

RETHINKING ERISA RELEASES

A recent Seventh Circuit case, *Howell v. Motorola, Inc.*, considers the effect of a release signed by an employee in exchange for receipt of a severance payment. The release complied with the general Americans With Disabilities Act (ADA) requirements and its terms applied to, among other things, any claim for pay, benefits or damages arising under federal law (including ERISA) but not “any claims for benefits under the Motorola employee benefit plan.”

The case was a “stock drop” case in which the plaintiffs, as 401(k) plan participants, sought redress for a loss in value of Motorola stock in their 401(k) accounts. The trial judge granted summary judgment for Motorola on the grounds that it was not improper for the Motorola plan to offer Motorola stock as an investment option, and that the participant elections to invest in Motorola stock in accordance with Section 404(c) of ERISA insulated plan fiduciaries from liability for participant investment losses.

The *Howell* decision is usually cited as another example of a stock drop case in which the fiduciaries prevail. However, the appellate opinion is remarkable because the Seventh Circuit panel did not follow the trial court’s reasoning and instead upheld the trial court’s decision solely on the basis of the release signed by Howell when his employment terminated.

The Seventh Circuit opinion reviewed the release and found that it did apply to bar the claims made by the plaintiffs. It went on to hold, in a case of first impression, that the release covered any claim but a claim for the amount in Howell’s retirement account at the time he signed the release, and that “he cannot now claim that his account would have been even more had the defendant not breached a fiduciary duty.” So, the bottom line is that a proper release of ERISA claims can provide a complete defense to all ERISA claims other than those that relate strictly to the current accrued benefit under a retirement plan.

Recommendations: In addition to making sure that your release form satisfies all applicable ADA requirements, it should also include language from the *Howell* case that now has been approved by the Seventh Circuit Court of Appeals. Also, now that it is clear that ERISA fiduciary breach claims can be released, consider using an appropriate release in connection with all routine benefit distributions. If the release satisfies applicable legal standards and is given in exchange for appropriate legal “consideration,” it should protect plan fiduciaries from any subsequent claims and related litigation.

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