



WRNewswire

An AALU Washington Report

Friday, 1 August 2014

WRN# 14.8.01

The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. The *WRNewswire* provides timely reports and commentary on tax and legal developments important to AALU members, clients and advisors, delivered to your inbox as they happen

TOPIC: Fiduciary Notice Obligations Associated with Change of Carriers

CITE: *Lucas v. Steel King Industries, Inc.*, 2014 WL 3509049, U.S. District Court, W.D. Wisconsin (July 16, 2014).

SUMMARY: This case discusses the fiduciary obligation of plan administrators to inform participants in advance of ERISA's statutory notice periods regarding the potential impact caused by a change of life insurance carrier under a group life insurance plan. Here, the change in the employer's group life insurance carrier resulted in termination of coverage for a disabled participant who might have been able to convert the policy to individual coverage within the first 30 days after the change—had he been informed of the change within such period.

Though the court ultimately granted summary judgment in favor of the plan administrator because the participant did not otherwise meet the eligibility requirements for conversion, the court suggested that plan administrators have a fiduciary duty to analyze the impact of material changes and, in some cases, may have a duty to inform participants of material changes more quickly than required by statute.

FACTS: Robert Lucas was employed by Steel King Industries, Inc. ("Steel King") and was a member of an iron workers union. The collective bargaining agreement between the union and Steel King provided for the purchase of group life insurance for employees in the amount of \$25,000. Steel King provided this coverage under the Steel King Industries Health & Life Plan (the "Plan").

In the fall of 2011, Robert was diagnosed with cancer and ceased active employment shortly thereafter. However, he remained an employee per the union contract for purposes of continuous service and benefits through the date of his death in July of 2012.

Up to December 31, 2011, the Plan was insured by Anthem Life Insurance Company (“Anthem”). Steel King continued the Plan for 2012, but changed insurers effective January 1, 2012 from Anthem to Reliance Standard Life Insurance Company (“Reliance”).

The life insurance component of the Anthem Policy gave certain insureds the right to convert to individual life insurance coverage without submitting proof of insurability in the event that the group policy was terminated, by written application to Anthem within 31 days of termination. Prior to January 1, 2012, Steel King notified Lucas of these policy terms. However, Steel King never notified Mr. Lucas of the termination of the Anthem policy which gave rise to the possible conversion right.

Mr. Lucas died on July 7, 2012.

Both Reliance and Anthem denied coverage. Anthem noted, in its denial letter, that Lucas might have continued coverage after the Anthem policy was terminated in January 2012 if he had converted his coverage to an individual policy. Reliance denied coverage because Mr. Lucas was not an “active” employee. The Reliance Policy limited eligibility to “active” employees—defined to exclude those on leave for injury or illness. Mr. Lucas would, likely, have been covered under the Anthem policy, had it remained in effect.

Mrs. Lucas alleged that Steel King, as administrator of the Plan, violated the statutory notice obligations and its more general fiduciary duty under the Employment Retirement Income Security Act (“ERISA”) by failing to disclose the change of insurers and the termination of coverage under the Anthem policy in time to enable the insureds to convert to an individual policy under the Anthem policy.

RESULT: The court concluded that the group term life insurance coverage was covered by ERISA and that equitable relief was available under ERISA for violation of statutory notice requirements. However, the court found that the applicable notice requirement under ERISA for a material modification in coverage was “not later than 210 days after the end of the plan year in which the change is adopted.” Since the change was effective January 1, 2012, notice was not required under ERISA until July 2013. As such, Steel King had not violated the ERISA statutory notice requirement by failing to notify Lucas of the coverage prior to his death in July 2012.

The court then considered Mrs. Lucas’s claim that failure to inform employees of the change in coverage was a breach of Steel King’s fiduciary duty. The court noted that a plan administrator cannot be expected to be aware of the individual facts and circumstance of each participant. Therefore the analysis regarding breach of fiduciary duty must look to the reasonableness of the administrator’s action as applied to all participants. However, under the terms of the Anthem policy, the termination of the policy could have given numerous multiple insureds the right to convert to individual policies—had they been informed of the policy termination. Steel King did not give notice that the Anthem policy was being terminated. The court discussed a number of cases imposing on plan administrators the duty to communicate material facts affecting the interest of plan participants or beneficiaries—pointing out that a change in insurance provider, “particularly where the terms of the coverage and eligibility have changed would seem significant enough to justify requiring an affirmative disclosure.” In the discussion, the court seems to suggest that Steel King’s non-disclosure may have breached its fiduciary duty.

In the end, the court did not decide whether Steel King breached its fiduciary duty because the court concluded that even if he had been notified, Mr. Lucas would have been ineligible to convert to an individual policy. Conversion rights under the Anthem policy were limited to insureds who were covered under the group policy for at least five years. The court found that, because the policy had been in effect for less than 5 years, Mr. Lucas' policy was ineligible for conversion; hence, the Steel King's failure to disclose the policy termination did not harm Mr. Lucas. For that reason, the court found it unnecessary to finally decide whether Steel King violated its fiduciary notice obligations.

RELEVANCE: This case illustrates the importance of plan administrators paying careful attention to material changes in insurance plans, particularly time sensitive issues like expiring conversion rights when replacing prior insurance coverage with new coverage. The court makes clear that it is not enough to simply comply with ERISA's "material modification" notice requirements. Rather, plan fiduciaries have an affirmative obligation to communicate material information to participants generally that may significantly impact their coverage or other rights.

WRNewswire #14.8.01 was written by Marla Aspinwall of Loeb & Loeb, LLP.

DISCLAIMER

In order to comply with requirements imposed by the IRS which may apply to the Washington Report as distributed or as re-circulated by our members, please be advised of the following:

THE ABOVE ADVICE WAS NOT INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED, BY YOU FOR THE PURPOSES OF AVOIDING ANY PENALTY THAT MAY BE IMPOSED BY THE INTERNAL REVENUE SERVICE.

In the event that this Washington Report is also considered to be a "marketed opinion" within the meaning of the IRS guidance, then, as required by the IRS, please be further advised of the following:

THE ABOVE ADVICE WAS NOT WRITTEN TO SUPPORT THE PROMOTIONS OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE WRITTEN ADVICE, AND, BASED ON THE PARTICULAR CIRCUMSTANCES, YOU SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR.

The AALU *WRNewswire* and *WRMarketplace* are published by the Association for Advanced Life Underwriting® as part of the Essential Wisdom Series, the trusted source of actionable technical and marketplace knowledge for AALU members—the nation's most advanced life insurance professionals.