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2nd Circuit rules ERISA remand orders non-final, non-appealable

When courts adjudicate Employee Retirement Income Security Act benefit disputes, a frequent outcome is that the matter is remanded for reconsideration to the insurer or other party responsible for paying benefits. However, if the benefit administrator seeks to appeal an adverse determination coupled with a remand, are such orders appealable? That was the question recently answered by the 2nd U.S. Circuit Court of Appeals in *Mead v. Reliastar Life Insurance Co.*, 2014 WL 4548868 (2d Cir. Sept. 16, 2014).

Following much the same path as last year's 3rd Circuit ruling in *Papotto v. Hartford Life & Accident Insurance Co.*, 731 F.3d 265 (3d Cir.2013), the 2nd Circuit firmly ruled that orders remanding benefit disputes arising under ERISA are non-final and, therefore, non-appealable. The plaintiff, Susan Mead, who was a participant in a group long-term disability plan sponsored by her employer, Reliastar, challenged the insurer's denial of her disability benefit claim based on the effects of degenerative cervical disk disease.

After a judicial determination finding the benefit denial arbitrary and capricious, the court remanded the matter to Reliastar to calculate benefits due for the first 24 months, when a determination of disability is based on the insured's inability to perform her own occupation.

However, the remand also ordered the insurer to determine whether Mead was eligible to receive benefits beyond the initial 24 months, when the qualification standards became more onerous. Reliastar appealed; however, Mead moved to dismiss the appeal on the ground that the remand

order was non-final as required by 28 U.S.C. Section 1291 and therefore non-appealable.

The court granted the motion, holding "the remand order is not an immediately appealable final decision under either the traditional principles of finality or our precedents governing remands to administrative agencies."

Prior 2nd Circuit rulings had raised the issue of the finality of remand orders but had not definitively decided whether such orders are appealable. The court recognized a decisive split among the circuits on this issue.

The majority of circuits deem ERISA remands non-final and therefore non-appealable. Other circuits have allowed appeals to proceed by analogizing to the law regarding court rulings remanding matters to administrative agencies.

And the 7th Circuit has found that ERISA remands are appealable by analogizing to Social Security benefit remands authorized by 42 U.S.C. Section 405(g). See *Pertman v. Swiss Bank Corp. Comprehensive Disability Protection Plan*, 195 F.3d 975 (7th Cir.1999).

The 2nd Circuit's ruling forcefully rejected the analogy of ERISA cases to administrative agency remands and especially to Social Security remands.

After closely examining the issue, the 2nd Circuit concluded that ERISA remands are non-appealable despite the defendant's argument focused on its concern that "an ERISA plan administrator that wishes to challenge a remand order may be unable to appeal after the proceedings on remand take place."

The 2nd Circuit explicitly rejected the 7th Circuit approach on the ground that "it strays too far from

WORKPLACE ISSUES



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settled principles of finality and relies on statutory language present in the Social Security Act for which ERISA has no analogue."

The 2nd Circuit concluded that the remand order did not "conclusively determine" the full scope of the claims alleged by the plaintiff under 29 U.S.C. Section 1132(a)(1)(B) even though it did determine eligibility for benefits during the first 24 months. But even as to that determination, the court of appeals found the ruling was

non-final because the court remanded for a calculation as to the amount of the benefits owed.

The court deemed that calculation more than "ministerial" because the formula for calculating benefits remained in dispute. Nor did the U.S. District Court's issuance of a directive to "close the case" and the entry of a separate judgment create finality since the issue turned on the substance of the district court's order, not its form.

Finally, as to the concern expressed by Reliastar that it would be precluded from appealing, the court observed that following the completion of proceedings on re-

mand, the defendant could then move in the district court for the entry of a final judgment, which would be appealable at that point.

The 2nd Circuit's ruling forcefully rejected the analogy of ERISA cases to administrative agency remands and especially to Social Security remands. The court also acknowledged that the ERISA statute contains no authority for even permitting remands, but then failed to question how the practice arose and whether there is even a legal basis for remanding ERISA benefit disputes to a private party adjudicating the claim.

Lacking any authority in the ERISA statute comparable to the provisions of the Social Security statute authorizing remands (42 U.S.C. Section 405(g)), not only is the practice of remanding ERISA cases extrastatutory, it is also of questionable constitutional validity. Given the requirement based on Article III of the Constitution requiring federal courts to issue final decrees of conclusive character, disposing of ERISA cases without fully deciding the issues and granting a remedy violates that rule.

Absent a ruling that decides the merits of the dispute with finality, there is no "immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged." See, *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 241 (1937).

Haworth found that a declaratory judgment entered in a disability insurance dispute was a final order. But ERISA remands do not fulfill the same purpose as a declaratory judgment.

Hence, while the 2nd Circuit disposed of the issue of whether ERISA remands are final and appealable orders, it left open a serious question that remains to be examined.