A New Precedent For ERISA Denial-Of-Benefits Rewards

Law360, New York (January 23, 2014, 1:36 AM ET) -- On Dec. 6, 2013, a divided panel of the United States Court of Appeals for the Sixth Circuit held that a plaintiff challenging a denial-of-benefits decision can recover both the denied benefits and disgorgement of any profits made on that amount. See Rochow v. Life Insurance Co. of North America, No. 12-2074 (6th Cir. Dec. 6, 2013). By providing what appears to be a dual award for the same injury, the majority's decision represents a dramatic departure from existing precedent precluding such awards. A dissenting opinion made exactly this point, noting that the majority opinion represents "an unprecedented and extraordinary step to expand the scope of ERISA coverage." (Slip Op. 25.)

Prior Proceedings

Plaintiff Daniel Rochow suffered from a rare and debilitating brain infection. After being demoted and eventually terminated from employment, he applied for long-term disability benefits from Life Insurance Co. of North America ("LINA"), which was vested in the plan documents with discretion to make benefits determinations. LINA denied Rochow's claim and later affirmed that denial in three subsequent administrative appeals, noting that Rochow was not actively working at the time of disability and did not file his disability claim until after termination. (Id. at 3.)

After his claim was denied, Rochow sued, alleging that he was entitled not only to the denied benefits under § 502(a)(1)(B) of the Employee Retirement Income Security Act, but also "appropriate equitable relief" under § 502(a)(3). (Id. at 3.) The district court granted Rochow summary judgment on his denial-of-benefits claim, holding that the plan administrator had acted arbitrarily and capriciously when denying benefits, and the Sixth Circuit affirmed. (Id. at 3-4, 12.)

On remand, Rochow moved for an equitable accounting and disgorgement (in addition to the benefits already awarded), arguing that he was entitled to equitable relief under § 502(a)(3) to prevent LINA from being unjustly enriched by its breach. The district court agreed and awarded disgorgement of approximately $3.8 million of LINA's profits on the withheld disability amount, based on an 11 to 39 percent annual return on average equity metric. (Id. at 4-5.)

The Sixth Circuit's Decision

LINA appealed the disgorgement award, but the Sixth Circuit panel affirmed, holding that disgorgement constitutes equitable relief available under § 502(a)(3), and that such an award is not barred merely because Rochow also recovered the benefit due under § 502(a)(1)(B). (Id. at 12.) Although the majority acknowledged that Varity Corp. v. Howe, 516 U.S. 489, 513-15 (1996), and its progeny, including Sixth Circuit precedent like Wilkins v. Baptist Healthcare System, Inc., 150 F.3d 609 (6th Cir. 1998), have been construed "as a complete bar to simultaneous claims for benefits under § 502(a)(1)(B) and breaches of fiduciary duty under § 502(a)(3)," it held that this rule did not apply when equitable relief is needed to provide "complete relief" to the plaintiff, and it held

that preventing unjust enrichment was one means of providing complete relief. (Rochow, Slip. Op. at 13-14.)

The majority also held that the district court had not abused its discretion by calculating profits based on LINA's return on average equity, rather than its much lower returns on investment income. (Id. at 5.) In support of that decision, the Sixth Circuit noted the district court's "pivotal factual finding" that LINA had commingled the withheld benefit funds, rather than placing them in a separate account, and therefore the funds were akin to normal business funds. (Id. at 20.)

The dissent held: "[T]his expansion of ERISA is contrary to clear Supreme Court and Sixth Circuit Precedent."

The dissenting judge in Rochow opined that disgorgement under § 502(a)(3) should not have been awarded for several reasons. First, because disgorgement is tied to a defendant's gain rather than a plaintiff's injury, it is inconsistent with ERISA's remedial purpose and Varity's holding that the availability of equitable relief depends on whether there is already "adequate relief for a beneficiary's injury" under a different provision. (Id. at 25-27.) The dissent noted that courts cannot use § 502(a)(3) "to exact reparation for" or "avenge" an ERISA violation because the Supreme Court has held that punitive damages are unavailable under that provision. (Id. at 15 and 27, citing Mertens v. Hewitt Assoc., 508 U.S. 255, 256-58 (1993).)

Second, the dissent argued that by allowing Rochow to recover both the denied benefits and disgorgement of profits, the majority had provided him a windfall — "a second recovery for the same injury." (Id. at 26.) The dissent argued that Rochow could be made whole by awarding his benefit under § 502(a)(1)(B), along with attorneys fees and prejudgment interest. The dissent noted that the $3.8 million profit award could not could not be characterized as prejudgment interest because it was so disproportionately excessive relative to Rochow's actual loss that the award was more in the nature of punitive damages, which are not available under ERISA. (Id. at 30, citing Ford v. Uniroyal Pens. Plan, 154 F.3d 613 618-19 (6th Cir. 1998).)

Potential Impact

If it stands and is followed by other courts, the Sixth Circuit's Rochow decision will place plan administrators in a difficult position when making decisions to deny benefits. Most plans today vest plan administrators with discretion to make benefits determinations. If an administrator is later found to have abused its discretion when denying benefits (i.e., deemed to have acted arbitrarily or capriciously), courts following Rochow potentially could find, as the district court in Rochow found, that the denial-of-benefits claim under § 502(a)(1)(B) automatically translates into an additional claim for breach of fiduciary duty and disgorgement of lost profits under § 502(a)(3).

As the dissent noted, that position is hard to square with established precedent holding that 502(a)(3) relief is generally unavailable for denial-of-benefit decisions. See, e.g.,

LaRocca v. Borden, Inc., 276 F.3d 22, 28-29 (1st Cir. 2002). Moreover, plan administrators who attempt to mitigate this impact by holding disputed benefits in escrow within segregated accounts while benefits disputes wind their way through the administrative process and courts, may ultimately find that they have invited claims under § 502(a)(3), based on the Supreme Court's decision in Great West Life v. Knudson, 534 U.S. 204, 213 (2002), which recognizes the traceability of particular funds as a touchstone for obtaining equitable restitution or a constructive trust under that provision.

Despite the Sixth Circuit's attempts to harmonize its decision with past precedent, the Rochow decision appears to create a circuit split. As a result, it is possible that the defendant will seek further review, either through rehearing en banc from the full Sixth Circuit or a petition for certiorari to the Supreme Court.

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