Second Circuit Holds that Retained Asset Accounts Are Not Plan Assets

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In *Faber, et al. v. Metropolitan Life Insurance Company*, No. 09-4901-cv, 2011 U.S. App. LEXIS 16153 (2d Cir. Aug. 5, 2011), the U. S. Court of Appeals for the Second Circuit has held that retained asset accounts, in which insurance proceeds are retained by the claims administrator for immediate use by the beneficiary, are not plan assets under ERISA.

The case was filed as a putative class action on behalf of beneficiaries of employee benefit plans for Kodak Company and General Motors Corporation, for which Metropolitan Life Insurance Company ("MetLife") was the claims administrator. Certain qualifying proceeds from life insurance policies in these plans were deposited to interest-bearing retained asset accounts set up and administered by MetLife, and beneficiaries were issued checkbooks for those accounts. Beneficiaries had the option to withdraw all proceeds at any time. MetLife provided an annual yield on the retained asset accounts of at least 1.5%. MetLife invested the funds in the accounts and kept the difference between its return on these investments and the interest that it guaranteed to the beneficiaries.

Plaintiffs alleged that this arrangement violated two duties under ERISA: the requirement that fiduciaries act solely in the interest of plan participants and beneficiaries under 29 U.S.C. ? 1104(a)(1), and the prohibition on self-dealing in plan assets under 29 U.S.C. ? 1106(b)(1). In essence, Plaintiffs argued that the funds deposited to the retained asset accounts remained plan assets until withdrawn by the respective beneficiaries, and that MetLife had used the retained asset account mechanism to misappropriate plan assets. The U. S. District Court dismissed these claims. Plaintiffs appealed.

The Second Circuit invited the U.S. Department of Labor ("DOL") to submit its views on these issues. The DOL responded by asserting that once the proceeds of the life insurance policies were deposited into the retained asset accounts pursuant to the plan terms, MetLife had discharged its duties as a fiduciary under ERISA. Thereafter, in the DOL's view, the retained asset accounts were not plan assets, and, therefore, no fiduciary duties under ERISA attached with respect to MetLife's management of the retained asset accounts.

The Second Circuit adopted these views in holding that Plaintiffs' complaint failed to state a claim under ERISA. In doing so, the court observed that "[n]othing in the [summary plan descriptions], or in the complaint, . . . contemplated an indefinite fiduciary relationship." After depositing the life insurance proceeds into retained asset accounts, the relationship of the beneficiaries and MetLife became one of debtor-creditor under state law. The employee benefit plans had no ownership interest in the retained asset accounts, so fiduciary duties that Plaintiffs pleaded under ERISA did not apply to MetLife's management of the accounts.

The court distinguished a somewhat similar case decided by the First Circuit in *Mogel v. UNUM Life Insurance Co. of America*, 547 F.3d 23 (1st Cir. 2008), on the basis that *Mogel* involved a plan that guaranteed that the proceeds from the life insurance policies at issue would be paid in a lump sum. *Mogel* had held that UNUM's practice of opening retained asset accounts into which the proceeds were disbursed violated the terms of the plan itself, so, unlike MetLife, UNUM's fiduciary duties did not terminate upon such disbursement. Thus, *Faber* should not be read to imply that retained asset accounts or other similar disbursement methods are always outside the bounds of fiduciary duties governed by ERISA. Careful adherence to the plan's provisions on disbursing funds to beneficiaries is a necessary lesson of the holding in *Faber*.

For more information about this topic, please contact the authors or any member of the Williams Mullen ERISA Litigation Team.

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