

## Cases Highlight Importance of Governing Law Clauses in ERISA Plan Documents

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The U.S. Court of Appeals for the Tenth Circuit recently held that the choice of law provision contained in a long-term disability insurance policy (the “**LTD Policy**”) controlled when determining which state law applied to the case. The LTD Policy, which was subject to regulation under ERISA as an employee benefit plan, stated that it was governed by the law of Pennsylvania, where Comcast (the employer) was incorporated and had its principal place of business. The employee argued that Colorado law controlled, because Colorado is where the employee worked for Comcast and filed the lawsuit. This was important because Colorado insurance law prohibited granting discretion to the plan administrator to interpret the LTD Policy, whereas Pennsylvania law did not prohibit this deferential standard. Generally, a plan administrator’s denial of benefits under an ERISA plan is reviewed by a court *de novo* (i.e., without deference being paid to the plan administrator’s original decision), but if the plan document gives the plan administrator discretion to interpret the plan, then the benefits denial decision is to be reviewed by a court using the deferential “abuse of discretion” standard. The Tenth Circuit ruled that, because the plan had a legitimate connection to Pennsylvania, the choice of law provision in the LTD Policy would govern. Similarly, on the same day, the U.S. District Court for the Southern District of Florida dismissed Apex Technology’s claims against the flexible benefits plan of Oracle (the employer). This district court previously found that the forum selection clause in Oracle’s plan document was enforceable and had instructed the parties to file supplemental briefings on the proper enforcement of the forum selection clause. Oracle argued that the claims should be dismissed, and Apex argued that the claims should instead be transferred to a federal court in California. The court held that dismissal was the proper mechanism for enforcing the forum selection clause and thus, Apex was required to refile its claims in the proper forum. These cases remind employers to review their employee benefit plan documents to ensure they contain governing law provisions, such as choice of law and forum selection clauses, that can be beneficial for managing litigation risks. *Ellis v. Liberty Life Assurance Co. of Boston*, No. 19-1074 (10th Cir. May 13, 2020) can be found [here](#). *Apex Toxicology, LLC v. United Healthcare Servs.*, No. 17-61840-CIV-SMITH (S.D. Fla. May 13, 2020) can be found [here](#).