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Overturning 26 years of precedent, a unanimous Ninth Circuit en banc panel holds that proper defendants under section 502(a)(1)(B) of ERISA may be broader than plans and plan administrators only.

Ninth Circuit Broadens Scope of Entities that Can Be Sued for ERISA Plan Benefits

By Darren Nadel and Kalisha Chorba

On June 22, 2011, a unanimous en banc panel of the Ninth Circuit issued a decision in *Cyr v. Reliance Standard Life Ins. Co.*, holding that potential liability under section 502(a)(1)(B) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(1)(B), is not limited to benefit plans and plan administrators. This opinion overrules contrary language in several of the Ninth Circuit's previous decisions, including: *Ford v. MCI Communications Corp. Health & Welfare Plan*, 399 F.3d 1076, 1081 (9th Cir. 2005); *Everhart v. Allamerica Financial Life Ins. Co.*, 275 F.3d 751, 756 (9th Cir. 2001); *Spain v. Aetna Life Ins. Co.*, 13 F.3d 310, 312 (9th Cir. 1993); and *Gelardi v. Pertec Computer Corp.*, 761 F.2d 1323 (9th Cir. 1985).

Background Facts

Laura Cyr, former vice president of Channel Technologies, Inc. (CTI) filed a claim for long-term disability benefits following her termination. The plan was insured by Reliance Standard Life Insurance Company (Reliance), which approved the payment of benefits to the employee based on her ending salary of $85,000. One year later, the employee filed a lawsuit against the company alleging that, during her tenure with the company, she was paid half the annual salary of male employees who performed equivalent work. The parties settled, and the company agreed to adjust her annual salary to $155,000, effective the week prior to her termination.

Because her salary was adjusted upwards, the employee contacted the insurance company to request an increase in her long-term disability benefit payments, which were calculated based on her salary. The insurance company initially stated that it would pay the additional benefits if the retroactive salary adjustment was valid, but later declined to pay the increased amount. The insurance company failed to respond to the employee's further inquiries, claiming that the company lost her claim file.

Plaintiff's Claims

The employee filed suit against Reliance, CTI, and the CTI Group Long Term Disability Benefit Program (the "Plan") under ERISA section 502(a)(1)(B). The employee also

alleged that the insurance company, Reliance, and the Plan breached their fiduciary duties and sought to estop the insurance company from denying the increased benefits. Reliance argued that claims under section 502(a)(1)(B) could only be brought against benefit plans and plan administrators. The district court held that insurers could be sued provided that they function as administrators. On appeal, the Ninth Circuit agreed to hear the case *en banc*. The parties then submitted additional briefing on the narrow issue of "whether appellant is a proper defendant in a suit for benefits under 29 U.S.C. section 1132(a)(1)(B) even though it isn't a plan or a plan administrator."

The Ninth Circuit's Analysis

In its decision, the Ninth Circuit first reviewed section 502(a)(1)(B) to determine whether the statute contained limits on who could be sued. Section 502(a)(1)(B) provides that:

> A civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the term of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

The court determined that neither the express language of the statutory provision, nor the regulations promulgated by the Secretary of Labor, limits the parties against whom a civil action may be brought. Instead, the language only limits who the proper plaintiffs are.

The Ninth Circuit also considered the U.S. Supreme Court's decision in *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000), where the Court unanimously held that a non-fiduciary could be held liable for causing a trust to enter into a prohibited transaction and rejected any assertion that a non-fiduciary could not be a proper defendant under the relevant subsection. The Ninth Circuit reasoned that a related section of the statute, section 502(d)(2), contemplates that parties other than plans and plan administrators can be held liable under ERISA's civil enforcement scheme. Applying this legal analysis to the facts in the *Cyr* case, the court determined that the insurance company was a proper defendant since it was responsible for denying the employee's claim for increased benefits and for paying her benefits. Moreover, the Ninth Circuit opined that there are times where it is not sufficient to name only a plan administrator, particularly in cases where the plan administrator does not approve benefits claims or assume responsibility for their payment.

Practical Considerations for Employers

Following the *Cyr* decision, courts, and employers, in the Ninth Circuit likely will see an increase in the number of claims brought against insurers and other entities who once considered themselves to be immune from liability under section 502(a)(1)(B). Now, in the Ninth Circuit, whether or not an entity is a proper defendant no longer depends on its designation as a plan or plan administrator, but on the level of responsibility it assumes in approving and denying employee benefits.

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