

What Happens After Breach of Fiduciary Duty Claims Stemming from Denials of Benefits Survive a Motion to Dismiss?

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Following the U.S. Supreme Court's decision in *CIGNA Corp. v. Amara*,¹ plaintiffs have argued, with some success, that ERISA breach of fiduciary duty claims under ERISA §§ 502(a)(2) and (a)(3) may proceed alongside claims for benefits under ERISA § 502(a)(1)(B) that seek the same relief. Allowing both sets of claims to proceed (rather than dismissing the breach of fiduciary duty claims on the basis that, because they can only give rise to equitable relief that would be duplicative of the remedies available under § 502(a)(1)(B)) makes it more difficult for defendants to resolve such claims quickly. It leads to an argument by plaintiffs that discovery should not be limited to the administrative record stemming from ERISA's statutory claim and appeal process; it also gives plaintiffs room to argue for the court to apply an expanded set of remedies to grant relief to plaintiffs whose claims are foreclosed by the terms of the applicable plan.

Although a number of lawsuits in this pattern have been litigated through motions to dismiss and appeals from grants of those motions, fewer have proceeded beyond that point to judgment on the merits. One recent decision, the Northern District of California's holding in *O'Rourke v. Northern California Electrical Workers Pension Plan*² provides useful insight on how courts approach residual breach of fiduciary duty claims under ERISA § 502(a)(3) after dismissing a claim for benefits under ERISA § 502(a)(1)(B). It demonstrates that, even where a court permits a breach of fiduciary duty claim to outlive a claim for benefits, plaintiffs still may have difficulty establishing an actionable fiduciary breach in the typical claim for benefits context.

In *O'Rourke*, after granting the defendants' motion for summary judgment on the benefit claims (and then denying plaintiff's motion for reconsideration on the same), the court considered the availability of equitable relief under ERISA § 502(a)(3). The court began its analysis by

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assessing whether the Board of Trustees defendant was acting as a fiduciary and then turned to the question of whether its conduct amounted to a breach of fiduciary duty. The court's thoughtful and thorough opinion provides some insight into how courts tackle breach of fiduciary duty claims that arise out of a claim for benefits.

Background

In April 2016, the plaintiff in *O'Rourke* brought suit against the Northern California Electrical Workers Pension Plan (the Plan) and the Board of Trustees of the Northern California Electrical Workers Pension Trust (the Board or Board of Trustees) in connection with his claim for early retirement benefits. The plaintiff, John O'Rourke, had worked as an electrician for 20 years and then as a business manager for the International Brotherhood of Electrical Workers (IBEW) Local 6.³ Based on his years of service in these positions, O'Rourke qualified for early retirement benefits under the Plan once he turned 55 years old.⁴

While working at Local 6, O'Rourke also served as the Chair of the Board of Trustees. During a September 2010 Board meeting, he proposed a change to the Plan's suspension of benefits rule, which prohibited retirees from working in certain "prohibited employment" positions.⁵ O'Rourke suggested that work performed for IBEW, as well as other AFL-CIO affiliates, be exempted from prohibited employment.⁶ The Board did not finalize the action, however, and approximately a year and a half later, in March 2012, O'Rourke left Local 6 and moved to IBEW Ninth District to work as a representative.⁷

In June 2014, O'Rourke submitted a claim for early retirement benefits.⁸ While he met the age and service requirements, the Board nevertheless denied O'Rourke's claim because his work as the Vice President of the IBEW Ninth District constituted prohibited employment under the Plan.⁹ The Board explained that the action taken at the September 2010 meeting was insufficient to implement a proposed exception for work at IBEW because no amendment had been adopted.¹⁰ O'Rourke later appealed, and the Board upheld the denial of early retirement benefits.¹¹

The appeal denial eventually led to O'Rourke filing suit against the Plan and the Board of Trustees in April 2016, asserting (1) a claim for benefits under ERISA § 502(a)(1)(B), and (2) in the alternative, a claim for breach of fiduciary duty under ERISA § 502(a)(3).¹² Prior to discovery, in August and September 2016, the parties filed cross-motions for partial summary judgment on the first claim for benefits based on the administrative record.¹³ The court granted the defendants' motion in December 2016, finding that O'Rourke failed to demonstrate the Board had abused its discretion in interpreting the prohibited employment provision to include his IBEW work.¹⁴ As a result, the sole remaining legal issue before the court was whether the Board breached its fiduciary duty, as alleged in O'Rourke's second claim.

After the close of fact discovery, O'Rourke moved the court to reconsider its prior order granting summary judgment to defendants on the benefits claim.¹⁵ He moved, in the alternative, for summary judgment on the breach of fiduciary duty claim, arguing that the Board breached its fiduciary duty by not following through on the 2010 action determining that IBEW work does not constitute prohibited employment.¹⁶ In connection with the latter claim, O'Rourke sought a declaration that the defendants were estopped from denying his early pension benefit and that the plan is reformed to exempt IBEW work from prohibited employment.¹⁷ The defendants likewise moved for summary judgment on the breach of fiduciary duty claim.

The Court's Decision

In its opinion, the court first addressed and denied O'Rourke's motion for reconsideration on his claim for benefits, concluding O'Rourke had failed to present any material new evidence, establish clear error, or demonstrate extraordinary circumstances.¹⁸ After determining that O'Rourke was not entitled to recover for his denial of benefits claim, the court moved forward with "analyz[ing] the availability of equitable relief."¹⁹ O'Rourke had based his breach of fiduciary duty claim on the Board's alleged failure to (1) inform him that prohibited employment encompassed work at IBEW; (2) decide if the Plan required an exemption for work with AFL-CIO affiliated entities; and (3) implement a Plan amendment that would add an exemption for that work.²⁰ In response, defendants argued that the claim failed as a matter of law because deciding whether to amend the Plan is not a fiduciary act.²¹ They further claimed that O'Rourke was fully aware of the Board's consideration of whether IBEW qualified as prohibited employment and that O'Rourke had failed to establish the elements of equitable estoppel or reformation.²²

The court addressed each of these arguments in turn, first assessing whether the Board was acting as a fiduciary. While the court acknowledged that the decision to amend a plan does not implicate fiduciary duties, it explained that O'Rourke's challenge was really to the Board's determination of his pension application, "which was based on its view that *an amendment was required* to conclude that IBEW work was exempted."²³ In its earlier summary judgment decision, the court had found the Board did not abuse its discretion when determining an amendment was required, but it was still possible that the Board was acting as a fiduciary when making that decision.²⁴ The court reasoned that an "employer's obligations as an ERISA fiduciary are not suspended while it considers a proposal to amend an existing ERISA plan or to adopt a replacement plan."²⁵ Thus, the Board was acting as a fiduciary when it assessed whether a Plan amendment was necessary to administer the early retirement benefits to O'Rourke.²⁶

After concluding as much, the court assessed whether the Board actually breached its fiduciary duty. O'Rourke claimed that the Board's failure to notify him of the status of the September 2010 action amounted to a breach of fiduciary duty, but the court found this argument flawed. Indeed, O'Rourke had "incorrectly translate[d]...inaction into a failure to inform him."²⁷ O'Rourke also did not point to any precedent to support his assertion that the Board had a duty to inform him on the status of the action, prior to him specifically inquiring about his early retirement benefits.²⁸ The court went on to explain that, even if such a duty to inform existed, the undisputed evidence clearly established that he *was* fully informed on the status of the September 2010 action.²⁹ Thus, O'Rourke could not state a claim for breach of fiduciary duty based on a failure to inform.

The court next considered whether O'Rourke was entitled to either equitable estoppel or reformation. As to the former, O'Rourke could not identify a misrepresentation, and the court aptly found he was attempting to "stretch estoppel principles a bit too far."³⁰ Similarly, with respect to reformation, the court explained that it is "proper only in cases of fraud and mistake."³¹ And there, O'Rourke had not demonstrated a disputed fact as to whether the Plan contained a mistake. Instead, the Board had reasonably determined that the 2010 action would require a Plan amendment, and it later voted against such an amendment.

Because it concluded that O'Rourke had failed to present evidence establishing any triable issues of fact as to his breach of fiduciary duty claim, the court granted the defendants' motion for summary judgment.³²

Conclusion

O'Rourke demonstrates the challenges plaintiffs face when seeking to convert claims for benefits into damages for breach of fiduciary duties. It underscores that, even if the standard for surviving a motion to dismiss is relaxed, the standard for recovering under an ERISA breach of fiduciary duty claim remains high. The *O'Rourke* court's careful analysis may provide a roadmap for other courts faced with such dual claims, and suggests defendants may expect to ultimately prevail on breach of fiduciary duty claims even if they initially survive motions to dismiss.

Notes

1. 563 U.S. 421 (2011).
2. Case No. 3:16-cv-02007, 2017 WL 5000335 (N.D. Cal. Nov. 2, 2017).
3. *Id.* at *3.
4. *Id.*

5. *Id.*
6. *Id.* at *4.
7. *Id.*
8. *Id.* at *5.
9. *Id.* at *6-*7.
10. *Id.* at *6.
11. *Id.* at *7.
12. *Id.* at *8.
13. O'Rourke v. N. Cal. Elec. Workers Pension Plan, Case No. 3:16-cv-02007, 2016 WL 7475609, at *1 (N.D. Cal. Dec. 29, 2016).
14. *Id.*
15. O'Rourke, 2017 WL 5000335, at *1.
16. *Id.*
17. *Id.* at *9.
18. *Id.* at *10-*13.
19. *Id.* at *13.
20. *Id.* at *9.
21. *Id.* at *10.
22. *Id.* The defendants also argued that the breach of fiduciary duty claim was time barred, but the court rejected this argument due to the Board continually tabling the issue of whether to implement the September 2010 action. *Id.* at *13 n.16.
23. *Id.* at *14 (emphasis in original).
24. *Id.*
25. *Id.* (quoting Bins v. Exxon Co. U.S.A., 220 F.3d 1042, 1047-1048 (9th Cir. 2000)).
26. *Id.*
27. *Id.* at *15.
28. *Id.*
29. *Id.* (explaining that O'Rourke received reports from the Plan manager and Board trustee and just because he was "unhappy with the information he received does not negate the fact that he received the information").
30. *Id.* at *16.
31. *Id.* (quoting Skinner v. Northrop Grumman Ret. Plan B, 673 F.3d 1162, 1166 (9th Cir. 2012)).
32. *Id.*