Lessons from the Newest Benefits Lawsuits

DFW ISCEBS Chapter

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Update From Last Year—Excessive Fee Litigation

- Bernaola v. Checksmart Financial LLC
  - Filed July 14, 2016 in Ohio
  - $25 million in assets; 1,700 participants
  - Motion to dismiss is pending.
- Damberg v. LaMettry's Collision Inc.
  - Filed May 18, 2016 in Minnesota.
  - $9.2 million in assets; 114 participants
  - Voluntarily dismissed June 17, 2016

401(k) and Stock Drop

- Coburn v. Evercore Trust Company
  - United States Court of Appeals—District of Columbia Circuit
  - December 30, 2016
  - Appeal of dismissal of claims

- Donna Coburn sued J.C. Penney for breach of the ERISA duties of prudence and loyalty when JCP failed to take preventative action as the value of JCP stock dropped between 2012 and 2013.
- JCP stock fell from $36.72/share to $5.92/share.
- $300 million in total losses.

- Court of Appeals upheld dismissal for failure to meet the pleading requirements announced by the United States Supreme Court in Fifth Third Bancorp v. Dudenhoeffer.
- Lawsuit could not be based only on allegations that the fiduciary should have recognized from publicly available information that continued investment in JCP stock was imprudent.

- Lawsuit must also include allegations of "special circumstances" affecting the reliability of the market.
- Special circumstances includes:
  - Fraud
  - Improper accounting
  - Illicit conduct
- Efficient Capital Market Theory

Conflict Between Plan Document and Summary Plan Description

- Lee v. Holden Industries, Inc.
  - United States District Court
    - Northern District of Illinois—Eastern Division
  - November 21, 2016
  - Ruling on Defendant's Motion For Summary Judgment

- William Lee is a former participant in the employee stock ownership plan (ESOP) of Holden Industries, Inc.
- He was employed from December 2007 to August 2012.
- He had 3,770.7267 shares of Holden stock in his ESOP account.
- After Lee's employment ended, Holden converted his ESOP account to cash.

- Lee elected to receive a cash distribution of $146,832.10 from his cash account in the ESOP.
- Lee argued that his shares should have been bought out at the December 2013 valuation rather than the December 2012 valuation.
- Lee's argument was based on differences in the wording between the official plan document and the summary plan description (SPD).

- The Court disregarded the SPD and quoted from the US Supreme Court's decision in Cigna v. Amara:
  - . . . the summary documents, important as they are, provide communication with beneficiaries *about* the plan, but that their statements do not themselves constitute the *terms of* the plan.

- The Court also ruled in favor of Holden on Lee's breach of fiduciary duty claim.
  - Fiduciaries are obligated to provide accurate information under ERISA but negligence in fulfilling that duty is not actionable.
  - Instead, there must have been an intent to "disadvantage or deceive" plan participants.

Problems With Increasing Coverage Under Voluntary Life Insurance

- Prince v. Sears Holdings Corporation
  - United States Court of Appeals—4th Circuit
  - January 27, 2017
  - Appeal of dismissal of claims

- Billy Prince worked for Sears and in November 2010 applied for $150,000 in life insurance on his wife, Judith.
- In May 2011, Sears acknowledged Billy's request and started withholding premiums from Billy's pay.
- Later in 2011 Judith learned that she had Stage IV liver cancer.
- A year later Billy checked his online benefits summary which confirmed his life insurance election for Judith.

- About a year after that Sears sent Billy a letter advising him that the insurance election never became effective because Billy did not submit an evidence of insurability form.
- In May 2014, Judith died.
- Billy sued Sears in state court alleging constructive fraud, negligent misrepresentation, and intentional & reckless infliction of emotional distress.

- Sears removed the case to Federal court and filed a motion to dismiss.
- District Court held that ERISA completely preempted all of Billy's claims and the Court of Appeals agreed.

Same Gender Spouses and Joint & Survivor Annuities

- Reed v. KRON/IBEW Local 45 Pension Plan
  - United States District Court
    - Northern District of California
  - December 5, 2016
  - Ruling on Motion to Dismiss

- David Reed and Don Gardner registered as domestic partners in California in 2004 and were married in California in 2014.
- Don worked for KRON TV station.
- Don retired from KRON in 2009 and began receiving his pension as a single life annuity which was the form available to participants who were not married.
- In June of 2014 Don died and his pension ended.

- David filed a claim for survivor benefits but received no response and filed a lawsuit on August 9, 2016.
- David argued that under California law domestic partners have the same status as married persons.

- Arguments,
  - Don and David were “married”
  - Don was not provided with an opportunity to elect a joint & survivor annuity pension
  - David did not consent to Don’s election of a life only pension
- Therefore,
  - Don’s life only pension election is invalid, and
  - The pension plan must paid a 50% survivor pension to David for the rest of his life.

QDROs and the Non-Employee Spouse

- Patterson v. Chrysler Group, LLC
  - United States Court of Appeals—6th Circuit
  - January 11, 2017
  - Appeal by Chrysler of judgment in favor of Ardella Patterson

- Ardella and Henry Lee Patterson were married on February 15, 1987 and divorced on September 27, 1993.
- The divorce decree awarded Ardella ½ of the pension benefits that Henry Lee earned during the marriage, with full rights of survivorship.
- Benefits were due when they became payable to Henry Lee.
- Henry Lee worked for Chrysler from June, 1965 or January, 1992.

- Henry Lee started receiving his retirement benefits in 1994 in a lifetime annuity, with no surviving spouse option.
- In December, 1994 Ardella (through her lawyer) tried to get her benefits but was told that the divorce decree was not a QDRO.
- Ardella did not follow up with the plan for nearly 13 years, after Henry Lee died in November 2007.

- At this point, the plan administrator once again said that the divorce decree did not meet the QDRO requirements but also that there was nothing left to divide since Henry Lee was now dead.
- Ardella went through four more lawyers to try to get justice and then finally sued Chrysler.
- Chrysler then argued, and the court accepted, that Ardella was simply too late and that her claim was barred by the state of limitations.

ERISA Preemption, Beneficiary Designations, and Slayer Statutes

- Herinckx v. Sanelle
  - Court of Appeals—Oregon
  - May 17, 2016
  - Appeal of Motion to Dismiss

- Plaintiffs are the parents and executors of the Estate of Julianne Lisa Herinckx.
- Julianne lived in Oregon.
- Julianne worked for Standard Insurance Company and was covered under a group life insurance plan.
- Julianne named Paul Sanelle and Terlin Patrick as her life insurance beneficiaries.
- Sanelle and Terlin killed Julianne in an attempt to claim the life insurance proceeds.

- Oregon has a state law called a Slayer Statute that says that proceeds under a life insurance policy that would be paid to the killer of the covered person must be paid to the secondary beneficiary or to the personal representative of the estate of the covered person.
- The question is whether this statute is preempted because it interferes with nationally uniform plan administration.

- The court noted that slayer statutes vary from state to state with
  - Different standards of proof in the absence of conviction
  - Different treatment of conviction
  - Different behavior necessary to result in a forfeiture
- One state—Wisconsin—allows an individual to declare in his/her will that the slayer statute does not apply.

- The court held that the Oregon statute would interfere with uniform plan administration.
- The court allowed Julianne's parents to amend their lawsuit to assert a claim under Federal law.

Personal Liability for Employee Contributions to Health Plan

- In re: Michael P. Harris
  - United States Bankruptcy Appellate Panel—For the 8th Circuit
  - January 6, 2017
  - Appeal by debtor of summary judgment in favor of the United States Department of Labor.

- Michael Harris was a debtor in bankruptcy and was the CEO of his company.
- The US DoL argued (and the District Court found) that Harris breached an ERISA fiduciary duty when his company failed to remit funds withheld from employees' paychecks for their health insurance plan.
- The DoL argued that the debt was non-dischargeable in bankruptcy.

- Employees paid 100% of the premium for the health plan, via payroll deduction.
- Faribault did not hold employee contributions in a separate account, but allowed them to be held in its general operating account.
- In February, 2009 the health plan TPA information Faribault that its check had bounced. TPA also sent letters to all participants in the health plan.

- In the meantime, Harris directed Faribault to pay other expenses instead of the health plan.
- In April, 2009, the TPA cancelled the health plan retroactively to the beginning of the year.
- Faribault was behind by $55,000 in payments to the plan.
- 42 employees and their families were affected.

- Faribault later went out of business sometime after May of 2009.
- DoL sued Harris for breach of fiduciary duty under ERISA, and the District Court ruled in favor of the DoL because Harris diverted employee funds to the payment of corporate expenses and to his own home equity loan.
- Faribault filed for bankruptcy in November 2015 and DoL contested the dischargeability of the ERISA claim.

- DoL argued, and the Court, found that an individual debtor cannot be discharged from any debt for fraud or defalcation while acting in a fiduciary capacity. 11 U.S.C. Section 523(a)(4).

A Self Funded Health Plan Disaster

- Keokuk Area Hospital, Inc. v. Two Rivers Insurance Company
  - United States District Court—Southern District of Iowa, Davenport Division
  - January 7, 2017
  - Order granting Motion to Dismiss

- Keokuk Area Hospital employs about 350 doctors, nurses and staff.
- In 2010, the Hospital adopted a new self funded employee health plan provided by Two Rivers, which cost $50,000 per month.

- Two Rivers did not:
  - Perform actuarial analysis of the amount of the reserve needed to start the plan.
  - Negotiate provider contracts and discounts.
  - Set up separate account for employee contributions.
  - Put in place financial and accounting controls.
  - Provide disclosures to participants and required filings with IRS.
  - Obtain stop loss insurance.

- DOL investigated.
- Plan was running a deficit of more than $400,000 by the end of 2010 and more than $1.3 million by the end of 2012.
- Unpaid claims were $1.8 million by February 2013.
- Hospital sued Two Rivers, alleging:
  - Negligence
  - Breach of fiduciary duty under ERISA.

- The Court:
  - Held that the Hospital's negligence claim against Two Rivers was preempted because the Hospital sued Two Rivers as a fiduciary and administrator of the plan;
  - Allowed a jury trial for the Hospital's ERISA breach of fiduciary duty claim; and
  - Struck the Hospital's claim for compensatory and punitive damages. Hospital could only recover for harm to the Plan.

ERISA and the U.S. Supreme Court

- Fenkell v. Alliance Holdings--Maybe
  - Whether ERISA allows plan fiduciaries to sue other fiduciaries for indemnification or contribution?
- Advocate Health Care Network v. Stapleton—Yes
  - Whether large hospitals can use a religious legal exemption to avoid fully funding their pension plans

ERISA and the U.S. Supreme Court

- Clause v. U.S. Dist. Court for E. Dist. of Mo.—No
  - Can an employer force lawsuits over workers' benefits into the employer's preferred court?

ERISA Preemption

- Pharmaceutical Care Management Association v. Gerhart
  - United States Court of Appeals—8th Circuit
  - January 11, 2017
  - On appeal from ruling on Motion to Dismiss in favor of the State of Iowa

- State law in Iowa regulates how pharmacy benefit managers (PBMs) establish generic drug pricing and requires disclosures on drug pricing be made to network pharmacies and to the Iowa Insurance Commissioner.
- The Pharmacy Care Management Association sued the State arguing that its statute impermissibly referenced ERISA and was therefore preempted by ERISA.

- A state law is preempted by ERISA if it has a connection with or reference to an ERISA plan.
- A state law has an impermissible reference to ERISA plans where it acts immediately and exclusively on ERISA plans or where the existence of ERISA plans is essential to the law's operations.

ERISA and Standing

- Soehnlen v. Fleet Owners Insurance Fund
  - United States Court of Appeals—6th Circuit
  - December 21, 2016
  - Appeal of dismissal for failure to state a claim

- Dan Soehnlen is President and CEO of Superior Dairy.
- In 2014, Superior contracted with Fleet to provide group medical coverage to Superior's employees.
- Fleet is a multi-employer welfare benefit fund.
- A dispute arose over whether the plan violated ERISA and the Affordable Care Act (ACA) by imposing per participant annual and lifetime dollar limits on beenfits

- Fleet argued that it was a “grandfathered plan” and therefore exempt from the ACA requirement to remove those limits.

- Even though a plaintiff may have an ERISA claim, the plaintiff must still have a claim under Article III of the US Consitution.
- Article III limits the judicial power of the United States and enforces the case-or-controversy requirement.

- To satisfy Article III, a plaintiff must show:
  - He has suffered an injury-in-fact that is
    - Concrete and particularized, and
    - Actual or imminent, not conjectural or hypothetical
  - The injury is fairly traceable to the challenged action of the defendant
  - It is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Interpretation of Plan Documents and Committee Discretionary Review

- Vendura v. Boxer
  - United States Court of Appeals--1st Circuit
  - January 11, 2017
  - Appeal of Summary Judgment in favor of employer

- Dispute about the number of years of benefit service
- Vendura was hired by TRW in 1993 and went on medical LOA in June of 2000.
- Northrop acquired TRW in 2002
- Northrop tried to lay off Vendura in 2003 but was not successful

- Vendura received long term disability benefits from 2000 to 2013.
- Vendura sought a pension based on 20 years of service.
- Northrop believed that he was only entitled to 12 years of benefit service.

- The Administrative Committee of the pension plan had the authority to interpret and apply the relevant provisions of the plan.
- The Court reviewed the Administrative Committee's interpretation under a deferential arbitrary and capricious standard; abuse of discretion.
- The Court must defer to the Administrative Committee when it "reasonably" construes ambiguous plan terms.

- Rule of Contract Interpretation:
  - Contracts must be construed as a whole and the intention of the parties is to be collected from the entire instrument and not detached portions thereof, it being necessary to consider all of the parts to determine the meaning of any particular part as well as of the whole.

Arbitrary and Capricious Standard of Review

- Geiger v. Aetna Life Insurance Company
  - United States Court of Appeals—7th Circuit
  - January 6, 2017
  - Appeal from ruling on Motion for Summary Judgment in favor of Aetna.

- Aetna terminated Donna Geiger's long term disability benefits under her employer's plan.
- Geiger worked for Sprint as an account executive from 2001 to 2009.
- Aetna decided that Geiger was no longer totally disabled from any gainful occupation.
- The plan allowed benefits for up to 24 months in the case of disability from a participant's own occupation.

- Aetna approved disability benefits after the 24 month period but conducted surveillance on four occassions.
- Geiger was seen:
  - Climbing into and driving an SUV
  - Shopping at multiple stores
  - Carrying a bag.
- Aetna terminated Geiger's LTD benefits and Geiger sued claiming that Aetna's decision was arbitrary and capricious.

- District Court found that Aetna:
  - Minimized any conflict of interest stemming from its role as both administrator and insurer
  - Presented sufficient evidence supporting its decision to terminate benefits
  - Properly considered Geiger's condition and pain
  - Properly considered the surveillance video as part of its decision.

- The Court of Appeals wrote that:
  - a plan administrator's decision may not be deemed arbitrary and capricious so long as it is possible to offer a reasoned explanation, based on the evidence, for that decision.
- Rational support found in the administrative record.

Pension Plan Termination Liability: Meaning of "Controlled Group"

- Pension Benefit Guaranty Corporation v. Findlay Industries
  - United States District Court
    - Northern District of Ohio—Western Division
  - December 29, 2016
  - Ruling on Defendants' Motion To Dismiss

- Findlay established a pension plan in 1964 and terminated the plan in 2009.
- This lawsuit involved the PBGC's claims against the Philip D. Gardner Inter Vivos Trust. Gardner was the founder and owner of Findlay.
- Gardner established the trust to provide money to care for Gardner's sisters.
- The trust also leased real estate to Findlay.

- PBGC argued that the leasing of property was a “trade or business” and that both the trust and Findlay were under common control of Gardner. Therefore the trust was obligated to pay Findlay’s debts.
- The Court looked at the common definitions of “trade” and “business”.
- “Trade” is the business of work in which one engages regularly.

- "Business" is a commercial or mercantile activity engaged in as a means of a livelihood.
- The Court concluded that there was no possibility that the rental activity was being used to dissipate or fractionalize Findlay's assets.
- According to the Court, no controlled group existed. The trust was not liable for the pension debts.

Pension Plan Termination Liability: Successor Liability

- Board of Trustees vs. Full Circle Group, Inc.
  - United States Court of Appeals—7th Circuit
  - June 24, 2016
  - Reversing District Court's grant of summary judgment in favor of employer

- Dad had a shipping and shipyard services company called Hannah Maritime Corporation (HMC).
- HMC had a collective bargaining agreement and was required to contribute to a union pension plan.
- Son formed a new company called FCG and bought some land and equipment from HMC.
- HMC subsequently became insolvent and could not pay its withdrawal liability obligation to the union pension plan

- The union pension plan sued to impose HMC's pension liability on FCG as its successor.
- The district court ruled in favor of FCG, holding that son could not have been aware of HMC's pension liability.

- The Court of Appeals wrote:
  - The general common law rule of successor liability holds that where one company sells its assets to another company, the latter is not liable for the debts and liabilities of the seller.
- In the case of union pension plans, however:
  - An asset buyer is on notice of, and therefore subject to, successor liability if he has notice that the seller may be contingently liable for withdrawal liability.

Union Pension Plan: Obligation to Contribute

- Midwest Operating Engineers Welfare Fund v. Cleveland Quarry
  - United States Court of Appeals--7th Circuit
  - December 20, 2016
  - Appeal of judgment in favor of Union Plans

- Defendants are 3 completely separate divisions of the same company called Riverstone.
- Riverstone produces crushed stone, sand and gravel.
- The Riverstone divisions were parties to 3 separate collective bargaining agreements that required contributions to pension and welfare funds.
- In 2013, the employees voted to de-certify the union.

- Riverstone stopped contributing to the fund
- The pension and welfare funds sued to collect delinquent contributions that would have been due until the expiration of the collective bargaining agreement.

- The Court held that the decertification of the union did not terminate Riverstone's obligation to contribute to the pension and welfare plan funds.
- The contribution obligation was not enforceable by the union but could be enforced by the plans.

ERISA: No Claim For Equitable Contribution

- Central States v. American International Group, Inc.
  - United States Court of Appeals—7th Circuit
  - October 24, 2016
  - Appeal of Ruling on Motion to Dismiss against Central States

- Central States sponsors a self-funded health plan for members of the Teamsters Union.
- AIG wrote insurance that covers schools and youth sports leagues.
- The Central States plan sued AIG to recover $343,000 that Central States paid on behalf of beneficiaries who were also covered by AIG.

- Battle between coordination of benefits clauses in the two respective plans.
- Central States sued in Federal Court under Section 502(a)(3) of ERISA to obtain appropriate equitable relief to enforce the terms of the plan.
- The District Court held, and the Court of Appeals agreed, that Central States' claim was one for damages that could not be brought under Section 502(a)(3) of ERISA.

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