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# Conflict of Interest in Claims Decisions – A Critical Analysis of *MetLife v. Glenn*

In *Metropolitan Life Insurance Company v. Glenn*, the U.S. Supreme Court considered whether MetLife, the insurer of an employer's long-term disability plan, had an inherent conflict of interest when making claims decisions in light of its financial incentive to deny claims. The Supreme Court ruled that a claims fiduciary (*e.g.*, an insurer or employer) who determines claims and funds the benefits from its general assets has an inherent conflict of interest that must be taken into account when determining whether the claims fiduciary has abused its discretion.

## How We Got to *MetLife*

Under ERISA-covered benefit plans, the entity that funds the benefit is often the same entity that decides whether a participant is entitled to the benefit, such as under an insured life or disability plan where the insurer is the claims fiduciary or a self-insured medical plan where the employer is the fiduciary for eligibility claims. Courts have long disagreed as to whether the financial incentive to deny the claim automatically creates a conflict of interest that must be taken into account when a claim denial is challenged. The Supreme Court has resolved that disagreement, holding that such financial incentives create a conflict of interest that must be considered when a claim determination is challenged in court.

The appropriate standard of review when a fiduciary decision is challenged is set forth in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). *Firestone* provides that: (1) principles of trust law supplement ERISA, (2) trust law mandates *de novo* review (a fresh judicial review of all the facts) of claims determinations, unless the plan grants the administrator or fiduciary discretionary authority to determine benefit eligibility or construe the terms of the plan, in which case a deferential (or abuse of discretion) standard of review is utilized, and (3) if the claims fiduciary operates under a conflict of interest, the conflict is one of many factors that must be considered when determining whether the claims administrator abused its discretion granted under the plan when making its determination on the benefit claim.

After *Firestone*, most plans added a *Firestone* provision, specifically granting to the plan administrator the discretionary authority to interpret the plan and make eligibility and claims determinations, which strengthens a claims fiduciary's determination to a deferential standard of review. Under a deferential standard of review a court will uphold the claims fiduciary's decision, unless the decision constitutes an abuse of discretion. Even when the deferential standard applies, in interpreting *Firestone* courts have struggled with the manner in which the conflict should be weighed and, correspondingly, the degree of deference afforded to a conflicted claims fiduciary's determination. In light of this struggle, different paradigms for assessing and weighing conflicts of interest have evolved in different circuits. For example, some circuits utilized the deferential standard of review and, consistent with *MetLife*, held that the conflict is a factor that had to be considered when determining the deference that would be afforded to the determination. Other circuits reviewed claims determinations under a heightened standard of review, where the court would assess the conflict on a case-by-case basis, employed a "burden-shifting" approach where the claims fiduciary had the burden of proving that its decision was not tainted by the conflict of interest, or utilized a "sliding scale" approach, under which the weight of the conflict increased with the severity of the conflict.

In light of ERISA's liberal jurisdiction and venue provisions and the disparate methods of analyzing and weighing conflicts of interest among the courts, there was a significant degree of uncertainty on the part of claims fiduciaries (who suffered from even apparent conflicts of interest) as to the degree of deference that would be afforded their determinations. Although the Supreme Court in *MetLife* resolved the manner in which a conflict should be assessed, the decision is wanting with respect to the practical application of the approach prescribed by *MetLife*.

**The *MetLife* Decision**

In *MetLife*, the Court was presented with an insured long-term disability plan, where MetLife was both the insurer (*i.e.*, paid claims from its own assets) and the claims fiduciary, thereby creating a conflict of interest. Some argued that in these conflict of interest situations a court should revert to the *de novo* standard of review and afford no deference to the claims fiduciary's decision. Fortunately, the Supreme Court ruled that the *Firestone* standard of review still applies to conflicted fiduciaries. Accordingly, if the plan grants the administrator the appropriate discretion, any determination made by the administrator or its delegate will be reviewed under the deferential standard of review. The Court qualified this rule, however, by holding that where a claims fiduciary operates under a conflict of interest, the reviewing court must take into account the conflict as a "factor" when determining whether the determination was tainted by self-interest. Unfortunately, the Court offers no practical guidance as to how the conflict should be assessed, but merely states that "[t]his kind of review is no stranger to the legal system." The Court did, however, identify circumstances that would affect the significance of the conflict. For example, the Court noted that a conflict would be much more significant if the claims fiduciary has a history of biased claims decisions or if cost was the primary consideration (as opposed to objective and reliable claims determination practices) when engaging a third party claims fiduciary. Alternatively, the Court noted that a conflict would be less important (and potentially of no importance) if the claims fiduciary has taken active steps to reduce any potential bias, such as by "walling off" the claims fiduciary from those interested in the company's finances or by imposing claims-management checks that penalize inaccurate decision making.

**Next Steps for Employers and Insurers**

In light of *MetLife*, it is likely that we will see an increase in benefit claim litigation in which participants challenge benefit claim denials on the basis of conflicts of interest. In this vein, there are legitimate concerns that there will be additional discovery pertaining to: (i) the existence of the conflict, (ii) the prophylactic measures taken to minimize the conflict, and (iii) the claims fiduciary's record regarding claims determinations. Additional discovery on these issues is contrary to the fundamental purpose of claims determinations – to establish a comprehensive record for judicial review – but, may be unavoidable.

As a result of the heightened scrutiny that conflicts of interest will be subject to, it is important to take notice of the Supreme Court's position that steps can be taken to minimize the potential adverse effect of financial conflicts of interest. Although these steps are not required, it is likely that employers or insurers who fail to take these steps will be at a distinct disadvantage when a claim denial is challenged in court.

### *1. The first step is to recognize when a financial conflict of interest exists.*

A financial conflict of interest exists whenever the entity making the decision on appeal is the same entity that pays the benefits –

- <u>Insured Health and Welfare Benefits</u> – A conflict exists for insured health and welfare benefits, because the insurer typically is the claims fiduciary and also funds the benefit payments.

- <u>Self-Insured Health and Welfare Benefits</u> – After the DOL claims procedures became final, most employers who had not already shifted the claims fiduciary role to their third party administrators, did so due to the shortened time period for determining claims and the medical review requirements. Having a third party administrator as a fiduciary for benefit claims means that there should not be any financial conflict (unless the administrator was chosen due to cost considerations as discussed below). However, typically employers retain the fiduciary role for determining eligibility claims and, if this is the case, a financial conflict of interest would likely remain.

- <u>Retirement Benefits</u> – As a general rule, when benefits are funded through a formal trust, there is no financial conflict of interest, because the plan sponsor (or other claims fiduciary) does not pay benefit claims from its general assets and, therefore, does not incur an immediate expense as a result of paying benefits. However, this rule would typically only apply to qualified retirement plans. Nonqualified plans, such as a nonqualified deferred compensation plan or a supplemental executive retirement plan, typically are not funded through a trust and therefore a financial conflict would exist for those plans.

### *2. The second step is to take actions to reduce the financial conflict of interest.*

Although this list is not exclusive, taking any or all of the following actions should diminish the significance of a financial conflict of interest upon judicial review:

- <u>Insurer as the Claims Fiduciary</u> – In these arrangements, plan sponsors should inquire as to the prophylactic measures employed by the insurer to remove the taint of any actual or potential conflict of interest. The plan sponsor should carefully consider the insurer's responses and the practical effect of the prophylactic measures. Then, document the consideration given the insurer's responses and ultimate selection of the insurer as the plan's claims fiduciary.

- <u>TPA as the Claims Fiduciary</u> – For purposes of benefit claims, a financial conflict of interest is not apparent on the surface when the sponsor has delegated fiduciary authority to a third party administrator. However, as *MetLife* points out, even in these cases a conflict may exist if the selection of the third party administrator was primarily motivated by cost (as opposed to accurate claims determination practices). The existence of this fact could impact the deference afforded the third party administrator's claims determinations. Therefore, as with insured arrangements, sponsors should inquire as to the third party administrator's checks and balances for determining claims and it should document its reasons for selecting the third party administrator.

- <u>Employers with Fiduciary Authority</u> – Over the past few years, many employers have undergone fiduciary reviews (particularly for retirement benefits) in order to protect themselves against various types of litigation (*e.g.*, employer stock-drop cases). However, after *MetLife* employers who have not undergone such review have one more reason to do so now, and for those who have undergone a review they should update their fiduciary procedures based on this decision. To minimize the significance of a financial conflict of interest with respect to any plan for which the employer has retained discretionary fiduciary authority (*e.g.*, to make eligibility or benefit determinations), the employer should review who acts on its behalf and remove anyone who is associated with the financial matters of the company. Further, plan sponsors and responsible fiduciaries would be well served by creating policies and/or procedures for determining appeals that ensure an objective claims determination process.

Although *MetLife* may result in increased litigation as participants seek reversals of claim denials based on the existence of a conflict of interest, the Supreme Court made clear that decisions made by employers or administrators who have a dual role in funding benefits and deciding claims are still entitled to a deferential standard of review. Further, taking the above steps will likely be viewed upon favorably by any court and may prove to be a disincentive to participant challenges of claim determinations.