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LEGAL ALERT



Legal Alert: Eleventh Circuit Panel Urges Court to Reconsider Heightened Review Standard

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A three-judge panel of the Eleventh Circuit recently issued a decision urging the Court to reconsider the heightened review standard the Court currently applies in reviewing ERISA plan administrators' benefits determinations in conflict of interest situations. See *Doyle v. Liberty Life Assurance Co.* (11th Cir. Jan. 7, 2007). Although the Court in *Doyle* applied the Eleventh Circuit's current standard and reversed the trial court's grant of summary judgment in favor of the plan administrator, the panel urged the Court to reconsider this standard, which it described as "unworkable."

Supreme Court Standard for Reviewing Plan Administrator Decisions

In 1989, the U.S. Supreme Court identified two standards by which plan administrators' decisions should be reviewed. If the plan administrator is without discretion to determine eligibility or construe the terms of an ERISA-covered plan, a court should apply a *de novo* standard in reviewing the administrator's decision to grant or deny benefits under the plan. The *de novo* standard means the court reviews the facts of the case as if a decision had not been rendered previously. If the plan administrator exercises discretion, a deferential (that is, arbitrary and capricious) review is appropriate, according to trust principles, which guide review of decisions affecting ERISA-governed plans. See *Firestone Tire & Rubber Co. v. Bruch* (1989). Additionally, in *Bruch*, the Supreme Court observed that when an administrator with discretion operates under a conflict of interest, that "conflict must be weighed as a 'factor in determining whether there is an abuse of discretion.'"

Eleventh Circuit Heightened Standard of Review

The court in *Doyle* noted that the Eleventh Circuit has adopted a heightened standard of review that applies in situations in which the plan administrator operates under a conflict of interest. This heightened standard of review shifts the burden to the fiduciary to prove that its interpretation of plan provisions committed to its discretion was not tainted by self interest. In *Doyle*, the lower court determined that the plan administrator operated under a conflict of interest, but instead of applying the heightened standard required by the Eleventh Circuit, applied a "modified heightened standard" and affirmed the plan administrator's denial of benefits. The Eleventh Circuit held that the trial court should have applied the heightened standard of review and remanded the case to the trial court to determine whether the decision should be affirmed under this standard.

Although the Eleventh Circuit applied the heightened standard that the Circuit has adopted for conflict of interest situations, the panel stated that it finds the heightened standard “flawed,” and that “applying a burden shifting analysis to a claims administrator’s factual determinations poses unique difficulties.” The panel found the standard flawed in three ways.

First, the panel stated that the heightened standard of review is inconsistent with the Supreme Court’s decision in *Bruch* that announced two standards – *de novo* and abuse of discretion. The panel noted that the Court in *Bruch* stated that the existence of a conflict should be treated as a factor in determining whether the administrator abused its discretion; it does not require a separate standard.

Additionally, the panel found the heightened standard flawed because it shifts the burden to the administrator to prove that its decision was not influenced by a conflict of interest. The panel noted that the Eleventh Circuit is the only Circuit that shifts this burden to the administrator. The other Circuits require the claimant to show the existence of a conflict of interest and then determine the level of deference to be given to the plan administrator’s decision.

Finally, the third flaw the panel identified is the “remarkably difficult burden it imposes upon the administrator in proving that its decision was not tainted by a conflict.” The panel called the standard “unworkable” and noted that commentators and other courts have labeled it the “presumptively void” standard. Although the panel acknowledged that the benefits decision of an administrator operating under a conflict of interest should be subject to a more exacting review, the heightened standard currently applied by the Eleventh Circuit effectively makes the administrator’s conflict of interest the dispositive factor rather than merely “a factor.”

Thus, the panel urged the Eleventh Circuit to review en banc “this troublesome heightened standard and consider adopting a more workable standard to apply in factual determination cases.”

Employers’ Bottom Line:

Although the court applied the existing heightened arbitrary and capricious standard of review in *Doyle*, there is finally a glimmer of hope that the Eleventh Circuit either will adopt a more workable standard for future ERISA cases, or clarify what proof an inherently conflicted fiduciary needs to provide to discharge any inference of taint associated with its benefits decision.

If you have any questions regarding this decision or other employee benefits issues, please contact Joelle Sharman, jsharman@fordharrison.com or 404-888-3975 or Jeff Rickman, jrickman@fordharrison.com or 404-8883925 or any member of Ford & Harrison’s Employee Benefits and Executive Compensation practice group.