Life, Health, Disability & ERISA Litigation Report

March 19, 2024 | J. Christopher Collins, Joseph M. Hamilton | Articles

Greetings! We are pleased to provide you with a summary of decisions rendered by the First Circuit Court of Appeals, the U.S. District Courts within the circuit, and state appellate courts within the same geographic area. For your convenience, we have included hyperlinks with direct access to the full decision for each case. Decisions reproduced with permission of Westlaw.

FIRST CIRCUIT SENDS CONTRACTUAL LIMITATION QUESTION TO RHODE ISLAND SUPREME COURT

In Smith v. Prudential Ins. Co. of Am., 88 F.4th 40 (1st Cir. 2023), the plaintiff, Brian Smith, a resident of Rhode Island was employed as an accountant and vice president for tax operations for Comverse Technology. He was covered under a group disability policy issued by Prudential, not to his employer, but to an association of CPAs of which Smith was a member. As a result of being insured under an association plan, his group policy was not governed by ERISA. During the time Smith was covered under the association policy, he worked for five different employers.

In October 2015, Smith was diagnosed with a mild cognitive impairment and left his job at Comverse. Smith filed a claim with Prudential, and it was approved. Smith received a benefit for nearly two and a half years until Prudential terminated his benefits in May 2018. After exhausting two levels of appeals, Smith received his final denial notice in August 2019. In March 2021, Smith sued Prudential for breach of fiduciary duty.

Prudential's main defense was that Smith's claim was untimely based on the limitation of legal actions provision in the policy which stated,

Smith argued in both the district court and on appeal that his claim was governed by ERISA but he was unsuccessful. The district court granted

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Prudential summary judgment based on the untimeliness of the Smith's lawsuit in accordance with the limitations language in the policy. That issue became the focus of the case on appeal.

The First Circuit carefully dissected the key dates of the claim including the date the claim was filed, the date proof of loss was due and the time frame for the two levels of appeal. As for the second level of appeal, Prudential agreed to toll the limitations period while it administered the appeal. According to the court's calculations, Smith had only eight weeks after the final decision on appeal to file suit.

> You can start legal action regarding your claim 60 days after proof of claim has been given and up to 3 years from the time proof of claim is required, unless otherwise provided under federal law.

Applying Rhode Island law, the one issue that survived the court's scrutiny was Smith's argument that enforcing the limitations provision in Prudential's policy would violate Rhode Island public policy. Smith argued the limitation provision would contravene fundamental principles of Rhode Island law to permit the limitations scheme to run from a time other than the date that Smith's cause of action against Prudential accrued following the denial of the claim.

The court found that Smith's public policy argument had merit for four reasons. First, that Rhode Island state courts have often voided or refused to enforce contractual provisions on public policy grounds. Second, the Rhode Island Supreme Court has condemned the "Alice in Wonderland effect" of allowing a limitations period to begin to run before a cause of action even exists and has held that doing so would be "palpably unjust." Third, Rhode Island courts view it as a matter of "fundamental [in]justice" to totally "bar adjudication of a claim even before it arises and fourth, the Rhode Island Supreme Court has made clear that "the determination of whether a particular contract provision violates public policy is case-specific," and the facts of this case are troubling.

The court then decided that because an issue of state law would determine the outcome it would certify the following question to the Rhode Island Supreme Court:

> In light of Rhode Island General Laws § 27-18-3(a)(11) and Rhode Island public

> policy (including Rhode Island Constitution article I, section 5), would Rhode Island enforce the limitations scheme in this case to bar Smith's lawsuit against Prudential?

The case is now before the Rhode Island Supreme Court to answer the certified question.

FIRST CIRCUIT FINDS CAUSE OF ACTION EXISTS AGAINST MIB GROUP

In Wiener v. MIB Group, Inc., 86 F.4th 76 (1st Cir. 2023), the First Circuit Court of Appeals held Wiener established Article III standing to bring a suit against the MIB Group for allegedly disclosing confidential information.

Wiener got into a dispute with his life insurer, AXA Equitable Life Insurance Company ("AXA"), regarding the reinstatement of his life insurance policies. Wiener ultimately sued AXA in North Carolina alleging that AXA negligently reported false information about Wiener's medical conditions to the MIB, thereby causing him to be uninsurable. Wiener was ultimately successful in his North Carolina litigation.

In that litigation, to exclude Wiener's expert, AXA submitted a declaration from MIB's general counsel. Wiener then filed suit against MIB in Massachusetts alleging that the MIB's declaration violated the Fair Credit Reporting Act and sought damages. MIB sought to dismiss the complaint on the grounds that Wiener did not have Article III standing. Wiener contended he did have standing due to out-of-pocket losses he incurred in the North Carolina litigation in the form of additional attorney's fees, as well as emotional distress caused by invasion of his privacy by virtue of the MIB disclosure. The district court dismissed the complaint, holding that Wiener did not have Article III standing.

The First Circuit reversed on appeal. In assessing Wiener's allegations, it relied solely on Wiener's amended complaint given that MIB had prevailed on a motion to dismiss.

The court first held that to show Article III standing, Wiener needed to show that he had suffered an injury that was concrete, particularized, and actual or imminent; that the injury was likely caused by MIB; and that the injury would likely be redressed by judicial relief. The court found that

Wiener met all three prongs of the test.

With regard to his injury, the court was satisfied that Wiener had alleged an injury in fact by virtue of his claim that he incurred additional attorney's fees and costs in addressing MIB's disclosure in the North Carolina litigation. The court also found that Wiener's alleged financial harm was fairly traceable to MIB's conduct and that a damage award against MIB would redress the alleged financial harm.

The court reversed the dismissal and remanded the case to the district court for further proceedings.

COURT FINDS DENIAL OF LTD BENEFITS NOT ARBITRARY OR CAPRICIOUS

In Leif v. Hartford Life and Accident Insurance Company, 2023 WL 4601967 (D. Mass. 2023), the U.S. District Court of Massachusetts held Hartford's denial of long-term disability benefits to Leif was not arbitrary or capricious.

Leif was insured under a disability benefit plan provided by her employer, which was governed by ERISA. Leif stopped working in January 2020 due to cardiac issues and received short-term disability benefits from Hartford. The claim was then reviewed for the payment of long-term disability benefits.

After a review of Leif's medical records, and an occupational analysis, Hartford concluded that Leif's occupation was sedentary, although her specific job was light-medium work. Hartford concluded that Leif could perform her occupation, and upheld the determination on appeal. Suit followed.

The court, applying the arbitrary and capricious standard of review, found that Hartford's determination was reasonable and supported by substantial evidence. Specifically, the court found that Hartford's use of independent peer reviews of Leif's medical records and the occupational analysis was sufficient to uphold the claim.

Hartford's determination that Leif could perform the essential duties of her occupation which were sedentary was supported by the medical reviews, who all agreed that Leif could sit without restrictions, stand and walk occasionally, as well as lift, carry and push occasionally up to 20 pounds. The court held that Leif did not meet her burden of showing that

her cardiac issues precluded her from performing the essential duties of her occupation. The court also rejected Leif's challenge to Hartford's use of the Department of Labor's Dictionary of Occupational Titles, noting that the First Circuit has found a claims administration may consider a position description drawn from the DOT as long as the duties are comparable to the claimant's own job.

Finally, the court noted that while Leif's treating physicians disagreed with Hartford, those physicians were not entitled to special deference.

The court denied Leif's motion for summary judgment.

COURT FINDS DENIAL OF LTD BENEFITS NOT ARBITRARY OR CAPRICIOUS

In Hughes v. The Lincoln National Life Insurance Company, 2023 WL 5310611 (D. Me. 2023), the U.S. District Court of Maine held Lincoln's denial of long-term disability benefits to Hughes was not arbitrary or capricious.

Hughes was insured under a disability benefit plan provided by his employer, which was governed by ERISA. Hughes stopped working in February 2021 due to gastrointestinal issues. He received short-term disability benefits from Lincoln. The claim was then reviewed for the payment of long-term disability benefits.

After a review of Hughes' medical records, and an occupational analysis, Lincoln concluded that Hughes' occupation was sedentary and that he could perform that occupation. It also upheld the determination on appeal. Suit followed.

Hughes first contended that the de novo standard of review should apply due to procedural violations by Lincoln during the administration of the claim. The court disagreed. Hughes' argument was based on the fact that during the administrative appeal Lincoln had a new vocational assessment performed which it did not share with Hughes prior to Lincoln's final determination. While the court found that the vocational assessment should have been provided to Hughes, it also found Hughes did not demonstrate he was prejudiced by Lincoln's failure. Therefore, the court held the standard of review would be arbitrary and capricious.

Hughes also argued that due to the procedural violation, the court should remand the claim to Lincoln so that Hughes could address the new vocational assessment. The court rejected that request as

well. Interestingly, the court noted Hughes had not identified or submitted to the court any evidence he could have provided to Lincoln to further develop the Administrative Record if given the opportunity to respond to the new analysis. The court noted that the scheduling order provided the parties with an opportunity to modify the administrative record or to conduct discovery and that Hughes did not attempt to do so.

Another interesting element of the decision was the court's analysis of whether Lincoln had a proper basis to take a 45-day extension to issue its final determination. In doing so, the court analyzed the Department of Labor Claim Regulations which require a "special circumstance" in order to obtain such an extension. The court noted the First Circuit had not addressed the meaning of the term. However, utilizing the Department of Labor's comment on the provision as well as the decisions by other jurisdictions, the court held Lincoln's decision to take the extension was appropriate given that it was considering new information provided by Hughes and that it acted properly and efficiently in doing so.

Turning to the merits of the case, and applying the arbitrary and capricious standard of review, the court held Lincoln's determination was not arbitrary and capricious, and specifically found Hughes had met his burden of proof that he was unable to perform the material and substantial duties of his occupation due to his medical condition.

Summary judgment was entered in favor of Lincoln.

STATE LAW CLAIMS FOR LIFE INSURANCE PROCEEDS PREEMPTED BY ERISA

In Waggeh v. Guardian Life Insurance Company of America, 2023 WL 4373897 (D. Mass. 2023), the U.S. District Court of Massachusetts allowed Guardian's motion to dismiss the Complaint on the grounds it was preempted by ERISA.

Waggeh's husband acquired life insurance coverage from Guardian in 2019. He died shortly thereafter. When Waggeh submitted a claim for benefits, it was denied on the grounds that the husband had misrepresented his medical condition.

Waggeh filed suit in state court alleging claims of specific performance, fraud, breach of contract, and violation of the Massachusetts Consumer Protection Act, Chapter 93A. Guardian removed the case to federal court

and moved to dismiss on the grounds that the claims were preempted by ERISA.

The court noted on that on its face, the Complaint alleged facts that indicated the coverage was part of an employee welfare benefit plan governed by ERISA. Waggeh argued that the policy was exempt from ERISA under the Safe Harbor provision of the Department of Labor's regulations or that it was a "payroll practice" under the DOL regulations. The court rejected both arguments on the grounds that the Complaint did not state a factually plausible claim to support that the life insurance benefit fell within the provisions of the Safe Harbor clause or there was a payroll practice. Thus, the court held that the Complaint was insufficient to state a plausible basis for inferring that ERISA preemption did not apply and allowed Guardian's motion to dismiss.

STATE LAW CLAIMS FOR LIFE INSURANCE PROCEEDS PREEMPTED BY ERISA

In Bernier v. Metropolitan Life Insurance Company, 2023 WL 8623402 (D. Mass. 2023), the U.S. District Court of Massachusetts allowed MetLife's motion for summary judgment to dismiss the Complaint on the grounds it was preempted by ERISA.

Josie Bernier obtained basic and supplemental life insurance coverage through her employment at Massachusetts General Hospital ("MGH"). The basic life insurance was paid for by MGH. Bernier was responsible to make premium payments for the supplemental coverage.

Bernier stopped working in February 2016 due to a disability. She died five years later. The benefit plan allowed the continuation of the supplemental life insurance after employment ended if premiums continue to be paid or the employee filed a claim with MetLife to continue the supplemental insurance within 12 months of the date of disability. Bernier did neither.

MetLife paid the basic benefit but denied the supplemental benefit. Bernier's beneficiaries sued in state court alleging breach of contract and a violation of the Massachusetts Consumer Protection Act. MetLife removed to federal court and filed a motion for summary judgment alleging the state law claims were preempted by ERISA.

After going through an analysis of the elements of an ERISA plan, the

court found the claims related to the benefit plan and were preempted by ERISA. Summary judgment was granted for MetLife.

MOTION TO DISMISS INSUFFICIENT TO PREEMPT STATE LAW CLAIMS

In Cannon v. Blue Cross and Blue Shield of Massachusetts, Inc., 2023 WL 7332297 (D. Mass. 2023), the U.S. District Court of Massachusetts denied Blue Cross' motion to dismiss Cannon's state law claims on the grounds they were preempted by ERISA.

In his Complaint, Cannon alleged that Blue Cross issued a health insurance policy. The case arose from Blue Cross' denial of a treatment. The Complaint contained claims for breach of contract, as well as tort claims. Blue Cross sought to dismiss all claims on the grounds they were preempted by ERISA. Applying the standard governing motions to dismiss, the court found that Blue Cross had not sufficiently developed the record to allow the motion.

The key issue was Blue Cross' failure to establish that documents it submitted in support of the motion to dismiss were authentic. The court noted that had Blue Cross submitted an affidavit explaining the significance of the documents offered and verifying that they concerned the policy at issue, the court may have considered the exhibits and reached the preemption argument. However, considering the manner in which the documents were submitted, the court was unable to do so.

The court denied the motion to dismiss without prejudice to Blue Cross raising the issue in a motion for summary judgment and ordered limited fact discovery on the preemption issue.

ATTEMPTS TO SUPPLEMENT THE ADMINISTRATIVE RECORD MUST BE MADE BEFORE DISPOSITIVE MOTIONS ARE FILED

In Cutway v. Hartford Life & Accident Company, 2023 WL 7386371 (D. Me. 2023), the U.S. District Court of Maine granted Hartford's motion to strike an affidavit submitted during the exchange of summary judgment motions.

The court struck the affidavit, called an affirmation, because it had been filed without leave of court in response to Hartford's motion for summary judgment. The court noted that the time to file a motion with the court to

expand the Administrative Record had passed. The court also raised concerns regarding whether, if the affidavit was allowed, should Hartford be permitted to file a counter-affirmation. If so, did the court then need to conduct an evidentiary hearing to assess the credibility of the declarants? The court held that given the process that had been outlined in the Scheduling Order, it would not allow the filing of evidence at the dispositive motion stage.

The court also struck Cutway's reply memorandum because replies were not permitted under the scheduling order and Cutway had not requested leave.

Mirick O'Connell's Life, Health, Disability & ERISA Litigation Group represents clients throughout New England. With offices in Boston, Westborough and Worcester, our attorneys are within an hour of all the major courts in Massachusetts, Hartford, Connecticut, Rhode Island, and southern New Hampshire. In addition, our attorneys are admitted to practice not only in Massachusetts, but in Connecticut, New Hampshire and Rhode Island as well. We have repeatedly and successfully represented clients in each of these jurisdictions. So remember, we are not here for you just in Massachusetts – think New England!