

July 14, 2008

## INSURANCE LAW ALERT

### Conflict of Interest Must be Weighed in Denial of Benefits Claims

The US Supreme Court recently held that when the administrator of an ERISA employee benefit plan both determines whether an employee is eligible for benefits *and* is responsible for paying those benefits out of its own assets, the administrator operates under a conflict of interest. The Court further held that in a review of the administrator's decision a court must consider that conflict of interest as one factor in determining whether the administrator abused its discretion. However, a complete, well-reasoned decision by the administrator will go a long way in minimizing the significance of any conflict. *Metropolitan Life Insurance Company v. Glenn* (No. 06-923)

The *Glenn* case involves a suit filed by an employee who had been denied extended disability benefits under her employer's plan, which was administered and insured by Metropolitan Life Insurance Company. The employee argued that the insurance company had a financial incentive to deny claims, creating a conflict of interest that should weigh heavily in an employee's favor when challenging the administrator's decision in court.

One issue raised in *Glenn* concerned whether an administrator's dual role in both considering eligibility for benefits and paying claims, standing alone, creates the kind of conflict that should be a factor in a court's review, or whether it was also necessary for the claimant to show that the conflict played a role in the denial of benefits. The Court said that the bare conflict of interest alone was sufficient to affect the standard of review. Under current law, a court will usually defer to the administrator's decision if the plan document says that the plan administrator has discretionary authority to interpret a plan's language in determining whether a participant or beneficiary will receive a benefit. This is the so-called deferential abuse of discretion standard of review.

Another important question, however, is *how* the standard of review is affected by the conflict. Even though the Court did not provide definitive guidance on how a reviewing court should analyze benefit denial claims in the presence of such a conflict of interest, it did say that the existence of the conflict does *not* change the standard of review from abuse of discretion to *de novo*. The conflict is to be weighed only "as a factor in determining whether there is an abuse of discretion" and the conflict's significance will "depend on the circumstances of the particular case."

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Further guidance will take time as lower courts decide the level of deference they should apply to plan administrators' decisions and the factors which may be relevant. In the meantime, there are steps plan administrators can take to minimize the potential adverse consequences of a dual role. For example, all benefit decisions should be in writing and the decisions should be explained thoroughly. If the claimant has presented evidence contrary to the decision reached by the administrator, the decision should include the reasons for rejecting that evidence. Inconsistencies should be discussed and relevant documents should be provided. Steps such as these can go a long way toward convincing a reviewing court that the administrator is making fair and accurate decisions.

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