

# Client Alert

A report  
for clients  
and friends  
of the Firm     June 2008

## U.S. Supreme Court Rules that Insurers Reviewing Benefit Claims Have a Conflict of Interest

On June 19, 2008, in *Metropolitan Life Insurance Co et al v. Glenn*, No. 06-923, the U.S. Supreme Court held that an insurance company that both reviews a participant's claim for benefits under a plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), and also is responsible for paying that benefit, is operating under a conflict of interest. In so holding, the Court stated that the conflict of interest should be one factor in determining whether to uphold the insurer's decision to deny a claim, the significance of which is to be evaluated on a case-by-case basis.

The decision was the Court's first attempt to address issues left open by the Court's ruling in *Firestone v. Bruch*, 489 U.S. 101 (1989). In *Bruch*, the Court held that if a benefit plan gives the administrator or fiduciary discretionary authority to determine the eligibility for benefits or to construe the terms of the plan, then a denial of benefits challenged under section 502(a)(1)(B) is to be reviewed under an arbitrary and capricious standard. However, the Court also stated that "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a facto[r] in determining whether there is an abuse of discretion." In the wake of *Bruch*, courts have struggled when considering two questions: (i) what facts and circumstances give rise to a finding of a conflict of interest; and (ii) what effect should the finding of a conflict have on the court's scrutiny of an administrator's decision to deny benefits. The *Glenn* decision addresses the first question with respect to insurance carriers. It also sheds light on the second

issue, but in a manner that leaves the district courts with no rigid standard to apply.

### Background and Lower Courts' Decisions

MetLife served as the insurer and claims administrator for Sears, Roebuck & Company's long-term disability plan. Wanda Glenn, a Sears employee, had a heart condition causing fatigue and shortness of breath. MetLife awarded Ms. Glenn two years of disability benefits. As a result of medical treatment, Ms. Glenn's condition improved somewhat. When Ms. Glenn applied for continued LTD benefits, MetLife concluded that she was not totally and permanently disabled, and denied her additional benefits. After exhausting her appeals, Ms. Glenn commenced this litigation. The district court, in reviewing MetLife's decision, applied the "arbitrary and capricious" standard set forth in *Bruch*, and upheld MetLife's denial.

On appeal, the U.S. Court of Appeals for the Sixth Circuit overturned the district court's decision, pointing to language in *Bruch* stating that the arbitrary and capricious standard does not apply in the event a plan administrator has a conflict of interest. The Sixth Circuit stated that the district court did not give MetLife's conflict of interest appropriate consideration.

### Supreme Court Decision

The Court's five-judge majority opinion, authored by Justice Breyer, concluded that, notwithstanding the argument that insurance companies serving as plan administrators are inherently different than employers administering their own plans (*e.g.*, because insurers pass along the cost of claims to employers, the insurer does not bear the ultimate cost of the claim), insurance companies that both decide and pay claims have an inherent conflict of interest. The dissenting opinions authored by Justices Kennedy and Scalia agreed with this conclusion.

On the issue of how the conflict should affect the judicial standard of review, the Court reiterated the

statement in *Bruch* that a conflict should “be weighed as a factor in determining whether there is an abuse of discretion” and determined that the conflict should be just one factor among many in determining whether a claims administrator had abused its discretion in making its determination. The Court stated the standard of review need not change from deferential to *de novo*, and that it did not seek to overturn *Bruch*’s holding by adopting a rule that would in practice create a *de novo* standard for the vast majority of ERISA claims denials. It also declined to create any special rules shifting the burden of proof in event of a conflict.

In an opinion that concurred in decision, Chief Justice Roberts stated that he would consider the conflict of interest on review only where there is evidence that the conflict motivated or affected the plan administrator’s decision. He expressed concern that considering a conflict of interest as a factor absent such evidence would open the door to a near universal *de novo* review of claims decisions, in spite of the majority’s stated intent not to do so.

In a dissenting opinion, Justice Scalia (joined by Justice Thomas) also adopted the position that a conflict of interest should not be taken into account unless the conduct actually and improperly motivates the decision. He advocated adopting the position of Restatement of Trusts (as quoted in *Bruch*). The Restatement enumerates factors indicating an abuse of discretion, then elucidates that any one of these factors alone can be determinative of abuse, and would, therefore, shift the standard of review from deferential to *de novo*. Justice Scalia characterized the majority’s totality of the circumstances test as “nothing but *de novo* review in sheep’s clothing.”

### **Implications for Plan Sponsors and Administrators**

The Court’s decision to allow a conflict of interest to serve as factor in determining whether there was an abuse of discretion, even without any evidence that the conflict tainted the insurance company’s decision, may make it more difficult for plans to defend claims for benefits, and possibly opens the door to additional issues for discovery. Insurers and employers should consider whether to establish procedures of the type suggested in the Court’s majority opinion, *e.g.*, ethical walls or quality control procedures, that may mitigate the weight afforded to a conflict of interest.

**BOCA RATON • BOSTON • CHICAGO • LONDON  
LOS ANGELES • NEW ORLEANS • NEW YORK • NEWARK  
PARIS • SÃO PAULO • WASHINGTON, D.C.**

**Client Alert**  
Proskauer Rose's Employee Benefits Litigation Group is a significant and rapidly growing component of the Firm's nationally-renowned Labor and Employment Law Department, which has nearly 175 attorneys. The Group's capabilities were recently boosted by the addition of a superb team of attorneys led by the renowned ERISA litigator, Howard Shapiro, the Chair of the Labor and Employment Law Section of the ABA. With this addition, the Group - with nearly 30 litigators nationwide - is one of the premier firms in defending complex and class action employee benefits litigations.  
  
If you have any questions about the impact of this new decision, please contact your Proskauer relationship attorney or one of the attorneys listed below:

**Howard Shapiro**  
504.310.4085 – howshapiro@proskauer.com

**Myron D. Rumeld**  
212.969.3021 – mrumeld@proskauer.com

**Andrea S. Rattner**  
212.969.3812 – arattner@proskauer.com

**Robert M. Projansky**  
212.969.3367 – rprojansky@proskauer.com

**Russell L. Hirschhorn**  
212.969.3286 – rhirschhorn@proskauer.com

Proskauer Rose is an international law firm that handles a full spectrum of legal issues worldwide.

You can also visit our Website at [www.proskauer.com](http://www.proskauer.com)

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.  
© 2008 PROSKAUER ROSE LLP. All rights reserved. Attorney Advertising.