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The Biggest Benefits Rulings From The 1st Half Of 2022

By **Kellie Mejdrich**

Law360 (June 17, 2022, 8:04 PM EDT) -- A U.S. Supreme Court opinion reviving a federal benefits lawsuit against Northwestern University headlines a jam-packed first half of 2022 for Employee Retirement Income Security Act rulings.

Here, Law360 breaks down five big benefits decisions from the last six months.

Northwestern Workers Win at High Court

The high court's decision in January to revive a challenge to Northwestern University's 401(k) plan hinged on rejecting the employer's argument that high-quality investment options in a plan precluded claims over allegedly imprudent ones.

But lawyers representing employers say there's been little broad impact so far from the Hughes v. Northwestern decision, given that justices ruled out a lesser-used defense from employers. The high court also didn't elaborate on the broader pleading standard needed to overcome a motion to dismiss in these types of 401(k) cases where workers allege mismanagement in violation of ERISA over high-fee and poorly performing investment options.

"I think that the initial reaction from some of the courts was to sort of worry about dismissing cases early. I think that's an early trend, I don't know that it's going to stick," said Andrew Oringer, partner in Dechert LLP's ERISA and executive compensation group.

In the Northwestern case, which is now on remand at the Seventh Circuit, justices held that workers had adequately pled their case accusing the school of violating federal law by saddling their retirement plan with high fees and poor investments. It reversed the Seventh Circuit's dismissal on the basis that the appeals court erred in relying on participant choice as a means to escape claims over bad options.

"There's a lot of continued confusion and cases going both ways," Jed Glickstein of Mayer Brown LLP said of the post-Hughes environment of dismissal rulings in ERISA cases.

"It doesn't appear like a lot has changed since Hughes," Glickstein said, adding that he's hopeful for clearer guidance soon from the circuit courts, pointing to cases pending in both the Seventh and Sixth Circuits, both of which heard oral arguments in workers' dismissal appeals in June.

"The reality is that decision is so short and so cryptic that I think people can kind of see what they want

to in it," Glickstein said.

The case is April Hughes et al. v. Northwestern University et al., case number 19-1401, in the U.S. Supreme Court. The appeal is Laura Divane et al. v. Northwestern University et al., case number 18-2569, in the U.S. Court of Appeals for the Seventh Circuit.

Mortality Table Challenge Tossed

After overcoming a motion to dismiss in April 2020, a proposed ERISA class action brought by Massachusetts General Hospital workers alleging the company lowballed their retirements by using outdated actuarial assumptions in annuity payout calculations was again tossed in March.

Now on appeal in the First Circuit, the case Belknap v. Partners Healthcare System Inc. seems likely to settle, as the appellate court on Wednesday ordered briefing stayed pending ongoing settlement negotiations after parties reported they were hashing out a deal.

Attorneys hoped the appeal might prompt the First Circuit to offer clearer pleading standards for these types of ERISA class actions over so-called actuarial equivalence standards for converting single life annuities, particularly given that many similar cases have settled.

ERISA requires that different kinds of annuity payouts, such as a joint and survivor annuity, must be actuarially equivalent to a single life annuity at normal retirement age. But the law doesn't define that term, and the workers in the Belknap case argued that the use of actuarial tables with old mortality tables used in those conversions was unreasonable.

Mass General hospital worker Scott Belknap first sued the health care system in 2019 under its previous name, Partners HealthCare. Belknap alleged Partners reduced the value of his annuity payments by over $10,000 because it used a 1951 actuarial table that included outdated assumptions about life expectancy.

A key holding in U.S. District Judge F. Dennis Saylor IV's dismissal of the case in March was that nothing in ERISA's statute required actuarial equivalence calculations using assumptions that were reasonable, given that the term wasn't clearly defined in law and the plan itself required the use of certain assumptions.

Mayer Brown's Glickstein said that the Partners outcome represented "sort of a much smaller microcosm of what you're seeing in excessive fee cases, where it's hard to articulate a standard, and hard to work through it."

Glickstein said the Partners appeal offered "a potential for clear guidance one way or another," but with the dispute likely resolved, attorneys will have to wait for other cases.

"To the extent that there's going to be clarity, it's going to have to come through continued percolation," Glickstein said.

The case is Belknap v. Partners Healthcare System Inc., case number 22-1188, in the U.S. Court of Appeals for the First Circuit.

North Carolina Ordered to Provide Trans Health Care

Earlier this month, a federal judge in North Carolina found the state health plan's policy to deny coverage for treatment of gender dysphoria a case of "textbook" discrimination under Title VII of the Civil Rights Act and the U.S. Constitution.

The dispute over state worker health coverage is just one of numerous recent lawsuits over employer-sponsored health plan decisions involving health care for transgender workers. The North Carolina injunction comes after federal courts ordered several injunctions in other cases against federal agencies, blocking them from requiring religious employers to cover gender-confirming surgery and other treatments that they say conflict with their beliefs.

In addition to enjoining the state from enforcing the exclusion, U.S. District Judge Loretta Biggs ordered the plan for teachers and North Carolina state employees — the state's largest insurer, covering about 740,000 people — to reinstate coverage for "medically necessary services for the treatment of gender dysphoria."

David Brown, legal director for the Transgender Legal Defense and Education Fund Inc., said the North Carolina decision comes after another federal court found in Georgia that a county health plan's exclusion of gender-conforming surgery violated Title VII because it applied only to transgender employees.

"I think the fact that you've got two courts in the southeastern United States who decided within less than two weeks of each other the exact same thing, namely, that a trans health exclusion in the employer health plan violates Title VII, couldn't send a clearer message," Brown said.

Employers have "a very limited time to get rid of their plan's health exclusions, or they are facing significant liability," Brown said.

State health plan participants and parents of transgender children insured by the North Carolina plan **first sued** the state over the exclusion in March 2019 and amended their complaint in March 2021, alleging discrimination under the Constitution's equal protection clause, Title VII and the Affordable Care Act.

The state defendants lost their motions to dismiss the case and sought unsuccessfully to have the Fourth Circuit shut down the case. After the appeals court upheld the trial court's denial of the dismissal bids, the state petitioned the U.S. Supreme Court to take up its case. The high court denied that petition in January.

In granting summary judgment on discrimination claims, Judge Biggs found that the plan's exclusion barring treatments such as hormone therapy or chest surgery, which the plan had covered for cisgender patients based on medical necessity, was a discriminatory policy "on its face."

The case is Kadel et al. v. Folwell et al., case number 1:19-cv-00272, in the U.S. District Court for the Middle District of North Carolina.

Sixth Circuit Denies Arbitration

The Sixth Circuit refused to compel arbitration for a proposed class of Cintas Corp. workers alleging mismanagement of the company's 401(k) plan in a published opinion in April, holding that while each

worker had signed employment agreements that contained arbitration provisions, those didn't apply to ERISA claims made on behalf of the entire plan.

The decision touched on the hotly contested issue of how and whether planwide ERISA claims can be pushed out of court. That's a fairly new question, in part because the Ninth Circuit only decided that ERISA claims could be arbitrated in the first place in 2019 in Dorman v. Charles Schwab Corp., which overturned decades of case law denying arbitration of such claims.

"The courts are all over the board right now" on arbitration, said Holland & Knight LLP partner Lindsey Camp, who has been closely watching rulings on arbitration.

Camp said she's waiting to compare the Sixth Circuit's ruling to the Third Circuit's decision in another ERISA arbitration appeal in Marlow Henry v. Wilmington Trust NA et al., another case that she said "hinged on consent" regarding plan claims.

Camp said the Cintas decision is "an interesting case, because I think ultimately, this supports the defendant's position for the enforceability of these plan arbitration provisions." Camp said the decision found the plan hadn't consented to arbitration, but that didn't conflict with the Ninth Circuit's ruling in Dorman.

Still, the Sixth Circuit panel said in its opinion in Cintas that the court didn't need to reach the issue of whether planwide claims were arbitrable under ERISA, "because neither party argues that plaintiffs' ERISA claims could not, in theory, be subject to arbitration."

The case is Raymond Hawkins et al. v. Cintas Corp., case number 21-3156, in the U.S. Court of Appeals for the Sixth Circuit. The district court case is Hawkins et al. v. Cintas Corporation et al., case number 1:19-cv-01062, in the U.S. District Court for the Southern District of Ohio.

ERISA Class Targets Group of Funds

The Third Circuit's published opinion in June upholding certification for a class of more than 60,000 Universal Health Services Inc. workers challenging a group of investment offerings in the company 401(k) plan gave benefits attorneys an early look at how appellate courts will interpret the Supreme Court's 2020 decision in Thole v. U.S. Bank NA.

Justices in the Thole case held that pensioners in a defined benefit plan lacked standing to sue over ERISA violations that didn't cause them to lose money in their own retirement accounts. Employers argued in the Third Circuit case that the workers should have to be invested in each fund they were targeting, building on Thole.

But the circuit court held that plaintiffs representing a class of workers in the case only had to prove investments in seven of the 37 fund offerings targeted by the suit, siding with the workers' argument that the class had enough commonality and typicality among their claims.

William A. Rivera, senior vice president for litigation at the AARP Foundation, said determining whether plaintiffs can sue over investments they don't actually have money in "is going to depend on the facts of any given case."

"But it certainly seems that in a case like this, that it's reasonable to say that investors can represent a

class of people who are sufficiently similarly situated in having been exposed to a group of investment options that shouldn't have been in there, if the fiduciary had carried out his or her duties properly."

The case is Mary Boley et al. v. Universal Health Services Inc. et al., case number 21-2014, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Haylee Pearl.
