

CLIENT BULLETIN

DOL Sues IAM National Pension Fund and Nine Trustees for Various Breaches of ERISA

According to a recently posted DOL [news release](#), as the result of an investigation, the Department of Labor (DOL) filed a lawsuit 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 will take a broad look at the DOL's allegations, omitting statutory references to *ERISA* listed in the complaint. The allegations are just that – *allegations* – until proven by the preponderance of the evidence in a court of law. However, the allegations provide examples of the types of behaviors and facts that the DOL considers to cross the lines of fiduciary duty and/or violate the rules on prohibited transactions under *ERISA*. Whether or not a court would agree is another matter. The allegations highlight areas for self-examination by pension plan trustees to ensure their plan and fellow trustees avoid the behaviors contained in the lawsuit.

The DOL publication [Meeting Your Fiduciary Responsibilities](#) is a helpful resource.

The DOL Allegations Against the Trustees

In broad strokes, the DOL alleged that various Defendant Trustees:

- failed to *loyally and prudently* select the Fund's service providers, including consultants and fund investment managers,
- *routinely ignored* required procedures written in the Fund's governing plan documents,
- *created conflicts* of interest,
- *unlawfully solicited* and accepted gratuities from service providers,
- *spent* and permitted others to spend *Fund assets lavishly* on unnecessary trips, parties, and inordinately expensive food and wine,
- *failed to prudently and loyally monitor* and control Fund costs, and
- generally engaged in a *pattern of conduct* in which they *intentionally disregarded* their fiduciary duties.

As a result of the Trustee's actions, the DOL alleged *ERISA* violations in that:

- the Trustees *failed to protect* the interests of the Fund and its participants and beneficiaries; and
- each Trustee *committed violations*, or knowingly participated in violations, of *ERISA's* fiduciary duties of loyalty and prudence, deliberately failed to follow the Fund's governing documents and engaged in prohibited transactions.

The DOL's lawsuit seeks to require the Trustees to restore any losses suffered by the Fund due to their actions and to require the Fund to implement reforms to prevent future violations and any other appropriate relief under *ERISA*.

For More Detailed Look

We take a closer look at many of the details alleged in the complaint in a five-page attachment to this *Client Bulletin*, available by "[clicking here](#)." Given that the complaint is 30 pages long with 120 detailed paragraphs, it is necessary to gloss over many details. Readers are encouraged to review the attachment and the DOL lawsuit and ask themselves, "*How is my plan doing in these areas?*"

The attachment reviews the DOL allegations in five areas of Trustee actions:

- *Imprudent Hiring of Investment Consultant*
- *Additional Imprudent and Improper Hiring Practices*
- *Trustees' Imprudent and Improper Expenditures of Fund Assets*
- *Creation of Conflict of Interest*
- *A Trustee Receives Wrongful Compensation from the Fund*

Conclusion

While it remains to be seen whether this matter is settled with or without a trial, the alleged fact patterns provide an insight into the law of *ERISA* and how the DOL sees this law as applied to Trustee (fiduciary) decisions in a Taft-Hartley, *ERISA*-governed multiemployer defined benefit pension plan. We will follow this case and report on developments. A court may disagree with the DOL's allegations; however, the case does serve as a refresher on fiduciary duties for plan Trustees.

Some "take-aways" are the need for Trustees:

- 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.

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