

Sixth Circuit Holds No Disgorgement of Profits Based on Wrongfully Denied ERISA Disability Benefits

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The Sixth Circuit Court of Appeals, sitting *en banc*, recently decided a closely-watched case regarding the scope of "other appropriate equitable relief" under ERISA Section 502(a)(3). In *Rochow v. LINA*, the court held that plaintiff Rochow, a high-level insurance executive, was made whole through his recovery, under ERISA Section 502(a)(1)(B), of wrongfully denied long-term disability benefits, attorney's fees, and the possibility of obtaining pre-judgment interest. Consequently, it vacated the district court's multimillion dollar "disgorgement of profits" award under Section 502(a)(3) as a "duplicative recovery" not permitted under ERISA. The *en banc* court rejected plaintiff's argument that the denial of benefits and a continued withholding of those benefits, yielding defendant profits, constituted separate injuries, and held that plaintiff was improperly "repackaging" his claim for benefits under Section 502(a)(1)(B) by seeking further relief under Section 502(a)(3). Further, citing *Varsity Corp. v. Howe*, the court held that plaintiff could only obtain "other appropriate equitable relief" under Section 502(a)(3) where there was no other adequate remedy under ERISA, and that Section 502(a)(1)(B) provided remedies adequate to redress plaintiff's injuries. Had the *en banc* court sided with the plaintiff, the impact on employee benefit plans and their sponsors, as well as administrators operating in the ERISA-governed space, could have been profound. Because this and related issues on the question of available remedies under ERISA are among the most hotly litigated ERISA issues currently in the courts, *Rochow* is likely to be a frequently cited case in the area. Carlton Fields submitted an *amicus* brief on behalf of several trade associations in support of LINA in the *en banc* proceeding.

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