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TOPIC: ERISA Fiduciary Obligations: More on Application to Life Insurance Coverage

CITES: *Biller v. Prudential Insurance*, 2014 WL 4230119 (N.D. Georgia, Aug 26, 2014); *CIGNA Corp. v. Amara*, 131 S.CT. 1866 (2011); 29 U.S.C. §§ 1001 et seq.

SUMMARY: The U.S. District Court for the Northern District of Georgia denied a motion to dismiss a claim brought against an employer by the beneficiaries of a deceased employee who had sought to convert her group life insurance coverage to individual coverage upon her termination of employment. Despite timely repeated requests, the employer failed to provide the employee with the form necessary for conversion of the policy until after the specified deadline such that the insurer denied the conversion request. The court upheld the plaintiffs' right to pursue an action against the employer under ERISA for breach of its fiduciary duty under the group life plan and to seek monetary damages as an equitable remedy.

FACTS: Tamara Biller ("Employee") participated in an employee benefit plan sponsored by her employer, Six Continents Hotels, Inc. ("Employer"). The benefit plan included a group life insurance policy (the "Policy") insured by Prudential Insurance Company of America ("Prudential"). The Policy provided that a terminated employee could convert the group Policy to individual coverage by submitting an application and paying the first premium by the later of (i) 31 days after termination, or (ii) 15 days after receipt of written notice of the conversion privilege.

According to the plaintiffs' complaint, the following facts transpired in chronological order:

10/28/2010	Employee was terminated.
11/3/2010	Employee contacted Prudential. Prudential told Employee that conversion could not be completed without written notice from Employer.

11/9/2010	Employee contacted Employer. Employer said notice would be mailed to Employee.
11/11/2010	Employee was sent written notice of Employee's right to convert to an individual policy.
	Employee again contacted Prudential. Prudential told her she needed to fill out an application to be obtained from Employer.
	Employee again contacted Employer. Employer promised to mail the application to Employee.
12/3/2010	Employer finally mailed the application to Employee.
12/10/2010	Employee received conversion application.
	Employee submitted application to Prudential which informed Employee that the 31 day limit had expired and application could not be accepted.
2/27/2011	Employee died.

When the plaintiffs, who were the beneficiaries under the Policy, claimed benefits under the Policy, they were denied by Prudential because the Policy had not been timely converted to individual coverage. Plaintiffs then sued both Employer and Prudential, seeking payment of the Policy amount as equitable relief under 29 U.S.C. § 1132(a)(3) based on breach of fiduciary duty.

Employer filed a motion to dismiss on three bases:

(1) Prudential, not Employer, was the fiduciary regarding the Policy;

(2) Employee may not bring an equitable action for breach of fiduciary duty because an adequate non-equitable remedy is available by bringing a claim to recover benefits under 29 U.S.C. § 1132(a)(1)(B); and

(3) Employee's claim for money damages is not appropriate equitable relief under ERISA.

The Court rejected Employer's motion to dismiss, allowing Plaintiffs' to proceed with their lawsuit.

First, the court rejected Employer's argument that it was not a fiduciary. Prudential was specifically designated in plan documents as "claims fiduciary," with sole discretion to interpret and determine eligibility for benefits under the Policy. Nevertheless, the court reasoned, "a party is a fiduciary 'to the extent' that it performs a fiduciary function." Here, the relevant activity was the process of applying for a conversion from group to individual coverage. Since Employer assumed responsibility for providing conversion notification and application forms, it had a fiduciary duty with respect to those functions.

Second, the court found that the plaintiffs could properly bring a breach of fiduciary duty complaint for equitable relief under ERISA's "catchall" remedy provision found in 29 U.S.C. § 1132(a)(3). While the court noted that equitable relief is, generally, not available where one of ERISA's specific remedy provisions provide an adequate remedy, in this case, a claim for benefits under the Policy would not provide an adequate remedy because apparently the plaintiffs had conceded that they were ineligible for benefits due to untimeliness of the application for conversion.

Finally, the court rejected the Employer's contention that monetary compensation was not available as an equitable remedy under ERISA, citing the Supreme Court's recent discussion in *CIGNA Corp. v. Amara* recently noted in *WRNewswire* #14.9.02. The court determined that, under *Amara,* monetary relief needed to "make whole" a wronged employee is included in the equitable relief available under § 1132(a)(3).

RELEVANCE: This case illustrates the importance of the coordination by employers, insurance companies and other plan administrators to provide participants with timely and clear communications, as well as necessary application forms and documents. Failure to timely provide employees with the information and documents they need to exercise their rights may result in the parties who are responsible for the relevant administrative actions being held liable under the fiduciary duty provisions of ERISA.

***WRNewswire* #14.9.12 was written by Marla Aspinwall of Loeb & Loeb, LLP.**

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