



The Emerging Frontiers for Equitable Remedies under ERISA in the Fourth Circuit: *Moon v. BWX Technologies*

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BY: MARK S. THOMAS

The U. S. Court of Appeals for the Fourth Circuit continues to build out the boundaries of ERISA's equitable remedies, which have expanded in the Fourth Circuit in the wake of the U. S. Supreme Court's decision in *CIGNA Corp. v. Amara*, 131 S. Ct. 1866 (2011). Building on its own post-*Amara* ruling in *McCravy v. Metropolitan Life Insurance Co.*, 690 F.3d 176 (4th Cir. 2012), the Fourth Circuit decided in *Moon v. BWX Technologies, Inc.*, No. 11-1750 (4th Cir. Dec. 3, 2012) (unpublished), to remand the case to the district court to determine whether the ERISA plaintiff is entitled to equitable relief even though the terms of the plan would not allow a recovery of benefits.

In *Moon*, the plaintiff was a plan beneficiary ("Moon") who contended that she was entitled to insurance proceeds as the beneficiary of a group life insurance policy in which her husband, Leslie W. Moon, had enrolled. The husband had been an employee of BWX Technologies, Inc. ("BWX"), and was awarded short-term disability benefits effective June 2005, due to a severe heart condition. In October 2005, he elected to enroll in a life insurance policy offered by BWX, for an enrollment that was to be effective January 1, 2006. The husband's short-term disability benefits lasted until November 30, 2005. He applied for and received long-term disability coverage that was approved on December 1, 2005, and retired from employment with BWX as of that date.

However, the life insurance plan was available only to active employees of BWX. The plan allowed an enrollee who ceased employment and was awarded disability benefits, to continue insurance coverage by converting the policy to an individual policy and making payments directly to the insurance company. However, the husband did not do so. In fact, BWX issued a Confirmation Statement concerning the husband's retirement benefits on November 29, 2005 which referred to him as an "employee" of BWX. The husband thereafter received a second confirmation statement from BWX that apparently repeated his statement of eligibility on January 13, 2006, notwithstanding his retirement the previous month, and in 2006 he and his family continued to make some, though not all, insurance premium payments to BWX, not the insurance company.

When the husband died in November 2006, the plan refused to pay Moon the policy proceeds of \$200,000. Moon filed suit and demanded the insurance proceeds. The district court held that Moon's husband was ineligible for life insurance benefits in 2006 under the terms of the plan, because he was not actively enrolled on the policy coverage effective date and never converted the coverage. Moon asserted that, based on BWX's acceptance of her husband's premium payments for coverage in 2006, the plan should be equitably estopped from denying his insurance coverage. The district court rejected that argument and dismissed the case. Moon appealed to the Fourth Circuit.

The Fourth Circuit noted that, although the Fourth Circuit's pre-*Amara* precedent would not have entitled Moon to relief under ERISA's section 502(a)(3) provision for "other appropriate equitable relief" based on equitable estoppel, the holdings in *Amara* and *McCravy* recognized that such equitable relief is in fact authorized under that ERISA section. Such relief could encompass claims of breach of fiduciary duty, equitable estoppel and equitable surcharge. The Fourth Circuit therefore overruled the lower court's dismissal and remanded the case to the district court for reconsideration of Moon's case, to determine whether she was entitled under *Amara* and *McCravy* to some form of equitable relief under ERISA.

Points to Remember. Whether the district court will ultimately award any equitable relief in this case remains to be seen. Nevertheless, *Moon* is instructive in that it shows that the Fourth Circuit and its lower courts are continuing to develop the new boundaries of equitable relief under ERISA. It also indicates that after *Amara*, plan administrators may need to weigh factors beyond the terms of a plan to determine whether beneficiaries are entitled to relief under ERISA. This development certainly does not minimize the crucial importance of clearly drafted ERISA plan terms and provisions, especially those that state the scope of eligibility for benefits and the conditions that would terminate them. Consistent administration in accordance with plan documents is also still required, under the statute. However, *Moon* does signify that fairness considerations matter, and the facts of benefit plan administration outside of the plan documents may impact the resolution of particular participant and beneficiary claims for relief.

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