

California LAWYER

EMPLOYEE BENEFITS

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The Employee Retirement Income Security Act of 1974, commonly known as ERISA, contains restrictions on when litigation can be filed to secure benefits, as well as on who can be sued and how much can be recovered. One uncertainty that lingered for years was the issue of whether an ERISA plaintiff seeking benefits can name the plan's insurer as a defendant, or whether the claimant is limited to suing only the plan sponsor and administrator. Creitz and Garofolo won a ruling that reverses 27 years of Ninth Circuit precedent, establishing the right of ERISA plan beneficiaries to name the plan's insurer as a defendant in benefits litigation. Both lawyers argued plaintiff Laura Cyr's appeal before a three-judge panel, but when the case was later reassigned to the en banc court, Garofolo was responsible for oral argument.

The decision gives Cyr a more direct route to securing benefits (*Cyr v. Reliance Standard Life Ins. Co.*, 642 F.3d 1202 (9th Cir. 2011)), and ERISA litigation will be more straightforward for other claimants who have been wrongfully denied their due.

The case drew strong support from Washington, D.C., as the Solicitor of Labor submitted an amicus brief asserting that to grant effective relief to ERISA beneficiaries, the party responsible for deciding and paying claims must be a party before the court.

After the ruling, Secretary of Labor Hilda L. Solis said in a statement that she was gratified by the court's decision, which she said "is in keeping with the language of the statute and with common sense."

The CLAY Awards 2012 AWARD WINNER

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