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ERISA & DISABILITY BENEFITS NEWSLETTER

VOLUME 3, ISSUE 7, JULY 2011

ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits.

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WHO ARE THE PROPER DEFENDANTS IN AN ERISA BENEFITS ACTION BY: JEREMY L. BORDELON

Introduction

If an ERISA employee welfare benefit claim is denied, and all of the available appeals have been exhausted, the claimant has the right to bring a civil action "to recover benefits due to him under the terms of his plan" under ERISA § 502(a)(1)(B), among other possible causes of action. The question is, who are the proper defendants to such an action? Is it the employer? The plan administrator? The plan itself? The insurer? All of the above? Since ERISA is a federal law, one might suppose that the answer would be simple to determine, and uniform in all federal courts. Unfortunately, this is not the case. Each federal circuit seems to have its own thoughts and case law articulating its own reasons for why certain parties are necessary, and other parties are not proper defendants. Other circuits will come to completely different and contradictory conclusions. Since the 9th Circuit Court of Appeals recently changed its stance on this issue, it seems appropriate to review the state of the law on this issue.

The ERISA statute has some guidance on the matter, but it is not always interpreted consistently by the courts. The statutory section which authorizes a cause of action for benefits states who may bring an action, but it does not state against whom the action should be brought: "A civil action may be brought…by a participant or beneficiary…to recover benefits due to him under the terms of his plan…" ERISA § 502(a)(1)(B). The other relevant section of the statute is § 502(d), which states that (1) "An employee benefit plan may sue or be sued under this title as an entity." 29 U.S.C. § 1132(d)(1). In other words, the benefit plan itself is potentially a defendant to an action under ERISA, but the statute does not say that it must be a defendant. In § 502(d)(2), the statute goes on to state that "any money judgment … against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter." Some courts have interpreted this second section to mean that because judgments against plans may only be enforced against plans, the plans themselves are the only proper defendants.

Not all courts have agreed that the plan is the only proper defendant, however, and when one delves further into the matter, it is easy to see why. In the context of long term disability ("LTD") claims in particular, the plan and the plan administrator very often have nothing to do with deciding or paying claims under the plan.

Besides the plan itself, potential defendants may include the employer, the plan administrator, a third party insuring benefits under the plan, or a third party deciding claims under the plan (these last two may be, and often are, the same entity). Most courts follow some variation of the same reasoning for determining which, if any of these, are proper defendants to an ERISA action. The important factors seem to be how much involvement the entity had in the decision to deny the claim, and who will be responsible in the event benefits are awarded to the claimant. With this backdrop in mind, what follows is a brief circuit-by-circuit summary of the law on who is a proper defendant to an action for benefits under ERISA § 502(a)(1)(B)[1].

Circuit-by-Circuit[2]

First Circuit: Holds that the entity which "controls administration of the plan" is the proper party, with the understand-

ing that this will usually be the plan administrator, but parties other than the named plan administrator may exercise sufficient control over a plan that they can be proper defendants. *Gomez-Gonzalez v. Rural Opportunities, Inc.*, 626 F.3d 654, 665 (1st Cir. 2010). In other words, in addition to the plan itself, the entity which made the decision to deny benefits is likely a permissible defendant, whether that is the plan administrator or an insurer.

Second Circuit: Proper defendants are only the plan and the administrators/trustees of the plan, not third parties which fund the plan. *Yoon v. Fordham Univ. Faculty & Admin. Ret. Plan*, 173 Fed. App'x. 936, 940-941 (2d Cir. 2006). Even if the employer is a "de facto co-administrator" and funds benefits due under the plan, it is not a proper defendant to a § 502(a)(1)(B) action unless it is the plan administrator. The plan itself is a permissible defendant, as is the insurer who decided the claim, if applicable.

Third Circuit: The proper defendant is the one who controls administration of the plan, which may mean that the insurer/claims administrator is more likely to be the correct defendant than the plan administrator. *Mitchell v. Eastman Kodak Co.*, 113 F.3d 433 (3d Cir. 1997) (allowing § 502(a)(1)(B) claim against a plan administrator). However, more recently the 3rd Circuit has held that the proper defendant in a § 502(a)(1)(B) action is "the plan itself or the person who controls administration of benefits under the plan." *Evans v. Employee Benefit Plan, Camp Dresser & McKee, Inc.*, 311 Fed. App'x 556, 558 (3d Cir. 2009) (dismissing the named plan administrator because the insurer was the sole entity with discretion to make benefit determinations).

Fourth Circuit: There does not appear to have been a pronouncement from the circuit court on this issue, but the district courts within the 4th Circuit have followed the general rule that the proper defendant is the entity which has responsibility for making decisions under the plan. *Ankney v. Metro. Life Ins. Co.*, 438 F. Supp. 2d 566, 574 (D. Md. 2006); *Sawyer v. Potash Corp.*, 417 F. Supp. 2d 730, 737 (E.D.N.C. 2006). Aside from the entity which controls the administration of the plan, the plan itself can also be a proper defendant. *Colin v. Marconi Commerce Sys. Employees' Ret. Plan*, 335 F. Supp. 2d 590, 597 (M.D.N.C. 2004).

Fifth Circuit: In *Musmeci v. Schwegmann Giant Super Mkts., Inc.*, 332 F.3d 339, 350 (5th Cir. 2003), the claimant sued both the plan and his employer, who was designated as both plan sponsor and plan administrator. The court acknowledged that the language of the statute seemed to suggest that only the Plan itself was a proper defendant to an action under ERISA § 502(a)(1)(B), but allowed the case to proceed against both the plan and the employer because it was the employer/plan administrator's decision to deny benefits. Relying on similar cases from other circuits, the 5th Circuit held that in addition to the plan itself, other parties could be proper defendants where they were involved in making the decision to deny benefits. Following the reasoning of *Musmeci*, as well as that of other circuits, district courts in the 5th Circuit have permitted suits against third parties when there is evidence showing that they exerted control over plan administration.

Sixth Circuit: In *Daniel v. Eaton Corp.*, 839 F.2d 263 (6th Cir. 1988), the 6th Circuit held that "[u]nless an employer is shown to control administration of a plan, it is not a proper party defendant in an action concerning benefits." *Id.* at 266. However, this does not mean that the plan itself is the only proper defendant. *Moore v. Menasha Corp.,* 634 F. Supp. 2d 865, 868 (W.D. Mich. 2009). In addition to the plan, the party insuring benefits due under the plan is a proper defendant if it makes the benefits decisions under the plan. *Gore v. El Paso Energy Corp. Long Term Disability Plan*, 477 F.3d 833, 842 (6th Cir. Tenn. 2007). The employer in *Gore*, which was also the named plan administrator, was not involved in any of the benefits decisions and was therefore not a proper defendant, even though it was nominally the administrator of the plan.

Seventh Circuit: *Jass v. Prudential Healthcare Plan*, 88 F.3d 1482 (7th Cir. 1996), introduced the notion in the 7th Circuit that only the plan itself was a proper defendant to an ERISA action. For the facts of that case, that rule made sense, but it was later applied too broadly, preventing claims against parties (such as insurers) who had legal obligations to pay claims under the plan. Since then, *Jass* has been criticized, and suits against insurers, employers, or other entities which act as administrators have been allowed, especially where they are the parties making the decisions and/or paying the claims. *See, e.g., Rivera v. Network Health Plan of Wis., Inc.*, 320 F. Supp. 2d 795 (E.D. Wis. 2004); *Penrose v. Hartford Life & Accident Ins. Co.*, 2003 U.S. Dist. LEXIS 13497 (N.D. Ill. 2003). Most courts within the 7th Circuit have held, however, that the default rule is still to sue the plan, and suits against other parties are only authorized by exception, when some other party is necessary for the court to fully address the claims involved in the case. *Rivera v. Network Health Plan of Wis., Inc.*, 320 F. Supp. 2d 795, 798 (E.D. Wis. 2004).

Eighth Circuit: The 8th Circuit's law on this issue seems to be cobbled together largely from the law of the 4th and 6th Circuits. The plaintiff to an ERISA action may name as a defendant a "party that controls administration of the [ERISA] plan." *Hall v. LHACO, Inc.*, 140 F.3d 1190, 1194 (8th Cir. 1998). Conducting certain administrative tasks may not be sufficient to render an employer susceptible to actions for benefits under ERISA. Where the ERISA plan document grants an insurer full and sole responsibility to determine benefits eligibility, the employer is not a proper party defendant. *Portz v. Hartford Life & Accident Ins. Co.*, 2008 U.S. Dist. LEXIS 113461, 15-16 (D. Neb. 2008).

Ninth Circuit: The most recent pronouncement on this legal issue, and the case which inspired this entire article, is *Cyr v. Reliance Standard Life Ins. Co.*, ___ F.3d ___, 2011 U.S. App. LEXIS 12601 (9th Cir. June 22, 2011) (*en banc*). The 9th Circuit had previously held that only the plan, and perhaps in some cases the plan administrator, were proper parties to actions for benefits under ERISA § 502(a)(1)(B). In *Cyr*, the Court re-examined its position from the beginning, first noting that although the ERISA statute is very specific about who may *sue*, it is largely silent about who may *be sued*. The 9th Circuit went on to cite the Supreme Court

case *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000), which rejected any suggestions that the potential pool of defendants was limited by the ERISA statute as to all but a few causes of action. It went on to address ERISA § 502(d)(2), discussed above. In the past, § 502(d)(2) has been cited by various courts as reason to limit causes of action to the plan itself, since a potential judgment could only be enforced against the plan. However, the 9th Circuit took up the second part of the statute, "…unless liability against such person [other than the plan] is established in his individual capacity," and held that this statutory clause should be applied against insurers who are responsible for payments of benefits under the plan. As such, it concluded that Reliance Standard, as insurer of benefits due under the plan, was a proper party to an action under § 502 (a)(1)(B). This overruled long-standing precedent in the 9th Circuit.

Tenth Circuit: The 10th Circuit has not set forth a hard and fast rule on this subject, but it is clear at least that the plan is one proper defendant, and may be the only proper defendant, depending on which cases you follow. Suits are probably permitted against plan fiduciaries or other parties which "control administration of the plan," but not against non-fiduciaries, such as third-party administrators. *Geddes v. United Staffing Alliance Emple. Med. Plan*, 469 F.3d 919, 931 (10th Cir. Utah 2006)

Eleventh Circuit: As so many other circuits have stated, "The proper party defendant in an action concerning ERISA benefits is the party that controls administration of the plan." *Garren v. John Hancock Mut. Life Ins. Co.*, 114 F.3d 186, 187 (11th Cir. 1997). A party other than the designated plan administrator may be the proper defendant in an ERISA action if the party has "sufficient control over the process to qualify as the plan administrator notwithstanding the language of the plan booklet." *Hamilton v. Allen-Bradley Co.*, 244 F.3d 819, 824 (11th Cir. 2001). In other words, the plan itself is a proper defendant, as is the party which controls the administration of the plan, but not anyone else. Therefore, if an insurer makes the benefits decisions under the plan, it is probably the proper defendant, in addition to the plan itself. The employer will not be a proper defendant, even if designated as plan administrator in the governing plan documents, if it had nothing to do with the decision being challenged in court.

Conclusion

When reviewing these cases, one particular quote comes to mind. "While it is silly not to name the plan as a defendant in an ERISA suit, we see no [] reason … for the proposition that the plan is always the only proper defendant…" *Mein v. Carus Corp.*, 241 F.3d 581, 585 (7th Cir. 2001). With the recent decision of the 9th Circuit in *Cyr*, a pattern is beginning to emerge. With some exceptions, the rule in most federal courts is that the proper defendants to an action for benefits due under ERISA § 502(a)(1)(B) will be the plan itself, as well as any other entity which controls the administration of the plan. Many, if not most, plans are administered and insured by large insurance companies, and they will usually be proper defendants. However, the state of the law on this issue is by no means settled, and failing to include the necessary parties could wind up costing you your case.

[1] Actions under other sections of the ERISA statute, particularly § 502(a)(3) actions for a breach of fiduciary duties, will have different defendants.

[2] The D.C. Circuit has not had occasion to address this issue.

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