



WRNewswire

An AALU Washington Report

Thursday, 18 December 2014

WRN# 14.12.18

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TOPIC: ERISA Fiduciaries Have a Duty to Inform

CITES: [*Van Loo v. Cajun Operating Company*](#), No. 14-cv-10604, 2014 WL 675043 (E.D. Mich., Dec. 1, 2014); [29 U.S.C. § 1132](#).

SUMMARY: In this case, the court found that the employer, serving as plan administrator of a group life insurance plan providing basic and supplemental coverage, may be liable for monetary damages for breach of its fiduciary obligations because it failed to inform the employee that she needed to complete an evidence of insurability form to be eligible for supplemental coverage under the plan.

FACTS: Donna Van Loo was an employee of Church's Chicken, organized as Cajun Operating Company ("Cajun"), and participated in an employer sponsored group life insurance plan. This group life insurance plan was underwritten by Reliance Standard Life Insurance Company. Cajun was the plan administrator for purposes of employee enrollment, premium collection and plan administration. Reliance was the claims administrator, with final authority to review and decide upon validity of claims under the plan. The plan documents specified that life insurance coverage in excess of \$300,000 could be purchased only with proof of good health and a completed Evidence of Insurability Form ("EIF").

From 2007 through her death in 2013, Donna elected coverage totaling more than the \$300,000 threshold that would require an EIF. According to the complaint, Donna was never informed of the EIF requirement, and was repeatedly assured by her employer that her benefits enrollment had been successfully completed. Donna paid and Cajun accepted premiums based on the full coverage amount.

When Donna died, her parents submitted a claim for the full \$614,000 coverage Donna had elected and paid for. Reliance paid \$300,000, but it denied coverage for amounts beyond \$300,000, and directed Cajun to refund all premiums previously paid for coverage above \$300,000.

This lawsuit was brought by Donna's parents to recover from both Donna's employer and the group term life plan insurer, Reliance, the \$314,000 in life insurance benefits above and beyond the \$300,000 paid by Reliance. Specifically, Donna's parents made claims against both Cajun and Reliance:

- 1) to recover benefits due under the terms of the Plan, pursuant to 29 U.S.C. § 1132 (a)(1)(B),
- 2) to recover monetary damages for breach of fiduciary duty, pursuant to 29 U.S.C. § 1132 (a)(3), based on the failure to accurately communicate the EIF requirement, and
- 3) claims for equitable estoppel and unjust enrichment.

Both Cajun and Reliance filed a motion to dismiss.

RESULT: In ruling on the motion to dismiss, the court assumed that the allegations of the complaint were true and asked whether, if true, these facts resulted in legal liability.

The court dismissed all claims, *except* the breach of fiduciary duty claim against Cajun. It reasoned as follows:

- The claim to recover benefits due under the plan failed because the plan clearly states that there can be no coverage in excess of \$300,000 without an EIF.
- The breach of fiduciary duty claim against Reliance failed because Reliance was a fiduciary only for determination of claims. It had no responsibility to communicate to employees prior to submission of a claim.
- The breach of fiduciary duty claim against Cajun, the employer, stands—and may proceed to trial. Cajun was the plan administrator and had the responsibility to communicate accurately with covered employees regarding the plan.

Though Cajun may not have made any *affirmative* misrepresentations to Donna, its fiduciary duty creates “not only a negative duty not to *misinform*, but also an *affirmative* duty to *inform* when the trustee knows that silence might be harmful.” (emphasis added) The court ruled that Cajun breached its fiduciary duty when it failed to inform Donna of the EIF requirement. It also breached its fiduciary duty when it informed Donna that she had “successfully” completed her enrollment. In addition, the court decided monetary damages can be awarded as part of an equitable award for breach of fiduciary duty.

The equitable estoppel and unjust enrichment claims failed because they are preempted by ERISA and otherwise fail to meet legal requirements.

RELEVANCE: AALU members should share this case with clients and alert them to risks involved when serving as plan administrators. Plan administrators may be liable for (1) *affirmative* misrepresentations to employees, (2) harmful misinformation provided to employees, and (3) failure to *inform* when that silence might be harmful.

Again, failure to accurately inform plan participants of plan requirements can result in a plan administrator's liability for breach of fiduciary duties.

***WRNewswire* #14.12.18 was written by Marla Aspinwall of Loeb & Loeb, LLP.**

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