

# FocusOn Call Benefits Litigation Update

**August 2, 2017**

# Participation Procedure

---

- Procedure for audience participation
- Audience will be in a “listen-only” mode
- If you wish to ask a question or make a comment, please press \*6 on your telephone to “un-mute” your telephone
- After speaking, please press \*6 again to re-enter “listen-only” mode

---

# ERIC's Antitrust Policy

---

As a reminder, all ERIC meetings and activities are to be conducted in full compliance with the ERIC Antitrust Policy. The antitrust laws prohibit competitors from agreeing on prices to be charged or otherwise taking steps that harm free and fair competition among them. While ERIC's primary mission and activities are entirely consistent with the antitrust laws, if you have any concerns about a particular topic or discussion, please raise it with ERIC staff.

# Presenters

---

James Gelfand  
The ERISA Industry Committee  
[Jgelfand@ERIC.org](mailto:Jgelfand@ERIC.org)  
202/627-1922

Adam Greathouse  
Health Policy Associate, The  
ERISA Industry Committee  
[Agreathouse@ERIC.org](mailto:Agreathouse@ERIC.org)

Sharon Lippett  
Member, Epstein Becker Green  
New York, NY  
[slippett@ebglaw.com](mailto:slippett@ebglaw.com)  
212/351-4630

John Houston Pope  
Member, Epstein Becker Green  
New York, NY  
[jhpope@ebglaw.com](mailto:jhpope@ebglaw.com)  
212/351-4641

# Agenda

---

- 1. The Importance and Difficulty of Controlling Venue in ERISA Litigation**
- 2. *Hannan v. Hartford*: Support for Plan Service Providers and Sponsors in Setting Plan Costs**
- 3. *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*: Is an SPD Enough to Enforce Subrogation After a Medical Liability Settlement?**

EPSTEIN  
BECKER  
GREEN

# The Importance and Difficulty of Controlling Venue in ERISA Litigation

Presented by John Houston Pope

---

# ERISA Litigation Venue

---

Reasons for Plaintiffs to Forum Shop:

- Standard of Review
- Available Discovery

# ERISA Litigation Venue (con't)

---

## Standard of Review

- Strict vs. Substantial Compliance
  - Halo: Full conformity unless inadvertent and harmless
  - Salisbury: Special circumstances hard to establish
- NY, CT, & VT as destination venues



## ERISA Litigation Venue (con't)

---

### Proper venue under ERISA

- (1) Where the plan is administered;
- (2) Where the breach took place; or
- (3) Where a defendant resides or may be found.

## ERISA Litigation Venue (con't)

---

Where the Plan is administered:

- Usually set forth in SPD
- Usually coincides with business operations

## ERISA Litigation Venue (con't)

---

Where the breach took place:

- Locus of decision
- Where claimant expected to receive benefits

## ERISA Litigation Venue (con't)

---

Where a defendant resides or may be found:

- Corporation resides where it has operations
- Corporation may be found where it can be served with process
- ERISA allows nationwide services of process
- Can swallow the whole – anywhere?

# ERISA Litigation Venue (con't)

---

## The menu of defendants

- Motions to transfer
- 28 U.S.C. § 1404(a)
- For the convenience of parties & witness, in the interest of justice

## ERISA Litigation Venue (con't)

---

Typical factors considered:

- (1) Plaintiff's choice of forum
- (2) Locus of imperative facts
- (3) Convenience of witnesses
- (4) Process to compel witnesses
- (5) Convenience of the parties
- (6) Relative means of the parties
- (7) Location of documents & proofs
- (8) Court's familiarity with governing law
- (9) Trial of business & the interest of justice

# ERISA Litigation Venue (con't)

---

## Takeaways:

- (1) Failure to address venue in plan documents raises exposure to hostile venues
- (2) Venue selecting clauses should be adopted
- (3) Proper party designations also helpful in controlling venue problems

EPSTEIN  
BECKER  
GREEN

*Hannan v. Hartford*: Support for  
Plan Service Providers and  
Sponsors in Setting Plan Costs

Presented by Sharon Lippett



# *Hannan v. Hartford*

## Overview

---

- In *Hannan v Hartford*, the Second Circuit held that:
  - Hartford Financial Services, Inc., the insurer of an ERISA life insurance plan sponsored by Family Dollar Stores Inc., was not a fiduciary of the plan
  - Family Dollar did not breach its fiduciary duties or engage in a prohibited transaction

# *Hannan v. Hartford*

## Summary of the Facts

---

- The Family Dollar Stores group insurance plan automatically enrolled all employees in basic life insurance coverage and offered supplemental insurance
- Plaintiffs alleged
  - Enrollment materials represented that Family Dollar would pay for basic coverage and that supplemental coverage was “surprisingly affordable” and “without high cost”
  - Family Dollar overcharged for the supplemental coverage to subsidize the cost of basic coverage
  - Family Dollar and Hartford breached their fiduciary duties by failing (as co-fiduciaries) to remedy each other’s breaches and participating in prohibited self-dealing
- The district court dismissed these claims in March 2016.

# *Hannan v. Hartford*

## Summary of the Facts

---

- On appeal, plaintiffs:
  - Challenged the dismissal of their fiduciary and co-fiduciary claims relating to misrepresentations in the enrollment materials and the prohibited transaction claims of self-dealing
  - Alleged that Hartford was a fiduciary because it exercised discretionary control over the assets of the Plan

# *Hannan v. Hartford*

## Holding

---

- Upheld the dismissal of the breach of fiduciary duty claim against Family Dollar because the complaint did not identify any material misrepresentations or omissions
  - No misleading or inaccurate statements about basic life insurance coverage or the cost of supplemental coverage
  - No obligation to disclose how proceeds from the supplemental coverage premiums would be applied.
- Complaint failed to state a prohibited transaction claim against Family Dollar or Hartford.
  - Strategies to minimize costs in providing basic and supplemental coverage was not a prohibited self-dealing transaction
  - Complaint failed to allege that Hartford engaged in a prohibited transaction because Hartford was not a fiduciary

# *Hannan v. Hartford*

## Takeaways

---

- For service providers who do not exercise control over plan assets, the case supports their long-held position that they are not fiduciaries
- For ERISA plan sponsors, decision affirms that sponsors have the discretion to establish the price of coverage and to apply employee premiums to reduce sponsor costs.
- The court's dismissal of the misrepresentation claim also should mitigate sponsor risks related to employee communications

EPSTEIN  
BECKER  
GREEN

*Rhea v. Allen Ritchey, Inc.*  
*Welfare Benefit Plan: Is an SPD*  
Enough to Enforce Subrogation  
After a Medical Liability  
Settlement?

Presented by Adam Greathouse

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## Background

---

- Donna Rhea was a beneficiary of the employee benefit plan through her husband, an Allen Ritchey employee
- Plan covered \$71,644.77 of medical expenses for Rhea's surgery, from which she allegedly suffered from medical malpractice
- Rhea recovered more than the cost of those medical expenses in the malpractice settlement, and Plan sought reimbursement of the expenses it covered
- Plan's Summary Plan Description (SPD) contained reimbursement and subrogation language
- SPD referenced a separate official Plan Document, but at the time Rhea incurred medical expenses, the SPD was the only document providing rights and obligations under the Plan
- Rhea refused to reimburse the Plan because she claimed it did not have an ERISA-compliant written instrument in place at the time it paid her expenses; sued the Plan for a declaratory judgment that she was not required to reimburse

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## **ERISA and SPDs, In Brief**

---

- Under ERISA, plan administrators must provide SPDs to beneficiaries
- The SPD must “reasonably apprise [plan] participants and beneficiaries of their rights and obligations under the plan” and be “written in a manner calculated to be understood by the average plan participant”
- Plans also are required to “be established and maintained pursuant to a written instrument,” which sets forth the plan’s terms and meets various other requirements:
  - Provide the procedure for creating and carrying out a funding policy;
  - Provide plan amendment procedures;
  - Specify the basis on which payments are made to and from the plan; and
  - Describe any procedure for allocation of responsibilities for the operation and administration of the plan



# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## **Argument 1: SPD and Written Instrument Must Be Separate Documents**

---

- Rhea relied upon *CIGNA Corp. v. Amara*, and claimed the SPD and written instrument must be separate documents
- Court distinguished this case from *Amara* because the issue wasn't over a conflict between an SPD and a written instrument, but rather whether an SPD can function as a written instrument in the absence of one
- Court also cited six other cases in a footnote that rejected Rhea's reading of *Amara*
- "When the Plan paid Rhea's medical expenses, its SPD was functioning as both an SPD and a written instrument. That is nothing peculiar: Plan sponsors commonly use a single document to satisfy both requirements, and courts have blessed the practice."

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## **Argument 2: SPD Not ERISA-Compliant Because Not Enough Funding or Amendment Details**

---

- Under § 1102(b) of ERISA, a plan must provide the procedure for creating and carrying out a funding policy and provide plan amendment procedures
- Rhea argued the SPD did not comply with § 1102(b) because it did not go into enough depth
- On a funding policy, the Court stated, “The SPD’s discussion of the Plan’s funding is sufficient to satisfy ERISA’s requirements.”
  - SPD addendum provided that Plan benefits are paid from the general assets of the Plan Sponsor, and any employee contributions are used to partially reimburse the Sponsor for benefits under the Plan; description of how employee contributions are calculated; and who to contact for more information about contributions
- On amendment procedures, the Court stated, “...ERISA does not require written instruments to set forth complex procedures.”
  - Plan sponsor’s right to amend the Plan without notice; amendments must be in writing; and a savings clause

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## **Argument 3: SPD Was Not Adopted as the Plan's Written Instrument**

---

- Rhea claimed the SPD never was adopted as the Plan's written instrument
- Court did not devote much space to this argument; Rhea cited two district court cases from California, but they were distinguishable from the case at hand in that they both concerned SPDs that conflicted with other plan documents
- “When an SPD is a plan's only written instrument, courts assume that the SPD is the written instrument.”
- No record in the evidence that a document other than the SPD was ever adopted as the Plan's written instrument during the relevant time period.

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## **Argument 4: SPD Referenced an “Official Plan Document” That Did Not Exist**

---

- Defendants did not inform Rhea that they considered the SPD to be the official plan document until her lawyers asked to see the plan document
- Rhea claimed they should not be able to enforce the SPD as the plan document since they “lied” to her
- Fifth Circuit had never ruled on this issue, but cited cases from other circuits finding plan administrators breached duty of loyalty to beneficiaries when they lied or misrepresented facts
- Factors Court considered:
  - No evidence defendants made intentional misrepresentations to Rhea
  - Rhea cited no precedent stating that ERISA plan administrators breach their duty of loyalty by including an errant disclaimer in a plan document
  - Rhea did not show that the misrepresentation was material or detrimental to her interest (most important)

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## Conclusion

---

- Court concluded that “equities favor[ed] the defendants”
- Rhea had pre-existing obligation to reimburse the Plan once she received a third-party recovery for the malpractice claim
- Attorneys’ fees also awarded to defendants (reviewed for abuse of discretion in ERISA cases); Factors considered:
  - The degree of the opposing parties’ culpability or bad faith
  - The ability of the opposing parties to satisfy an attorneys’ fees award
  - Whether awarding fees against the opposing parties would deter other persons acting in similar situations
  - Whether the parties requesting attorneys’ fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question about ERISA itself
  - Relative merits of the parties’ positions

# *Rhea v. Allen Ritchey, Inc. Welfare Benefit Plan*

## Takeaways

---

- An SPD can function as both the SPD and the written instrument for the plan in the absence of a plan document
- Plan sponsors should carefully review their SPD provisions, their accuracy, and how they relate to the written instrument

EPSTEIN  
BECKER  
GREEN

Questions?