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DECLARATORY JUDGMENT DETERMINING PRIMARY LIABILITY FOR
OVERLAPPING CLAIMS IS EQUITABLE RELIEF UNDER ERISA § 502(a)(3), EIGHTH
CIRCUIT DECLARES

In a recent published decision, the Eighth Circuit Court of Appeals found that an ERISA health plan may file a declaratory judgment action against a private insurer to determine primary liability for unpaid medical expenses incurred by a common insured.

In February 2014, a student was participating in a college-sanctioned baseball practice at Westminster College in Missouri when he injured his knee. Westminster College provided student athletes with a blanket accident insurance policy through Guarantee Trust Life Insurance Company. The student was also insured through his father's ERISA-governed employee welfare benefit plan. Both plans acknowledged coverage for the student's baseball-related injuries, but both claimed coverage did not begin until the other plan had paid out all available benefits.

After Guarantee Trust refused to pay the claims, asserting that it was an "excess only" policy, the trustees of the ERISA plan filed suit in federal district court under ERISA § 502(a)(3) seeking an order enforcing the plan's coordination of benefits provisions and declaring that Guarantee Trust was primarily liable for the medical bills. The District Court for the District of North Dakota ruled that it had jurisdiction under ERISA and that Guarantee Trust was the primary insurer for the claims.¹

Guarantee Trust appealed to the Eighth Circuit. On August 3, 2017, the Court of Appeals affirmed the district court's rulings, confirming that the ERISA plan could bring an action under § 502(a)(3) of ERISA seeking an order enforcing the coordination of benefits provisions in its plan and determining that Guarantee Trust's policy provided primary coverage for the outstanding medical expenses.² The issue depended on whether the ERISA plan was seeking an "equitable" remedy under the ERISA scheme.

In finding that the ERISA plan was seeking an equitable remedy, the Eighth Circuit noted that because the claims had not been paid, the ERISA plan was not seeking to recover any payments, past or future.³ Rather, the plan was seeking to enforce its plan terms, which the statute expressly authorizes. The court reviewed a number of decisions discussing the differences between equitable and legal remedies in the days of the divided bench, and likened the plan's claim to a "bill for instructions." The "trustees seek a judicial ruling on an uncertain question critical to proper

¹ *Dakotas & Western Minn. Elec. Indus. Health & Welfare Fund v. First Agency, Inc.*, 2016 WL 1736619 (D.N.D. Mar. 11, 2016).

² 2017 WL 3297339, __ F.3d __ (8th Cir. 2017).

³ *Id.* at *3.

performance of their fiduciary duties in administering plan assets and paying beneficiary claims—a ruling traditionally available in courts of equity by a bill for instructions.”⁴ The court also affirmed the district court’s order that, under the ERISA plan’s coordination of benefits provisions, Guarantee Trust was primarily liable for the student’s accident claims.⁵

Finally, the Eighth Circuit panel reversed the district court’s separate order granting the ERISA plan’s motion for attorney’s fees. Without citing the Supreme Court’s *Hardt v. Reliance Standard Life Insurance Co.* decision,⁶ the panel found that the district court abused its discretion in granting the plan fees because Guarantee Trust’s “position that ERISA should not govern this dispute was not obviously wrong, and its argument that Dakotas was not entitled to declaratory relief under § 502(a)(3) was virtually untested.”⁷

Overall, this decision is important in upholding an ERISA plan’s terms and allows such plans to sue third party insurers in federal court to enforce those terms. The opinion can be found here: <http://media.ca8.uscourts.gov/opndir/17/08/161846P.pdf>.

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⁴ *Id.* at *4.

⁵ *Id.* at *5.

⁶ 560 U.S. 242 (2010).

⁷ 2017 WL 3297339, at *5.