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News Release

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Sixth Circuit Decision in *Rochow v. Life Insurance Company of North America* in Alignment with DRI Amicus Brief

Chicago—(March 31, 2015)—On March 5, 2015, the United States Court of Appeals for the Sixth Circuit ruled for the defense in the case of *Rochow v. Life Insurance Company of North America.* The decision is consistent with the arguments asserted in an amicus brief filed with the Court by DRI's Center for Law and Public Policy.

The *en banc* decision aligned the Sixth Circuit with other circuit courts holding that a plaintiff who obtains relief under one of the express causes of action in Section 502(a) of ERISA, cannot recover for the same injury under ERISA's "catchall" equitable relief recovery provision in Section 502(a)(3).

In 2013, a divided panel of the Sixth Circuit ordered the disgorgement of approximately $3.8 million in profits allegedly made by Life Insurance Company of North America on the value of benefits it denied to Daniel Rochow ("Rochow"), a participant in an employer-sponsored long-term disability plan. The disgorgement award was granted under ERISA Section 502(a)(3) (the so-called "catch-all" provision) and was in addition to the award of improperly denied benefits under ERISA Section 502(a)(1)(b), the statutory provision that expressly permits a participant to recover benefits denied under an ERISA covered plan.

After granting rehearing *en banc*, the Sixth Circuit held that Rochow was not entitled to recovery under both provisions for the same denial of benefits. The Court's majority opinion found that allowing recovery under both remedial provisions without establishing that the ERISA Section 502(a)(1)(B) remedy is inadequate to redress plaintiff's injury would result in duplicative recovery, which is contrary to established Supreme Court and Sixth Circuit precedent.

DRI filed an amicus brief at the *en banc* stage, explaining that the additional disgorgement remedy constituted a punitive windfall, offended ERISA's remedial nature and would dramatically increase the cost of offering benefit plans to employees. DRI's brief argued that "[t]he Benefits Claims Provision of ERISA… not the 'catchall' provision – is the statutory

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mechanism designed for a claimant to challenge the plan administrator's final benefits determination. Allowing collateral remedies to a participant who has been denied benefits does not fit into ERISA's carefully crafted design that has been in place for decades... Nothing in the meticulously structured process for determining entitlement to benefits under ERISA and the DOL Claims Procedure Regulations creates – or can reasonably be read to create – collateral remedies beyond those available under ERISA's Benefits Claim Provision."

DRI also argued that awarding disgorged profits could dissuade employers from offering benefits or cause employers to pass on the added costs to employees.

Commenting on the *en banc* ruling, Jerrold J. Ganzfried, co-author of the DRI brief, said: "In reaching its decision, the majority opinion cited the Supreme Court's foundational holding in *Varity Corp. v. Howe,* 516 U.S. 489 (1996), that 'where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be appropriate.'"

The authors of DRI's amicus brief, Jerrold J. Ganzfried and Ariadna Alvarez, of Holland & Knight, Washington, D.C., and Ft. Lauderdale, FL, respectively, are available for interview or expert comment through DRI's Communications Office.

For the full text of the amicus brief, click here.

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