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COMPLIANCE ADVISORY

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Court finds transfer to QDIA does not violate ERISA

In *Bidwell v. University Medical Center, Inc.,* the 6th U.S. Circuit Court of Appeals held that University Medical Center did not breach its fiduciary duty to plan participants when it transferred participant account balances to the plan's newly selected qualified default investment alternative (QDIA) without actual consent.

The plaintiffs in the case were two 403(b) plan participants who had previously made affirmative elections to invest in a stable value fund, the plan's default investment at the time. When plan fiduciaries later changed the plan's default investment from the stable value fund to a newly selected QDIA, no plan records existed to show which participants had been defaulted into the stable value fund, and which participants had made a previous affirmative election into the fund. Accordingly, plan fiduciaries, through its service provider Lincoln Retirement Services Company, sent a notice of the change to participants who were entirely invested in the stable value fund and informed them that all amounts in the fund would be transferred to the new QDIA unless they specifically elected otherwise by a certain date. Since neither of these participants took action, their account balances were transferred from stable value to the plan's new QDIA.

The two participants claimed they did not receive notice and argued that since they had previously made affirmative elections into the stable value fund, the plan sponsor should not have received the fiduciary protection provided by the QDIA rules. They also argued that the sponsor had a duty to maintain records of which investors were default investors and which were investors by election, in order to give special treatment to the investors by election.

Ruling

The court ruled in favor of the plan sponsor, finding that the sponsor acted in accordance with the Department of Labor's (DOL's) interpretation of the QDIA rules.

The court cited the DOL's preamble to the QDIA rules which states that the protection applies to "situations beyond automatic enrollment" such as "the failure of a participant or beneficiary to provide investment direction following the elimination of an investment alternative or a change in service provider, the failure of a participant or beneficiary to provide investment instruction following a rollover from another plan, and any other failure of a participant or beneficiary to provide investment instruction." The DOL emphasized that "whenever a participant or beneficiary has the opportunity to direct the investment of the assets in his or her account, but does not direct the investment of such assets, plan fiduciaries may avail themselves of the relief provided by this final regulation, so long as all of its conditions have been satisfied."

The court also referenced the DOL's explanation that the protection may apply when the administrator requests participants who previously had elected a particular investment vehicle to confirm whether they wish for their funds to remain in that investment. If participants who previously made an affirmative investment election are provided proper notice, they can become non-electing plan participants by failing to respond. Additionally, the court ruled that by distributing notices to affected participants through first class mail, the plan sponsor handled notice distribution in a manner that was "not deficient under ERISA."

Impact of court case

This ruling is the first appellate court ruling regarding QDIA and is an important development, particularly for plan fiduciaries considering a QDIA approach that involves transfers of account balances into the plan's QDIA for participants who made previous affirmative investment elections.

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