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Another District Court Rules that Church Hospitals Cannot Establish Non-ERISA Church Plans

Background

A second federal judge has ruled that church hospitals cannot establish non-ERISA church plans, causing growing concern for church hospitals. In March, Judge Michael Shipp of the U.S. District Court for the District of New Jersey rejected church plan status for a defined benefit plan of St. Peter's Healthcare System as a matter of law based on a statutory analysis of the church plan definition. In doing so, he joins Judge Thelton Henderson in the Northern District of California in his December 2013 decision in *Rollins v. Dignity Health* (for a synopsis of the *Rollins* case see our prior alert here http://www.groom.com/resources-840.html). This decision, as well as the *Rollins* decision, will likely have implications for other church plan cases across the country. No doubt, plaintiffs' counsel will likely rely on these two cases as persuasive authority in order to convince other judges to rule in their favor. However, given the judges' narrow reading of the statute, the factual differences of each particular case, and the weight of federal agency and court authority against these two judges' opinions, it is still too early to tell the import of these district judges' decisions.

The Decision

In *Kaplan v. St. Peter's Healthcare System*, No. 3:13-cv-02941-MAS-TJB (D. N.J. March 31, 2014), Judge Shipp determined that the retirement plan sponsored by St. Peter's Health System ("St. Peter's"), a non-profit health system located in New Brunswick, New Jersey, was not, as a matter of law, a church plan, and thus denied its motion to dismiss.

In reaching this conclusion, Judge Shipp undertook a textual analysis of the church plan definition which was very similar to the approach undertaken in *Rollins*. Here, the Court laid out the relevant statutory language and stated that subsection A of ERISA § 3(33) is the "gatekeeper" to the church plan exemption. That subsection in relevant part provides that "[t]he term "church plan" means a plan established and maintained . . . by a church or by a convention or association of churches." The Court noted that "although the church plan definition, as defined in subsection A, is expanded by subsection C to include plans ***maintained*** by a tax-exempt organization, [the statute] nevertheless requires that the plan be ***established*** by a church or convention of churches." (emphasis in original). From this reading of the statute, the Court opined that ". . . Congress has explicitly provided two ways to fall within the church plan exemption: (1) a plan established and maintained by a church, or (2) a plan established by a church and maintained by a tax-exempt organization, the principal purpose or function of which is the administration or funding of the plan, that is either controlled by or associated with a church." Thus, in the Court's view, "if a church does not establish the plan, the inquiry ends there."

The Court suggested that its reading of the statute was consonant with rulings by both the Fourth and Eighth Circuits in *Lown v. Continental Casualty Co.*, 238 F.3d 543 (4th Cir. 2001) and *Chronister v. Baptist Health*, 442 F.3d 648 (8th Cir. 2006), where the appellate courts "concluded that the entities at issue did not meet the definition of a church plan based on factual findings." The Court also found the ruling in *Rollins* persuasive and relied heavily on that case in framing its statutory analysis. The Court, however, found the ruling in *Thorkelson v. Publishing House of Evangelical Lutheran Church*, 764 F. Supp. 2d 1119 (D. Minn. 2011) unpersuasive. There, the District of Minnesota faced similar facts and legal arguments, but nevertheless reached the opposite conclusion and upheld the church plan exemption for a plan sponsored by a non-profit publisher for the Lutheran Church. The Court reasoned that even though the *Thorkelson* court analyzed the statute, that court's focus was limited to "whether the plan was sponsored by a tax-exempt entity that is controlled by or associated with a church" and not on the interpretation of ERISA § 3(33)(A) " . . . which requires – from the outset – a plan to be established by a church." The Court also ignored other prior decisions that ruled similar to *Thorkelson* on the basis that these decisions either "bypassed subsection A of the definition and immediately applied subsection C(i), made conflicting determinations regarding the limitations of C(i), or even misstated the text of subsection C(i)."

Moreover, because the Court found that the statutory language was clear and not ambiguous, the Court refused to consider the legislative history cited by the parties in support of their arguments. The Court also refused to give deference to decades of federal agency interpretation of the statutory definition confirming the application of the church plan exemption to plans of church-related agencies. And despite an August 14, 2013 private letter ruling by the IRS conferring church plan status on the St. Peter's plan, the Court opined that the "private letter ruling is conclusory, lacking any statutory analysis, and cannot be used as precedent because the ruling was issued in a non-adversarial setting based on information supplied by St. Peter's."

Based on its very narrow reading of the statute, the Court determined that a plan must first be established by a church, and only after a church has established a plan can an organization controlled by or associated with a church maintain such a plan. Because the St. Peter's plan was not established by a church, the Court ruled that, as matter of law, the plan was not a church plan.

In response to the Court's decision, St. Peter's filed a motion for interlocutory appeal to the 3rd Circuit and to stay the current proceedings pending appeal. It's unclear whether the Court will grant or deny St. Peter's motion. Dignity Health filed such a motion in its case, which the district judge denied on the basis that the hospital's request for appellate review did not meet the "exceptional circumstances" standard.

Take-Aways

There are a number of things worth noting in the *St. Peter's* decision. First, although the Court found as a matter of law that the St. Peter's plan was not a church plan, the Court expressly refused to examine the question of what constitutes a "church," noting that "[t]he Court does not venture to define 'church' . . . ."' Second, the Court (like the *Rollins* court) failed to so much as mention subsection D of ERISA § 3(33), which provides retroactive relief for plans that fail to meet one or more of the church plan exemption requirements but subsequently correct such failures. Third, a factual distinction, which the court notes, is that St. Peter's treated itself as subject to ERISA and paid PBGC premiums for over 30 years. While this distinction may not ultimately be dispositive in this or other church plan cases, it may be another basis to assert why the *St. Peter's* decision is distinguishable. Most importantly, this opinion – by itself – does not drastically change the church plan landscape. The case is still in its early stages and much could change between now and the final judgment. Even so, church plan sponsors would be advised to consider the implications of *St. Peter's* for their plans.