



## BENEFIT NEWS BRIEFS

### ***Court Orders Trustees of IAM National Pension Fund To Restore \$200K To Plan, Pay \$40K In Penalties***

In [Client Bulletin 2016-08](#), we looked at a lawsuit the Department of Labor (DOL) brought against the International Association of Machinists (IAM) National Pension Fund ("Fund") and nine present or past trustees for multiple violations of the *Employee Retirement Income Security Act (ERISA)*. The Fund was added as a "necessary party" under [Rule 19](#) of Federal Rules of Civil Procedure. The case is [Perez v., Roach, et al., \(Dist. Ct. DC, January 26, 2016; Case 1:16-cv-00120\)](#). The Fund is a multiemployer defined benefit plan.

We took a broad look at the DOL's allegations as a way of reviewing how the DOL sees a trustee's fiduciary duty in various contexts. We noted that the allegations were just that – *allegations* – until proven by the preponderance of the evidence in a court of law. As we explained, the allegations provided examples of the types of behaviors and facts that the DOL considers to cross the line of fiduciary duty and/or violate the rules on prohibited transactions under *ERISA*. The allegations highlighted areas for self-examination by pension plan trustees to ensure their plan and fellow trustees avoid the behaviors the DOL targeted in the lawsuit.

**On July 19, 2016, the parties settled the litigation with a 37 page Consent Judgement and Order**, as outlined in a [DOL Press Release](#). The defendants must repay \$200,000 to the Fund and pay \$40,000 in civil money penalties, amounts covered by the Fund's insurer.

The DOL summed up the allegations and Order as below. The IAM Pension Fund released a strongly worded response noting the Pension Fund and Trustees settled the case to avoid unnecessary expense of pointless litigation. That response follows the DOL summary.

#### **The DOL Summary of the Case and Resolution**

An investigation by the U.S. Labor Department's Employee Benefits Security Administration found that the Fund defendants violated ERISA and breached their fiduciary duties by:

- Failing to select fund service providers loyally and prudently, including consultants and fund investment managers.
- Ignoring required procedures included in the fund's governing plan documents regularly.
- Creating conflicts of interest for the fund.
- Unlawfully soliciting and accepting gratuities from plan service providers.
- Spending and permitting others to spend fund assets lavishly on unnecessary trips, parties and extravagant food, wine and accommodations.

**Resolution:** A settlement agreement ordered the defendants to repay \$200,000 to the fund and pay \$40,000 in civil money penalties. The order also requires the plan trustees to take the following actions to protect fund participants from future ERISA violations:

- Within 30 days of entry of the order, adopt a new manager and consultant selection policy, which mandates that the plan trustees use a three-part search process for selecting an investment consultant or investment manager.
- Engage in a new search process for a new general investment consultant for the fund, and hire an independent search consultant to conduct a comprehensive and objective request for proposal process for this search.
- Amend the fund's code of conduct and ethics policy to prohibit the same person from acting as both an investment consultant and investment manager for the fund.
- Amend the fund's record retention policy to hold records relating to the hiring or firing of any investment consultant or manager for six years.

### **The IAM Pension Fund Response**

The IAM National Pension Fund issued their own [Press Release](#)<sup>1</sup> on the matter, reproduced below for ease of access:

#### ***IAM National Pension Fund Settles Department of Labor Claims***

As a result of an agreed-upon settlement, a federal court in Washington, D.C. dismissed the Department of Labor's suit against the IAM National Pension Fund. The court's order brings to final conclusion a lawsuit that the Fund believes was unfounded and that had not progressed at all since the Department brought it in January.

The central focus of the Department's lawsuit questioned the manner in which the Fund hired certain investment managers and consultants—but never suggested that those consultants were unqualified, lost money for the Fund, or performed poorly. Instead, the Department raised

---

<sup>1</sup> Thanks to Benefitslink.com for posting the IAM Press Release

questions as to the process the Trustees employed when selecting these advisors.

The Trustees disagreed with the Department's view and were confident that they had fulfilled their fiduciary duties and would ultimately prevail in the lawsuit. However, the Fund determined that the settlement was in the best interest of Fund participants. *"The Trustees' decision to accept the settlement agreement likely has saved the Fund many times the settlement amount in attorneys' fees and litigation costs,"* said Ryk Tierney, Director of the IAM National Pension Fund. *"Now the Trustees can get back to focusing exclusively on the task at hand—making sure the Fund remains one of the healthiest and best funded pension plans in the United States."*

Under the settlement agreement, the IAM National Pension Fund agreed to and has adopted a formal policy for selecting financial advisors. This written policy closely tracks industry best practices and the procedures the Fund already had in place. The settlement agreement also calls for a relatively nominal payment into the Fund of \$200,000, along with a statutorily-required 20 percent assessment to the federal government. These amounts will be covered by the Fund's insurer.

It is inexplicable why the Department brought the lawsuit against a flourishing plan in the first place. The Pension Protection Act defines all pension funds that are over 80 percent funded as "Green Zone Funds," which means they are financially healthy. The Fund is close to 100 percent funded, making it the healthiest of the healthy. The Fund has been and continues to be top performing and extremely secure.

## **Conclusion**

---

Appearances and processes are important, especially when examined through the lens of ERISA's fiduciary duties and prohibited transaction rules. The DOL publication *Meeting Your Fiduciary Responsibilities* is a helpful resource.

As we mentioned in *Client Bulletin 2016-08*, some "take-aways" for Trustees based on the issues raised in the litigation are the need:

- to *follow Plan documents*, policies and procedures,
- to *use prudent process* in the selection of service providers,
- to *analyze and avoid conflicts* of interest,
- to *follow the Fund's expense policy* and
- to *evaluate each expense* in order to avoid imprudent and improper expenditures of Fund assets.

\* \* \*

**LEGAL DISCLAIMER:** Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.