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Victory for Our Client: Court Ruled Against Unum's Claim ERISA Applied

GOODEN V. UNUM LIFE INSURANCE COMPANY OF AMERICA

Our client held an individual disability policy that he obtained directly from Unum. *Gooden v. Unum Life Ins. Co. of America*, 181 F.Supp.3d 465, 468 (E.D. Tenn. 2016). An insurance salesperson for Unum reached out to our client's employer and requested to meet privately with some of the employees. *Id.* The meetings resulted in our client and a few other employees obtaining disability policies through Unum, which were discounted by a percentage pursuant to a Unum program that allows for discounts when three or more full-time employees of the same company sign up, and the employer agrees to pay the bill directly—whether through payroll deductions, or otherwise. *Id.* at 468–69. Our client's employer did agree to pay the premiums, and to fund those payments by deducting the same amount from our client's paycheck. *Id.* at 469. Our client's employer never negotiated a group plan, nor did it pay the premiums with its own funds. *Id.*

When Unum refused to pay our client's claim for disability benefits, we sued in state court under Tennessee's bad-faith contract law. *Id.* Unum removed the claim to federal court, seeking to have our claim reviewed

removal, because we know that ERISA is often more favorable to insurers and less favorable to our clients. We argued that ERISA did not apply to our client's policy, and Tennessee's state bad-faith law should guide the case. *Id.*

ERISA applies to "employee welfare benefit plans," defined as:

any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, . . . disability . . . benefits.

***Id.* at 470 (citing 29 U.S.C. § 1002(1) (2012)).**

In determining whether ERISA applied to our client's plan, the court applied the Sixth Circuit's three-step test, which looks first at the Department of Labor "safe harbor" regulations. *Id.* at 470–71. The court stopped at this first step, as it found that our client's plan did fall into the Department of Labor's "safe-harbor" provision, thus exempting it from ERISA coverage. The safe-harbor provision that the court relied on stated that a plan is exempt from ERISA coverage if the circumstances meet the following four requirements:

(1) No contributions are made by an employer or employee organization;

(2) Participation [sic] the program is completely voluntary for employees or members;

(3) The sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and

(4) The employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other

services actually rendered in connection with payroll deductions or dues checkoffs.

***Id.* at 471 (citing 29 C.F.R. § 2510.3-1(j) (2019)).**

Unum agreed with us that the second and fourth criteria were satisfied. *Id.* at 471. Thus, the only two criteria at issue for the court were the first and the fourth. In reference to the first criterion, Unum argued that the discount that our client and the other employees received through its own program constituted a contribution by the employer. *Id.* The court did not agree with Unum, and held that "a non-negotiated group discount that applies only because premiums are paid through payroll deduction is not a 'contribution' under the first criterion of the safe harbor." *Id.* at 471–72. Because our client's employer did not negotiate the discount, nor did the employer pay any portion of the premiums, the court found that the first criterion for exclusion was satisfied. *Id.* at 474–75. Additionally, the court did not buy Unum's back-up argument that simply paying the premiums through equivalent payroll deductions constitutes employer contribution. *Id.* at 475. The Department of Labor's own regulations specifically allow an employer to "collect premiums through payroll deductions . . . and remit them to the insurer" for an excluded plan. *Id.* (citing 29 C.F.R. § 2510.3-1(j)(3) (2019)).

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