

Abrogating Precedent, Fourth Circuit Narrows Equitable Remedies for Fiduciary Breach

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Rose v. PSA Airlines, Inc., 2023 WL 5839282 (4th Cir. 2023)

Available at <https://www.ca4.uscourts.gov/opinions/212207.p.pdf>

A 27-year-old who needed a heart transplant requested approval of the procedure from his employer's self-insured health plan. After the plan denied his request and subsequent appeals, he died—shortly before an external reviewer overturned the claim denials. The participant's mother (acting on behalf of his estate) sued the employer, plan, and several administrative service providers, seeking relief for wrongful denial of benefits or, alternatively, breach of fiduciary duty. A trial court dismissed both claims.

On appeal, the Fourth Circuit Court of Appeals upheld the dismissal of the benefits claim because the cost of the surgery (rather than the surgery itself) was not a benefit owed under the plan. But it disagreed with the trial court's analysis of relief potentially available for a fiduciary breach. Explaining that monetary relief is available for fiduciary breach only if the type of relief was "typically available in equity," the court engaged in an extensive analysis of "typically available" equitable remedies. (In the historic distinction between legal and equitable remedies, recovery of money damages is typically characterized as legal, but some equitable remedies might include monetary relief.) In the court's view, Fourth Circuit precedent suggesting "surcharge" as an available fiduciary breach remedy was inconsistent with a later U.S. Supreme Court decision stating that, notwithstanding the expansion of equitable remedies suggested by its *Cigna v. Amara* ruling, its interpretation of equitable relief as reflected in pre-*Amara* opinions "remains unchanged." (The court also noted that a subsequent Fourth Circuit decision failed to reconcile these issues.) According to the court, the trial court had correctly noted that compensatory "make-whole" monetary relief (such as surcharge) was not available for a fiduciary breach, but had not considered relief based on unjust enrichment, which would require showing that the fiduciary was unjustly enriched by its wrongdoing and that the fruits of that unjust enrichment remained in its possession or could be traced to purchased assets. It returned the case to the trial court for reanalysis on that basis.

EBIA Comment: This change to potential remedies for fiduciary breach, at least in the Fourth Circuit, is notable. Even if the claimant can demonstrate that the fiduciary was unjustly enriched by its actions, tracing the funds may present a significant challenge. A dissent disagreed that the Supreme Court had rejected *Amara*'s "blessing" of surcharge as an available remedy and would conclude that the ability to obtain relief does not turn on traceability. For more information, see EBIA's ERISA Compliance manual at Section XXVIII.I ("Fiduciary Liability and Litigation"). See also EBIA's 401(k) Plans manual at Section XXXVII.H ("Claims for Breach of Fiduciary Duty") and EBIA's Self-Insured Health Plans manual at Section VIII.D ("Potential Pitfalls for the Plan Sponsor as Fiduciary").

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