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## Carden v. Aetna Life Insurance Co

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***CARDEN V. AETNA LIFE INSURANCE CO.***

The Employee Retirement Income Security Act of 1974 (ERISA)<sup>1</sup> regulates employer-provided employee retirement and welfare benefit plans, including disability coverage.<sup>2</sup> ERISA defines two positions that are integral to the operation of these employee benefit plans: the plan sponsor<sup>3</sup> and the plan administrator.<sup>4</sup> The employer-plan sponsor selects the contract terms and bears the financial responsibility for paying the cost of benefits claims arising from the plan, while the plan administrator determines whether the plan covers the employee's claims and processes those claims.<sup>5</sup> As to welfare plans, although employers may choose to sponsor these plans and bear the financial risk,<sup>6</sup> many times employers outsource the funding risk to third party insurance companies.<sup>7</sup> Similarly, some employers may retain the role of plan administrator,<sup>8</sup> while others delegate this function to an outside entity.<sup>9</sup> Moreover, often the same entity—either the employer or a third party—serves a dual role as both the plan administrator and the entity bearing the financial risk.<sup>10</sup> Under ERISA, if the plan administrator denies an employee's benefits claim, then the employee may, after exhausting plan remedies, bring an action in state or federal court challenging the denial of benefits.<sup>11</sup> Although “ERISA provides ‘a panoply of remedial devices’ for participants and beneficiaries of benefit plans,”<sup>12</sup> it fails to specify the standard of review that the federal court should apply to plan administrators' determinations.<sup>13</sup>

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1. Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of 26 and 29 U.S.C.).

2. 29 U.S.C. § 1002(1) (2006).

3. *Id.* § 1002(16)(B).

4. *Id.* § 1002(16)(A).

5. See JAY CONISON, *EMPLOYEE BENEFIT PLANS IN A NUTSHELL* 13 (2d ed. 1998).

6. See, e.g., *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 105 (1989) (describing an employer maintaining pension and welfare benefit plans for its employees); *Champion v. Black & Decker (U.S.) Inc.*, 550 F.3d 353, 356 (4th Cir. 2008) (describing an employer as both the sponsor and the administrator of a plan); *Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan*, 201 F.3d 335, 338 (4th Cir. 2000) (describing an employee benefits plan as self-funded).

7. See, e.g., *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2346 (2008) (describing third party as insurer and administrator of an employer-provided employee benefit plan); *Carden v. Aetna Life Ins. Co.*, 559 F.3d 256, 257–58 (4th Cir. 2009) (third party insurer and administrator); *Carolina Care Plan Inc. v. McKenzie*, 467 F.3d 383, 385 (4th Cir. 2006) (third party insurer and administrator), *abrogated by Carden*, 559 F.3d at 260.

8. See, e.g., *Firestone*, 489 U.S. at 105 (describing a self-administered employee severance plan).

9. See, e.g., *Glenn*, 128 S. Ct. at 2346 (describing a third party administrator of an employee disability plan).

10. See, e.g., *id.* (describing third party's dual role); *Firestone*, 489 U.S. at 105 (describing employer's dual role); *Carden*, 559 F.3d at 257–58 (describing third party's dual role); *McKenzie*, 467 F.3d at 385 (describing third party's dual role).

11. 29 U.S.C. § 1132(a)(1) (2006).

12. *Firestone*, 489 U.S. at 108 (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985)).

13. *Id.* at 108–09.

In *Firestone Tire & Rubber Co. v. Bruch*,<sup>14</sup> the United States Supreme Court held that plan administrators' findings are subject to de novo review unless the plan expressly grants the administrator discretionary authority.<sup>15</sup> However, if the plan grants discretionary authority to the administrator, courts should review the denial of benefits claim under an abuse of discretion standard and uphold the administrator's decision when reasonable.<sup>16</sup> In *Carolina Care Plan Inc. v. McKenzie*,<sup>17</sup> the United States Court of Appeals for the Fourth Circuit applied a modified abuse of discretion standard in the dual role context, applying the *contra proferentem* rule of construction, which "requires that the administrator construe plan ambiguities against the party who drafted the plan."<sup>18</sup> Furthermore, in *Booth v. Wal-Mart Stores, Inc. Associates Health & Welfare Plan*,<sup>19</sup> the Fourth Circuit held when the plan sponsor and administrator are different entities, courts should apply a nonexclusive eight-factor reasonableness test under the abuse of discretion standard.<sup>20</sup> Those eight factors are as follows:

- (1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decisionmaking process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.<sup>21</sup>

In *Metropolitan Life Insurance Co. v. Glenn*,<sup>22</sup> the Supreme Court refined the abuse of discretion standard, holding that an entity's dual role as plan sponsor and administrator does not warrant special burden shifting procedural rules.<sup>23</sup> Rather, the Court found that such a dual role creates a conflict of interest, which "should be weighed as a factor in determining whether there is an abuse of discretion."<sup>24</sup> Moreover, courts should determine the weight given to the dual

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14. 489 U.S. 101 (1989).

15. *Id.* at 115.

16. *See id.* (citing RESTATEMENT (SECOND) OF TRUSTS § 187 cmt. d (1959)).

17. 467 F.3d 383 (4th Cir. 2006), *abrogated by Carden*, 559 F.3d at 260.

18. *Id.* at 389.

19. 201 F.3d 335 (4th Cir. 2000).

20. *Id.* at 341–43.

21. *Id.* at 342–43.

22. 128 S. Ct. 2343 (2008).

23. *Id.* at 2351.

24. *Id.* at 2350 (quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)) (internal quotation marks omitted).

role conflict on a case-by-case basis by looking to the circumstances surrounding the administrator's decision.<sup>25</sup>

Following the Court's refinement of the abuse of discretion standard, the Fourth Circuit reviewed its earlier decisions regarding the scope of review in the contexts where there are dual roles, first for employers and more recently for third parties. In *Champion v. Black & Decker (U.S.) Inc.*,<sup>26</sup> the Fourth Circuit rejected its modified abuse of discretion standard when the employer is the plan administrator and the plan sponsor.<sup>27</sup> Instead, the Fourth Circuit held that when an employer has a conflict of interest because of its dual role as plan sponsor and administrator, then that conflict is one of numerous factors a court may consider in determining whether the employer abused its discretion in denying benefits.<sup>28</sup>

Last year, in *Carden v. Aetna Life Insurance Co.*,<sup>29</sup> the Fourth Circuit applied the Court's holding in *Glenn* and overruled *McKenzie*'s modified abuse of discretion standard in the third-party dual role context.<sup>30</sup> In *Carden*, Larry Carden challenged Aetna Life Insurance Company's (Aetna) interpretation of Duke Energy Corporation's (DEC) long-term disability plan.<sup>31</sup> Carden, a DEC employee of over thirty years, left his job in April 1997 due to "episodic vertigo," which he had experienced over the previous fifteen years.<sup>32</sup> Upon leaving, Carden filed a claim for benefits (the benefits claim) under DEC's long-term disability insurance plan (the Plan) with Aetna.<sup>33</sup> Aetna held the dual roles of insurer and the plan's claims administrator.<sup>34</sup> Aetna "accepted Carden's [claim] and began paying [him] monthly disability benefits."<sup>35</sup> In August 1997, Carden filed a workers' compensation claim against DEC alleging that he suffered from asbestosis from his time at DEC.<sup>36</sup> Without admitting fault, DEC settled the workers' compensation claim in May 1999 by paying \$39,936 for his alleged injury and \$13,312 in attorney's fees.<sup>37</sup>

Aetna failed to discover Carden's settlement for the workers' compensation claim until late 2004.<sup>38</sup> Upon gaining this knowledge, Aetna reduced Carden's benefits claim payments for sixty months.<sup>39</sup> Justifying the reduction, Aetna found that the workers' compensation claim settlement constituted "other income" and that the Plan allowed Aetna to offset other income from the

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25. *Id.* at 2351.

26. 550 F.3d 353 (4th Cir. 2008).

27. *Id.* at 355.

28. *Id.* at 355–56.

29. 559 F.3d 256 (4th Cir. 2009).

30. *Id.* at 259–63.

31. *Id.* at 258.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

disability payments.<sup>40</sup> Carden appealed the reduction, but Aetna affirmed the initial decision.<sup>41</sup> Consequently, Carden filed an action in federal court challenging Aetna's interpretation of the Plan's language.<sup>42</sup> After the parties stipulated to the facts, the only issue presented to the district court was whether the Plan's express language entitled Aetna to offset Carden's workers' compensation claim settlement against the benefits claim monthly payments when the two claims arose from different physical injuries.<sup>43</sup> The district court held that Aetna's "decision [was] consistent with the plain and unambiguous language of the Plan,"<sup>44</sup> and thus it was entitled to offset the workers' compensation claim settlement against the monthly benefits claim payments.<sup>45</sup> Carden appealed to the Fourth Circuit, claiming that the district court erred in finding that Aetna's interpretation of the Plan was proper.<sup>46</sup>

On appeal, the Fourth Circuit held that Aetna's reduction in monthly benefits payments was reasonable under the circumstances and not an abuse of discretion.<sup>47</sup> In reaching this conclusion, the court examined four of the eight *Booth* factors: (1) the Plan's language, (2) the Plan's purpose, (3) the consistency amongst the interpretation of the ambiguous term and other terms in the Plan, and (4) the conflict of interest arising from Aetna's dual role as plan sponsor and administrator.<sup>48</sup> The court found that the Plan's language allowed Aetna to offset disability payments against disability benefit payments, regardless of whether the payments were for the same disability.<sup>49</sup> Moreover, the court found that the Plan's purpose, when read in its entirety, was "to assure an *income* stream for the disabled employee during the period of disability rather than an independent benefit quantified by a specific disability."<sup>50</sup> Consequently, the court determined Aetna's interpretation of the Plan, which allowed the offset of the workers' compensation claim settlement against the monthly benefits claim settlement, to be consistent with the Plan's purpose.<sup>51</sup> Furthermore, with little elucidation, the court determined, *inter alia*, that the gravity of Aetna's conflict of interest due to its dual role as plan insurer and administrator did not overcome the other indicia of reasonableness.<sup>52</sup>

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40. *Id.*

41. *Id.*

42. *Id.*

43. *Carden v. Aetna Life Ins. Co.*, No. 6:05-2053-RBH, 2007 WL 3274279, at \*1 (D.S.C. Nov. 2, 2007).

44. *Id.* at \*5.

45. *Id.* at \*7.

46. *Carden*, 559 F.3d at 259.

47. *Id.* at 263.

48. *Id.*

49. *Id.* at 262.

50. *Id.*

51. *Id.*

52. *See id.* at 263.

*Carden's* abbreviated exploration of the facts surrounding Aetna's conflict of interest suggests that the Fourth Circuit may not have taken heed of *Glenn's* suggestion to examine the circumstances and history of a plan administrator's conflict of interest.<sup>53</sup> In *Glenn*, the Court set forth multiple factors to determine the weight given to the conflict of interest in a reasonableness test.<sup>54</sup> The Court stated that a conflict should be given significant weight "where circumstances suggest a higher likelihood that it affected the benefits decision, including, but not limited to, cases where an insurance company administrator has a history of biased claims administration."<sup>55</sup> On the other hand, "where the administrator has taken active steps to reduce potential bias and to promote accuracy, for example, by walling off claims administrators from those interested in firm finances, or by imposing management checks that penalize inaccurate decisionmaking irrespective of whom the inaccuracy benefits," the conflict should be given less weight.<sup>56</sup> Other than the final sentence of the opinion, in which the court states that it "consider[ed]" Aetna's conflict of interest,<sup>57</sup> *Carden* gives no justification for why the other *Booth* factors outweigh the conflict.<sup>58</sup> There is neither an inquiry into Aetna's history of claims administration nor an examination of Aetna's claims handling procedures as *Glenn* suggests.<sup>59</sup> The parties stipulated to the facts;<sup>60</sup> therefore, whether these issues would have affected the outcome of the case is unclear. However, by not requiring the parties to brief these issues or remanding for further fact-finding, the *Carden* court appears merely to pay lip service to *Glenn's* requirement that courts must consider the dual role conflict of interest under an abuse of discretion standard.<sup>61</sup>

Read in combination with *Champion*, *Carden* marks the death knell of the Fourth Circuit's longstanding authority applying the doctrine of *contra proferentem* to interpret ambiguous provisions of employee benefit plans. In *McKenzie*, the court upheld the application of the *contra proferentem* doctrine to an ERISA benefits plan administrator's discretionary interpretation of an ambiguous plan provision, reasoning that "a reasonable administrator-insurer would look to an important external standard" to interpret an ambiguous term.<sup>62</sup> As the *McKenzie* court noted, construing ambiguity against the drafter "shifts the

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53. See *id.* at 259–63.

54. See *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2351 (2008).

55. *Id.*

56. *Id.*

57. *Carden*, 559 F.3d at 263.

58. See *id.*

59. See *id.* at 257–63.

60. *Id.* at 258.

61. Compare *id.* at 263 (noting that the court considered the conflict), with *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2350 (2008) ("[A] conflict should be weighed as a factor in determining whether there is an abuse of discretion." (quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)) (internal quotation marks omitted)).

62. *Carolina Care Plan Inc. v. McKenzie*, 467 F.3d 383, 388 (4th Cir. 2006), *abrogated by Carden*, 559 F.3d at 260.

cost of ambiguity to the party best positioned to avoid and bear it [and] . . . encourages administrator-insurers to write clear plans that can be predictably applied to individual claims, countering the temptation to boost profits by drafting ambiguous policies and construing them against claimants.”<sup>63</sup> This reasoning is in accord with ERISA’s fiduciary requirement that an entity that has “‘authority to control and manage the operation and administration of the plan’ . . . must provide a ‘full and fair review’ of claim denials.”<sup>64</sup>

Although both *Carden* and *Champion* posit that *Glenn* rejects the *McKenzie* requirement of applying the *contra proferentem* doctrine when the terms are ambiguous and a conflict exists,<sup>65</sup> this interpretation of *Glenn* may be overly broad. *Glenn* stands for the proposition that courts should evaluate case-specific factors in determining an ERISA plan administrator’s denial of benefits.<sup>66</sup> Consequently, *Carden* and *Champion* are correct in recognizing that *Glenn* bars courts from applying per se rules to determine the reasonableness of a plan interpretation.<sup>67</sup> However, the Court also stated “any one factor will act as a tiebreaker when the other factors are closely balanced.”<sup>68</sup> In *McKenzie*, the court applied the *contra proferentem* doctrine only after determining that the *Booth* factors were evenly weighted.<sup>69</sup> Thus, *McKenzie* could be harmonized with *Glenn* if *McKenzie* is viewed as adding a ninth factor—whether the administrator construed ambiguous terms against the drafter—rather than a per se burden-shifting rule. However, as shown by the court’s rejection of *McKenzie* in *Carden* and *Champion*,<sup>70</sup> the Fourth Circuit has not taken this position.

In conclusion, *Carden* sets forth a traditional abuse of discretion standard of review for denial of ERISA benefit claims when the plan administrator has discretionary authority, the plan administrator also bears the financial risk, and the plan administrator is a third party.<sup>71</sup> In the Fourth Circuit, the traditional abuse of discretion standard requires a weighing test that considers a nonexclusive list of eight factors, as elucidated in *Booth*.<sup>72</sup> Moreover, *Carden* recognizes the Supreme Court’s holding in *Glenn* that when a third-party plan administrator also bears the plan’s financial risk of claims payments, the conflict of interest must be considered as a factor in determining the reasonableness of

63. *Id.* at 389.

64. *Firestone*, 489 U.S. at 113 (quoting 29 U.S.C. §§ 1102(a)(1), 1133(2) (1988)).

65. *See Carden*, 559 F.3d at 259–60; *Champion v. Black & Decker (U.S.) Inc.*, 550 F.3d 353, 355–56 (4th Cir. 2008).

66. *See Glenn*, 128 S. Ct. at 2351.

67. *See Carden*, 559 F.3d at 260–61; *Champion*, 550 F.3d at 355–56.

68. *Glenn*, 128 S. Ct. at 2351.

69. *See Carolina Care Plan Inc. v. McKenzie*, 467 F.3d 383, 388 (4th Cir. 2006), *abrogated by Carden*, 559 F.3d at 260.

70. *See Carden*, 559 F.3d at 260–61; *Champion*, 550 F.3d at 355–56.

71. *See Carden*, 559 F.3d at 258–60.

72. *Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan*, 201 F.3d 335, 342–43 (4th Cir. 2000).

the administrator's decision.<sup>73</sup> In addition, *Carden*, along with *Champion*, reject the application of the *contra proferentem* doctrine with respect to employee benefit claims denials, whether the dual role is held by an employer or a third party.<sup>74</sup>

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73. See *Carden*, 559 F.3d at 260–61.

74. See *id.*; *Champion*, 550 F.3d at 359.



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