



## Alerts

### Second Circuit Allows Breach of Fiduciary Duty Claim to Proceed Based on Misrepresentation of Benefits by ERISA Plan Administrator

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*The LHD/ERISA Advisor*

In *Sullivan-Mestecky v. Verizon Communs. Inc.*, 961 F.3d 91 (2d Cir. 2020), the Second Circuit held that a claim under Section 502(a)(3) of ERISA could proceed, where the beneficiary pled that the plan and its agents negligently misrepresented the amount of life insurance coverage provided to the participant and the participant / beneficiary relied on those misrepresentations to their detriment.

Kathleen Sullivan ("Sullivan") was a retired employee of Verizon's predecessor and was enrolled in various plan benefits, including life insurance. In 2011, Sullivan contacted the Verizon Benefits Center, which was administered by Aon Hewitt ("Aon"), to confirm her life insurance benefits. In response, Sullivan received an enrollment worksheet and various other mailings on Verizon letterhead that confirmed coverage in the amount of \$679,700, which was actually 52 times the amount Sullivan was eligible for under the terms of the plan. Sullivan contacted the plan's representative and expressed surprise regarding the amount of her benefits. Aon questioned the amount of Sullivan's coverage internally, but did not discover the error. As a result, the plan's representatives confirmed Sullivan's coverage in the amount of \$679,700.

Believing that Sullivan had such coverage, Sullivan's daughter and named beneficiary, Kristine Sullivan-Mestecky ("Sullivan-Mestecky"), allowed her mother "to live rent-free at her home, covered her mother's living expenses, paid off her mother's debts," and took an extended unpaid leave of absence from work to care for her mother. She believed all these expenses would be covered with the payout of the life insurance benefits through Verizon. It was only after Sullivan's death that Aon and Verizon discovered the error and advised Sullivan-Mestecky that the actual benefit was \$11,400. Sullivan-Mestecky filed suit against Verizon and Prudential Insurance Company of America ("Prudential"), the insurer and claim administrator, asserting claims under Sections 502(a)(1)(B) and 502(a)(3) of ERISA. The district court dismissed the 502(a)(3) claim and granted summary judgment in favor of Verizon and Prudential on the 502(a)(1)(B) claim.

On appeal, the Second Circuit affirmed the judgment under Section 502(a)(1)(B) because the express terms of the plan only entitled Sullivan to the "1 x Pay" option of coverage, which equaled \$11,400. However, the Second Circuit reversed the dismissal of the claim under Section 502(a)(3) against Verizon,

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finding that Sullivan-Mestecky "plausibly alleged that Verizon breached its fiduciary duty by failing to provide Sullivan with "complete and accurate information" of her benefits. The court noted that Sullivan-Mestecky had pled a claim for estoppel based upon (1) Verizon's and Aon's written and verbal misrepresentations regarding the level of coverage, even after Sullivan questioned the amount; (2) the detrimental reliance on those representations, including Sullivan-Mestecky's incurring expenses to care for her mother, and Sullivan's decision to forego obtaining other insurance coverage, both in reliance on receipt of the benefits promised; and (3) the presence of "extraordinary circumstances" based on what the court described as "gross negligence" by Verizon and its administrator Aon, who could have discovered the error with a proper investigation. The Second Circuit also held that Verizon's fiduciary breaches supported a claim for equitable surcharge and reformation of the plan under Section 502(a)(3) to provide the amount of benefits promised.

Although the Court held that Sullivan-Mestecky pled a viable breach of fiduciary duty against Verizon, the court held the claims could not proceed against Prudential, which sent only one letter to Sullivan advising her how the value of her policy would decrease as she aged. The court also noted that the plan administrator—not Prudential—was responsible for confirming Sullivan's eligibility and enrollment under the plan.