

May 14, 2015

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Plaintiffs Settle Church Plan Case in 6th Circuit – Plan Remains a Church Plan

On May 11, 2015, District Court Judge Avern Cohn granted preliminary approval of the class action settlement agreed to by the parties in the church plan case *Overall v. Ascension Health*, 2:13-CV-11396 (E.D. Mich.). Currently, there are 11 other church plan cases across the country. The cases are all at various stages in litigation, but none have reached the settlement phase. This is the first case to settle.

Background

This case began over two years ago when plaintiff filed a complaint in the Eastern District of Michigan alleging that the defined benefit pension plan sponsored by Ascension Health, a non-profit Catholic healthcare system, is not entitled to the church plan exemption under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). Plaintiff argued that the plan should be subject to ERISA, and that defendants had violated ERISA’s reporting and disclosure provisions and minimum funding standards, which resulted in the plan being underfunded by \$444.5 million dollars according to the plaintiff’s estimate. Plaintiff also argued that defendants had breached their fiduciary duties owed to the plans’ participants and beneficiaries, and that the church plan exemption as applied to Ascension violates the Establishment Clause of the First Amendment.

Defendants denied all of plaintiff’s allegations and moved to dismiss the complaint on the grounds that Ascension is controlled by and associated with the Roman Catholic Church, and the plan is a church plan exempt from ERISA.

Plaintiff’s arguments did not persuade the District Court, and the District Court granted Ascension’s motion to dismiss in its entirety a year ago. Thereafter, plaintiff appealed to the Sixth Circuit and the parties filed their briefs. The Sixth Circuit also received a number of amicus briefs arguing both sides of the church plan debate.

After briefing was complete and oral argument was set before the Sixth Circuit, the parties agreed to mediation through a Court mediation program. After reaching a settlement, the parties jointly filed a motion to suspend proceedings at the Sixth Circuit and remand the case to the District Court to determine whether to approve the settlement agreement.

The Proposed Settlement

The proposed settlement includes a variety of measures directed at plan funding and restrictions on the employer’s ability to cut back or terminate the plan over a seven year period. Many of these measures reflect ERISA-type rules relating to participant disclosures, claims procedures and plan administration. Barring further changes in the law or

disassociation from the Catholic Church, the settlement provides that the Ascension plan will remain a church plan and will continue to be exempt from ERISA. Further, Ascension will guarantee benefits to participants for the next seven years based on the plan terms and not based on ERISA's standards. Certain communications to plan participants such as Summary Plan Descriptions ("SPDs") will be required but not have to comply with ERISA standards and do not have to include any mention of ERISA or information about ERISA rights. And in comparison to the \$444.5 million dollar underfunding originally alleged by plaintiff, Ascension will only be required to make a one-time \$8 million dollar contribution. The details of the tentative settlement are noted in the Attachment.

Following the hearing, District Court Judge Cohn signed an order preliminarily approving the settlement, certifying a settlement class, establishing notice procedures to the class, and setting a final fairness hearing on the settlement for September 17, 2015.

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