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Choice-of-Law Plan Provision Enforced As A Matter of Federal Common Law

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The Tenth Circuit recently concluded that, as a matter of federal common law, a choice-of-law provision in a long-term disability insurance policy, which was part of the plaintiff's employer's ERISA plan, must be enforced because a "clear, uniform rule . . . is required to ensure plan administrators enjoy the predictable obligations and reduced administrative costs central to ERISA." The central issue on appeal was whether the Court's review of the decision to deny plaintiff his claim for long-term disability benefits should be governed by the highly deferential arbitrary and capricious standard of review, or reviewed de novo. The plaintiff commenced the action in Colorado, but the policy had a choice-of-law provision that required the application of Pennsylvania law. Which law to apply was of paramount importance because Colorado state law bans discretion-granting clauses while Pennsylvania does not.

The Court first determined that it need not decide whether or not ERISA preempts state laws banning discretionary clauses in insurance policies because it concluded that the Colorado law should not apply in light of the policy's choice-of-law provision. In so ruling, the Court recognized that other circuits had developed a variety of approaches to determining whether a choice-of-law provision should be enforced, all of which essentially focused on a rule of reasonableness. Without commenting on how those approaches might be applied in the instant case, the Tenth Circuit found them inappropriate because they "overlook[ed] the uniformity and efficiency objectives" central to ERISA. The Tenth Circuit further explained that a choice of law doctrine must account for the "centrality" of the plan in ERISA matters and the aims of uniformity and reduced administrative costs. Accordingly, the Court concluded that if the plan has a legitimate connection to the state whose law is chosen, ERISA's interest in efficiency and uniformity, as well as its recognition of the primacy of plan documents, compelled the conclusion that the selected law should govern as a matter of federal common law.

In the end, the Court determined that the denial of plaintiff's claim for long-term disability benefits was not arbitrary and capricious. The case is *Ellis v. Liberty Life Assurance Co. of Boston*, No. 1:15-cv-00090 (10th Cir. May 13, 2020).

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