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has ruled.

The disbursement method involved defendant Unum Life Insurance Co., which, upon approving a claim, established an unfunded account — the RAA — for the beneficiary at an

intermediary bank, credited with the full amount of the benefit owed.

The beneficiary could then withdraw either the entire amount of the benefit or increments of at least \$250. As long as funds remained credited to the RAA, the insurer would hold them in its general account, crediting the RAAs with a 1-percent interest rate while apparently earning a higher rate of return on the funds for itself.

A U.S. District Court judge found that, by doing so, the insurance carrier had failed to discharge its obligations solely in the interest of plan participants and beneficiaries as required under ERISA's duty-of-loyalty provision, Section 404 (a).

But the 1st Circuit reversed.

"The centerpiece of [Unum's] challenge is the assertion that, by establishing the RAAs in accordance with ... plan documents, the insurer fully discharged its fiduciary duties," Judge Bruce M. Selya wrote for the court.

"Consequently, the subsequent relationship between the insurer and the beneficiary was in the nature of a debtor-creditor relationship, governed not by ERISA but by state law," Selya said. "In other words, when the insurer invested the retained funds and paid interest to the beneficiaries, it was not acting as an ERISA fiduciary. The insurer's position makes sense, and it is bulwarked by relevant authority."

Meanwhile, the 1st Circuit also affirmed the trial judge's finding that Unum's use of RAAs did not constitute self-dealing in violation of Section 406(b) of ERISA.

The 29-page decision is *Merrimon, et al. v. Unum Life Insurance Company of America*, Lawyers Weekly No. 01-175-14. The full text of the ruling can be found by clicking [here](#).

'Common, convenient and secure'

Unum's attorney, Donald R. Frederico of Pierce Atwood in Boston, said the decision is important to the insurance

