

Beneficiary Suit Against Plan Fiduciary Permitted to Go Forward

A new federal court decision reminds employers about their fiduciary duties with respect to employee benefit plans they sponsor and offers an important lesson about the scope of ERISA's protective powers. *Deluca v. Blue Cross Blue Shield of Michigan* (E.D. Mich., No. 06-12552, 1/25/07).

As fiduciaries under ERISA, employers are required to discharge their plan duties solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable plan administration expenses. Fiduciaries are directed to do this with the care, skill, prudence and diligence under the circumstances that a prudent person who is familiar with such matters would use. Although this case was brought against an insurance company (rather than an employer), the fact that the case was permitted to proceed is an indication that employers should take their ERISA duties seriously.

Background

Anthony Deluca joined the plan of his wife's employer, Flagstar Bank. One week later he was the lead plaintiff in a class action suit filed in a U.S. District Court alleging that Blue Cross Blue Shield (BCBS) of Michigan violated its fiduciary duty to the Flagstar Bank plan because BCBS negotiated "more favorable rates" for its HMO with area physicians and hospitals than the rates it negotiated for self-funded plans that it administered. The chief allegation was that BCBS actually promised the hospitals that it would offset the lower costs for the HMO with higher costs from the self-funded plans.

Discussion

The insurer sought to have the suit dismissed because it claimed that Deluca did not have the right to file the suit against the plan (that is, he had no standing to do so) primarily because — even if everything he said was true — he had not been damaged as a result.

Deluca had only been a beneficiary of the plan for a single week and had not even filed a claim, much less had to pay more for his care because of the alleged deal between the hospitals and BCBS. This was mentioned in the case but dismissed as irrelevant by the court. The court reasoned that

because the case was filed on behalf of the plan, not on behalf of the individual, it did not matter that the plaintiff had not personally suffered any damages. In a footnote the court even noted that it was not authorized to use a plaintiff's motive in joining the plan as a factor in the determination as to whether he had standing to bring the lawsuit. Ultimately, the court did find that the individual had a right to sue the fiduciary to seek a recovery on behalf of the plan.

Conclusion

It seems clear to objective observers that this case was specifically brought by the plaintiff's attorneys to seek recovery of attorney's fees as permitted under ERISA. For one thing, it is unlikely that a complaint could be drafted and served so quickly after the beneficiary joined the plan — unless it had already been in the works for some time. Here is a case where the plaintiff's attorneys seemed to be hunting for a suitable plaintiff in order for them to file the lawsuit. Although this case was not directed at the plan sponsor (the employer), it nevertheless illustrates the types of cases that could be lurking and simply waiting to be filed with respect to plans generally. Plan sponsors should make careful deliberation of any decision when acting with respect to their ERISA programs to ensure that they are not violating their fiduciary duties.

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