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A Recent 5th Circuit ERISA Decision is Not as Far Reaching as it Appears

To reduce the cost of maintaining an ERISA plan and reduce the expense of ERISA litigation, it is helpful to have courts both apply a deferential standard of review and limit the review to the administrative record. If an ERISA plan properly delegates discretionary authority to the plan administrator, courts generally will uphold an adverse benefit determination unless the administrator abused its discretionary authority. This is the deferential standard of review. In many states (including Texas), state insurance laws no longer permit insurance policies to have these discretionary clauses. When there is no valid discretionary clause, most circuits use the de novo standard of review under which the court reviewing a challenge does not defer to the administrator's decision – it reviews the facts anew and reaches its own decision.

Prior to the recent decision in *Ariana M. v. Humana Health Plan of Texas,* the Fifth Circuit applied the deferential standard of review for factual determinations, even in ERISA benefit cases where the plan documents did not reserve discretionary authority for the plan administrator. Under *Ariana,* the Fifth Circuit has reversed course to join the rest of the country in applying the de novo standard of review in such cases.

The effect of this change, however, is muted by the fact that *Ariana* also held that even though the de novo standard of review will apply, the court's review will be limited to the record before the administrator. There remains a split among the circuits on this issue; some courts will allow the record to be expanded beyond what was considered on appeal when it applies a de novo standard of review. However, as the Fifth Circuit pointed out, limiting the record to be reviewed by the court promotes efficiency and encourages parties to resolve their disputes without resorting to litigation.

In addition, state insurance laws do not apply to self-insured plans. This allows self-insured plans to have valid discretionary clauses, where the deferential standard of review will continue to apply.