



Court's Award of \$3.8 Million Raises Questions About the Scope of ERISA Remedies

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The U.S. Court of Appeals for the Sixth Circuit has affirmed an unusually large award of \$3.8 million in a case involving the denial of long-term disability benefits. In *Rochow v. Life Insurance Company of North America*, No. 12-2074 (6th Cir. Dec. 6, 2013), the Sixth Circuit held that the district court did not abuse its discretion in awarding the plaintiff participant both the denied long-term disability benefits and also damages for fiduciary breach arising from the benefit denial. The holding provoked a strong dissent which argued that the ruling departed from U.S. Supreme Court and Sixth Circuit precedent in calculating that the total damages base could properly include profits that the defendant allegedly earned on the benefit amount at issue.

Background. Daniel Rochow was covered by a disability plan sponsored by his employer, Arthur J. Gallagher & Co., and administered by defendant Life Insurance Company of North America (?LINA?). Rochow was president of Arthur J. Gallagher & Co., but, due to a progressively worsening disablement, he was demoted in 2001 and resigned effective January 2, 2002. In February 2002, Rochow's condition was diagnosed as a debilitating brain infection, and that year he filed a claim for long-term disability benefits under the plan. LINA denied his claim on the ground that his employment ended before his disability began. Rochow filed suit under ERISA, pleading two claims: one to recover benefits allegedly due under the plan, and the other to remedy an alleged breach of fiduciary duty, namely, an abuse of discretion in denying his benefits claim.

The U.S. district court ruled in Rochow's favor in 2005, and LINA appealed. The Sixth Circuit affirmed the finding that LINA's denial of Rochow's claims was arbitrary and capricious, and remanded for further proceedings. On remand, the district court held that the proper remedy was both the award of benefits and the equitable remedy of a "disgorgement of profits" that LINA allegedly earned on the amounts not paid to Rochow[1]. The amount of the denied benefits was determined to be approximately \$900,000. The court then calculated the award of profits using a "Return on (Average) Equity" offered in testimony from Rochow's expert, who asserted that LINA earned between 11 percent and 39 percent

annually and therefore unjustly earned approximately \$2.8 million on benefits it should have paid to Rochow beginning in 2002. LINA appealed this second ruling.

The Sixth Circuit's Ruling. LINA objected that the award for fiduciary breach, in addition to the award of the disability benefits, was inconsistent with *Varity Corp. v. Howe*, 516 U.S. 489 (1996), and Sixth Circuit precedent. In *Varity Corp.*, the U.S. Supreme Court held that equitable relief under ERISA § 503(a)(3) "normally would not be appropriate" where the plaintiff already had an adequate remedy under another applicable ERISA provision. ERISA § 502(a)(1)(B) provides a remedy for benefits due under a plan, and LINA argued that this remedy was sufficient to make Rochow whole for the denial of his claim.

The majority of the Sixth Circuit panel, however, held that where a plan administrator acts "arbitrarily and capriciously," the equitable remedy of disgorgement of profits could be "appropriate equitable relief" under ERISA § 503(a)(3), in addition to the award of benefits under ERISA § 502(a)(1)(B). This holding differs from post-*Varity Corp.* holdings in the other Circuits, which have generally construed *Varity Corp.* to interpret ERISA as providing a "make whole" remedy for plan participants who have been denied benefits due under a plan, and to allow relief under the equitable remedies of ERISA § 503(a)(3) only when such relief is needed for an injury distinct from the denial of benefits. By contrast, the majority of the *Rochow* court ruled that the equitable remedy of disgorgement was a logical extension of *Varity Corp.* and Sixth Circuit precedent and that the award of benefits alone would not redress the alleged unjust enrichment of the plan fiduciary or assure that the fiduciary acted solely in the interests of participants as ERISA requires.

In dissent, the remaining judge on the Sixth Circuit panel described the majority's ruling as taking "an unprecedented and extraordinary step to expand the scope of ERISA coverage. The disgorgement of profits undermines ERISA's remedial scheme and grants the plaintiff an astonishing \$3,797,867.82 windfall under the catchall provision in § 502(a)(3)." The dissent argued that the award of benefits, pre-judgment interest for the denied benefits, and the participant's attorney's fees, was an adequate remedy under ERISA § 502(a)(1)(B) to make Rochow whole. The dissent also characterized the award of disgorged profits as resulting "in an improper repackaging of the benefit claims" that constituted an unauthorized departure from *Varity Corp.* and a contravention of ERISA's basic purposes.

The Significant Lesson. *Rochow* will undoubtedly give encouragement to ERISA participants and beneficiaries seeking recovery of plan benefits, especially in cases involving fully insured benefit plans where the plan fiduciary is both the entity funding the benefits and the entity deciding whether a claim for benefits is paid. Many ERISA plans grant discretion to the plan administrator or claims fiduciary, such that reversing a denial of benefits may require the finding that the plan fiduciary abused its discretion. As a result, the holding in *Rochow*, if followed to its logical conclusion, might be broadly applicable to virtually any award of benefits under ERISA based on an abuse of discretion standard. It remains to be seen whether *Rochow* will be followed in other federal circuits, but the case is a stark reminder that ERISA plaintiffs seek to expand the scope of equitable remedies available under that statute.

[1] Rochow died in 2008; his estate was substituted as plaintiff and pursued his claims.

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