



# WRNewswire

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## **TOPIC: Court Holds Insurer's Failure to Send Conversion Notice Did Not Violate ERISA**

**CITES:** [\*Brenner v. Metropolitan Life Insurance Company and Southboro Medical Group, Inc.\*](#), - F Supp. -, \_\_ Civil Action No. 11-12096-GAO., 2015 WL 1307394 (Dist. MA 03/23/2015), [29 USC 1132\(a\)\(3\)](#).

**SUMMARY:** The United States District Court held that an insurer's failure to send a notice of the right to convert a group term policy to individual coverage on termination of employment was not an ERISA violation. The insurer had sent a number of plan documents to the employer that clearly spelled out when group term coverage would cease and the details necessary to implement a conversion when group life insurance coverage ceased. The court held that the failure to send an additional conversion privilege notice to the insured was not required under ERISA, since this was a mere administrative duty and not an ERISA obligation. However, the failure on the part of an employer to understand a covered plan's provisions, and providing incorrect advice to the employee, *was* held to be a potential ERISA violation, pending a full trial on the matter.

**RELEVANCE:** The duties of insurers and plan administrators with regard to compliance with ERISA are scrupulously reviewed by the courts. The courts strive to make sure that insurers or plan administrators do not breach any ERISA fiduciary duties. However, mere administrative duties are deemed not to be covered by ERISA, and are not deemed to be a fiduciary duty. However, employer clients should be cautioned that if they serve as plan administrators, they must both take reasonable efforts to understand the provisions of a plan they sponsor and to provide correct advice to covered employees with respect to that plan.

**FACTS:** The plaintiff, Lynn Brenner, was the surviving spouse of Dr. Alan Brenner. Dr. Brenner was hired by the defendant, Southboro Medical Group ("SMG"), in 2004. SMG had a group term insurance program. The plan was an "employee welfare benefit plan" as defined by ERISA. SMG paid premiums monthly to the insurer.

The plan documents provided that in order to remain eligible for coverage under the policy, an employee had to be "actively at work," that is, performing all usual duties of his or her job on a full-time basis, which was defined as thirty or more hours per week.

A plan participant's coverage could remain in effect for nine months after he or she ceased active work if the stoppage occurred because of an injury, illness, or disease, and if SMG continued to pay premiums for the coverage. The coverage had a conversion option that could be applied for when an employee ceased to be covered under the group term plan.

The insurer provided to SMG an administrative manual stating that when there were changes in an employee's status that may affect his or her life insurance coverage, it was SMG's responsibility to inform the insurer. In addition, the insurer provided copies of documents for SMG to distribute to plan participants, as well as documents that included a certificate of insurance, which contained the terms and provisions of the group policy, and information relevant to ERISA. The plan documents provided for a conversion option, allowing a qualified plan participant to convert to an individual policy upon the expiration of participation in the group policy. A participant in group coverage had to submit an application in order to effect the conversion. The conversion application had to be submitted prior to 91 days from the date that the group insurance ended.

In 2009, Dr. Brenner began suffering from an incapacitating auto-immune disease. As a result of his illness, Dr. Brenner stopped working in March 2009. Because he stopped working due to illness and because SMG continued to pay premiums, his coverage was continued for an additional nine months, through December 31, 2009. However, no application for the conversion option was ever submitted and, accordingly, his employer sponsored life insurance coverage ended after December 31, 2009, nine months after he ceased active employment.

Dr. Brenner never returned to work. His spouse, Lynn Brenner, however, regularly informed SMG's Human Resources Director, about Dr. Brenner's condition and made inquiries about the status of his benefits. In May, 2009, she emailed the HR director to ask if her checks for benefits were being received and "to be sure everything is still in place." The director replied that "everything is ok."

Dr. Brenner died on March 31, 2010. The insurer refused to pay the death benefit under the group term life plan. On November 28, 2011, Lynn Brenner filed a complaint against the insurer and SMG. In her amended complaint, she brought claims for misrepresentation, promissory estoppel, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of contract under ERISA, breach of fiduciary duty under ERISA, unfair claims settlement practices in violation of Massachusetts law, and unfair or deceptive practices in violation of Massachusetts law.

On the defendants' motions, the Court dismissed all of the plaintiff's state law claims as preempted by ERISA, and her ERISA breach of contract claim as falling outside of the types of claims permitted under that statute. Consequently, the only claim that remained in this case was a complaint for breach of fiduciary duty under ERISA. The defendants both filed Motions for Summary Judgment, arguing that the plaintiff failed to state a claim under ERISA for which relief could be granted. The case was referred to a magistrate, who subsequently issued a "Report and Recommendation on the Motions for Summary Judgment." The magistrate recommended that the motion be granted as to the insurer and denied as to SMG. This recommendation was subsequently reviewed for implementation by the U.S. District Court judge.

The insurer conceded that, in a broad sense, it was a fiduciary with respect to the life insurance plan because it had "discretionary authority to determine an employee's eligibility for and entitlement to Plan benefits." The court held, citing numerous cases, that merely performing administrative duties, including "advising participants of their rights and options under the plan," is *not* treated as a fiduciary function. The court further found that the plan documents expressly designated SMG, not the insurer, as

the “Plan Administrator.” In order to have succeeded on her claims, then, the plaintiff had to present evidence that the insurer owed her a fiduciary duty in this case, and here the court found that no such duty existed in this case as to the mere administrative function of sending a conversion notice.

The court noted that in order to comply with ERISA, a plan description need only be “written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.”

The court found that the insurer had provided this document to SMG. SMG conceded that the insurer had provided these documents and that they in turn gave a copy to Dr. Brenner.

In addition, the court found that nothing in the plan documents required the insurer to give a participant a separate notice of the right to convert when the time came to make such a choice. Further bolstering the argument that the insurer had no obligation to send a separate conversion notice was that the fact that the insurer never had received any indication from SMG that Dr. Brenner was incapacitated, had ceased to work, and that he was no longer a member of the group. Indeed, SMG thought erroneously he could still be a group member even though he ceased employment and SMG continued to include him in the group. SMG erroneously told the plaintiff that coverage was maintained and that all she had to do was pay premiums.

The court adopted the recommendation of the magistrate and dismissed all claims against the insurer. However, the court denied the motion as to SMG, meaning that further proceedings could find the professional practice liable for an ERISA breach of fiduciary duty.

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