SECTION: ERISA
PARTICIPANT'S SPOUSE'S RELIANCE ON REPRESENTATION OF PLAN FIDUCIARY CANNOT GIVE RISE TO CLAIM UNDER ERISA FOR BREACH OF FIDUCIARY DUTY

Citation: Shook v. Avaya, Inc, CA3 No. 09-4043, 11/2/10`

The Third Circuit Court of Appeals ruled that there could not be an action for breach of fiduciary duty under ERISA when a participant claimed he had been damaged by a misrepresentation that caused he and his wife to decide that she should retire from her job. The case in question involved an employer that had been subject to an acquisition. The key question became how many years of service the participant would have credit for under the plan, and to what extent his service to the predecessor employer would count under the successor employer's plan.

Based on answers the participant had received to inquiries regarding his start date for various benefits the participant had computed his expected retirement benefit. The benefit he computed presumed that he would be able to obtain a full retirement benefits even if he were to be, as it turns out he was, laid off in a force reduction in the near future. Based on that expected benefit, it was decided that his wife could go ahead and retire from her job with a different employer. Unfortunately, the actual benefit he qualified for when he was laid off was substantially less than what he had computed. Even worse, his wife had retired before he had been laid off.

The Court held that the actions of a non-participant, that is the wife in this case, could not be the source of a claim for breach of fiduciary duty due to detrimental reliance on a fiduciary's representation. Rather, the Court held that it was required to show action on the part of the participant that led to the damages.

The Court noted that the wife's decision to retire had no impact on the participant's benefits, nor did it have any effect on benefits potentially payable to her as a beneficiary of her spouse under the plan. The Court found that this was not a reasonably foreseeable consequence to the fiduciary.

SECTION: ERISA
WHERE INSURER HAD NO DISCRETION UNDER THE PLAN, BURDEN OF PROOF NOT SHIFTED TO INSURER FOR DISPUTE OVER TERMINATION OF DISABILITY BENEFITS

Citation: Muniz v. Amec Construction Management, No. 09-55689, 10/27/10

The Ninth Circuit Court of Appeals sustained a District Court ruling holding an individual did not qualify for disability benefits under the terms of an employer plan, and that the plan was justified in terminating the individuals disability benefits.

The individual in question was diagnosed with HIV in 1989, and stopped working in 1991. He began receiving disability benefits under the plan in 1992. In 2005 his claim came up for periodic review.

After examining medical records submitted by the employee, the insurer determined that he could perform sedentary employment which rendered him no longer disabled under the terms of the plan. Eventually the employee filed an appeal with the United States District Court. The court reviewed the insurer's decision using a de novo standard of review after finding the plan did not grant discretion to the insurer in this area.

An expert appointed by the court to perform this review determined that the employee was no longer disabled under the terms of the plan and the court sustained the denial of benefits.

The employee argued that because he had presented his own physicians statements regarding proof of disability, the burden of proof should have shifted to the insurer to clearly show he was no longer disabled.

The Ninth Circuit declined to follow this result. The Court noted that the employee was citing cases on the burden of proof under situations where the administrator had discretion and the test was for an abuse of discretion. In this case, the administrator did not have discretion and the prior burden decisions did not apply to the District Court's de novo review.

The Court also found that while the fact the employee had previously been paid disability benefits may be relevant to the question of whether he remained disabled, that fact itself did not shift the burden of proof to the plan.

The key factor in this case was the lack of discretion on the part of the plan administrator. Where the plan administrator has discretion under the plan, the Courts have expressed concern that a conflict may exist where the funds to pay the benefit will come from the organization which is exercising the discretion. However, in this case the plan did not grant discretion and the District Court conducted its own independent de novo review of the determination of disability. Thus it appears the Ninth Circuit panel concluded that the risk inherent when there is discretion did not exist here, and therefore no special burden rested upon the plan administrator.

SECTION: 1
IRS ANNOUNCES COST OF LIVING FIGURES FOR 2011 RETURNS

Citation: Revenue Procedure 2010-40, 10/28/10

The IRS has some released inflation adjusted figures to be used for 2011, while others that are impacted by various expiring provisions of the law are not yet included—presumably to wait and see if Congress takes action to extend a number of the expired benefits to apply to 2011 returns.

For 2011 the amount used to reduce net unearned income reported on a child's tax return for purposes of the kiddie tax is $950.

The alternative minimum tax exemption for child subject to the kiddie tax for 2011 can be no more than the sum of the child's current income for the taxable year plus $6,800.

The exclusion under Section 135 for income from United States savings bonds for taxpayers to pay qualified higher education expenses will begin to phase out for modified adjusted gross income above $106,650 for those filing joint returns and $71,100 for those filing under other filing statuses. The exclusion will be completely phased out for those filing joint returns with modified adjusted gross income above $136,650 or for those with $86,100 or more of modified adjusted gross income who have other filing statuses.

The limitations in 2011 for amounts deductible for long-term care premiums are set at $340 for those age 40 or less, $640 for individuals more than age 40 but not more than age 50, $1,270 for those more than age 50 but not more than age 60, $3,390 for those more than age 60 but not more than age 70, and $4,240 for those older than age 70.

For Archer Medical Savings Accounts the amounts defined for a high deductible health plan are set at annual deductibles of not less than $2050 and not more than $3050 for self-only coverage. For such coverage annual out-of-pocket expenses required to be paid cannot exceed $4,100. For those with family coverage, a annual deductible can be not less than $4100 and not more than $6150. The maximum out-of-pocket expenses to be paid for covered benefits cannot exceed $7,500.

The foreign earned income exclusion for 2011 will be $92,900.

The annual exclusion for gifts remains at $13,000 for gifts of a present interest to any person in 2011.

The Revenue Procedure goes on to provide a number of other inflation adjusted items effective for 2011.

SECTION: 401
IRS ANNOUNCES PENSION PLAN LIMITATIONS FOR 2011

Citation: IRS News Release IR–2010–108, 10/28/10

The IRS announced cost-of-living adjustments that will be in place for pension plans and other plan related items for tax year 2011. Most of the items are not changed for 2011 or have very small adjustments.

Elective deferrals for employees in 401(k), 403(b), and 457(b) plans remain at $16,500. Catch-up contribution limits for those age 50 and over also remain unchanged at $5,500.

The phase-outs for IRA contribution deductions for those covered by employer-sponsored retirement plan are unchanged from 2010. The limits for single individuals and those filing head of household remain between $56,000 and $66,000. For married couples, the income phase-out range is from $90,000 to $110,000 up slightly from the range of $89,000 to $109,000 in 2010. If the IRA contribution is for the spouse who is not an active participant in the plan, but the other spouse is an active participant, the deduction phases out between $169,000 and $179,000. In 2010 the reduction was phased out between $167,000 and $177,000.

The phase-out range for Roth IRAs also increased slightly from 2010. For a married couple filing jointly the ability to make a Roth IRA contribution is phased out between $167,000 and $177,000. For those filing either single status or head of household, the phase-out range will be between $107,000 and $122,000 for 2011. As always, for married individuals filing separate returns, the phase-out range remains between $0 and $10,000.

The Section 415 limitations for both defined benefit and defined contribution plans remain unchanged for 2011. For defined benefit plans the limit on the annual benefit remains at $195,000. For defined contribution plans the maximum amount of allocation allowed to a single participant in the plan remains at $49,000.

Annual compensation limits remain unchanged at $245,000. As well, the dollar limitation for the definition of the key employee in a top-heavy plan remains unchanged at $160,000. The dollar amount for definition of a highly compensated employee under Section 414(q)(1)(B) remains at $110,000.

Compensation to be considered for participation in a simplified employee pension plan (SEP) remains at $550 for 2011. The limits on deferrals to SIMPLE retirement accounts remains at $11,500.

SECTION: 408
TAXPAYER GRANTED LATE ROLLOVER RELIEF WHERE TAXING AGENCY FAILED TO RELEASE FUNDS TIMELY TO CUSTODIAN

Citation: PLR 201043044, 10/29/10

In an interesting ruling on rollovers, the IRS allows a taxpayer the right to roll over and amount distributed from an IRA late in the following circumstance. The taxpayer had a pending tax assessment from a taxing agency. Even though the taxpayer had filed an appeal, the taxing agency began collection activities. In order to retain his employment, the taxpayer had his IRA custodian transferred to the taxing agency the amount of tax in dispute.

The taxpayer was eventually successful in his administrative appeal and was due to be refunded the amount transferred. He requested that the agency transfer the amount directly to his IRA account. However the agency delayed, and the amount was transferred to the IRA custodian a few days after the end of the 60 day.

The IRS ruled in this case that the taxpayer was delayed in making his IRA rollover due to the mistake of the taxing agency, apparently treating that agency as a financial institution. Under Revenue Procedure 2003-16, an error on the part of a financial institution is one of the criteria that justifies allowing a late rollover.

Many may have assumed that the use of the funds to pay a potential tax liability would have been a problem for the IRS and that the mere fact it took the taxing agency a while to issue the check would not have been seen as a financial institution error. However, the IRS was rather generous in his view in this particular case.

SECTION: 3121
SERVICE PROVIDERS WORKING AT SPA HELD NOT TO BE EMPLOYEES

Citation: Cheryl Mayfield Therapy Center v. Commissioner, TC Memo 2010-239, 10/28/10

In what the court found was a close case, the Tax Court found that massage therapists, cosmetologists and nail technicians that worked on the premises of a spa were independent contractors and not employees of the spa. The individuals paid a booth rent of approximately $80 as a base rent or, if higher, 25% of the service provider's gross revenues earned.

The Tax Court discussed a number of Revenue Rulings that had dealt with the question of employment status of individuals in similar industries, including Revenue Ruling 73-592, Revenue Ruling 57-110, Revenue Ruling 73-591, Revenue Ruling 73-574 and Revenue Ruling 70-488. The Court noted that the existence of a fixed rental component generally argued for independent contractor treatment. While the spa was not consistent, normally the rent charged was based on the $80 minimum or, if higher, 25% of gross receipts.

Also in the spa's favor was the fact that all compensation was on a straight and mission basis, no business or travel expenses of the service providers was paid for by the spa and many of the service providers made significant investments to outfit and decorate their room. These factors meant the service providers both had a risk of loss and an opportunity to profit by working longer hours.

The spa did not tell the service providers how to provide the services to their clients, the service providers were all licensed professionals, set their own hours and although they provided their schedules in advance, the service providers could change the schedules as they please.

Arguing against the treatment of the service providers as independent contractors were certain factors the Tax Court pointed out. The services given were integrated directly into the spa's operation, the services were provided almost exclusively on the spa's premises, some basic training was provided and the service providers did not generally offer their services to the public outside of the spa.

Ultimately the Tax Court decided that, although it was a close case, these individuals were properly treated as independent contractors.

SECTION: 3122
FEDERAL AGENCIES CAN BE TREATED AS EITHER ONE OR TWO EMPLOYERS FOR FICA WITHHOLDING PURPOSES

Citation: Chief Counsel Email 201042031, 10/22/10

Individuals that work for two employers and have social security taxes withheld for the year on wages in excess of the annual social security wage base are allowed to claim a credit on their tax return for the excess. However, generally if the amount is paid by a single employer that happens to overwithhold, the employee does not get the credit.

An IRS email discusses a special treatment accorded the federal government for this purpose, effectively noting that two federal agencies can be treated as either one or two employers for this purpose. Under §3122 the agencies can either coordinate to limit the deduction (and thus be treated as a single employer) or they can not coordinate and the employee can treat the two agencies as two separate employers.

The email goes on to note that agencies that had not coordinated in the year in question could request a refund of employer FICA, but that to do so after the fact would require obtaining employee's consent to seek a refund on the employee's behalf.