

Fifth Circuit Resolves Split with Other Circuits on Standard of Review

March 16, 2018

Generally, when discretionary authority is delegated to the plan administrator of an ERISA plan, a court reviewing the denial of a benefits claim is limited to determining whether the plan administrator abused its discretion in denying the claim. In a prior seminal case, *Firestone Tire & Rubber Co. v. Bruch*, the U.S. Supreme Court held that, when there is no delegation of discretionary authority, a denial of benefits is to be reviewed *de novo* (*i.e.*, without deference to the plan administrator's previous decision). The U.S. Court of Appeals for the Fifth Circuit (whose jurisdiction includes Texas, Louisiana, and Mississippi) interpreted *Firestone* to only require *de novo* review of a denial of benefits based on an interpretation of plan language, but not denials based on *factual determinations*. The Fifth Circuit recently overturned its longstanding precedent in order to bring its interpretation of *Firestone* in line with eight other federal circuit courts – the *de novo* standard of review applies to both legal and factual determinations when there is no delegation of discretionary authority under the plan. Employers should continue to ensure that their plan documents properly allocate discretionary authority to the plan administrator to ensure that a court would use a discretionary standard to judicially review a plan administrator's benefit claim denial. *Ariana M. v. Humana Health Plan of Texas, Inc.*, No. 16-20174 (5th Cir. Mar. 1, 2018)