Blitman & King LLP

Fifteenth Annual

ERISA AND EMPLOYEE BENEFITS SEMINAR 2009

Judicial Update: A Summary of Recent ERISA Cases

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I. ***METRO. LIFE INSUR. CO. V. GLENN*****, NO. 06-0923, 554 U.S. ___ (JUNE 19, 2008)**

A. Facts:

1. The participant received disability benefits and social security benefits for "severe dilated cardiomyopathy." This heart condition required that the participant avoid sudden shock or strain. The disability plan administrator terminated the benefits deciding that the participant was no longer disabled.

2. On appeal, the plan's fiduciaries referred the case to an Independent Physician's Consultant Board which held that the participant was not disabled "if the job environment entails a significant degree of emotional stress and the patient is able to cope with that."

3. After the fiduciaries denied the appeal, the participant maintained that the plan fiduciaries did not engage in a deliberative process concerning this decision. The participant argued that the fiduciaries should have more closely evaluated the opinion of the medical consultants.

4. The Court of Appeals for the Sixth Circuit agreed with the participant that the fiduciaries did not adequately consider the medical evidence. The Court also reasoned that a conflict of interest affected this decision.

5. Where an ERISA fiduciary serves in another capacity, the fiduciary can be liable for any damages if there is a conflict of interest in serving these two capacities. *See* 29 U.S.C. §1104(a); *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000)(stating "ERISA does require, however, that the fiduciary with two hats wear only one at a time, and wear the fiduciary hat when making decisions").

B. Issue: how the courts should review ERISA fiduciary decisions in claims appeals when the fiduciaries are responsible for evaluating the merits of the claim while also evaluating the financial stability of the plan.

C. Holding: affirmed the decision of the Sixth Circuit through Justice Breyer. Where the administrator of an ERISA governed employee benefit plan has discretionary authority to determine benefits eligibility and pays benefits from its funds, the administrator has a "conflict of interest" that must be considered in determining whether the administrator abused its discretion in denying benefits. The amount of weight to give the conflict depends on the facts and circumstances involved with the case.

D. Reasoning:

1. If a fiduciary operates under a "conflict of interest, that conflict must be weighed as a factor in determining whether" the fiduciary abused his or her discretion. *See Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Since *Firestone*, many judges and commentators have questioned whether the courts have adequately examined this factor in resolving ERISA claims disputes. *See e.g.*, John H. Langbein, *Trust Law as Regulatory Law: The Unum/Provident Scandal and Judicial Review of Benefit Denials under ERISA*, 101 NW. U. L. Rev. 1315, 1321 (2007)(stating the "danger pervades the ERISA-plan world that a self-interested plan decision maker will take advantage of its license under [*Firestone*] to line its own pockets by denying meritorious claims. . . Unum turns out to have been a clumsy villain, but in the hands of subtler operators such misbehavior is harder to detect").

2. Despite requests to eliminate it, the majority in *Glenn* reaffirmed this factor and explained that judges must "determine lawfulness by taking account of several different, often case-specific, factors, reaching a result by weighing all together" including whether the fiduciaries were conflicted in ruling on the claim. In evaluating the conflict, the judges should consider (i) the fiduciary's history of biased claims; (ii) the evidence of plan finances influencing the decision; and (iii) the active steps taken to reduce potential bias and promote accurate decisions.

3. The majority in *Glenn* declined to "enunciate a precise standard" because such "formulas" would "falsify the actual process of judging or serve as instruments of futile casuistry."

E. Other Opinions:

1. Chief Justice Roberts and the other dissenters Justices Scalia and Thomas criticized the vagueness of the majority approach. They stated that judges should only consider item (ii) above: whether the fiduciaries' conflict motivated or affected the benefit denial. Indeed, Justice Scalia called the majority approach "nothing but *de novo* review in sheep's clothing" because he believes the decision will

undermine the deference typically afforded during judicial review.

2. Justice Kennedy accepted the majority's analysis, but he would have remanded the case to the lower courts to allow the fiduciaries an opportunity to defend their decision under the conflict analysis described by the Court.

II. <u>*KENNEDY V. PLAN ADMINISTRATOR FOR DUPONT SAVINGS AND INVESTMENT PLAN*, NO. 07-636, 555 U.S. ____ (JANUARY 26, 2009)</u>

A. Facts:

1. The participant had a $400,000 account with a "savings and investment plan" ("SIP"), and, while he was an employee, he named his first wife as the beneficiary.

2. When the participant divorced this wife in 1994, he provided a qualified domestic relations order ("QDRO") that mentioned other ERISA plans, but not the SIP. He retired in 1998, and he died in 2001.

3. The participant's estate sought the SIP benefits, but the plan paid them to the former spouse in accordance with the SIP beneficiary designation form. The District Court determined that the estate was entitled to the monies because the former spouse did not obtain a right to the SIP account in the QDRO.

4. The Court of Appeals for the Fifth Circuit agreed and held that "requiring DuPont to recognize the waiver in this situation would conflict with ERISA by purporting to determine rights to pension-plan benefits in a manner not authorized by the QDRO procedures, and, therefore, not permitted by the anti-alienation provision."

B. Issue: whether a divorce decree constituted a waiver of individual account benefits when the parties failed to mention the account in the QDRO.

C. Holding: unanimously affirmed the decision from the Fifth Circuit through Justice Souter. A divorce decree does not waive the right to benefits from a qualified pension plan unless the decree is a QDRO.

D. Reasoning:

1. Silence can be golden: attempts to transfer participant or beneficiary rights can only be accomplished by a QDRO. *See* 29 U.S.C. 1056(d)(1); *Boggs v. Boggs*, 520 U.S. 833, 851-52 (1997)(finding a testamentary transfer of an interest in former husband's pension was invalid). In this case, the beneficiary designation form was valid

unless it was revised by a QDRO.

2. “The law cannot force someone to take an estate against their will.” Consequently, the Court refused to characterize the divorce decree as a waiver because to do so would have meant that the SIP proceeds were payable to the participant’s estate despite the instructions to remit these proceeds to someone else in the SIP form.

3. The crux of the dispute turns on the requirement to pay benefits in accordance with the Plan without relying on external divorce decrees that are not QDROs. *See* 29 U.S.C. 1104(a)(1)(D); *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001)(describing basis for following uniform administrative scheme).

III. ***YSURSA V. POCATELLO EDUC. ASS’N*, NO. 07-0869, 555 U.S. ___ (FEBRUARY 24, 2009)**

A. Facts:

1. Idaho law prohibits contractual requirements for the payment of union dues, and it requires a “signed written authorization” for any wage deductions. *See* Idaho Code §44-2004(1) (Michie 2003). In 2003, the Idaho Legislature amended this law to prohibit payroll deductions for “political activities” defined as electoral actions, including expenditures for political action committees. *See Id.*

2. The Idaho District Court and the Ninth Circuit Court of Appeals held that the 2003 statute was unconstitutional because it interfered with First Amendment rights. *See Pocatello Educ. Ass’n v. Heideman*, 504 F.3d 1053, 1057 (9th Cir. 2007). However, these Courts disagreed about the effect of the statute on local level public employers. The Court of Appeals reasoned that the Idaho legislature did not have the ultimate authority to control the expression of local governments, so the statute was also unconstitutional with respect to local government employees. *Id.* at 1068.

B. Issue: whether the Idaho Legislature can constitutional prohibit local government agencies from deducting amounts to be paid to political action committees or other political purposes.

C. Holding: reversed the decision of the Ninth Circuit through Chief Justice Roberts. State legislatures can prohibit certain payroll practices, including deductions for political action committees, by local instrumentalities, like city, county, or similar entities.

D. Reasoning:

1. The state government has a legitimate interest in avoiding the reality or appearance of governmental favoritism or entanglement with partisan politics. Therefore, it could articulate a rational basis for the legislature's restriction on public sector employee deductions for political campaigns.

2. Because the labor unions were seeking the State's assistance in collecting contributions for political purposes, the legislation was not subject to the highest level of constitutional scrutiny. Consequently, the restriction on these payroll deductions was permissible to the extent it separated public employment from political activities. *See Regan v. Taxation Without Representation of Wash.*, 461 U.S. 540, 549 (1983).

E. Other Opinions:

1. Justice Breyer dissented because Idaho allows for many types of payroll deductions, so it should not prohibit this type of deduction. Justice Bryer objected to the content regulation of how deductions are prohibited.

2. Justices Stevens and Souter dissented because (a) this statute was specifically designed to regulate union fund raising, and it was, therefore, discriminatory; and (b) the local government instrumentalities should not be denied constitutional protections merely because of their relationship to the state government.

3. Justice Ginsburg concurred in the judgment, but she disagreed that there was any need to answer the question about whether the unions were seeking the State's assistance.

IV. ***<u>14 PENN PLAZA LLC V. PYETT</u>*****<u>, NO. 07-0581, 556 U.S. ___ (APRIL 1, 2009)</u>**

A. Facts:

1. The employer reassigned some employees from security guards to cleaning staff, and the employees filed a grievance. When the parties were unable to resolve the matter, the union took the grievance to arbitration.

2. While the arbitration was pending, the employees filed a claim with the EEOC and a lawsuit in the District Court alleging that the reassignments violated the Age Discrimination in Employment Act as well as other anti-discrimination statutes.

3. The employer filed a motion dismissing the cases because of the grievance and arbitration provisions in the labor contract. The District Court denied the motion, and the Court of Appeals affirmed this decision.

4. A collective bargaining agreement does not typically waive an employee's right to have individual, statutory claims, like prohibitions against discrimination, resolved by a judicial forum. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 49-51 (1974). However, an employee may waive such rights to a judicial forum in an individual employment contract. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 33-35 (1991).

B. Issue: whether a "clear and unmistakable waiver" of the right to appear in court under a grievance and arbitration procedure of a collective bargaining is valid to defeat individual employment claims.

C. Holding: reversed the decision of the Second Circuit through Justice Thomas. A labor contract could validly waive the employee's right to have discrimination and other employment claims resolved through arbitration.

D. Reasoning:

1. The union and the employer bargained for the right to arbitrate employment claims, and there is no statutory reason to invalidate the labor contract provision. *See Wright v. Universal Maritime Serv. Corp.*, 525 U.S. 70, 82 (1998)(finding the collective bargaining agreement did not provide clear and unmistakable waiver in an arbitration provision and withholding judgment about the validity of such provisions).

2. The negative treatment of arbitration in *Gardner-Denver* rested on a misconceived view of arbitration, and, since *Gardner-Denver*, the Supreme Court held that arbitration has adequately protected individual employment rights. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001).

3. Any concerns about the union's ability to vindicate individual liberties are resolved by claims against the union either under the duty of fair representation or under claims that the union itself violated the anti-discrimination statutes. *See Marquez v. Screen Actors*, 525 U.S. 33, 44 (1998)(describing duty of fair representation claims).

E. Other opinions:

1. Justice Stevens dissented because of the settled view that Congress entrusted the District Courts to resolve individual employment claims without prospective waivers to adjudicate the claims in arbitration.

2. Justice Stevens dissented because of the settled view that Congress entrusted the District Courts to resolve individual employment claims without prospective waivers to adjudicate the claims in arbitration.

V. <u>*AT&T CORP. V. HULTEEN*, NO. 07-0543, 556 U.S. ___ (MAY 18, 2009)</u>

A. Facts:

1. Since 1914, the pension system for AT&T provided pension and other benefits based on years of service. Prior to 1977, employees on "disability leave" received credit for periods of their absence from work. However, employees who took "personal" leave only received 30 days of credited service. Pregnancy was treated as "personal" leave, so employees on maternity leave did not receive credited service during their absence.

2. In 1976, the Supreme Court held that such arrangements did not violate Title VII of the Civil Rights Act because they discriminated based on pregnancy, not sex. *See General Electric Corp.v. Gilbert*, 429 U.S. 125, 138 (1976). Congress reacted by passing the Pregnancy Discrimination Act ("PDA") which, effective April 29, 1979, made it unlawful to treat pregnancy-related conditions less favorably than other medical conditions. *See* 42 U.S.C. §2000e(k).

3. In response to the PDA and effective April 29, 1979, AT&T revised its pension plan to provide credited service for pregnancy leave on the same basis as leave taken for other temporary disabilities. However, AT&T made no retroactive adjustments for absences before April 29, 1979.

4. In this case, four AT&T employees who took pregnancy leave before April 29, 1979 filed charges of discrimination in 1998 with the Equal Employment Opportunity Commission ("EEOC") maintaining the current failure to grant pension credit for the absences before 1979 violated the PDA.

5. Ultimately, the EEOC, the District Court for the Northern District of California, and the Court of Appeals for the Ninth Circuit all agreed that AT&T had discriminated against these employees because the

calculation of pension service credit excluded time spent on pregnancy leave and violated the PDA.

B. Issue: whether an employer violates the PDA when it calculates pension benefits based on pre-1979 accrual rules that give less retirement credit for pregnancy than for medical leave generally.

C. Holding: reversed the decision of the Ninth Circuit through Justice Souter. The PDA does not cover pension benefit accruals earned prior to the PDA's effective date.

D. Reasoning:

1. A seniority system does not violate the PDA when it gives current effect to rules that operated before the PDA because of the value of preserving stable employment practices. *See* 42 U.S.C. §2000e-2(h); *Trans World Airlines v. Hardison*, 432 U.S. 63, 81 (1977); *Teamsters v. United States*, 431 U.S. 324, 350 (1977).

2. AT&T's pre-PDA policies did not intend to discriminate against employees because of their sex, it discriminated against them because of pregnancy as recognized by *Gilbert*. Consequently, there was no unlawful discrimination in the pre-PDA policies. *See Automobile Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991)(finding explicit facial discrimination was prohibited even without underlying malevolence).

3. PDA Section 2(b) was explicit that the PDA has no retroactive effect. *See* 42 U.S.C. §2000e(k).

E. Other opinions:

1. Justice Stevens disagreed with the decision in *Gilbert*, but he concurred in the Court's decision because, in his view, it controlled the outcome.

2. Justices Ginsburg and Breyer dissented because they believed that *Gilbert* was wrongly decided. In their view, discrimination based on pregnancy is discrimination against women because it perpetuated how employers used motherhood to impede employment opportunities. In any event, the dissenters maintained that Congress' rejection of *Gilbert* with the PDA demonstrates that post-PDA credited service determinations should not perpetuate the pre-PDA discrimination. After all, the plaintiffs were not seeking back-pay or other compensation for past injuries. Instead, they sought

current and future benefits based on their actual service to the employer.

VI. ***GEDDES V. UNITED STAFFING ALL. EMP. MED. PLAN, NO. 06-1458, ON APPEAL FROM, GEDDES V. UNITED STAFFING ALL. EMP. MED. PLAN*, 469 F.3D 919 (10TH CIR. 2006), *CERT. DENIED*, 556 U.S. ___, 128 S. CT. 2993 (JUNE 27, 2008)**

A. The welfare plan's fiduciaries engaged an independent third party, Everest, to review claims and administer all benefits. The fiduciaries, however, reserved the right to make final decisions about benefits and to interpret the plan terms. The participant's son was injured when he dove into shallow water on vacation, and he incurred $185,892 in medical bills. Everest recommended that the plan pay $40,921 of these medical claims, and deny the rest under the "usual and customary" restriction and the $2,500 cap for "rehabilitation" services. The fiduciaries denied the participant's appeal in accordance with the recommendation.

B. The District Court agreed with the participant and held that, by delegating the claims handling process to Everest, the fiduciaries waived their right to a deferential standard of review upon appeal. The Court of Appeals for the Sixth Circuit reversed the District Court, and opened a split in the circuits. See Baker v. Big Star Div. of the Grand Union Co., 893 F.2d 288, 291 (11th Cir. 1990)(finding that delegation to non-fiduciary did not affect the standard of review).

C. After inquiring about the position from the Solicitor General, the Supreme Court declined to review the decision from the Sixth Circuit. Considering the split in the Circuits, we anticipate additional litigation about whether fiduciaries are entitled to deference in their claims appeal decisions, especially when they delegate claims appeal functions.

VII. ***IN RE HALPIN*, ___ F.3D ___, 2009 U.S. APP. LEXIS 10037 (2D CIR. 2009)**

A. Facts:

1. An electrical contractor owed fringe benefit contributions to various multiemployer benefit plans, and the contractor filed a bankruptcy petition trying to discharge these and other debts.

2. The funds filed an adversary proceeding in the United States Bankruptcy Court for the Northern District of New York seeking a determination that the debt was not dischargeable because the contributions were plan assets such that the failure to remit them breached ERISA's fiduciary duties.

3. The Bankruptcy Court and the District Court determined that the contractor was not a fiduciary and that the delinquent contributions were not plan assets. *See In re Halpin*, 370 B.R. 45, 48-50 (N.D.N.Y. 2007).

4. The collective bargaining agreement, the trust agreement, and the plan itself were silent about whether delinquent contributions were plan assets.

5. Other courts have held that if the plan documents do not adequately identify the delinquent contributions as plan assets, then the debts are dischargeable in bankruptcy. *See e.g., In re M&S Grading, Inc.*, 541 F.3d 859, 865 (8th Cir. 2008).

B. Issue: whether claims for unpaid fringe benefit contributions to multiemployer benefits plans are dischargeable in bankruptcy.

C. Holding: affirmed the District Court for the Northern District of New York through Chief Judge Parker. The funds claims were discharged because there was no breach of fiduciary duty in failing to remit the contributions.

D. Reasoning:

1. Under "ordinary notions of property rights" as well as common law trust doctrines, if a debtor fails to meet its contractual obligations to a creditor, the creditor does not automatically own a share in the debtor's assets.

2. Importantly, the parties did not "contractually provide for" the delinquent contributions to be treated as plan assets. Without such language in the labor contract or trust agreement, the court would not impose the obligation as a matter of ERISA common law.

3. Importantly, the parties did not "contractually provide for" the delinquent contributions to be treated as plan assets. Without such language in the labor contract or trust agreement, the court would not impose the obligation as a matter of ERISA common law.