while defense counsel would like discovery requests to be as narrow as possible. Generally, discovery in ERISA cases is limited to what was before the plan administrator at the time the claim decision was made. In other words, the administrative record. However, in 2008, the Supreme Court in *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008) held that a conflict of interest “should be weighted as a factor in determining whether there is an abuse of discretion.” *Id.* As a result, most Circuit courts have held that *Glenn* allows for discovery outside the administrative record, when it pertains to whether the plan/claims administrator acted in a manner consistent with the conflict of interest. Recently, in *Zewdu v. Citigroup Long Term Disability Plan*, 264 F.R.D. 622 (N.D. Cal 2010), Magistrate Judge Maria Elena James addressed the scope of discovery under *Glenn* and allowed the Plaintiff to subpoena the following information:

Number of claims reviewed, granted and/or denied by the medical review company.

- Employment agreements between Insurer and the medical review company.
- Invoices from the medical review company relating to the plaintiff’s claim.
- Information regarding the compensation between the insurer and the physician reviewer.
- Documents pertaining to the training of medical staff and handling of disability claims.
- Performance evaluations of medical professionals involved in the handling of the claim.



Similarly, Judge James denied requests for the following information:

- Insurance company’s underwriting file.
- Information from physician reviewer on time spent reviewing claims.
- Financial information regarding amount of benefits paid and total premiums collected.
- Medical Reports drafted by Physician Consultant on claims other than the plaintiffs.
- Documents relevant to Insurers decision to hire the physician reviewer.

These rulings from the district courts are far from consistent on the subject. Nevertheless, a consensus is beginning to develop among the district courts that mirror the rulings in this case. Of course, until the Ninth Circuit provides additional guidance, the district courts will continue decide for themselves what constitutes the proper scope of discovery. This case, and the opinions cited within, represent an excellent starting point for understanding the scope of discovery in ERISA cases.



By: M. Scott Koller
Associate
McKennon | Schindler LLP
384 Forest Avenue, Suite 20
Laguna Beach, California 92651
877-MSLAW20
(877) 675-2920

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