

A Summary of Judge Sotomayor's ERISA Decisions- Part II

By Mike Vanic and Joe Faucher

This is the second of two bulletins regarding decisions by Judge—now Justice—Sonia Sotomayor involving the Employee Retirement Income Security Act of 1974 (“ERISA”). Since our last bulletin, the United States Senate has confirmed Justice Sotomayor’s appointment and she has been sworn in as the newest member of the United States Supreme Court.

In our first bulletin, we described her ERISA decisions issued while a member of the United States Court of Appeals for the Second Circuit. In this bulletin, we address several ERISA decisions issued by Judge Sotomayor while she was a United States District Judge.

As a general rule, decision by District Court judges carry less weight than decisions by the Circuit Courts of Appeals. This is because two different district courts within the same circuit may conflict in their interpretation of the law. Therefore, a decision by one District Court judge may be considered persuasive authority to a court in a different district, but does not bind those other District Courts. Conversely, all District Courts within a given Circuit are bound by the decisions of the Circuit Court of Appeals. However, because Circuit Court opinions reflect the collective opinions of a panel of multiple judges (most often, three), District Court opinions issued by a single judge arguably give us a more unfiltered insight into that judge’s view of the law. We hope you find this summary of some of Justice Sotomayor’s District Court ERISA opinions informative.

District Court Decisions By Judge Sotomayor

As we discussed in our first bulletin, a hallmark of Judge Sotomayor’s ERISA decisions at the Circuit Court level was her conscientiousness, attention to detail and adherence to precedent. Those attributes also tend to permeate her district court decisions.

In *Lanahan v. Mutual Life Insurance Company of New York*, 15 F.Supp.2d 381 (S.D.N.Y. 1998), the plaintiff alleged his employment was terminated in violation of the Age Discrimination in Employment Act, ERISA and various state laws. Judge Sotomayor granted the employer’s motion for summary judgment. With regard to the ERISA claim, she found that plaintiff failed to provide any data from which a reasonable factfinder could have inferred that his discharge was motivated by a desire to deprive him of ERISA benefits as required by

ERISA §510. She also found that his breach of contract claim was preempted by ERISA.

The *Lanahan* decision demonstrates Judge Sotomayor’s attention to detail as she describes in detail the evidence presented in connection with the motion and quotes extensively from depositions. The result also demonstrates her evenhandedness. While her critics may attempt to portray her as a “closet liberal,” the *Lanahan* case shows that Judge Sotomayor is unlikely to be swayed by an affinity for the “little guy” when the facts require a ruling in favor of a large corporate defendant.

Eastern States Health & Welfare Fund v. Philip Morris, Inc., 11 F.Supp. 2d 384 (S.D.N.Y. 1998) involves an exploration of an issue that arises often in the ERISA context: preemption. Multiple suits were brought in state court on behalf of employee benefit plans seeking to recover from tobacco companies the amount of payments made to plan beneficiaries for treatment of medical conditions caused by tobacco. The tobacco companies removed the case to federal court. The plans filed a motion for remand to the state courts, claiming the federal court lacked subject matter jurisdiction. The tobacco companies argued the actions were “completely preempted” by ERISA.

Judge Sotomayor’s decision contains a lengthy discussion and analysis of ERISA preemption and the doctrine of complete preemption. She noted initially that plaintiffs did not attempt to assert any ERISA claim. Thus, under the well-pleaded complaint rule, even if some of the plaintiffs’ claims were subject to ERISA preemption, preemption was only a defense and could not serve as a basis to remove the actions to federal court. Citing relevant Supreme Court precedent, Judge Sotomayor cited the general principles that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint, and a defense is not part of a plaintiff’s properly pleaded statement of his claim. Thus, federal question jurisdiction may not be predicated on an anticipated federal defense. She then noted that this well-pleaded complaint rule gives way to only one, very limited exception—the complete preemption doctrine. Under the complete preemption doctrine, the Supreme Court has recognized that in certain circumstances the preemptive force of a statute is so “extraordinary” that it “converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded

complaint rule.” The tobacco companies argued that this was just such a case. She proceeded to analyze their arguments in that regard.

Judge Sotomayor noted that two conditions must exist in order for there to be complete preemption under ERISA: first, the cause of action must be based on a state law that is preempted by ERISA, and second, the cause of action must be within the scope of the civil enforcement scheme of ERISA §502(a)—that is, the case must be one for which ERISA expressly provides a remedy. She deferred deciding the preemption issue, since it was not necessary to her holding. With regard to the civil enforcement prong, she concluded that the action was not within the scope of the civil enforcement scheme of ERISA because (i) the Funds filing the claims were ERISA plans which do not have standing under ERISA §502(a)—only participants, beneficiaries and fiduciaries have standing under that statute; and (ii) the cases did not assert claims for relief that were cognizable under ERISA §502. Judge Sotomayor reasoned that the subrogation claims upon which the tobacco companies premised their argument did not adjudicate rights and relationships of parties which ERISA was intended to regulate, noting “[i]n the instant case, of course, the suits are not brought against participants to enforce the Funds’ subrogation rights, but rather are cases brought by the Funds as subrogees against the Companies for torts unrelated to any ERISA provisions.”

The decision in *Eastern States* is well-reasoned and consistent with the view of most courts regarding the scope of the “complete preemption” doctrine. She thoroughly reviewed the arguments presented by the parties, and raised her own issues as well.

Semmler v. Metropolitan Life Insurance Company, 172 F.R.D. 86 (S.D.N.Y. 1997) involved an action for denial of benefits for post operative pain management. Plaintiffs moved to reconsider an order granting summary judgment for the defendant. The Plan vested discretion in the administrator or fiduciary to determine eligibility and construe its terms. Thus, Judge Sotomayor concluded that the applicable standard of review was the arbitrary and capricious or abuse of discretion standard—the standard requiring deference by the court to the decision of the plan administrator—rather than “de novo” review of the claim by the court. Accordingly, she reviewed the record to ascertain whether the determination made by the administrator was reasonable, and concluded “because the conclusion of the Committee is rational and supported by the record, under a deferential review, the Committee’s conclusion must be upheld.” Again, Judge Sotomayor’s decision demonstrates an extensive and detailed review of the record and the willingness to reach a result that runs contrary to pigeonholing her as a “closet liberal.”

Greater Blouse, Skirt & Undergarment Association, Inc. v. Morris, 1996 WL 180019 (S.D.N.Y. 1996) involved protracted litigation between the Association and its former executive director, Morris. Morris counterclaimed for breach of his employment agreement and for benefits under a defined benefit pension plan. Once promoted to executive director, Morris’s duties included overseeing the pension plan. As executive director, Morris had

four amendments to the Plan prepared by plan counsel, three of which resulted in increasing his benefits. Morris presented each of the amendments to the Association’s President, John Lam. Lam signed them, but claimed at the trial he did not understand them. Morris apparently did not disclose the amendments to the board of directors. The amendments required the Association to increase funding for the Plan. Although other participants also benefited by the amendment, Morris’s benefit was substantially greater due to his years of employment and age. When the board of directors later discovered the existence of the amendments, Morris was fired. The board refused to pay him the enhanced benefits.

That action proceeded to trial by jury. The jury found in Morris’s favor. The jury determined that the amendments were valid for the purpose of calculating Morris’s benefit. In light of the jury’s finding with regard to the amendments, Judge Sotomayor concluded that although Morris did breach his fiduciary duty by not disclosing the amendments to the board of directors, he “inflicted no harm on the pension plan or its participants and beneficiaries and that the imposition of a remedy for his breach is therefore not warranted.” She reaffirmed her finding that the board of directors could and did delegate its power to amend the plan to a corporate officer (Lam), and that therefore, the amendments were valid. She found that the benefits paid to Morris did not violate the prohibited transaction rules because the “benefit [was] computed and paid on a basis which [was] consistent with the terms of the plan as applied to all other participants....” She found no remedy available under ERISA §409 because a causal connection is required between a breach of fiduciary duty and the losses incurred by the plan, and no losses were incurred by the plan. She reasoned that the only entity harmed in this case was the Association (which had to pay more to fund the plan than it otherwise would), but stated that the Association had offered no proof that when the amendments were adopted, the company lacked the financial resources to keep the plan funded.

The decision in *Morris* represents a strict adherence to the law, even if a layperson reading the opinion might conclude that Mr. Morris “pulled a fast one.” Critics of Justice Sotomayor who might argue that she is a “judicial activist” certainly could not point to the *Morris* case in support of their argument.

In *Pedre Co., Inc. v. Robins*, 901 F.Supp. 660 (S.D.N.Y. 1995) a plan and a plan beneficiary brought a claim for breach of fiduciary duty against fiduciaries of the plan who invested plan assets in risky real estate tax shelters. The primary defendant, Lee Robins, was an accountant who rendered professional services for the plan sponsor and the plan. He persuaded the plan sponsor to involve the plan in a real estate tax shelter investment, representing that in the unlikely event any problem arose in connection with the transaction, he [Robins] would “take care of them” so that the plan would not suffer or incur any liability. Robins and his associates assumed day-to-day management and investment control over the plan. As part of the deal, defendants retained 85% of the tax shelter’s profits for themselves and without telling the plan sponsor, they also sold shares in the tax shelter scheme to other clients. The IRS audited. The plan incurred legal fees in connection with the audit and projected its maximum exposure with regard to the audit to be

\$4 million. In connection with the defendants' motion to dismiss, Judge Sotomayor rejected defendants' contention that the case was not ripe for review because the audit was not yet complete. She noted that long before the IRS intervened, the defendants had breached their fiduciary duty under ERISA by embroiling the Plan in a risky tax shelter scheme, by dividing profits between the plan and themselves in violation of the prohibited transaction rules and by secretly using the investment scheme to enrich other clients. She noted that the complaint contained sufficient allegations to establish the fiduciary status of the defendants by virtue of the claim that they took possession of the Plan's checkbook and assumed control over its day-to-day management and assets. Judge Sotomayor did dismiss the breach of fiduciary duty claim by the Plan, itself, without prejudice, holding that the plan did not have standing under ERISA §502(a), but the dismissal was with

leave to the Plan sponsor to replead the claim in his capacity as trustee.

The *Robins* decision—like the other decisions by Judge Sotomayor—is well-supported by existing law, and hardly controversial.

This handful of cases is representative of Justice Sotomayor's decisions in ERISA cases during her time as a District Court judge. In short, Judge Sotomayor's District Court ERISA decisions are well-reasoned, thoughtful and meticulous. They are not the product of a "judicial activist." Although we often see cases in which courts simply don't seem to "get it" when it comes to ERISA, the same cannot be said for Judge Sotomayor based on a review of those opinions. ❖

Any tax advice contained in this communication (including any attachments) is neither intended nor written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market or recommend to anyone a transaction or matter addressed herein.

©2009 Reish & Reicher, A Professional Corporation. All rights reserved. This bulletin is published as a general informational source. Articles are general in nature and are not intended to constitute legal advice in any particular matter. Transmission of this report does not create an attorney-client relationship. Reish & Reicher does not warrant and is not responsible for errors or omissions in the content of this report.