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Standing

Court Says Ex-Employee Has Standing to Sue Over Post-Employment Health Care Coverage

By Agnes Mendoza-Ben-Yosef

A former employee has standing to continue with his claim that his employer breached its fiduciary duties in violation of the Employee Retirement Income Security Act by making allegedly negligent misrepresentations regarding post-employment health insurance options, the U.S. District Court for the Northern District of Georgia held Oct. 18 (*Fadely v. Blue Cross and Blue Shield of Georgia Inc.*, N.D. Ga., No. 1:11-cv-01409-TWT, 10/18/11).

Judge Thomas W. Thrash Jr. declined to dismiss the participant's fiduciary breach claim, ruling that the participant had standing to bring claims arising from conduct that occurred while he was enrolled in the employer's plan under the Consolidated Omnibus Budget Reconciliation Act.

Kristopher R. Alderman of the Gibson Firm, Woodstock, Ga., attorney for the former employee, James G. Fadely, told BNA Oct. 21 that "this is an important ERISA decision because it is one of the few cases to directly address the issue of whether a former employee has statutory standing under ERISA to file suit after he is no longer entitled to benefits under the employee benefit plan. The decision to evaluate statutory standing at the time of the alleged ERISA violation accords with ERISA's stated policy of protecting the interests of plan participants and providing ready access to the federal court system."

Participant Told About Medicare Part A and COBRA

When Fadely was terminated by his employer, originally Crawford Communications but now named Encompass Digital Media Inc., he was advised by the human resources manager to enroll in Medicare Part A and also elect COBRA continuation coverage.

Fadely followed this advice and incurred substantial costs due to the insurance company's recoupment of benefits based on his Medicare coverage. Fadely sued both Encompass and the insurance company, Blue Cross and Blue Shield of Georgia Inc., alleging various breaches of fiduciary duty in violation of ERISA.

Encompass filed a motion to dismiss Fadely's complaint, arguing he lacked standing because he was no longer a plan participant.

Standing for a Former Employee?

The court said the U.S. Court of Appeals for the Eleventh Circuit evaluates standing based on the time of the alleged ERISA violations. Thus, claims by former employees who were participants when the alleged ERISA violations occurred are allowed, even though they may no longer be participants, the court said.

In so ruling, the court determined that Fadely had standing to bring claims arising from advice given during his employment.

Fadely also had standing for claims arising from the time that his insurance coverage was extended under COBRA, the court said.

Other Claims Survive Motion to Dismiss

In its motion to dismiss, Encompass also argued that it was neither a plan administrator nor plan fiduciary and therefore could not be held liable for the breaches of fiduciary duty and ERISA violations alleged by Fadely.

BNA Snapshot

Fadely v. Blue Cross and Blue Shield of Georgia Inc., N.D. Ga., No. 1:11-cv-01409-TWT, 10/18/11

Key Holding: A former employee has standing to continue with his claim that his employer violated ERISA when it made allegedly negligent misrepresentations regarding post-employment health insurance options.

Key Takeaway: A former employee has standing in his claims against his former employer because the alleged ERISA violations occurred while he was still enrolled in the employer's health insurance plan.

The court said Fadely's identification of Encompass as the plan sponsor in his complaint was sufficient to survive a motion to dismiss because Blue Cross also identified Encompass as the plan administrator.

According to the court, whether Encompass's allegedly negligent misrepresentation to Fadely was the discretionary act of a plan fiduciary was an issue for summary judgment and not a motion to dismiss.

Fadely was represented by Douglas Thomas Gibson and Kristopher R. Alderman of the Gibson Firm, Woodstock, Ga. The plan was represented by Michelle M. Rothenberg-Williams of Blue Cross and Blue Shield of Georgia, Atlanta. Encompass was represented by Gordon Myles Berger of Wagner Johnston & Rosenthal, Atlanta.

The full text of the court's opinion is at <http://op.bna.com/pen.nsf/r?Open=amby-8mum39>.

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

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