

# First Circuit Finds for Life Insurer in ERISA Class Action Challenging Retained Asset Accounts to Pay Life Insurance Benefits

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In a unanimous panel decision, the U.S. Court of Appeals for the First Circuit reversed a trial court's ruling that the defendant, Unum Life Insurance Company of America (Unum), had breached fiduciary duties under the Employee Retirement Income Security Act of 1974 (ERISA) by using so-called retained asset accounts ("RAAs") to disburse death benefits under employer-sponsored benefit plans funded by group life insurance policies that Unum issued to the plans. [\*Merrimon v. Unum Life Insurance Company of America\*](#), No. 13-2128 (1st Cir. July 2, 2014). In reversing the trial court's liability ruling, the First Circuit also vacated the lower court's \$12 million judgment in favor of the plaintiff class. By way of background, RAAs operate similarly to interest-bearing checking accounts. Upon approval of a life insurance beneficiary's claim, the insurance company provides the beneficiary with a draft book issued by an intermediary bank from which the beneficiary can choose to write a single draft in the entire amount of the benefit, draw the account down via multiple drafts over time, or do nothing, in which case the account continues to accrue interest at a guaranteed rate. In *Unum*, the named plaintiffs were beneficiaries who received RAAs under the terms of ERISA-governed benefit plans funded by Unum group life insurance policies. The named plaintiffs brought a putative class action lawsuit in the U.S. District Court for the District of Maine. They alleged that Unum earned more on the "retained assets" backing the RAAs than the 1 percent guaranteed rate Unum credited to the plaintiffs and other class members through their RAAs, and that by retaining the alleged difference, Unum violated ERISA in two ways: (1) the practice constituted self-dealing in plan assets in violation of ERISA Section 406(b); and (2) the practice violated Unum's duty of loyalty owed to plan beneficiaries under ERISA Section 404(a). On the parties' cross-motions for summary judgment, the district court rejected the plaintiffs' first theory. However, the court granted partial summary judgment in favor of the plaintiffs on the second theory, certified the class, and set a trial to

determine the appropriate measure and amount of monetary relief. Following the bench trial, the district court awarded the plaintiff class \$12 million. The plaintiffs and Unum cross-appealed to the First Circuit, with plaintiffs challenging the summary judgment ruling on the ERISA Section 406(b) “self-dealing” claim, and Unum challenging the \$12 million judgment against it based on the district court’s liability finding under ERISA Section 404(a). The First Circuit panel affirmed the trial court’s summary judgment ruling in favor of Unum on the Section 406(b) claim, finding that the insurer’s underlying general account funds, which backed the RAAs, were not plan assets. In doing so, the panel noted that “[t]here is no basis, either in the case law or in common sense, for the proposition that funds held in an insurer’s general account are somehow transmogrified into plan assets when they are credited to a beneficiary’s account.” The appellate court reversed the trial court’s ruling on plaintiffs’ second theory for breach of fiduciary duty under ERISA Section 404(a), finding that the district judge erroneously concluded that Unum was acting as a fiduciary by retaining discretion to determine the interest rate and other features associated with the RAAs and “award[ing] itself the business” of administering the RAAs while retaining the assets backing the accounts. The First Circuit rejected this reasoning, citing the U.S. Department of Labor’s stated position that a life insurer discharges its fiduciary duties associated with the disposition of benefit claims when it provides a death benefit through the establishment of an RAA, where this method of payment is called for under the plan’s terms. In this case, because the plan documents called for payment of death benefits through RAAs, the First Circuit panel distinguished its own prior precedent, having previously held in *Mogel v. Unum Life Insurance Co.*, 547 F.3d 23, 26 (1st Cir. 2008), that the use of RAAs violated ERISA fiduciary duties where the terms of the benefit plan at issue required “lump sum” payment of death benefits. The First Circuit’s decision is in harmony with rulings from the Second and Third Circuits, which are the only other federal appellate courts to address these important ERISA issues under comparable facts. Attorneys from Carlton Fields P.A. represented the American Council of Life Insurers as *amicus curiae* in support of Unum and in favor of reversal of the district court’s judgment on the ERISA Section 404(a) claim. If you have any questions about this decision, please contact Wally Pflepsen ([wpflepsen@carltonfields.com](mailto:wpflepsen@carltonfields.com) or 202-965-8133), Michael Valerio ([mvalerio@carltonfields.com](mailto:mvalerio@carltonfields.com) or 860-392-5046), Ben Seessel ([bseessel@carltonfields.com](mailto:bseessel@carltonfields.com) or 860-392-5053), or John Pitblado ([jpitblado@carltonfields.com](mailto:jpitblado@carltonfields.com) or 860-392-5024).

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