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About Mitchell Williams

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Considerations for Due Diligence and Monitoring Benefit Plan Claims Administrators

Being that the delegation of the discretionary function of claims processing is a fiduciary act, plan fiduciaries are responsible to routinely monitor their third party claims administrator's processes and performances and make the affirmative determination that the delegated duties are performed in accordance with the controlling law under ERISA and its written administrative policies.

A recent lower-court case in California raises an interesting question: Is it appropriate for the delegating fiduciary to require a representation from the claims administrator that its processors' compensation or performance evaluations are not conditioned upon a purely quantitative measure of the processed claims (i.e. the number of claims dismissed) but upon a qualitative measure (i.e. the number of claims processed under the controlling requirements of Title I of ERISA).

In *Sullivan v. Deutsche Bank Ams. Holding Corp.*, 2010 U.S. Dist. LEXIS 8414 (S.D. Cal. Feb. 2, 2010) the court ruled that the plaintiff could access the claims administrator's personnel files as necessary discovery to determine (1) the credibility of the evaluators involved in denying the plaintiff's claim, and; (2) whether the claims administrator awarded superior evaluations for higher rates of denying benefits constituting evidence of a conflict of interest in the administration of claims.

The *Sullivan* Court looked to courts in other districts and other Circuits in making its determination that it is reasonable for plaintiffs to have access to the claims administrator's personnel files. The court reasoned that a compensation or performance rating based upon the

denial of claims demonstrates a conflict of interest for the fiduciary. The demonstration of a fiduciary's conflict is a fundamental element in the claim of a breach of fiduciary duty and outweighs the burden of the discovery.

Because the courts recognize that a conflict of interest exists when a claims administrator bases its processor's compensation upon a quantitative standard, the delegating fiduciaries may be well-advised to monitor its claims administrators for such practices. The monitoring may be through a provision in the services agreement where the TPA represents or warrants that it doesn't engage in compensation or performance practices which are in conflict with the Title I requirements in ERISA, or as part of a periodic audit and review of the TPA's processes. Implicit in this advice is that plan fiduciaries exercise best practices when:

- They have a clear understanding of what constitutes a "fiduciary" act and that the act of delegating any plan investment or administrative duty to a third-party service provider is in itself a fiduciary act (ERISA Sec. 405(c)(1)).
- Any delegation of fiduciary responsibilities is made in accordance with written procedures for allocating the responsibility (ERISA Section 405(c)).
- Duties assigned by the plan to a fiduciary are subsequently allocated by that fiduciary to a third party in accordance with the written procedures as a statutory requirement to relieve the delegating fiduciary for liability for actions of the provider but does not immunize the delegating fiduciary from liability for the making of an imprudent delegation or failure to adequately monitor the service provider's performance (ERISA Sec 404(c)(2) and ERISA Sec. 404(a)).
- They act in accordance with well-reasoned written investment and administrative policies and procedures.
- They conduct due diligence on, and monitor the performance of, the providers of any ministerial or discretionary services to the plan.