PLAN ADMINISTRATOR OF LIFE INSURANCE PROGRAM WAS ENTITLED TO ABUSE OF DISCRETION STANDARD OF REVIEW DESPITE ABSENCE OF WORD "DISCRETION" IN PLAN DOCUMENTS

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The Second Circuit court of appeals affirmed a federal district court's dismissal of a claim brought by the spouse of a deceased participant seeking accidental death benefits under the employer's life insurance program, for which Aetna was the insurer. The primary issue presented by plaintiff on appeal was whether the delegation of discretionary authority by the employer to Aetna was sufficient for the court to apply the favorable "abuse of discretion" standard.

Plaintiff's husband died of a pulmonary embolism caused by cabin pressure, while traveling on business for Stanley Black and Decker ("SB&D"). The spouse sought enhanced benefits for accidental death, arguing that the death was an "accident" under the business travel provisions of the Aetna policy. The district court upheld Aetna's determination that the participant's death was not an accident, applying an abuse of discretion standard of review.

Under ERISA, *de novo* review is the default standard applied by federal courts in reviewing adverse claims decisions. However, if the benefit plan document gives the administrator "discretionary authority to determine eligibility benefits or to construe the terms of the plan," the U.S. Supreme Court case *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) provides that the administrator is entitled to review of its decision under an arbitrary and capricious standard. The arbitrary and capricious standard allows a plan administrator's reasonable interpretation and decision to control, despite the fact that an alternative conflicting result might also be reasonable.

The Second Circuit panel held that Aetna was granted discretionary authority by SB&D for the following reasons:

1. The plan document need not actually use the word "discretion," so long as the benefit plan gives authority to determine eligibility for benefits. SB&D's plan stated that Aetna had authority to "determine[ ] eligibility for and the amount of any benefits" and to "evaluat[e] all benefit claims and appeals under the Plan."

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2. The plan established a subjective standard by which Aetna would make eligibility determinations, stating that Aetna would decide claims in accordance with "reasonable" claims procedures. Because Aetna was permitted to apply its subjective judgment, the court held Aetna was delegated discretionary authority over claims.
3. Aetna created the procedures to implement its review of eligibility determinations, thereby indicating it held discretionary authority.
4. Second Circuit precedents have held similar language sufficient to indicate a delegation of discretionary authority.

The appellate court not only disagreed with plaintiff regarding the applicable standard of review, but held it would have denied her claims even if the *de novo* standard had been applicable. The panel further rejected plaintiff's argument that it should have held a *de novo* standard applied based on Aetna's failure to disclose certain procedural documents, because plaintiff failed to timely raise the issue. Finally, the court rebuffed plaintiff's argument that it should have applied lesser deference based on an alleged "structural" conflict, as plaintiff failed to identify and demonstrate that the conflict actually affected Aetna's decision.

The case is a strong reminder that appropriate delegation of discretionary authority is a vital defense in lawsuits challenging claims determinations. Plan administrators should review their often multi-layered policies, plan documents and participant disclosures to ensure the applicable documents contain a clear delegation of discretionary authority entitled to an arbitrary and capricious standard of review.

Tyll v. Stanley Black and Decker Life Ins. Program, 2021 WL 1748474 (2d Cir. 2021)