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Trevor Savage Wins Landmark ERISA Case

In a case of first impression, the First Circuit Court of Appeals has announced a new fiduciary duty under the Employee Retirement and Investment Security Act of 1974 ("ERISA"): that where an insurer has both the discretion to choose whether an employee is eligible for coverage *and* when to accept premiums from that employee, the insurer has a fiduciary duty to "make eligibility determinations for each employee from whom the insurer accepts premiums reasonably proximate to the acceptance of those premiums."

The case, *Shields v. United of Omaha Life Insurance Company*, arose after Ms. Shields' husband signed up for life insurance benefits in October 2008. For nearly ten years, United of Omaha accepted premiums from Mr. Shields. He died in June 2018, and Ms. Shields submitted a claim for the life insurance benefits. United of Omaha denied her claim, stating that her husband was never insured—and thus, that Ms. Shields was not entitled to benefits—because it never "received and approved" a form from Mr. Shields in 2008, certifying that he was in "good health" at that time.

The First Circuit Court of Appeals disagreed, concluding that the life insurance policy gave United of Omaha "the discretion and the final authority to interpret" the life insurance plan, including the discretion to "decide all questions of eligibility." As a result, the Court held that because the plan "confer[red] on [United] the discretion to choose when to accept premiums for an employee and when to determine if an employee is eligible for coverage, then [United of Omaha] has the kind of discretion in setting the relative timing of those two determinations" sufficient to "impose a functional fiduciary duty" on United of Omaha. Accordingly, United of Omaha had a fiduciary duty to "make eligibility determinations for each employee from whom [it] accept[ed] premiums reasonably proximate to the acceptance of those premiums."

As the First Circuit observed, without this newly-established fiduciary duty, United of Omaha would have been free to receive "essentially risk-free windfall profits from employees who paid premiums on non-existent benefits but who never filed a claim for those benefits," meaning that "[t]he biggest risk [United of Omaha] would face . . . would be the return of their ill-gotten gains through premium refunds, and even this risk would only materialize in the (likely small) subset of circumstances where plan participants actually needed the benefits for which they had paid."

For more information regarding the decision in *Shields v. United of Omaha Life Insurance Company* and other ERISA or employment issues, please contact Trevor D. Savage at (207) 553-4616 or tsavage@nhdlaw.com.