CORPORATIONS ARE INDIVIDUALS! FOR SERVICE IN ERISA CASES AT LEAST

The power of the corporation continues to expand in the eyes of the law, at least as far as employee benefits litigation is concerned. Recently, in *Burton v. Colorado Access*, the Colorado Supreme Court held corporations meet the definition of "individuals" for purposes of interpretation under the Employee Retirement Income Security Act ("ERISA"). ERISA is a federal statute that regulates employee benefit plans. The *Burton* holding is significant in that corporations now have a clear legal entitlement to receive direct notice of ERISA lawsuits against them, so far as they designate the corporation itself as the proper agent for service in their Summary Plan Descriptions.

In *Burton*, the insurance companies denied two plaintiffs' claims for long-term disability benefits asserted under employee-benefit plans set up by their employers ("the Plans"). The plaintiffs then sued under ERISA, 29 U.S.C. § 1132(a)(1)(B), for benefits due to them under the insurance policies.

One aspect of the *Burton* decision focuses specifically on service. In order for a lawsuit to move forward, the plaintiffs bear the obligation of serving the defendants with the complaint, which ensures defendants have notice of the claims against them. Under ERISA, when an employee-benefit plan has not designated an "individual" as the proper agent for service, the statute allows plaintiffs to serve the U.S. Department of Labor Secretary, pursuant to 29 U.S.C. § 1132(d)(1). Historically, plaintiffs have relied on this section of the statute to ease the burden of service.

In *Burton*, the Plans designated corporations for service; however, plaintiffs mistakenly deemed those corporations as not meeting the definition of "individuals" under the ERISA statute, and therefore, served the U.S. Department of Labor Secretary rather than the corporations' registered agents. In both cases, the Labor Secretary never forwarded the complaints to the Plans' corporate agents and the Plans failed to respond to the lawsuits resulting in default judgments against the Plans. Four years later, the Plans moved to set aside the default judgments on the basis of improper service, which the trial courts granted, the Colorado Court of Appeals and the Colorado Supreme Court affirmed.

The Colorado Supreme Court examined the question of whether service on the U.S. Department of Labor Secretary is sufficient under ERISA where the employee-benefit plan designates a corporation as its agent for service instead of a natural person. The Court held service on the U.S. Department of Labor Secretary is not sufficient, finding that corporations meet the definition of "individuals" and must be served directly. The Court reasoned Congress intended Section 1132(d)(1) of ERISA to be a substitute service provision in which plaintiffs could serve the U.S. Department of Labor Secretary only where the summary plan description fails to designate a plan administrator or some other person, including a corporation, as an agent for service.

Also of note, the *Burton* Court held that the judgments void for lack of service may be set aside at any time when service is invalid. Lastly, the Colorado Supreme Court held the insurer, not the employee-benefit plan, is the only proper defendant in an ERISA claim for benefits due when the plan's terms provide that only the insurer is obligated to pay and determine eligibility for benefits. The Court stated it is still possible for an insurance-funded employee-benefits plan to be sued, but not when the plan has no legal obligation to provide benefits under the plan's terms.

The *Burton* decision provides some clarity in the dense avenues of ERISA litigation. Colorado employers who want to ensure direct notice of ERISA lawsuits on the corporation should specifically and clearly designate the corporation as the proper agent of service in their Summary Plan Descriptions. Taking such action will avail these employers of the advantages of the *Burton* decision, allowing employers to challenge service where plaintiffs may attempt to only serve the U.S. Department of Labor with the complaint. With a view toward best practices, designating the corporation as the proper agent for service in the Summary Plan Description also may protect the corporation from inadvertent default judgments. Otherwise, if no agent of service is specified in the Summary Plan Description, a plaintiff may have no choice but to serve the U.S. Department of Labor, which is still permissible under ERISA per *Burton*, and the employer then bears the risk of the U.S. Department of Labor potentially failing to forward the complaint to the corporation and thereby leading to a default judgment, the very situation which occurred in *Burton*.

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