

## Case Reminds Plan Sponsors to Check Plans for Discretionary Language

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Most employer-sponsored group health plans are subject to ERISA. Under ERISA, courts will review a denial of a participant's benefits claim *de novo* (meaning without deference to the plan administrator's prior decision) unless a plan document gives the plan administrator discretionary authority to interpret the terms of the plan. If the plan administrator has this discretion, a court will review the plan administrator's decision under the "arbitrary and capricious" standard, and the court will uphold the plan administrator's decision if it is rational in light of the plan's provisions. In this case, a "wrap plan" granted the plan administrator discretion to interpret the employer's health and welfare benefits plan for employees. This was important because the certificate of coverage for the accidental death and dismemberment benefit did not contain such language. Although the language was also contained in the summary plan description (SPD), the court noted that the recent U.S. Supreme Court case, *Cigna v. Amara*, concluded that SPDs do not themselves constitute the terms of the plan. This case thus serves as a reminder to plan sponsors to ensure that, to the extent they are relying on insurance policies and certificates of coverage as the official plan document, generally a wrap plan is needed that incorporates such policies or certificates by reference and gives the plan administrator discretionary authority to interpret the plan, including for appeals of claim denials. *Johnson v. Prudential Insurance Company of America*, No. 2:11-cv-664 (S.D. Ohio Oct. 31, 2012). No. 11-3291 (7th Cir. Sept. 4, 2012).