

**Publications**

# In Depth – Courts Delve into Whether a Pharmacy Benefit Manager is a Fiduciary under ERISA

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A number of lawsuits have recently been brought by health benefit plan participants against pharmacy benefit managers (“PBMs”) that provide prescription drug services for their plans. In these cases, plaintiffs have alleged that the PBM breached a fiduciary obligation that it purportedly owed the plan pursuant to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). Plaintiffs have sought monetary relief for the alleged breach of fiduciary duty under Section 502(a)(2) of ERISA. That ERISA section authorizes a participant to sue a fiduciary for breach of its fiduciary duties and to make good on any monetary losses resulting from such fiduciary breach. Because a defendant can be liable for an ERISA breach of fiduciary duty only if it is, in fact, a fiduciary, the cases have turned on whether the PBM satisfies the definition of “fiduciary” under the statute. As we discuss below, courts that have addressed the question have uniformly answered “no,” the PBM is not an ERISA fiduciary.

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