



Employee Benefits Law Action Memo

July 2008

Bond, Schoeneck & King, PLLC

New York

Albany ■ 518-533-3000
Buffalo ■ 716-566-2800
Ithaca ■ 607-330-4000
Long Island ■ 516-267-6300
New York City ■ 646-253-2300
Oswego ■ 315-343-9116
Rochester ■ 585-362-4700
Syracuse ■ 315-218-8000
Utica ■ 315-738-1223

Kansas

Overland Park ■ 913-234-4400

Bond, Schoeneck & King, P.A.

Florida

Bonita Springs ■ 239-390-5000
Naples ■ 239-659-3800

Employee Benefits Practice Group

Stephen C. Daley, Chair
Michael P. Collins
Joanmarie M. Dowling
Thomas G. Eron
Darcie A. Falsioni
David M. Ferrara
John C. Godsoe
Brian K. Haynes
Richard C. Heffern
Richard D. Hole
Amelia M. Klein
Robert A. LaBerge
Thaddeus J. Lewkowicz
Louis Orbach
Aaron M. Pierce

Senior Employee Benefits
and Tax Analyst
Kathleen A. Jacques

BENEFIT CLAIMS PROCEDURES SHOULD BE REVIEWED TO ADDRESS POTENTIAL CONFLICT OF INTEREST ISSUES RAISED IN A NEW SUPREME COURT DECISION

On June 19, 2008, the United States Supreme Court ("Supreme Court") issued a decision that raises new issues about how employers and insurers should handle potential conflicts of interests that could arise in the handling of certain claims for benefits. That decision, Metropolitan Life Insurance Co. v. Glenn, focused on the potential conflict of interest that arises when a claims administrator has a financial interest in how a claim for benefits is decided (e.g., if an insurance company is both the claims administrator and the entity responsible for paying for benefits, a decision to deny a claim for benefits could save the insurance company money). A similar potential conflict of interest could arise when an employer with a self-funded benefit plan (e.g., a self-insured health plan) also acts as the claims administrator for the plan. The Supreme Court held that such potential conflicts of interest could, in certain circumstances, result in less judicial deference to a claims administrator's interpretation of a benefit claim if that claim is ever litigated.

Although there are several issues regarding the Glenn decision that remain to be resolved, there are steps employers can take now to better position themselves to address these potential conflict of interest issues. These steps are described below, and their implementation should be considered by employers that wish to strengthen their position with respect to certain types of benefits litigation.

What Happened in the Glenn Case?

Metropolitan Life Insurance Company ("MetLife") administered and insured a long-term disability plan for Sears, Roebuck & Company ("Sears"), and an application for benefits under that plan

was filed by a Sears employee. That employee was provided benefits under the plan for 24 months. MetLife determined, however, that the employee would not be eligible for continued long-term disability benefits under the plan after the initial 24 month period. The plan gave MetLife discretionary authority to determine eligibility for benefits.

The employee disagreed with MetLife's determination that she was ineligible for plan benefits after the first 24 months, and decided to seek judicial review of MetLife's denial of those benefits. The Court of Appeals for the Sixth Circuit ("Sixth Circuit") held that MetLife had abused its discretion in denying such benefits to employee, and set aside MetLife's benefits denial. The Sixth Circuit said it based its decision on several factors, including the fact that MetLife had a conflict of interest because it was "authorized both to decide whether an employee is eligible for benefits and to pay those benefits." MetLife appealed to the Supreme Court.

The Supreme Court affirmed the Sixth Circuit's decision against MetLife, and held that:

- when a claims administrator both decides a claim for plan benefits and funds those benefits, such a "dual role" creates a conflict of interest for the claims administrator;
- a court should consider such a conflict of interest as a factor when deciding whether there has been an abuse of discretion by a claims administrator regarding how a claim for benefits was decided; and
- how much "weight" should be given to the fact that such a conflict of interest is present will depend upon the facts of each case.

BS&K publications are for clients and friends of the firm and are not a substitute for professional counseling or advice. For information about our firm, practice areas and attorneys, visit our interactive web site, www.bsk.com.

Attorney Advertising
© 2008 Bond, Schoeneck & King, PLLC
All Rights Reserved

Printed on recycled paper

BOND, SCHOENECK & KING, PLLC
ATTORNEYS AT LAW ■ NEW YORK FLORIDA KANSAS



What Steps Can Employers Take To Address These Potential Conflict of Interest Issues?

If an employer has any benefit plans where the persons responsible for deciding claims for benefits are also responsible for paying for those benefits, consideration should be given to revising those plans to eliminate those potential conflicts of interest. Steps that employers can take now to address these potential conflicts of interest include the following:

- Try To Separate the Persons Who Are Deciding Claims From the Persons Who Are Responsible For Paying For the Claims – The Glenn decision suggests that it would be helpful to take active steps to reduce potential bias (e.g., by “walling off” claims administrators from those interested in employer finances). If an employer can separate the persons who are responsible for deciding claims from those who are responsible for the finances needed to pay for the claims, it will have a stronger position with respect to the potential conflict of interest. Such separation, of course, may not always be feasible. If an employer is the designated claims administrator of a plan and the employer is responsible for paying claims under the plan, consideration should be given to designating a committee to be the claims administrator and to having non-financial people serve on the committee to the extent feasible. Consideration also should be given to establishing “information walls” between persons responsible for deciding claims and persons responsible for paying for claims.
- Check With Insurance Companies Who Might Have a Conflict of Interest About the Steps They Are Taking To Address Such a Conflict – If an employer has a benefit plan administered by an insurance company that has the type of potential conflict of interest described in the Glenn case, the employer should contact the insurance company and ask what steps it is taking to address the potential conflict of interest (the kinds of steps that can be taken are very similar to the steps the employer can take as described above). Employers also should consider amending their agreements with insurance companies who have potential conflicts of interest to make it clear that claims for benefits are to be decided solely based on the terms of the applicable plan, and that in no event should the costs of those benefits be considered in making that decision.
- Monitor Decisions Made By Claims Administrators To Make Sure They Are Accurate, and Are Not Based On Financial Considerations – The Glenn decision mentions the importance of implementing management checks that penalize inaccurate decisionmaking on claims, and help ensure that claims are not being incorrectly decided as a result of financial considerations. The Supreme Court noted that MetLife had provided little evidence about its efforts to assure accurate claims assessment. If a claims administrator has a history of biased claims administration, that fact will be held against an employer if an employer did little to discover the problem and to correct it.

- Revise Benefit Claims Procedures To Address the Conflict of Interest Issue – Consideration should be given to revising the benefit claims procedures for each benefit plan to make sure that they clearly state that all claims for benefits are to be decided solely based on the terms of the plan, and that the costs of the benefits being claimed should not be taken into account when making such decisions.
- When Benefit Claims Are Denied, Consider Having Documentation That Reflects the Fact That Financial Considerations Were Not Taken Into Account – When claims for benefits are denied, consideration should be given to having official documentation that reflects the fact that financial considerations were not considered when deciding the claim. The claims administrator making the decision, for example, could prepare minutes of the meeting in which that decision was made that provide (among other things) that the claims administrator decided the claim based solely on the terms of the applicable plan, and that pursuant to the terms of the benefit claims procedures no consideration was given to the cost of the benefit being claimed.
- Consider Whether An Independent Review Organization Might Be Helpful With Respect To Claims That Are Likely To Be Litigated – If an employer has a potentially difficult claim for benefits that is likely to be litigated, consideration could be given to retaining an independent review organization to review the claim. An independent review organization can be incorporated into a plan’s benefit claims procedures either as part of the regular procedures or as a voluntary level of appeal. As long as the independent review organization is truly independent and has no financial interest in how a claim is decided, its decision could be helpful as part of the judicial review process.

If you have any questions about this memorandum, please contact Ted Lewkowicz (315-218-8131, tlewkowicz@bsk.com) or any of the other members of our Employee Benefits Practice Group listed below.

In Central New York, call 315-218-8000 or e-mail:

Stephen C. Daley	sdaley@bsk.com
Brian K. Haynes	bhaynes@bsk.com
Richard D. Hole	rhole@bsk.com
Aaron M. Pierce	apierce@bsk.com

In the Capital District, call 518-533-3000 or e-mail:

Amelia M. Klein	aklein@bsk.com
-----------------	--

In Western New York, call 716-566-2800 or e-mail:

Darcie A. Falsioni	dfalsioni@bsk.com
John C. Godsoe	jgodsoe@bsk.com

On Long Island, call 516-267-6300 or e-mail:

Terry O’Neil	toneil@bsk.com
--------------	--

In New York City, call 646-253-2300 or e-mail:

Michael P. Collins	mcollins@bsk.com
--------------------	--