



## News Release

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For more information, contact:

**Tim Kolly** 312-698-6220 | [tkolly@dri.org](mailto:tkolly@dri.org)

### **First Circuit Decision in *Merrimon v. Unum Life Insurance Company of America* in Alignment with DRI Amicus Brief**

**CHICAGO – (July 15, 2014)**—A recent decision in the United States Court of Appeals for the First Circuit vacating a \$12 million verdict against the insurer Unum Life Insurance Company of America aligns with the DRI amicus brief. The brief was filed by DRI’s Center for Law and Public Policy, and the First Circuit cited the DRI brief as “helpfully develop[ing] the argument [made by Unum] in significantly greater detail.”

This is a certified class action matter involving the payment of ERISA-governed life insurance benefits. As is common in the life insurance industry, Unum paid benefits via a retained asset account (“RAA”) and provided interest to accountholders while the funds were in the account. Unum’s policy specifically required that benefits be paid via RAA.

The named plaintiffs received all of the benefits to which they were entitled under the policy, but then filed a putative class action, alleging that paying benefits through RAAs violated Sections 404(a) and 406(b) of ERISA, 29 U.S.C. §§ 1104(a), 1106(b), and seeking appropriate equitable relief under 29 U.S.C. § 1132(a)(3). On cross-motions for summary judgment, Judge Nancy Torresen of the United States District Court, District of Maine held that the insurer’s use of RAAs did not constitute self-dealing of plan assets under Section 406(b) but did breach the insurer’s duty of loyalty under Section 404(a).

Specifically, the district court held that Unum was an ERISA fiduciary when it set the interest rate on these accounts, that it was obligated to pay “the best rate available on the market,” and that it breached its fiduciary duties under ERISA when it paid too low of an interest rate. Comparing a judicially-fashioned rate to the rate Unum paid, the court calculated the underpayment to the class and awarded over \$12,000,000.

The First Circuit reversed the district court’s holding. The court rejected the plaintiffs’ arguments that the insurer continued to act as a fiduciary after it established the RAAs. Instead, the First Circuit held that the insurer fully discharged its fiduciary duties by establishing the RAAs in accordance with the plan documents. The court further reasoned that once the insurer paid the death benefits under the terms of the plan, its duties as an ERISA fiduciary ceased, and any further obligation that insurer had to the beneficiaries constituted a creditor-debtor relationship governed by state law. The court concluded that

setting the interest rate, even though the plan stipulated no specific rate, did not relate to plan management under ERISA, but rather to management of the RAAs, because the funds backing the RAAs were not plan assets, and no further fiduciary duties under ERISA attached once the insurer delivered the guaranteed death benefit to the beneficiary. Consequently, the First Circuit found that the plaintiffs were not entitled to relief and vacated the judgment against the insurer.

DRI brief author Jeremy P. Blumenfeld of Morgan, Lewis & Bockius LLP in Philadelphia is available for interview or for expert comment through DRI's Communications Office.

To read DRI's brief in its entirety, [click here](#).

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