FIFTH CIRCUIT HOLDS THAT SPD WAS AN ENFORCEABLE PLAN DOCUMENT THROUGH WHICH THE ADMINISTRATOR COULD PROPERLY SEEK REIMBURSEMENT

In another victory for plan administrators seeking reimbursement under the terms of ERISA plans, in *Rhea v. Alan Ritchey, Inc. Welfare Benefit Plan*, No. 16-41032, 2017 U.S. App. LEXIS 9482 (5th Cir. May 30, 2017), the Fifth Circuit held that what the plaintiff termed a “disclaimer” in an ERISA plan document did not invalidate the summary plan description or the requirement set out in that SPD that the plaintiff was required to reimburse the plan for medical expenses it had paid on her behalf when she settled a malpractice case related to those expenses.

Donna Rhea was the beneficiary of an employee benefit plan organized under ERISA, who suffered injuries caused by her physician’s medical malpractice. The plan used a single document as both its summary plan description and its written instrument and that document contained a reimbursement provision, which stated “if a third party causes a Sickness or Injury for which you receive a settlement, judgment, or other recovery, you must use those proceeds to fully return to the Plan 100% of any Benefits you received for that Sickness or Injury.” It further stated, “[i]f the Plan incurs attorneys’ fees and costs in order to collect third party settlement funds held by you or your representative, the Plan has the right to recover those fees and costs from you.” The ERISA plan covered $71,644.77 of her medical expenses and after she settled the malpractice claim, the plan sought reimbursement, which she refused to pay, claiming that the plan did not have an enforceable written instrument.

The basis of her claim was that the SPD alluded to a separate “official Plan Document” and stated that if there was any discrepancy between the SPD and the official plan document, the plan document governed. Despite this “disclaimer,” at the time the plan sought reimbursement, there was no other plan document and the plan produced an affidavit to her lawyer stating that the SPD was "the Plan document that has been accepted, ratified, and maintained by the Plan Sponsor, that contains all of the ERISA-required plan provisions, and operates as the Plan's official plan document." In response, Rhea claimed, among other things, that the plan did not have an ERISA-compliant written instrument in place at the time it paid her medical expenses and therefore, had no right to reimbursement. Rhea filed a declaratory judgment action in the Eastern District of Texas seeking a declaration that she was not required to reimburse the plan. The plan filed a counterclaim in which it requested both equitable relief and damages under ERISA and the trial court, based on the recommendation of the magistrate judge, granted summary judgment to the plan and awarded over $31,000 in attorney fees and costs to the plan, a decision from which Rhea appealed.

The appeals court began its analysis by noting that while ERISA required plan administrators to provide SPDs to beneficiaries and that plans are required to be established and maintained pursuant to "written instruments," there is nothing peculiar about an SPD functioning as both the SPD and the written instrument. In doing so, it specifically rejected Rhea's argument that *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011) required two separate documents, stating that because the *Amara* court was grappling with a conflict between the SPD and written instrument, it was factually distinguishable from this case, in which the court was simply determining whether the SPD could function as a written instrument in the absence of a separate written instrument.

It then rejected Rhea's claim that the SPD did not comply with ERISA's requirements "because it does not go into enough depth about how the Plan is funded or how it can be amended" because it determined that even though the SPD did not "lay out complex amendment or funding procedures," something the court said was not required, it had sufficiently complied with ERISA's information requirements. It further rejected her arguments that 1) the plan had never adopted the SPD as the plan's written instrument because there was no evidence the plan adopted any other written instrument and 2) the plan had "lied" to her when the SPD appeared to refer to a non-existent separate written instrument because it held that an SPD, in the absence of a separate written instrument, still qualifies as the plan document.

Based on this analysis, the appeals court upheld the trial court's decision that the plan contained a valid reimbursement provision that created an equitable lien by agreement in the plan's favor when she settled the malpractice claim. It also upheld the lower court's decision to award attorney fees, because it determined that the trial court had weighed all the factors required when awarding such fees, "including, most significantly, that Rhea was at least arguably acting in bad faith when she moved to deny the Plan a recovery to which it is contractually entitled."