Proskauer

Supreme Court Expands Deference Applicable to ERISA Plan Administrators

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In a ruling issued this morning, the Supreme Court held in *Conkright v. Frommert*, No 08-810, that an administrator's initial faulty implementation of a plan rule does not prevent application of the deferential arbitrary and capricious standard in reviewing the administrator's subsequent determination as to how best to remedy the prior mistake. The ruling is significant in that it confirms that courts must defer to ERISA plan administrators, even outside the context of traditional benefit determinations, so long as the administrator has authority to interpret the plan.

The decision arose in the aftermath of determinations by the United States District Court for the Southern District of New York and the Second Circuit Court of Appeals that the plan had failed to properly notify participants who returned to work that their benefits would be subject to a "phantom offset" that was calculated based on benefits previously received **plus** an assumed rate of return; and, accordingly, that the plan administrator had abused its discretion in applying this formula. Following remand, the district court and Second Circuit both declined to defer to the plan administrator's determination as to the best method for recalculating participant benefits in light of the prior ruling. The Supreme Court reversed, finding that the lower courts should have deferred to the administrative determination, rather than an alternative method that would have placed the returning employees in a better position than other participants. (The court ruled 5 to 3; Justice Sotomayor did not participate in the decision).

Writing for the majority, Chief Justice Roberts stated in pertinent part:

> People make mistakes. Even administrators of ERISA plans. That should come as no surprise, given that the Employee Retirement Income Security Act of 1974 is "an enormously complex and detailed statute," *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 262 (1993), and the plans that administrators must construe can be lengthy and complicated. (The one at issue here runs to 81 pages, with 139 sections.) We held in *Firestone Tire & Rubber Co.* v. *Bruch* , 489 U. S. 101 (1989), that an ERISA plan administrator with discretionary authority to interpret a plan is entitled to deference in exercising that discretion. The question here is whether a single honest mistake in plan interpretation justifies stripping the administrator of that deference for subsequent related interpretations of the plan. We hold that it does not.

The majority ruling effectively embraced the position that Proskauer advanced in an *amicus* brief filed on behalf of the ERISA Industry Committee and American Benefits Council.

A thorough analysis of the Court's decision will follow in the May edition of Proskauer's ERISA Litigation Newsletter.

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