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LEGAL ALERT



Legal Alert: Second Circuit Reassesses Standard of Review Governing Challenges to Conflicted ERISA Plan Administrators' Benefits Decisions

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Citing the U.S. Supreme Court's decision in *Metropolitan Life Insurance Co. v. Glenn*, the Second Circuit recently issued one of the first major opinions to "reassess [the] standard of review governing cases ... that challenge an Employee Retirement Income Security Act ('ERISA') plan administrator's decision to deny disability benefits, where the administrator has a conflict of interest because it both has the discretionary authority to determine the validity of the employee's claim and pays the benefits under the policy." *McCauley v. First Unum Life Ins. Co.*, (Dec. 24, 2008).

The plaintiff in *McCauley* was a tax lawyer who, after being diagnosed with advanced colon cancer, underwent life-saving surgery and chemotherapy. These treatments, however, allegedly created a host of new problems, which led to McCauley's filing a disability claim under his employer's ERISA plan.

First Unum insured disability benefits under the plan through an insurance policy it issued to McCauley's employer. The insurance policy expressly conferred discretion upon First Unum to decide, among other things, a participant's entitlement to disability benefits under the plan.

First Unum initially denied McCauley's claim on the ground that medical records in the file, according to a nurse reviewer, supported the determination that his cancer was stable. On his administrative appeal of that denial, McCauley submitted a memorandum in which his physician detailed how and to what extent the medical problems caused by McCauley's cancer treatment precluded him from working. The nurse reviewing the file on appeal found that "[n]o new medical ha[d] been submitted" and that the memorandum was "not an official document from [an] attending physician." First Unum subsequently upheld its decision to deny McCauley's claim on the grounds that the health problems listed in McCauley's memorandum "were acknowledged by [his] physician on the initial application and in his narrative letter...."

McCauley then filed suit in the District Court of the Southern District of New York. He argued that First Unum was inherently conflicted due to its dual role as the entity that decided claims and that paid disability benefits under the plan. McCauley maintained that this inherent conflict of interest tainted First Unum's decision to deny him benefits and that the decision should be afforded no deference, especially in light of several procedural irregularities that occurred in the administration of claim. These alleged irregularities

included contentions that one document was missing from the administrative record and that First Unum had incorrectly told McCauley that a medical doctor rather than a nurse had reviewed his claim.

The District Court granted summary judgment to First Unum under an arbitrary and capricious standard, holding that the procedural irregularities McCauley noted were insufficient to warrant *de novo* review. McCauley appealed this ruling to the Second Circuit Court of Appeals.

While McCauley's appeal was pending, *Glenn* was decided. Before *Glenn*, courts in the Second Circuit, as the District Court in *McCauley* did here, generally applied a deferential standard when reviewing benefit decisions issued by a claims administrator vested with discretionary authority to decide claims. Courts were authorized to use a *de novo* standard to review an administrator's benefits decision only where an inherent conflict of interest actually influenced that decision.

In *Glenn*, however, the Supreme Court held that an inherent conflict of interest on the part of a claim administrator should be considered in reviewing the propriety of the administrator's decision. According to the Court, "the conflict of interest ... should prove more important (perhaps of great importance) where circumstances suggest a higher likelihood that it affected the benefits decision, including, but not limited to, cases where an insurance company administrator has a history of biased claims administration."

Applying *Glenn*, the Second Circuit found that First Unum's initial denial of McCauley's claim was reasonable insofar as it referenced medical records supporting that McCauley's cancer was stable. But the court held that First Unum's decision on McCauley's administrative appeal was not reasonable and was influenced by other factors. The court explained:

The reason First Unum gave to McCauley for rejecting the information provided in McCauley's memorandum was unreasonable and deceptive. Even the most cursory comparison with McCauley's earlier submission by a competent reviewer would have revealed the myriad of details about his condition, absent from the earlier submission, severely affecting his ability to work. And contrary to First Unum's representation, it appears the information was afforded little if any weight by the nurse considering his appeal because the memorandum was not signed by a physician. The rejection mischaracterizes the quality and detail of the evidence McCauley had submitted on appeal.

The court opined that "[t]aken in combination, these factors are plainly exacerbated by First Unum's conflict of interest, as both administrator and payor, for what else would have influenced First Unum to avoid following up on simple inquiries prompted by [McCauley's submission of his doctor's memorandum]?"

The court further analyzed other evidence of taint, including First Unum's history of biased claims administration. The court reasoned:

In light of First Unum's well-documented history of abusive tactics, and in the absence of any argument by First Unum showing that it has changed its internal procedures in response, we follow the Supreme Court's instruction [in *Glenn*] and emphasize this factor here. Accordingly, we find First Unum's history of deception and abusive tactics to be additional evidence that it was

influenced by its conflict of interest as both plan administrator and payor in denying McCauley's claim for benefits.

Consequently, the court reversed the judgment of the District Court and remanded the case for entry of summary judgment in favor of McCauley.

The Bottom Line:

McCauley suggests a trend that courts are reassessing and, perhaps, abandoning their long-prevailing standards of review in light of the *Glenn* decision. It is clear that, when deciding whether to uphold administrators' benefits decisions, courts will consider administrators' conflicts of interest, both inherent and actual.

If you have any questions regarding this decision or other employee benefits decisions, please contact the author of this Alert, Joelle Sharman, jsharman@fordharrison.com, 404-888-3975, or any member of Ford & Harrison's Employee Benefits practice group.