



TOPIC:

United States Court of Appeals for the Ninth Circuit Refuses to Rehear *Banuelos v. Construction Laborers Pension Trust*: Rewrites Judicial Review of Administrative Decisions by ERISA Plan Fiduciaries.

EXECUTIVE SUMMARY: *THIS ISSUE OF MULTI-ALERT IS INTENDED TO INFORM YOU OF THE 9TH CIRCUIT DECISION THAT HAS THE POTENTIAL TO SERIOUSLY ERODE THE BASIS UPON WHICH FUNDS HAVE ADMINISTERED THE “FULL AND FAIR REVIEW” PROVISIONS OF ERISA WITH RESPECT TO CLAIMS PROCESSING AND THE APPEAL OF DENIED CASES. IN THIS CASE, BANUELOS BASED HIS CLAIM FOR BENEFITS ON AN UNSIGNED PLAN DOCUMENT THAT HIS ATTORNEY HAD RECEIVED IN CONJUNCTION WITH ANOTHER CASE THAT DID NOT INVOLVE BANUELOS, AND UPON WHICH HE CLAIMED HE RELIED IN APPLYING FOR BENEFITS.*

WHAT WAS EVEN MORE ASTOUNDING WAS THAT WHEN THE APPEAL WAS DENIED BASED ON THE ADMINISTRATOR’S KNOWLEDGE OF THE OFFICIAL, SIGNED VERSION OF THE PLAN DOCUMENT, THE COURT OF APPEALS DETERMINED THAT THE TRUSTEES COULD NOT RELY ON THAT DOCUMENT BECAUSE IT HAD NOT OFFICALLY BEEN INTRODUCED INTO THE RECORD AT THE TIME OF THE APPEAL HEARING BY THE TRUSTEES.

WHILE THIS CASE HAS LIMITED APPLICATION, THE MERE FACT THAT THE NINTH CIRCUIT HAS ALLOWED THE DECISION TO STAND IS LIKELY TO PROMPT ATTORNEYS ELSEWHERE TO USE THIS LINE OF REASONING IN ATTEMPTING TO OVERTURN DECISIONS ISSUED UNDER THE TRADITIONAL STANDARDS OF “FULL AND FAIR REVIEW”. FUND COUNSEL AND PLAN ADMINISTRATORS ARE ENCOURAGED TO REVIEW THIS DECISION AND CONSIDER WHETHER CHANGES IN YOUR OWN PLAN APPEALS PROCEDURES SHOULD BE ADOPTED TO PREVENT SUCH CASES FROM PREVAILING.

PURPOSE: INFORMATIONAL

CATEGORY: COURT DECISION

ISSUER: UNITED STATES COURT OF APPEALS FOR THE 9TH CIRCUIT

TARGET AUDIENCE: TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER DEFINED BENEFIT AND DEFINED CONTRIBUTION PENSION AND HEALTH BENEFIT PLANS

FORWARD COMMENTS TO: Multi-Elert@nccmp.org

REFERENCE: VOL.5, ISSUE 1

FOR ADDITIONAL BACKGROUND SEE: ATTACHED FILES CONTAINING THE CONSTRUCTION LABORERS PENSION TRUST PETITION FOR REHEARING AND THE AMICUS BRIEF FILED BY THE NCCMP IN SUPPORT OF THE CONSTRUCTION LABORERS PENSION TRUST PETITION FOR REHEARING

**U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT DENIES
REHEARING IN BANUELOS V. CONSTRUCTION LABORERS
PENSION TRUST OF SOUTHERN CALIFORNIA
Docket NO. CV-00-05630-RJK**

In December, 2004, the U. S. Court of Appeals for the 9th Circuit let stand its reversal of the District Court’s ruling in favor of the Pension Trust. The reversal held that the official approved plan text could not be introduced in the District Court to refute the unsigned draft plan text (received by the applicant’s attorney when representing another client in an unrelated case), upon which the Participant claimed he had relied, because the Pension Appeals Committee had not entered the approved plan document as part of its appeal record when it denied the Participant’s claim at the administrative level. This issue of *Multi-Elert* will examine the implications of this decision for plans.

Background

The Pension Trust reviewed Banuelos’ application for a pension, including his work history, and determined he was not entitled to a pension because he had not completed ten years of service and had several one-year breaks in service beginning in 1990 until he reached age 65 in 1995. Banuelos appealed to the Pension Appeals Committee in a letter which quoted what the Participant claimed was Section 4.07(e) of the plan document that would have provided a pension to a Participant who had five years of Vesting Service upon reaching normal retirement age. The Trustees denied the appeal because the approved, signed version of the plan document did not contain the quoted language. No written pension plan was technically introduced as part of the “administrative record” before the Pension Appeals Committee.

The Participant sued the Plan and, at that point, attached a copy of the plan document upon which he said he based his claim. The attachment to the complaint was the first time that the Trustees realized that an unsigned document existed and that the Participant was insisting this document was the official plan text. The Board of Trustees answered the complaint, indicating that the document was not the approved document and that it contained mistakes.

Both parties filed motions for summary judgment. Evidence relating to the authenticity of the exhibit to the Participant’s complaint was submitted. The District Court found triable issues of fact existed and denied both motions for summary judgment. The District Court then conducted a multi-day bench trial during which it permitted the Pension Trust to submit the approved Plan into the District Court record and to prove that the Participant's exhibit to the Complaint was not the pension plan of the Pension Trust. Based upon the evidence presented, the District Court found in favor of the Pension Trust.

The Participant filed an appeal not from the outcome of the bench trial, but from the earlier denial of the Participant's motion for summary judgment. The Court of Appeals reversed the District Court's decision on the Participant's motion for summary judgment. It found that, since the executed plan document was not part of the Pension Appeals Committee record, it could not be admitted in the District Court proceeding. Ignoring the fact that the District Court had denied the Plan's motion to remand the matter to the Pension Appeals Committee to give the Trustees the opportunity to address whether the document the Participant first attached to his Complaint was the pension plan of the Pension Trust, the Court of Appeal simply awarded the Participant a pension based on the language of the exhibit to Participant's Complaint. Thus, the Participant was granted a pension on summary judgment based on provisions that were proven in a full trial never to have been incorporated into the actual Pension Plan of the Pension Trust.

The Issue

May the Court of Appeals usurp the authority of the Secretary of Labor by imposing on the Pension Plan Trustees an additional obligation to include in the administrative record a finding of fact to support a denial of pension benefits?

The Appellate Opinion

According to the Trust's petition for rehearing the appellate decision "rewrites the rules of judicial resolution of conflicts between authorized pension plan documents and authorized Summary Plan Descriptions by presuming the material first introduced by plaintiff in Court is an authorized version of the pension plan and then holding that the plaintiff is entitled to the most favorable interpretation of two competing documents without remanding the issue back to the district court or to the Trustees to address whether and to what extent the documents conflict or which is the document that is an authorized statement of what the pension plan of the Trust contains." And again, "The panel's opinion overlooks the fact that the Pension Trust has never had the opportunity to demonstrate that the document relied on by the plaintiff to establish his right to benefits was not the official plan of benefits, but in fact was a rogué document which contained mistakes. (Of course, in the bench trial before the district court which the panel's decision bypasses procedurally, the Trust provided these points and prevailed.)"

The petition for rehearing also states that the appellate court's decision is in conflict with prior decisions of the circuit that have held that the plan administrator has discretion to construe the terms of the plan and make determinations as to entitlement to benefits. If the administrative record is not completely developed, precedent requires that the case be sent back to the plan administrator for the initial determination as to benefit entitlement.

Implications

This case would be disturbing enough if it stood for the proposition that an unsigned, draft plan mistakenly provided by an Administrator to a participant with respect to determining his eligibility for a benefit trumps the approved and executed plan document. Then it might mean that Trustees and Plan Administrators must redouble efforts to destroy draft and working copies of their plans and to take extra steps to ensure that only the approved and executed copy of the Plan is disseminated to participants.

The facts of this case extend beyond that, however, and the implications of this decision apply to every plan. The Trustees in this case apparently were not aware that the Participant’s appeal was based on an unsigned, unconfirmed document until the disgruntled Participant filed suit at the District Court level. The Participant did not claim to have received this unconfirmed document from the Plan Administrator with respect to his case. The Participant’s attorney had received the document in connection with his representation of another person in an unrelated case. As the petition for rehearing indicates, the plan’s cover page could have been typed by anyone.

The Appeals Court did not require the Participant to verify his submission at the appellate level of a document that he had not even submitted at the initial administrative level. Yet the Appeals Court determined, with an uneven hand, that the same courtesy would not be extended to the Pension Trust’s submission of its approved and executed document. As Pension Trust counsel indicated in the petition for rehearing, “At its worst, [this] rule would allow Participants to perpetrate a fraud upon the Trust by presenting documents (or quotes from documents) which are manufactured, in the hopes that the Trust would not discover the fraud during the course of the administrative proceedings, and thereby be forever barred from presenting the facts demonstrating the fraud”.

By letting the appellate decision stand, the decision adversely affects plan administration and the claims decision-making process by ERISA fiduciaries. Plans must now do more than a “full and fair review” of adverse benefit determinations. According to the NCCMP amicus brief, “It has the effect of imposing an obligation to conduct exhaustive review of claims appeals in order to create formal administrative records covering any matter which might be the subject of a subsequent appeal to the courts. To create that record, trustees would be required to create documentation of facts and matters of which they are intimately knowledgeable due to their experience in administering plans. The result will be a significant increase in the costs of claims administration. It will also transform the claims appeal process of plans from one which seeks to reach the correct result through non-adversarial, efficient mechanisms to an adversarial one which can turn on technical questions of procedural compliance, regardless of whether the right outcome is reached”.

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How this decision applies to your plan(s) is a question that should be directed to your own fund counsel and administrator. It appears at this point that the Construction Laborers may pursue a writ of certiorari to the Supreme Court. We will keep you apprised of any further developments as we hear of them.

As with all matters concerning interpretations of the law and / or regulations applicable to multiemployer plans, Plan trustees and sponsors should rely on their own attorneys and other professional advisors for advice on the meaning and application of the foregoing case for their particular funds.

If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact Patricia Douglas, Communications Director, NCCMP, by phone at (202) 737-5315, or by e-mail at pdouglas@nccmp.org.
