



## Legal Alert: Ninth Circuit Holds that Third Party Insurers may be Sued Under ERISA

6/29/2011

**Executive Summary:** Specifically overruling the holdings of four prior decisions, a full panel of the Ninth Circuit has held that ERISA permits the beneficiaries of an employee benefits plan to sue parties other than the plan administrator to recover benefits due under the plan. See *Cyr v. Reliance Standard Life Insurance Company* (9th Cir. June 22, 2011).

### **Background**

Cyr's employer, Channel Technologies Inc. (CTI) provided employees with long-term disability benefits under a program insured by Reliance Standard Life Insurance Company. Although Reliance effectively controlled the decision of whether to honor or deny a claim under the program, it was not identified as the plan administrator.

Cyr was discharged in October 2000 and immediately filed a claim for long-term disability benefits based on a back condition. Reliance approved the payment of benefits based on Cyr's salary of \$85,000 and subsequently paid those benefits.

The following year, Cyr sued CTI claiming gender discrimination based on unequal pay. Cyr and CTI eventually entered into a settlement agreement under which her salary was retroactively adjusted to \$155,000, effective one week prior to her termination date. Cyr then requested that Reliance increase her disability benefits payments based on this retroactive pay increase. Although the company originally stated that it would increase the benefits payments if the pay increase was bona fide, it later refused to do so.

### **ERISA Claims**

Cyr subsequently sued Reliance under § 502(a)(1)(B) of ERISA (29 U.S.C. § 1132(a)(1)(B)). This provision states, "A civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

The trial court ruled in favor of Cyr and the Ninth Circuit upheld this decision. The Ninth Circuit held that the terms of 29 U.S.C. § 1132(a)(1)(B) do not "appear to limit which parties may be defendants" in a civil action under that provision. The court noted that although 29 U.S.C. § 1132(a) provides a comprehensive listing of which parties can bring which types of civil actions

under ERISA, "[t]here are no limits stated anywhere in § 1132(a) about who can be sued."

The court also noted that the U.S. Supreme Court did not find a limit on who could be sued under a different subsection of 29 U.S.C. § 1132(a) in *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000). The Ninth Circuit saw "no reason to read a limitation into § 1132(a)(1)(B) that the Supreme Court did not perceive in § 1132(a)(3)."

The court held that Reliance was a logical defendant in this case even though it was not the plan administrator because as the plan insurer it was responsible for paying legitimate benefits claims. "Reliance is, therefore, a logical defendant for an action by Cyr to recover benefits due to her under the terms of the plan and to enforce her rights under the terms of the plan, which is precisely the civil action authorized by § 1132(a)(1)(B)."

In holding that potential liability under 29 U.S.C. § 1132(a)(1)(B) is not limited to a benefits plan or the plan administrator, the Ninth Circuit specifically overruled any statements or suggestions to the contrary in its prior decisions, including *Ford v. MCI Communications Corp. Health & Welfare Plan*, 399 F.3d 1076, 1081 (9th Cir. 2005); *Everhart v. Allmerica Financial Life Insurance Co.*, 275 F.3d 751, 756 (9th Cir. 2001); *Spain v. Aetna Life Insurance Co.*, 13 F.3d 310, 312 (9th Cir. 1993); and *Gelardi v. Pertec Computer Corp.*, 761 F.2d 1323 (9th Cir. 1985),

**Bottom Line:**

The Ninth Circuit's decision expands the scope of potential liability in benefits claims under ERISA. Accordingly, companies that have authority to accept or reject benefits claims, regardless of whether they are identified as the plan administrator, should ensure that all decisions comply with ERISA's requirements.

If you have any questions regarding the issues addressed in this Alert, please contact the Ford & Harrison attorney with whom you usually work or any member of Ford & Harrison's Employee Benefits practice group.