



March 24, 2008

**Via Facsimile and U.S. Mail**

Donald J. Warwick  
Vice President Human Resources  
Konica Minolta Business Solutions U.S.A., Inc.  
100 Williams Drive  
Ramsey, NJ 07446

Re: *Ralph Martinelli and Robert Ryan-Wenger*  
*Request for Review of Denial of Domestic Partner Benefits*

Dear Mr. Warwick:

Pursuant to Section 503 of ERISA,<sup>1</sup> 29 U.S.C. § 1133, and the Department of Labor Regulations issued thereunder, Ralph Martinelli and Robert Ryan-Wenger hereby request review of the determination to deny Mr. Ryan-Wenger medical benefits under the Out of Area Plan for Konica Minolta Business Solutions U.S.A., Inc. ("the Plan"). Mr. Ryan-Wenger was a beneficiary under the Plan as the domestic partner of Mr. Martinelli, a Plan participant. The Plan Administrator, Konica Minolta Business Solutions U.S.A., Inc. ("KMBS") has denied Mr. Ryan-Wenger's benefits on the ground that he is no longer an eligible domestic partner under the plan because he and Mr. Martinelli have relocated from New Jersey to Idaho. As shown below, this determination is contrary to the Plan terms. Furthermore, even if KBMS's application is a permissible interpretation of an ambiguous Plan term, KBMS should reverse its determination because its interpretation undermines the employer's domestic partner benefits program and serves no business interest of the employer.

**1. Facts.**

Mr. Martinelli has been a valued KMBS employee for five years. In August 2005, he and Mr. Ryan-Wenger registered as domestic partners in New Jersey, where they resided, and Mr. Ryan-Wenger became covered under KMBS's medical plan. In May 2007, the couple relocated to Idaho in the hope of relieving trauma symptoms that Mr. Ryan-Wenger, a former Morgan Stanley employee, experienced as a survivor of the World Trade Center disaster of September 11, 2001. Initially, Mr. Martinelli commuted

<sup>1</sup> The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

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Donald J. Warwick  
March 24, 2008  
Page 2

back to the northeast, where he continued to serve as the KMBS District Sales Manager for the East Region, until KMBS transferred him to its western region in November 2007.

In August 2007, KMBS notified Mr. Ryan-Wenger that, as a result of the move from New Jersey to Idaho, he was no longer a “domestic partner” within the meaning of the Plan and was no longer eligible for benefits. Mr. Ryan-Wenger elected continuation coverage.

## **2. Pertinent Plan Provisions.**

A domestic partner is a spouse for purposes of the Plan. (Plan, p. 73)  
The Plan further provides as follows:

To qualify for Domestic Partner coverage, the Konica Minolta Business Solutions U.S.A., Inc. Employee must obtain a certificate of registration of domestic partnership from the state or municipality in which he or she resides and Provide [*sic*] Konica Minolta with evidence of that registration. If the state or municipality in which the employee resides does not recognize the Employee’s relationship as a domestic partnership, the Employee will not be able to obtain Domestic Partner coverage through the Konica Minolta Business Solutions U.S.A., Inc. Benefits Program.

(*Id.* at 73.) There is no dispute that Mr. Martinelli obtained a certificate of registration of domestic partnership from New Jersey, where he resided, and that he provided KMBS with evidence of the registration.

## **3. Adverse Benefit Determination.**

By letter dated October 2, 2007, Donna Irish-Merritt of KMBS confirmed the termination of Mr. Ryan-Wenger’s coverage under the Plan. Ms. Irish-Merritt explained the Plan terms as follows: “If the state or municipality in which the employee resides in [*sic*], or relocates to, does not recognize the employee’s relationship as a domestic partnership, the employee will not be able to obtain Domestic Partner coverage through the KMBS Benefits Program.” As shown above, the words “or relocates to” do not appear in the Plan.

#### **4. KMBS Lacks Discretion to Rewrite the Plan.**

The Plan gives KMBS discretion to interpret the terms and conditions of the Plan. (*Id.* at 65.) However, as a matter of law, this discretion does not extend to rewriting the Plan terms. *See Saffle v. Sierra Pac. Power Co.*, 85 F.3d 455, 459-60 (9th Cir. 1996). In particular, a plan administrator may not deny a claim based on terms that do not appear in the plan. For example, in *Saffle*, a disability benefits plan provided defined disability as a participant's inability to perform the duties of his or her occupation. The plan administrator denied a participant's claim on the basis that she could perform her occupation with accommodations for her disability. The Ninth Circuit held that the administrator lacked discretion to add the term "accommodations" to the plan.<sup>2</sup>

Likewise, here, KMBS lacks discretion to add the term "or relocates to" to the Plan, as Ms. Irish-Merritt did in the October 2 letter. Mr. Martinelli, the employee, resided in New Jersey at the time that he and Mr. Ryan-Wenger registered their domestic partnership. He provided KMBS with evidence of the registration as required by the Plan. Nothing in the Plan required that Mr. Martinelli continue to reside in New Jersey in order to maintain Mr. Ryan-Wenger's eligibility. Instead, the plain language of the Plan required only that he reside in New Jersey at the time of registration. Nor does New Jersey's Domestic Partnership Law require that registered domestic partners continue to reside in New Jersey in order to maintain their status. Accordingly, Mr. Ryan-Wenger continues to be an eligible domestic partner under the Plan and his benefits must be reinstated.

#### **5. If the Plan Is Ambiguous as to Eligibility of Domestic Partners Who Relocate, KMBS Should Exercise Its Discretion to Interpret the Plan in Favor of Eligibility.**

To the extent that the Plan's domestic partner eligibility provision is susceptible to two interpretations – that the employee must reside in the relevant state or municipality at the time of registration or that the employee must continue to reside in the relevant state or municipality after registration in order to maintain his beneficiary's eligibility – KMBS should exercise its discretion to give the Plan the former interpretation. As demonstrated above, nothing in the Plan compels the interpretation that a domestic partner loses eligibility if the employee and partner relocate away from the

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<sup>2</sup> Because the participant and beneficiary in this case reside in Idaho, the law of the Ninth Circuit governs the claim.

jurisdiction that initially recognized their partnership. Interpreting the Plan to continue domestic partner eligibility after relocation will promote KMBS's image as an employer committed to equitable treatment of its employees, maintain employee goodwill, and simplify plan administration.

**a. Denial of Domestic Partner Benefits to Relocated Employees Undermines KMBS's Image as an Employer Committed to Equality.**

By providing domestic partner benefits, an employer can realize not only significant recruitment and retention dividends but also customer loyalty and public acclaim. Looking first at the issue of creating goodwill with those within an organization, studies have demonstrated that employee morale and productivity improve in work environments where individuals believe that all employees are valued by their employer.<sup>3</sup> One of the most tangible and visible ways in which an employer can demonstrate that it values all of its employees irrespective of their sexual orientation is by offering benefits to the domestic partners of its gay and lesbian employees. As employees' satisfaction with their employer increases, so too does their loyalty to the organization. In MetLife's 2007 "Study of Employee Benefits Trends," 80 percent of employees who were "highly satisfied" with their benefits expressed strong job satisfaction, 70 percent said their benefits package was a reason for joining their current employer and 83 percent said it was a factor in staying with the business.<sup>4</sup> This loyalty manifests itself in a willingness by employees not only to stay with their employer but also to recommend their employer to others.<sup>5</sup>

The goodwill produced by equitable employee benefits policies extends beyond the corporation itself to the general public. In fact, studies reveal that the consumer-oriented employer that treats its gay and lesbian

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<sup>3</sup> See Samir Luther, *Domestic Partner Benefits: Employer Trends and Benefits Equivalency for the GLBT Family*, Human Rights Campaign Foundation, 2006, at 2, available at <http://www.hrc.org/documents/Guide-to-Employer-Trends-and-Benefits-Equivalency-for-the-GLBT-Family.pdf> (citing "Fundamentals of Employee Benefit Programs, Part Four: Other Benefits," Employee Benefit Research Institute, 2005).

<sup>4</sup> See *Workplace Benefits for GLBT Employees and their Families*, Human Rights Campaign, <http://www.hrc.org/issues/workplace/benefits/5922.htm> (discussing Met Life study) (last visited Mar. 10, 2008).

<sup>5</sup> See Luther, *supra* note 3 (citing "Employee Discrimination in the Workplace," The Gallup Organization, Nov. 10, 2005).

employees and their families equally stands to benefit not only in terms of its workforce but also with the GLBT consumer market, valued at \$641 billion for 2006.<sup>6</sup> Sixty-nine percent of GLBT people indicated that their shopping decisions are influenced by companies' workplace policies supporting equal and fair treatment of GLBT people.<sup>7</sup> For this reason, it is not surprising that, as of March 1, 2006, 49 percent of the Fortune 500 and 78 percent of the Fortune 100 largest corporations offer health benefits to employees' domestic partners.<sup>8</sup> One such corporation providing benefits is Xerox, which allows its employees to relocate without losing their benefits, and which, as an office equipment supplier, is a KMBS competitor. This year, along with 195 other companies, Xerox was awarded a perfect score in the Human Rights Campaign's Corporate Equality Index for its fair treatment of GLBT employees. In fact, Xerox has earned a perfect score for six years. KMBS, however, did not participate in the survey.<sup>9</sup>

In contrast, KMBS's interpretation of the Plan to revoke domestic partner eligibility upon relocation will achieve the opposite effect, exposing KMBS to criticism as an employer imperfectly committed to equal treatment of its employees. In this case, KMBS has terminated the medical benefits eligibility of a survivor of the September 11 attacks, who suffers ongoing trauma from the event, because he moved away from the jurisdiction where he registered his domestic partnership. Moreover, rather than emphasizing KMBS's commitment to equality, KMBS's Plan interpretation underscores the unequal treatment of domestic partners and married couples. It would be preposterous for KMBS to interpret the Plan to require that married employees have obtained their marriage licenses in the jurisdiction in which they reside, or to require that married employees obtain a new marriage license if they relocate. As a result, public goodwill generated by the decision to provide domestic partner benefits in the first place stands to be canceled out by the termination of benefits upon relocation.

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<sup>6</sup> *Id.* (citing "Gay Buying Power Projected at \$641 billion in 2006," Witeck-Combs & Packaged Facts, Feb. 14, 2006).

<sup>7</sup> *Id.* (citing "One in Four Gays More Likely than Last Year to Consider Shopping at Stores with Reputations as Good Corporate Citizens," Witeck-Combs & Harris Interactive, Feb. 6, 2006).

<sup>8</sup> *Id.*

<sup>9</sup> See *Corporate Equality Index: A Report Card on Gay, Lesbian, Bisexual and Transgender Equality in Corporate America*, Human Rights Campaign, 2008, at 39, available at [http://www.hrc.org/documents/HRC\\_Corporate\\_Equality\\_Index\\_2008.pdf](http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2008.pdf) (last visited Mar. 11, 2008).

Like public goodwill, employee goodwill will be another casualty of KMBS's Plan interpretation. Mr. Martinelli and Mr. Ryan-Wenger recount that, until this issue arose, they boasted about KMBS's forward-thinking decision to offer domestic partner benefits. Research has shown that, when employers offer partner benefits, GLBT employee turnover decreases and morale improves.<sup>10</sup> Such good feeling on the part of employees and their families, however, will be completely undermined by interpreting the Plan to terminate such benefits upon relocation. Significantly, the impact of such policies on employee morale is not limited to GLBT employees. As a recent survey conducted by Out & Equal, Harris Interactive and Witeck-Combs reported, 69 percent of heterosexual workers agreed that "all employees are entitled to equal benefits on the job."<sup>11</sup>

**b. Denying Domestic Partner Benefits to Relocated Employees Imposes a Costly Administrative Burden on the Plan.**

One of the principal goals of ERISA is to enable nationally uniform administration of benefits plans for employers, like KMBS, whose plans cover employees in multiple states. *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). "Uniformity is impossible, however, if plans are subject to different legal obligations in different States." *Id.* In *Egelhoff*, the Supreme Court held that a state statute providing for automatic revocation of beneficiary status was preempted by ERISA because, otherwise, plan administrators would be forced to "familiarize themselves with state statutes so that they can determine whether the named beneficiary's status has been 'revoked' by operation of law." *Id.* at 148-49. Because administrative and financial burdens on plan administrators are ultimately borne by plan participants and beneficiaries, state-by-state plan administration contravenes the goals of ERISA.

In this case, while KMBS and its employees are protected by ERISA from administrative burdens occasioned by varying state laws, the plan

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<sup>10</sup> See M.V. Lee Badgett, *et al.*, *The Effect of Marriage Equality and Domestic Partnership on Business and the Economy*, The Williams Institute, 2006, available at [http://www.masspolicy.org/pdf/publications/badgett\\_gates.pdf](http://www.masspolicy.org/pdf/publications/badgett_gates.pdf) (citing B.R. Ragins "We Are Family: The Influence of Gay Family-Friendly Policies on Gay, Lesbian and Bisexual Employees," (2002)).

<sup>11</sup> *Id.* (citing 2006 poll by Out & Equal, Harris Interactive and Witeck-Combs, [http://www.outandequal.org/news/pr/documents/2006\\_Workplace\\_Survey052306.pdf](http://www.outandequal.org/news/pr/documents/2006_Workplace_Survey052306.pdf)) (last visited Mar. 11, 2008).

administrator's interpretation of the Plan in the domestic partner relocation context voluntarily imposes these administrative costs on KMBS and its employees. For every KMBS employee who moves, the plan administrator must (1) determine whether the employee has a beneficiary enrolled; (2) if the employee has a beneficiary, determine whether the beneficiary is a domestic partner; (3) and if the beneficiary is a domestic partner, determine whether either the state or the municipality to which the employee has moved recognizes domestic partnerships.

This case exemplifies the administrative burden. Presumably because of the difficulty of identifying beneficiaries to whom this exclusionary Plan interpretation applies, KMBS did not terminate Mr. Ryan-Wenger's benefits until five months after he and Mr. Martinelli moved. Moreover, as shown in Ms. Irish-Merritt's letter, KMBS's investigation into Mr. Ryan-Wenger's eligibility included conducting legal research regarding recognition of domestic partnerships in Idaho. Multiplying this investigation by dozens, if not hundreds, of KMBS employees who relocate every year, and taking into account the daily changes in the number of jurisdictions recognizing domestic partnerships, results in significant expenditures for administration which would be better made on benefits.

**c. Idaho's Anti-Gay Marriage Amendment Has No Bearing on This Issue, and Should Not Be Used as an Excuse for Discrimination Against KMBS's Gay and Lesbian Employees.**

Nothing in Idaho law precludes private employers like KMBS from providing fair and equitable health care benefits to their gay and lesbian employees. Rather, Idaho's anti-gay marriage amendment (also known as "Amendment 2") simply provides that access to the state-created institution of civil marriage is reserved to heterosexual couples, and government entities may not create alternative institutions for other relationships, gay or straight, that would have the effect of creating a union that serves as a legal alternative to marriage (*e.g.*, civil unions). *See* Idaho Const. art. III § 28.

KMBS itself appears to recognize that nothing in Idaho law or public policy requires or countenances such unfair treatment of private employees. Yet, by requiring its employees repeatedly to produce government documentation of their ongoing commitment to their partners whenever they are relocated to a different state, regardless of whether or not the state to which they are relocating has a process for obtaining such documentation, KMBS is, in effect, *choosing* to adopt anti-gay policies enacted elsewhere throughout the country. For all of the reasons noted above, both as a matter

Donald J. Warwick  
March 24, 2008  
Page 8

sense and good corporate citizenship, KMBS should be enacting progressive policies that maximize to the greatest extent possible the fair treatment of its employees.

**6. Conclusion.**

For all of the foregoing reasons, the Plan terms, practical considerations, and considerations of public and employee goodwill mandate that Mr. Ryan-Wenger's benefits be reinstated.

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