



Participant's Estate Fails to Show a Claim For Failure to Give Notice of Right to Continue Life Insurance Coverage: Estate of Mocerri v. Ratner Companies, LC

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Providing a practical lesson on determining a duty to give notice to ERISA participants, the U. S. District Court for the Middle District of Florida dismissed the claim by the estate of an ERISA group life insurance plan participant for a fiduciary's alleged failure to give timely notice of the right to continue the benefits after termination of the participant's employment. *Estate of Mocerri v. Ratner Companies, LC*, Case No. 2:14-cv-579-FtM-29CM (M.D.Fla. April 7, 2015), held that the estate failed to plead facts showing that such a duty arose, or had been breached, in this case.

Background. Cynthia Mocerri (Mocerri) was employed by Ratner Companies, LC (Ratner) from 2011 until her termination in July 2013. While employed, she participated in Ratner's group life insurance plan, which Ratner funded through a group life insurance policy issued by defendant Metropolitan Life Insurance Company (MetLife). Mocerri died October 1, 2013. Her estate (the Estate) filed this civil action in 2014, alleging that Ratner failed to give her timely notice of her rights to continued health insurance coverage under COBRA, and that MetLife did not deliver notice of her right to continue her life insurance coverage (by converting the policy to individual coverage) until October 3, 2013, two days after her death. Because Mocerri did not elect to continue her life insurance coverage, MetLife refused to pay the \$70,000 to which Mocerri would otherwise have been entitled under a continuation policy. The Estate asserted that if she had received timely notice, Mocerri would have elected to continue the coverage. This Alert will focus on the ERISA claim relating to the group life insurance and the alleged continuation rights.

Defendant MetLife filed a motion to dismiss the Estate's claim relating to the life insurance continuation rights, asserting that the claim did not present facts showing MetLife had any fiduciary duty to notify Mocerri of those rights and, therefore, that MetLife could not have breached a duty to give timely notice.

The Court's Ruling. The District Court granted MetLife's motion and dismissed the life insurance claim.

Accepting the facts of the Estate's complaint as true for purposes of the MetLife motion, the Court held that ERISA does not create any statutory duty requiring a fiduciary to give timely notice of a right to continue coverage derived from a group life insurance plan. The Court noted that, in fact, other courts have affirmatively held that ERISA does not create such a statutory duty. See, for example, *Prouty v. Hartford Life & Accident Ins. Co.*, 997 F.Supp.2d 85, 91(D. Mass 2014)(citing to 29 U.S.C. § 1022(B)).

The Court acknowledged that such a duty could still arise if the insurance policy itself required such notice. This follows from the duty imposed by ERISA to administer a plan in accordance with the plan documents. However, the Estate had not alleged that the plan documents governing Mocerri's life insurance coverage included such a requirement, and the Court itself could not find one upon its own inspection of the policy. Accordingly, the Court held that the Estate failed to adequately plead that MetLife had a duty to notify Mocerri of her continuation rights. The Estate was given leave to amend its complaint and plead additional facts to show such a claim, if it had them. The Court's opinion did not discuss the group life insurance plan's summary plan description, so it is unclear whether there was notice of continuation rights in that document.

The Court did not discuss the undisputed fact that MetLife did choose to send Mocerri notice of her continuation rights but that the notice arrived too late for Mocerri to elect continued coverage. In the absence of a positive duty to give timely notice (and facts indicating how timeliness could be measured, as with a statutorily-required COBRA notice for health plan benefits), the claim of fiduciary breach against MetLife could not survive.

The Significant Lesson: *Estate of Mocerri* is a compact explanation of how fiduciary breach claims of failure to give notice can be tested, and a reminder that the fiduciary duty of notice under ERISA does not necessarily apply to every aspect of an ERISA-regulated plan.

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