



BENEFIT NEWS BRIEFS

Second Circuit Court Joins Three Other Circuits in Holding Amending Multiemployer Plan Is NOT A Fiduciary Act

The Second Circuit Court of Appeals became the fourth federal circuit court to hold that in light of "recent" U.S. Supreme Court rulings the amendment of a multiemployer pension plan is NOT a fiduciary act under *ERISA* but a settlor function, overturning previous precedent in the Second Circuit.

The defendants were former trustees and plan managers who were alleged to have made certain pension plan amendments and undertaken other actions benefitting themselves that were allegedly a breach of their fiduciary duties under *ERISA*. In addressing the issue on appeal from the District Court, the Second Circuit Court dismissed the claims based on violations of fiduciary duty in amending the plan. However, it allowed other counts to go forward that the District Court had held were barred by the statute of limitations, if the plaintiffs wished to amend their compliant and proceed with their case.

The Second Circuit case is *Janese v Fay*, 693 F.3d 221, (2nd Cir. 2012) and is available by "[clicking here](#)." The Second Circuit includes Connecticut, New York and Vermont. The other federal circuits holding the same include the Third Circuit (Delaware, New Jersey and Pennsylvania) and Sixth Circuit (Kentucky, Michigan, Ohio and Tennessee) and the District of Columbia Circuit.

Thus, these four federal Circuit Courts of Appeal have interpreted the Supreme Court's holdings that the acts of amending a single employer pension or welfare plan are not fiduciary acts implicating *ERISA* fiduciary duties. "Settlor" acts such as this are equally applicable in the multiemployer plan context. It is important to remember that even though the act of *amending* a plan is not a fiduciary act, the *implementation* of the amendment may involve fiduciary duties.

The Supreme Court cases relied on were: *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995); *Lockheed Corp. v. Spink*, 517 U.S. 882 (1996), and *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432 (1999).

* * *