

Supreme Court Ruling Provides Guidance For Improving Defensibility Of ERISA Claims Decisions

Learn More At August 1, 2008 ERISA Claims & Appeals Boot Camp

June 23, 2008

Last Thursday, the United States Supreme Court in *Metropolitan Life Insurance Co. v. Glenn* provided important guidance to administrators, insurers and employers sponsoring and administering employee benefit plans regulated by the Employee Retirement Income Security Act (ERISA) about procedures that can help their plan administration decisions hold up in court.

Individuals or organizations interested in learning more about the *Glenn* decision, ERISA's other claims and appeals administration requirements, and strategies for improving the sustainability of claims and appeals decisions in light of *Glenn* and other ruling precedent and regulations are invited to participate in person or by telephone in the "ERISA Claims & Appeals Boot Camp" to be conducted by Cynthia Marcotte Stamer on August 1, 2008 from noon to 2:00 p.m. Central Daylight Time.

About The Glenn Decision

In its June 19, 2008 decision in *Glenn*, the Supreme Court addressed whether and how the existence of a responsibility to pay plan costs or other financial interest in the outcome of a claims decision by the administrator impacts a court's review of the claims decisions made by the administrator.

In *Glenn*, the Supreme Court reaffirmed that the inclusion of appropriate language in the plan remains a prerequisite to a court's deferential review of a plan administrator's claims decision, but does not guarantee qualification for deferential review.

According to the *Glenn* opinion, where the plan administrator making the claims decision also funds claims

paid under the plan or otherwise has a financial interest in the outcome of the claims decision, the administrator acts under a conflict of interest that under certain circumstances may justify less deferential judicial review of its claims decisions than otherwise would apply in the absence of this conflict of interest.

According to *Glenn*, however, the mere existence of this conflict of interest does not automatically disqualify the plan administrator's decision for any deference by a reviewing court. Rather, the existence of this conflict of interest is merely a factor that the reviewing court may consider when deciding whether less deferential review is justified.

According to the Supreme Court's decision, whether this conflict of interest justifies a reviewing court's closer scrutiny of the administrator's claims decision depends upon the facts and circumstances.

In *Glenn*, the Court provided insights about types of evidence that influence the court's decision about whether the conflict of interest merits greater scrutiny of the decision by the court. However, the Court expressly declined to establish any specific formula to govern how courts make this decision. As a consequence, the *Glenn* decision likely makes it more difficult for plans and beneficiaries to secure a summary judgment victory where a conflict of interest is alleged to have compromised the plan administrator's decision.

The Court's decision makes clear that depending on the evidence produced, a court reviewing the plan administrator's decision appropriately can decide the conflict of interest warrants no special scrutiny or significantly greater scrutiny of the

plan administration decision. Consequently, plan administrators and employers and insurers sponsoring or administering ERISA covered employee benefit plans where the plan administrator has dual responsibilities should take steps to design and administer the plan so as to promote the ability of the plan administrator's decisions to qualify for judicial deference in the event of a law suit.

As the availability of deferential review can substantially impact the ability of plan administrators to successfully defend claims decisions in court and the cost of that defense, plan administrators and employers and insurers that sponsor and fund such plans should review their existing plan design and administrative procedures in light of the Supreme Court guidance, other existing judicial precedent, and Labor Department claims and appeals regulations to improve the likelihood that plan administration decisions will be defensible in court.

Taken together, the Supreme Court's decisions in *Glenn* and *Firestone v. Bruch* and other judicial precedent applying ERISA's claims and appeals, fiduciary responsibility and other requirements provide helpful lessons for plan sponsors and fiduciaries about processes and plan language that can help make claims decisions more defensible before the courts.

Pointers From Glenn and Other Guidance

This guidance indicates that plan sponsors and administrators seeking to strengthen the sustainability of plan administration decisions in the courts should:

- ✓ Ensure that plan documents incorporate the necessary grants of discretion that the Supreme Court previously ruled in *Firestone v. Bruch* must exist before the courts can consider applying deferential, rather than de novo review to a plan administrator's decisions;
- ✓ Draft plan documents, summary plan descriptions and other plan communications carefully to reduce the need for the plan administrator to exercise discretion when making plan administration decisions;
- ✓ Ensure that plan claims and appeals processes, communications, and documentation are updated and administered to comply with currently applicable Labor Department regulations;
- ✓ Consider appointing an individual, service provider or committee to act as the plan administrator that is uninvolved in the performance of responsibilities related to the funding of the plan;
- ✓ Ensure that documentation, processes and procedures,

notifications, and communications are appropriately designed and administered to document that the administrator has acted prudently make its plan administration determinations in accordance with the plan terms without improper prejudice or undue influence as a result of its financial interest in the plan or other conflict of interest.

In addition to guidance provided by *Glenn*, plan sponsors and administrators also can draw upon a wide range of other guidance to strengthen the defensibility of their plan design and administration decisions.

Learn More At August 1 Workshop

Plan sponsors, administrators and service providers interested in learning more about *Glenn* and other ERISA rules and requirements impacting the defensibility of ERISA claims and appeals decisions and how to use this guidance to promote the defensibility of administrative decisions in their plans are invited to participate in an "ERISA Claims &

Appeals Boot Camp" scheduled for August 1, 2008.

The workshop is scheduled to begin promptly at 12:00 p.m. Central Time, 1:00 p.m. Eastern, 11:00 a.m. Mountain Time, and 10:00 a.m. Pacific Time. Interested persons can participate in person in the Dallas offices of Glast, Phillips & Murray, P.C. or by telephone. Interested parties may register for the workshop on line at cynthiastamer.com or may complete and return the accompanying registration form along with the applicable registration fee via mail.

If you need assistance reviewing or defending a claims or appeals determination under an ERISA plan, reviewing and updating plan terms and processes in response to *Glenn* and other current guidance, or addressing other employee benefit or employment related questions or concerns, please do not hesitate to contact Cynthia Marcotte Stamer at 972.419.7188.

About Cynthia Marcotte Stamer

Board Certified in Labor & Employment Law and Chair of the American Bar Association (ABA) Health Law Section's Managed Care and Insurance Interest Group and Vice Chair of both the ABA Real Property, Probate & Trust Section Employee Benefits & Compensation Group and the ABA TIPS Worker's Compensation Committee, Cynthia Marcotte Stamer has more than 20 years experience advising and representing employer and union plan sponsors, employee benefit, insurance, financial services and other clients to design, document, administer and defend employee benefit, compensation, employment, and insurance programs and practices.

As a core focus of her practice, Ms. Stamer regularly works with employer and other plan sponsors, fiduciaries, administrators, insurers, and others to design, document, investigate and administer, and defend employee benefit plans and their administration. She also assists employers, employee benefit plan fiduciaries, insurers and others to respond to government investigations and enforcement actions by the Department of Labor, the Internal Revenue Service, the Department of Health & Human Services, and other federal and state regulatory authorities, to monitor and respond to legislative and regulatory proposals and enactments,

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, author and speaker, who regularly conducts

management and other training on a wide range of employee benefit, human resources and internal controls, and other related risk management matters. Her writings have appeared in a variety of other publications, including works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, SHRM, World At Work, Government Institutes, Inc. and many others. For a listing of some of these publications and programs, see cynthiastamer.com.

Ms. Stamer's insights on employee benefits and human resources risk management matters also have been quoted in *The Wall Street Journal*, various publications of *The Bureau of National Affairs* and *Aspen Publishing*, the *Dallas Morning News*, *Spencer Publications*, *Health Leaders*, *Business Insurance*, the *Dallas* and *Houston Business Journals* and a host of other publications.

Ms. Stamer also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations. For instance, in addition to her many other leadership involvements in the ABA, Ms. Stamer serves as Continuing Education Liaison for the ABA Joint Committee on Employee Benefits, a member of the IRS TEGE Council, a frequent contributing author to various publications for BNA, Aspen, SHRM, World At Work, HRResource and numerous other publishers, as faculty member and planning committee member for numerous

human resources related programs and in numerous other leadership roles. She also has previously served on the BNA EBCD Editorial Advisory Board, as Region IV Chair and a National Consultants Forum Board Member for the Society of Human Resources Management, Chair of the Dallas Bar Association Employee Benefits and Executive Compensation Section, Continuing Education Chair and a member of the Board of the Southwest Benefits Association, on the National Board and Dallas Chapter President of Web Network of Benefit Professionals, and as a State Executive Board Member and Dallas Chapter Chair of the Texas Association of Business.

For more details about Ms. Stamer's experience and other credentials, contact Ms. Stamer, information about workshops and other training, selected publications and other human resources related information, see CynthiaStamer.com or contact Ms. Stamer via telephone at 972.419.7188 or via e-mail at cstamer@solutionslawyer.net. If you or someone else you know would like to receive future Alerts or announcements about other developments, publications or programs, please be sure that we have your current contact information – including your preferred e-mail – by registering at CynthiaStamer.com, or by providing that information to us via telephone, fax or e-mail using the above contact information.

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We hope that this information is useful to you. You can register to receive future updates and information about upcoming programs, access other publications by Ms. Stamer and other helpful resources or additional information about Ms. Stamer and/or Glast, Phillips & Murray, P.C. at CynthiaStamer.com or by contacting Ms. Stamer directly. If you or someone else you know would like to receive future Alerts or other information about developments, publications or programs, please be sure that we have your current contact information – including your preferred e-mail. Interested persons can register or update their contact information by providing that information to us through registration on our website at www.cynthiastamer.com or via telephone, fax or e-mail. If you have questions or concerns about the matters discussed in this publication or other health care or health industry related matters, wish to obtain information about arranging for training or presentations by Ms. Stamer, wish to suggest a topic for a future program or publication, or wish to request other information or materials, please contact Ms. Stamer using the contact information set forth below.

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HOW TO CONTACT US. You can reach us by writing, telephoning or e-mailing:

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**PROGRAM REGISTRATION FORM
ERISA Claims & Appeals Boot Camp
August 1, 2008**

1:00 p.m. Eastern -12:00 p.m. Central -11:00 a.m. Mountain -10:00 a.m. Pacific

The workshop will be conducted live in the Dallas Offices of Glast, Phillips & Murray, P.C. with registration beginning at 11:30 a.m. Central Time and the briefing commencing promptly at noon Central Time. Parties unable to attend the live briefing can elect through advance registration to participate via telephone. Program handouts will be distributed via e-mail to participants registering in advance the morning of the program. To register, please complete the online registration form and pay the required registration fee online at cynthiastamer.com or complete and return this program registration form with check or money order in the amount of \$125 no later than 4:00 p.m. Central Time on July 28, 2008. Make checks or money orders payable to: "Cynthia Marcotte Stamer, P.C." and forward your registration form along with your payment to: Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, Suite 2200, 13355 Noel Road, L.B. 48, Dallas, Texas, 75240, Attention: Cynthia Marcotte Stamer. For additional information, contact Ms. Stamer at cstamer@solutionslawyer.net or via telephone at 972.419.7188.

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