

The Western Pension & Benefits Council Portland Chapter

ERISA Litigation Update Presented by:

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ERISA §404 Fiduciary Duties

- A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, and
 - (A) for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan;
 - (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
 - (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
 - (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA].

Presumed Innocent Nevermore

- *Fifth Third Bancorp v. Dudenhoeffer*
 - Issue: Are ESOP fiduciaries presumed to be in compliance with the ERISA prudence standard in regard to company stock investments?
 - Takeaway: Never presume
 - ESOPs are subject to prudence standards
 - Be careful with hardwired clauses

ERISA §502 Civil Enforcement

- A civil action may be brought:
 - (1) by a participant or beneficiary—

 - (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan

Time's Up!

- *Heimeschoff v. Hartford Life & Accident Insurance Co.*
 - Issue: Does a time limit for filing a lawsuit set forth in a plan document override ERISA?
 - Takeaway: Include reasonable time limit in plan documents

29 CFR §2560.503-1 Claims Procedure

- The plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination
- The notification shall set forth, in a manner calculated to be understood by the claimant—
- (iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under [ERISA] following an adverse benefit determination on review.

Time Stands Still

- *Moyer vs. Metropolitan Life Insurance Company*
 - Issue: Is the imposition of a contractual time limit conditioned upon disclosure in the claim denial notice?
 - Takeaway: Include time limit in SPD and claim denial notice

Could Have or Would Have

- *Tatum v. RJR Nabisco Investment Committee*
 - Issue: Can blind luck prevail?
 - Takeaway: Be thorough and prudent

ERISA §510 Interference with Protected Rights

- It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan... or [ERISA] or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan...

ERISA's Blind Eye

- *Roe v. Empire Blue Cross Blue Shield*
 - Issue: Does ERISA protect same-sex spouses?
 - Takeaway: ERISA is not the answer, but relief may possibly be found elsewhere

Excess Fee Decision – Round Two

- *Tussey vs. ABB*
 - Issue: Why do they let these groups play with our money?
 - Takeaway: Be smart about it

ERISA §(21)

- (A) A person is a fiduciary with respect to a plan to the extent (i) he... exercises any authority or control respecting management or disposition of its assets

So You Thought You Weren't A Fiduciary

- *Golden Star v. Mass Mutual Life Insurance Company*
 - Issue: Does having the ability to set fees make you a fiduciary?
 - Takeaway: Require consent to fee increases

You, Too, Thought You Weren't A Fiduciary

- *Perez vs. Geopharma*
 - Issue: How little does it take to become a fiduciary?
 - Takeaway: The DOL is casting a wide net

ERISA §514 Other Laws

- The provisions of [ERISA] shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan

ERISA Preemption. Where Hath Thou Gone?

- *Gray vs. FedEx Ground Package System, Inc.*
 - Issue: Is every loss of benefits claim covered by ERISA?
 - Takeaway: Be wary of state law claims

Questions?