

Second Circuit Upholds Reduction of Attorneys' Fees Sought in ERISA Benefits Case

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Monday, October 7, 2019

In a recent summary order in an ERISA LTD benefits case, the Second Circuit Court of Appeals rejected a plaintiff's appeal concerning the amount of attorneys' fees awarded by the district court. In *Solnin v. Sun Life and Health Insurance Co. et al.*, after plaintiff prevailed on her claim for benefits, her counsel filed a motion seeking attorneys' fees of over \$515,000, along with costs and interest. Plaintiff's attorneys, who had their offices in Manhattan (Southern District of New York), argued that their rates should be fixed at Southern District rates, rather than the typically lower rates used in the Eastern District of New York where the case was litigated. The District Court (Hurley, J.) determined that the local rates for the Eastern District should apply. The District Court also found that a 25 percent across-the-board reduction in fees was appropriate given that plaintiff's counsel had engaged in "impermissible billing practices" including vague descriptions, block billing, and questionable entries, and further noting that decisions in similar cases seemed to suggest that the firm had "a pattern of excessive billing for their time considering their experience." *Solnin I*, 2018 WL 4853046 (E.D.N.Y., Sept. 28, 2018). The District Court ultimately awarded slightly over \$222,000 in fees, instead of the \$500,000-plus that plaintiff had requested.

On appeal, the Second Circuit upheld the District Court's decision. The Court first rejected the argument that the District Court had exceeded its discretion by not awarding fees based on the higher rates typically awarded in the Southern District.

The Court pointed out that courts in the Second Circuit apply the forum rule, using the hourly rates employed in the district in which the reviewing court sits, and found no fault with the District Court's decision to award fees at the Eastern District rates. *Solnin II*, 776 Fed. Appx. 731, 732 (2d Cir. 2019).

The Court next rejected the claim by plaintiff's counsel that his high hourly rate was actually paid by clients in the Eastern District. The Court found that counsel not only had failed to offer evidence of general Eastern District rates for ERISA claim litigation but also that his hourly rate did not apply to litigation, for which his firm only represents clients on a contingency basis. Noting that the rates requested by counsel greatly exceeded the amount of the judgment in the case, the Second Circuit was "not convinced that a 'reasonable, paying client' in an ERISA litigation would be willing to pay an hourly rate resulting in attorneys' fees so far in excess of the amount of recovery, even considering the successful procurement of future benefits in this case." 776 Fed. Appx. at 732-33.

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