Insight

MetLife v. FSOC on Appeal

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Last summer after MetLife filed its lawsuit against the Financial Stability Oversight Council (FSOC), the American Action Forum highlighted the ten arguments made in MetLife's complaint. When Judge Collyer ruled on the case on March 30th of this year, she chose to only rule on four of the ten arguments, which was sufficient to overturn FSOC's designation of MetLife as a Systemically Important Financial Institution (SIFI). When the case is heard on appeal later this year, all ten original arguments, including the six that Judge Collyer chose to not rule on, will be back on the table. Before briefs start being filed on the appeal, it's helpful to understand what has been ruled on, what has not, and what could still be ruled on.

MetLife's Original 10 Claims:

1. MetLife is technically not a non-bank financial company under Dodd-Frank because less than 85 percent of its revenues and assets relate to "financial activities" and therefore it is not "predominately engaged in financial activities."
2. FSOC acted arbitrarily and capriciously in designating MetLife because its designation as a SIFI did not stay within the statutory criteria in section 113 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).
3. FSOC relied on speculation and assumption in designating MetLife a SIFI.
4. FSOC failed to consider the cost of designating MetLife a SIFI.
5. FSOC failed to consider reasonable alternatives to designating MetLife as a SIFI.
6. FSOC's designation was fatally premature because FSOC has not yet promulgated a handful of standards and processes that were required under Dodd-Frank.
7. FSOC over-emphasized MetLife's size and interconnectedness.
8. FSOC failed to consider risk principles.
9. FSOC failed to examine the magnitude or likelihood of various events that would cause a financial crisis and instead relied only on extreme scenarios.
10. FSOC violated the Due Process Clause, specifically the separation of powers in acting as both the judge and jury and failing to give MetLife full access to the administrative record.

Judge Collyer ruled only on the first four claims. For the first, she found that MetLife did, in fact qualify as a nonbank financial company so they were eligible for the designation. However, for the next three claims, she found that FSOC did act arbitrarily and capriciously because they articulated intent to consider MetLife's vulnerability to financial distress, but in their designation they did not consider vulnerability at all. Judge Collyer ruled that such a change in their position with no explanation was arbitrary and capricious. She further ruled that FSOC relied on unsubstantiated assumptions in their designation because they simply tallied MetLife's exposures and doing so was arbitrary and capricious. Lastly, she ruled that FSOC failed to consider the cost of designation and that FSOC must consider all risk-related concerns. In doing so she cited a recent Supreme Court case in which an action by the Environmental Protection Agency was deemed to be arbitrary and capricious.

When the case goes to appeal all ten claims are fair game for the judge to rule on. As the case stands now, this decision does not set precedent for any other companies that have been designated by FSOC – it only applies to MetLife. However, once the next judge decides the case on appeal in the Circuit Court, that decision will be binding precedent. In the meantime, there's nothing preventing FSOC from taking another shot at designating MetLife, but they would have to do so under the guidelines set forth in Judge Collyer's decision.