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Will *MetLife v. Glenn* Change the Landscape of Employee Benefits Litigation?

The Supreme Court's *Metropolitan Life Ins. Co. v. Glenn* decision, issued on June 19, 2008, addressed two questions: (1) Whether an ERISA plan administrator's dual roles as both evaluator and payor of employee benefits claims indicates the presence of a conflict of interest; and (2) if so, how such a conflict should be taken into account during judicial review of the benefits claims decision. Slip op. at 3, 554 U.S. ___ (2008).

The answer to the first question—whether a conflict of interest is present—was, from the Court's perspective, dictated by its earlier decision in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). Expanding on *Firestone*, the Court found a conflict of interest exists when the same entity that pays the claim for benefits evaluates the claim, regardless of whether it is an insurer or the employer. The Court answered the second question—how such a structural conflict should be taken into account on judicial review—by saying courts should consider such a conflict as one of many factors in its review of the benefits determination. This aspect of the case could have wide-ranging implications on benefits litigation in the future.

Background

The facts of the case are fairly straightforward and typical of disability benefits cases. Like most large employers, retailer Sears, Roebuck & Company sponsors a long-term disability (LTD) benefits plan for the benefit of its employees, and it contracted MetLife to act as the plan administrator and insurer of the plan. An employee, Ms. Glenn, was diagnosed with a heart condition and was found to be incapable of performing her *own* occupation. MetLife granted and paid her benefits for 24 months. In order to continue to receive benefits after the first 24 months, the LTD plan required that the claimant be incapable of performing *any* occupation. Finding she was capable of full-time sedentary work, MetLife denied Ms. Glenn's LTD benefits under the *any* occupation standard. Slip op. at 1-2.

During the time it was making this determination, MetLife also referred Ms. Glenn to the Social Security Administration (SSA) as it was required to do by the LTD plan. Ms. Glenn was granted social security disability benefits, which offset the LTD benefits Sears was required to pay. (Such an offset provision is both entirely proper and practically ubiquitous in LTD plans.) MetLife disagreed with the SSA's decision that Ms. Glenn was permanently and completely disabled. MetLife also apparently failed to provide its independent vocation and medical experts with all of the relevant medical evidence needed to fairly evaluate Ms. Glenn's situation. Further, when MetLife issued its decision, it did so in a way that emphasized medical evidence favorable to the denial and de-emphasized medical evidence more favorable to Ms. Glenn. Slip op. at 12.

After exhausting her administrative remedies, Ms. Glenn filed her claim for benefits under ERISA § 502(a)(1)(B) in federal district court. The district court ruled in favor of MetLife. She then appealed to the federal court of appeals for the Sixth Circuit, which reversed the district court's decision. The Sixth Circuit ruled in Ms. Glenn's favor, finding that a conflict of interest impaired MetLife's decision. Coupled with the claimed errors in the analysis (inconsistency with the Social Security Administration's determination of her total disability, failure to provide all of the relevant evidence to the expert evaluators and inappropriate focus on the evidence that was unfavorable to Ms. Glenn), the court found that MetLife had abused its discretion in determining Ms. Glenn was not entitled to LTD benefits under the any occupation standard. Slip op. at 3. MetLife then appealed to the Supreme Court.

The Holding

Despite a splintered decision, a majority of the Court found that: (1) MetLife was operating under a conflict of interest; and (2) that conflict of interest should be "a factor" in the analysis as to whether MetLife had abused its discretion. The majority opinion, written by Justice Breyer and joined by Justices Stevens, Souter, Ginsburg and Alito, affirmed the Sixth Circuit's decision that Ms. Glenn was entitled to continued LTD benefits.

The majority found that, consistent with *Firestone*, a conflict of interest exists when the entity evaluating and paying the claim are the same. But rather than addressing itself solely to the situation at hand (Sears's LTD plan was fully insured and administered by MetLife), the Court advised in *dicta* that an "employer that both funds the plan and evaluates the claims" also suffers from this conflict. Slip op. at 5. The Court did *not* opine on whether the establishment of a trust to fund the plan benefits would remove or mitigate a conflict (though most circuits recognize that this situation does not create a conflict). The Court attempted to clarify that the existence of a conflict does not actually affect the standard of review. Slip op. at 9. Thus, so long as discretionary authority is granted to the administrator in the plan documents to make benefits determinations, a deferential standard of review applies to that decision. *Id*.

The Court's next task was to explain how the conflict should be taken into account. Without setting forth any specific test, the Court held that a structural conflict of interest was "a factor" to be considered by a court in its multi-factor analysis of whether the plan administrator had abused its discretion. Other factors mentioned included the insurer's "history of biased claims administration," efforts taken "to reduce potential bias and to promote accuracy," and the specific circumstances of the case. Slip op. at 11-12.

Recognizing the indeterminacy of its "combination-of-factors" analysis, the majority took pains to justify its opinion. Reiterating that courts are generally adept at applying their judgment in multi-factor analyses, the Court eschewed a "one-size-fits-all procedural system" and emphasized that "[b]enefits decisions arise in too many contexts" for a bright line test to work. Slip op. at 10.

Analysis

The majority's decision could have wide-ranging, though apparently unforeseen, implications in the discovery setting. Undoubtedly claimants will now seek to admit evidence of an alleged "history of biased claims administration" as part of the multi-factor analysis. Plaintiffs will argue this requires discovery into those issues (including, for instance, discovery requests aimed at discovering any

potentially relevant decisions in analogous cases, etc.). However, this discovery issue was not before the Court, and the majority's analytical statements should not be sufficient to displace well-established precedent for limited discovery.

Another potentially problematic aspect of the case is the discussion of inconsistency between MetLife's decision and the decision of the Social Security Administration, finding Ms. Glenn disabled. Slip op. at 11-12. Just five years ago, the Supreme Court held that benefits determinations need not line up with the SSA's disability decision, nor is SSA entitled to deference in its disability determination. *Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003). The majority's decision in *MetLife v. Glenn*, however, comes dangerously close to questioning *Nord*, as the dissent points out. Dissenting op. at 9. Given the potential differences in the standards and analyses, there remains the potential that plan administrators and the SSA may reach different conclusions. However, federal courts are going to be even more attuned to whether plan administrators are appropriately considering SSA disability decisions.

The Minority Opinions

The concurring/dissenting justices took the majority to task for their broad, indeterminate pronouncements.

Justice Kennedy's concurrence criticized the Court for not remanding the case back to the Sixth Circuit for consideration of the heretofore irrelevant "evidentiary considerations" regarding the insurer's efforts to "employ[] structural safeguards to avoid conflicts of interest." Kennedy Concurring op. at 2. Kennedy disagreed that the Sixth Circuit had made an effort to analyze this issue, and dissented from a result in which the majority undertook that analysis in the first instance.

In his concurrence, Chief Justice Roberts joined in the result and in the answer to the question of whether a structural conflict exists, but rejected the analysis of how such a conflict should be considered. Deriding the majority's "kitchen sink approach," Roberts accused the majority of leaving "the law more uncertain, more unpredictable than it found it." Roberts Concurring op. at 4. Roberts warned that the majority's approach does not avoid "near universal review by judges *de novo*" and "invites the substitution of judicial discretion for the discretion of the plan administrator." *Id*. at 2-3.

The dissenters, Justices Scalia and Thomas, echoed this concern, calling the majority's approach "nothing but *de novo* review in sheep's clothing." Dissenting op. at 5. Of course, if realized, this could lead to many more reversals of benefits determinations, and an increase in defense costs to benefits plans and employers.

In short, *MetLife v. Glenn* raises a number of important issues regarding the degree of deference courts will actually apply in benefits disputes, and (possibly) the scope of discovery in such cases. However, the full impact of the Court's decision on benefits litigation in general remains to be seen.

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