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CASE LAW UPDATE: ERISA and Employee Benefit Plans

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Fiduciary Duties: Prudence in Investing

Prudence in Investing: No Presumption of Prudence Regarding Employer Securities

Fifth Third Bancorp. v. Dudenhoeffer, 134 S. Ct. 2459 (2014).

- No presumption of prudence protects ESOP fiduciaries; they are subject to the same duty of prudence that applies to all ERISA fiduciaries.
- But, a claim for breach of the duty of prudence may be difficult to plead: the complaint must allege a reasonable alternative that the defendant could have taken, that would have been legal, and which a prudent fiduciary could not conclude would do more harm than good.

Prudence in Investing: No Presumption of Prudence Regarding Employer Securities

Amgen, Inc. v. Harris, --- S. Ct. --- (2016).

- Reiterating holding in *Dudenhoeffer* that a court faced with a claim of breach of an ERISA fiduciary duty against a plan must consider whether the complaint plausibly alleged that a prudent fiduciary in the defendant's position could not have concluded that an alternative would have done more harm than good.

Prudence in Investing: Duty to Monitor

Tibble v. Edison Intern., 135 S. Ct. 1823 (2015).

- The *Firestone* abuse of discretion standard applies to fiduciary decisions.
- The 6-year statute of limitations for breaches of ERISA fiduciary duties runs not only from the initial selection of investments for a plan, but also from a point at which the fiduciary should have reviewed and potentially changed investments.
- The fiduciary's duty to monitor investments and remove imprudent ones is separate from the duty to exercise prudence in the initial selection of investments.

Prudence in Investing: Abuse of Discretion

Tussey v. ABB, Inc., Case No. 2:06-cv-04305 (W.D. Missouri July 9, 2015).

- Defendant company abused its discretion under ERISA when it chose investments based on benefits to the company and Fidelity, not to plan participants.
- Even if there were justifications for the investment change, the conflict in interest weighed in favor of finding an abuse of discretion.
- Appeal pending before 8th Circuit Court of Appeals

Fiduciary Duties: Reasonable Fees

Recordkeeper has no Duty in Setting Fees

McCaffree Financial v. Principal Life Ins., -- F.3d --- (8th Cir. 2016).

- Court rejected argument that Principal breached a fiduciary duty owed to plan participants by charging excessive fees, because employer explicitly agreed to those fees in the contract, and because Principal was not a fiduciary prior to execution of the contract, at which point the fees had already been established.

The Changing Landscape of Retiree Medical Benefits

Overturning the Presumption of Benefit Vesting

M&G Polymers USA, LLC v. Tackett, 135 S. Ct. 926 (2015).

- The Court overturned *Yard-Man*, holding that vested benefits cannot be inferred from the context of labor negotiations.
- Vesting must be evidenced using ordinary principles of contract interpretation.

Retiree Medical Benefits Under the Contract Approach

Gallo v. Moen, Inc., -- F.3d -- (6th Cir. 2016).

- The court followed *M&G Polymers*' holding that no presumption of retiree medical benefit vesting applies.
- The benefits were not vested when the CBAs provided no unalterable lifetime healthcare benefits to retirees or spouses, where the CBAs were only 3-year agreements, where certain other benefits were expressly continued, where benefits for certain retirees were expressly vested, and where the CBAs or other governing documents contained reservation-of-rights clauses.

Example: When do Benefits Vest?

United Steelworkers v. Kelsey-Hayes Company, Case No. 4:11-CV-15497 (E.D. Mich. Jan. 28, 2016).

- Court concluded that plaintiffs' retiree medical benefits, as negotiated in prior CBAs, had vested, despite Supreme Court's rejection of the *Yard-Man* inference, where CBA stated that retiree health benefits "would be continued thereafter … provided that suitable arrangements for such continuance, can be made with the carrier(s)."

What language does a court look for?

- Durational language (e.g., “for life”, “thereafter”, “until age ___”)
- Reservations of a plan’s right to amend or terminate benefits
- Term-limitations in the contracts

Limitations on Subrogation Rights

Plan Document Controls

Apollo Education Group v. Henry, -- F. Supp. 3d -- (D. Ariz. 2015).

- Benefit provider was not entitled to reimbursement for benefits paid, when defendant obtained reimbursement from third parties, where the plan document and the SPD (which was incorporated in the plan document by reference) were in conflict, when the plan contained no subrogation provision and the SPD included a right to reimbursement provision.

Restrictions on Reimbursement Rights

Montanile v. National Elevator Industry Health Benefit Plan, 136 S. Ct. 651 (2016).

- Court held that plan was not entitled to reimbursement when it failed to seek reimbursement immediately, and when the plan participant spent the recovered third-party settlement on non-traceable assets.
- In such circumstances, the claim was not one for equitable relief because no “specifically identifiable funds” were available to which the lien could attach.

Successor and Withdrawal Liability for Multiemployer Pension Plans

Withdrawal Liability May Transfer to Successor

Resilient Floor Covering Pension Trust Fund v. Michael's Floor Covering, Inc., 801 F.3d 1079 (9th Cir. 2015).

- Successor employer may be subject to withdrawal liability under the MPPAA, so long as the successor takes over the business with notice of the potential withdrawal liability and on balance, other factors support the transfer of liability, including whether there is a substantial continuity in the business operations between the predecessor and successor.

Other Interesting Issues…

Third-Party Liability

Malinowski v. The Lichter Group, LLC, Case No. JKB-14-917 (D. Maryland January 28, 2016).

- Accountants/Auditors were not liable under state law for failure to identify during audit the employer's failure to meet its plan funding obligations, when there was no evidence that the plaintiffs relied on the defendants' reports and when the injury probably would have resulted even absent defendants' conduct.

Provider Recovery of Unpaid Fees

Griffin v. Verizon Communications, -- Fed. Appx. -- (11th Cir. 2016).

- Participants' assignment of benefits to medical provider were unenforceable in light of the anti-assignment provision in the health benefit plan.

ESOP Disqualification

Family Chiropractic Sports Injury & Rehab Clinic v. IRS, T.C. Memo. 2016-10 (Jan. 19, 2016).

- Court upheld IRS disqualification of ESOP, where, over a series of plan years, the plan failed to satisfy code anti-alienation requirements (by transferring a vested balance from the account of one ex-spouse to another with no QDRO), when it failed to follow its own document in operation, and when it exceeded Code Section 415 limits.