

NINTH CIRCUIT ADDRESSES ISSUES RELATED TO MISCALCULATION OF RETIREMENT BENEFITS AT PORTALS

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The Ninth Circuit Court of Appeals addressed several issues related to a miscalculation of benefits provided by using an internet portal. The employer had hired a third-party recordkeeper to provide a portal where plan participants could receive estimates of their defined benefit plan payments. Because of a misapplication of the definition of compensation utilized at the portal, several participants received estimates that grossly overstated the amount of the pension payable. When the individuals retired, those benefit amounts were initially paid. Subsequently, when a new recordkeeper was hired, the error was discovered. The participants were then told that their benefits were much less and, in at least one instance, told that benefit payments needed to be returned. As a result, the participants brought an action to retain the original benefit amounts. The Ninth Circuit addressed three important issues regarding the participant claims for violation of fiduciary duties and negligence claims.

First, the participants alleged that the miscalculation of the benefit was a violation of fiduciary duty under ERISA. The Ninth Circuit held that the employer, the plan administrative committee, and the recordkeeper were not performing a role as a fiduciary when performing the benefit calculation. Following similar decisions in the First and Fourth Circuits, the Ninth Circuit found that the party would be liable for a fiduciary breach only when they are performing a fiduciary function. The court held that calculating pension benefits using a pre-determined formula is a ministerial function and not a fiduciary function. Therefore, the miscalculation did not create a breach of fiduciary claim.

Second, the participants claimed that the company and administrative committee breached their fiduciary duties by providing incomplete and inaccurate benefit statements. The court held that a request made at a portal satisfied ERISA's requirement of being a request made "in writing." As a result, participants are allowed to amend their complaint to provide that they made a written request for benefits that was not properly responded to.

Third, the Court addressed the issue of ERISA preemption with respect to the negligence claim made against the third-party recordkeeper. The Court found that ERISA did not preempt state law claims of professional negligence against the

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recordkeeper. The Court found that state law negligence claims do not directly impact ERISA plans and was not preempted. Therefore, the case was remanded to the district court for further action regarding the malpractice claim against the recordkeeper.

While the employer and administrative committee were successful on the direct breach of fiduciary claim, the participants may be able to revive their claim for failing to provide an accurate benefit statement in response to a written request and the recordkeeper may have to defend the negligence claim made against it. This highlights the need for plan sponsors and administrative committees to carefully review the way in which administrative portals operate and to be as certain as possible that the portals operate in a manner constant with plan terms. *Bafford v. Northrop Grumman Corp.*, 9th Cir., 2021.