



## Sixth Circuit's Unprecedented Expansion of Remedies for Wrongful Denial of Benefits Under ERISA in *Rochow*

JANUARY 9, 2014

Last month, the Sixth Circuit affirmed a lower court's ruling that an insurance company that incorrectly denied disability benefits must not only pay the benefits but also disgorge the profits earned on those benefits. In so doing, the appellate court drastically expanded the scope of ERISA remedies available to plaintiffs appealing wrongful claim denials.

In *Rochow v. Life Insurance Company of North America*, the plaintiff was an employee who applied for long-term disability benefits under his company's disability plan. The insurer ("LINA") denied his claim, as well as his subsequent appeals. Rochow filed suit against LINA, in which he stated two claims under Section 502(a) of ERISA: first, that he was entitled to recover full benefits payable to him under the terms of the plan, and second, that the insurer had breached its fiduciary duty in denying his benefits. On the second claim, the plaintiff argued that LINA should disgorge all profits earned on the benefits wrongfully withheld, in order to prevent the insurer's "unjust enrichment" from the alleged breach of fiduciary duty.

The court first found that LINA's denial of benefits was arbitrary and capricious, and ordered the insurer to pay the plaintiff approximately \$900,000 in wrongfully denied benefits. However, the court went one giant step further, granting the plaintiff's motion seeking an accounting of the profits earned on the denied benefits and ordering LINA to disgorge approximately \$3.8 million in profits that (the plaintiff asserted) had been earned by LINA on the wrongfully denied benefits.

On appeal, LINA argued (among other things) that ordering disgorgement of profits was inconsistent with the Supreme Court's holding in *Varity Corp. v. Howe* that equitable relief under Section 502(a)(3) of ERISA was inappropriate for cases where the statute already provided an adequate remedy (i.e., the restitution of benefits). However, the court upheld the lower court's disgorgement ruling, and determined that the two remedial provisions of Section 502(a) in question (the participant's right to sue for wrongfully denied benefits, and the participant's right to sue for "other appropriate equitable relief") were not mutually exclusive and that damages could be awarded under both provisions.

The dissenting opinion of Judge McKeague described the majority's ruling as "an unprecedented and extraordinary step to expand the scope of ERISA coverage" that is "contrary to clear Supreme Court and Sixth Circuit precedent" and "willfully blind to the negative repercussions that undoubtedly will ensue" – specifically, an increase in

disgorgement claims where an abuse of discretion can be argued, and the cost and complexity of litigating such claims. In late December, LINA filed a petition with the Sixth Circuit for a rehearing of the case *en banc*. If upheld, *Rochow* will almost certainly have a substantial impact on the landscape of ERISA benefit plan litigation.

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[Erin Haldorson Weber](#)

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