

CONSULTANT'S PENSION MISCALCULATION DOES NOT RESULT IN FIDUCIARY BREACH

Hodgson Russ Newsletter
August 31, 2016

A third party pension consultant, who was hired by the sponsor of a pension plan, was contacted by a plan participant for a calculation of his retirement benefit under the plan. The consultant told the participant that he was entitled to a benefit of \$8,444.18 per month. On the basis of that calculation, the participant retired and in fact began to receive monthly benefit checks from the plan in the amount of \$8,444.18 per month. Within months of his retirement and the commencement of his benefit payments, a plan representative contacted the participant and told the participant that his correct monthly benefit was \$3,653.78 per month and that he would be required to return approximately \$43,000 of overpayment to the pension plan. The plan participant commenced a lawsuit against the plan and its consultant. The participant's claims included a claim for a breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA).

A federal district court dismissed the lawsuit for failure to state a valid claim and, on appeal to the Court of Appeals for the Tenth Circuit, the plaintiff's fiduciary breach claim was again rejected. The district court had rejected the breach of fiduciary duty claim on the ground that the pension consultant did not act as an ERISA fiduciary, and the Tenth Circuit agreed. The participant asserted that the consultant's responsibility for calculating and reporting pension benefits was sufficient to characterize the consultant as a plan fiduciary under ERISA. Fiduciary status can be established if a person has any discretionary authority or discretionary responsibility in the administration of a plan. The Tenth Circuit concluded that preparing routine pension calculations "does not inherently require discretion." In reaching this conclusion, the court relied in part on Department of Labor regulations which suggest that a person who performs "purely ministerial functions" (which include benefit calculations) in accordance with established plan parameters does not have discretionary authority or discretionary responsibility respecting management of the plan. Because "merely calculating benefits, without more, does not establish fiduciary status under ERISA," the Tenth Circuit ruled that the facts alleged by the participant were insufficient to establish liability for an ERISA fiduciary breach.

Lebahn v. National Farmers Union Uniform Pension Plan (10th Cir. 2016)

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy

Practices & Industries

Employee Benefits