Sixth Circuit Rejects Disgorgement of Profits As Appropriate Equitable Relief For Wrongful Denial Of ERISA Long-Term-Disability Benefits Claim

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In Rochow v. Life Ins. Co. of N. Amer., 737 F.3d 415 (6th Cir. 2013), a three judge panel, in a 2-1 decision, caused alarm bells to sound when the panel upheld the District Court order requiring the fiduciary insurer to disgorge almost $3 million in profits it allegedly made on long-term-disability benefits (“LTD benefits”) it had improperly withheld. This was in addition to the substantive LTD benefit ward of approximately $900,000. Defense lawyers screamed like Chicken Little (“The sky is falling!”), plaintiff lawyers jumped for joy believing that “bad faith” equitable relief had wound its way around the holding in Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41 (1987) where the Supreme Court had determined that state “bad faith” insurance laws had been preempted under ERISA.

The shake-up did not last. The dissenter, Judge McKeague, described the majority’s ruling as “an unprecedented and extraordinary step to expand the scope of ERISA coverage” that is “contrary to clear Supreme Court and Sixth Circuit precedent” and “willfully blind to the negative repercussions that undoubtedly will ensue.” He convinced a sufficient number of his colleagues to vacate the opinion and rehear the case en banc. On March 5, 2015, a sharply divided Sixth Circuit released Rochow v. Life Ins. Co. of N. Amer., — F.3d —, 2015 WL 925794 (6th Cir. Mar. 5, 2015) (en banc). Nine judges joined the majority, three judges joined in a concurring opinion, six judges joined the dissent, and one judge joined in part and dissented in part. Cutting through the morass of opinions, the Court answered the question, “Is Rochow entitled to recover under both ERISA § 502(a)(1)(B) and § 502(a)(3) for LINA’s arbitrary and capricious denial of long-term disability benefits,” in the negative. The Court held that the relief sought was duplicative and not permitted under ERISA.

Nobody wants to believe that the way the insurer handled Daniel Rochow’s benefit claim is the norm. In many ways Rochow is an outlier case. More than five years after applying for benefits, Rochow received his first payment. After he died in 2008, the insurer made a second lump sum payment. The fiduciary had denied his claim for grounds including non-existent policy terms, shifting reasons, and closing the pre-suit administrative record unfairly. The dissenting opinion noted, “The courts will not often come across a case as troubling as this one.” Rochow v. Life Ins. Co. of N. Am., 780 F.3d 364, 395 (6th Cir. 2015)

Did the fiduciary determine Rochow’s claim with the accuracy that the Supreme Court requires, Metro. Life Ins. Co. v. Glenn, 554 U.S. 105 (2008)? That appears to be one issue that all judges agreed upon. The fiduciary had abused its discretion denying Rochow’s claim. This was not a close call.
Rochow was a successful insurance executive who served as president of a very large insurance brokerage. He was struck by HSV–Encephalitis, a rare and severely debilitating disease. In December 2002 his personal representative applied for disability benefits under an ERISA governed plan insured by Life Insurance Company of North America (“LINA”). LINA denied his claim. LINA contended that he had been working and did not qualify for benefits. Rochow appealed a number of times, and LINA gave differing reasons for denying benefits. In 2004, he filed suit. In addition to seeking benefits, Rochow sought disgorgement of profits that LINA made on funds that Rochow contended to belong to him and not to LINA.

As to the issue of liability, the District Court found in favor of Rochow. He argued that that merely because he had received wages during the time he sought benefits did not mean he was not disabled under the terms of the long-term-disability plan, or even working in his occupation. The Sixth Circuit affirmed the rationale of the District Court, turning to an often cited case written by Judge Posner of the Seventh Circuit that there is no “logical incompatibility between working full time and being disabled from working full time.” Hawkins v. First Union Corp. Long–Term Disability Plan, 326 F.3d 914, 918 (7th Cir.2003).” Rochow v. Life Ins. Co. of N. Am., 482 F.3d 860, 865 (6th Cir. 2007).

Of significance, the Sixth Circuit did not remand the case to the District Court. Nevertheless, the parties engaged in various “post-remand” proceedings in the District Court. Rochow’ personal representatives continued to press for an equitable accounting of the profits LINA earned on the nearly $900,000 in disability benefits that LINA had withheld from Rochow. They alleged that the District Court had the power to provide additional relief pointing to Section 502(a)(3) of ERISA.

For the next three years the parties sparred over calculating the return on equity LINA had gained. Eventually, the District Court entered judgment for Rochow in the approximate amount of $3.8 million. For a second time LINA appealed.

In a 2-1 opinion, the Sixth Circuit held that § 502(a)(3) does permit recovery of disgorged profits in addition to a benefits claim under § 502(a)(1)(B). Rochow v. Life Insurance Company of North America, 737 F.3d 415 (6th Cir. 2013). The Court upheld the disgorgement relief approving a return-on-equity analysis to compute the amount of the profits earned by LINA. The District Court had adopted for the most part the calculations of Rochow’s expert who had calculated that LINA used the wrongfully withheld benefits to earn between 11 percent and 39 percent annually. As stated at the outset, the Sixth Circuit vacated the opinion, and after hearing the case en banc, issued the divided decision on March 5, 2015.

In the 2015 decision, the majority opinion held that Rochow is made whole under § 502(a)(1)(B) through recovery of his disability benefits and attorney’s fees, and potential recovery of prejudgment interest. In addition, the majority held that Rochow could not recover disgorged profits under § 502(a)(3). The Court reasoned such a recovery would be duplicative recovery for a single injury – denial of disability benefits.
The majority argued that Supreme Court had established that 502(a)(3) equitable relief is available only “for injuries caused by violations that § 502 does not elsewhere adequately remedy.” Varity Corp. v. Howe, 516 U.S. 489, 503 (1996). The majority expressed a concern that if the earlier opinion had been allowed to stand every finding of arbitrary and capricious denial of benefits implicated a breach of fiduciary duty, something the majority believed not contemplated under ERISA. In the end, the Sixth Circuit found that “there is no showing that the benefits recovered by [the plaintiff], plus the attorney’s fees awarded, plus the prejudgment interest that may be awarded on remand, are inadequate to make [the plaintiff] whole. Absent such a showing, there is no trigger for ‘further equitable relief’.”

The Court remanded the case to the District Court for a determination of whether prejudgment interest should be awarded under ERISA § 502(a)(1)(B). The Court warned, “[a]wards of prejudgment interest are compensatory, not punitive, and a finding of wrongdoing by the defendant is not a prerequisite to such an award” but that an excessive prejudgment interest rate would amount to punitive damages and “would ‘contravene ERISA’s remedial goal of simply placing the plaintiff in the position he or she would have occupied but for the defendant’s wrongdoing.’”

The concurring opinion focused on procedural grounds to deny relief sought by Rochow. The Judge concluded that the Sixth Circuit had not remanded the case after the first appeal from the District Court and that the ensuing litigation violated the mandate rule.

The concurring and dissenting opinion sought to remand the case for recalculating the disgorgement amount. This Judge concluded that the majority and dissents “all appear to agree disgorgement of profits is a potential remedy under ERISA.” Disgorgement is appropriate when, “[i]n the absence of such justifications,”… “on a finding that the decision to deny benefits was not only arbitrary and capricious but also based on impermissible considerations that call for an equitable judicial response geared toward deterring similar decision making in the future,….”

The dissenters noted that the majority opinion concluded that Rochow suffered a single injury by LINA. Instead, the dissenters posited that LINA injured Rochow in two distinct ways: First, by arbitrarily and capriciously denying his disability benefits claim and second by breaching its fiduciary duties owed to him. Benefits had been withheld for a very long period of time. They wrote that equity has long recognized that a trustee or a fiduciary who garners a benefit by breaching its fiduciary duty must return the gains to the beneficiary.

“Reading Amara and Varity Corp. together, we see that the remedies awarded to Rochow comport with the statute, its purposes, and trust law. The principle is clear that a plaintiff may pursue relief under both § 1132(a)(1)(B) and (a)(3) if wrongly denied benefits are recovered under (a)(1)(B) and ‘other appropriate equitable relief’—something in addition to the award of benefits—is necessary to make the plaintiff whole for a breach of fiduciary duty. In this case, requiring LINA to disgorge its profits earned
on wrongly withheld benefits, accomplished under (a)(3), was necessary to make Rochow whole and to prevent LINA's unjust enrichment.” *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 387 (6th Cir. 2015). Also, the dissenters suggested that not allowing disgorgement would incentivize claims administrators to delay paying benefits while investing that money for their own gain.

Surprisingly, the dissenters did not cite to the congressional findings in the ERISA statute: “It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries,… by establishing standards of conduct,… and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.” § 1001.

The law in the Sixth Circuit is set for now. Given the divergent opinions of the judges and strong arguments on both sides of the issue, disgorgement of profits for wrongful denial of ERISA welfare-benefits is hardly settled as it surely will arise in other Circuits. Both sides should not expect the meaning of “appropriate equitable relief” under Section 502(a)(3) of ERISA to fade like a sunset.