

## Church Plan Litigation Update

In recent years, participants and beneficiaries in retirement plans maintained by certain church-related tax-exempt entities (such as hospitals) have sued to enforce their rights under ERISA. They assert that ERISA's church plan exemption does not apply. The federal district courts that have considered ERISA's church plan exemption in these cases have been evenly split, with courts in three circuits ignoring long-standing IRS private letter rulings and DOL Advisory Opinions and finding that the pension plans do not qualify as valid church plans and courts in three other circuits finding that they do.

In contrast to retirement plan cases where participants have argued *against* the church plan exemption to obtain ERISA protections, participants in welfare benefit plans have argued *for* the applicability of the church plan exemption so they could litigate their state-law based claims in state court.

### Background

ERISA requires that employee pension benefit plans meet certain standards in areas such as minimum funding, vesting, reporting and disclosure, and fiduciary responsibility. ERISA also requires defined benefit plans to be covered by PBGC plan termination insurance, which guarantees plan benefits up to certain limits. Similarly, ERISA requires employee welfare benefit plans to meet the reporting and disclosure requirements, and fiduciary

requirements. However, ERISA provides an exemption from the pension and welfare plan requirements for "church plans" that do not opt into ERISA coverage.



When originally enacted, ERISA defined a "church plan" as a plan established and maintained by a tax-exempt church (which includes a convention or association of churches) for its employees. Plans in existence on January 1, 1974 were temporarily allowed to cover employees of church related tax-exempt agencies. In 1980, before the temporary rule expired, Congress permanently expanded the definition of "church plan" to include plans that covered such employees. In addition, the definition of church plan was modified to include plans maintained by a tax-exempt organization that is either controlled by or

associated with a church, with the principal purpose or function of administering or funding a plan to provide retirement and/or welfare benefits for the employees of a church. The district courts that have considered the language permitting a separate organization to maintain a church plan have disagreed about its meaning, with some courts finding that the plan must be established by a church and others finding that it does not matter who establishes the plan, the plan merely needs to be maintained by a tax-exempt organization that is either controlled by or associated with a church.

ERISA also generally preempts state laws that relate to employee benefit plans (other than those that pertain to insurance, banking or securities), and allows parties to sue in the federal district courts, regardless of the amount in controversy or the citizenship of the parties. Church plan sponsors that do not elect into ERISA coverage may be subject to state law claims.

## In the Courts – Recent Pension Plan Activity

A number of class action court cases have been filed against church controlled or associated entities that have established employee benefit plans and claimed church plan status. The participants in these cases have alleged that such plans are not church plans exempt from ERISA despite having received IRS private letter rulings to the contrary. They seek to force the plan sponsor or plan fiduciaries to remedy violations of the ERISA rules and obtain PBGC coverage. In our [December 18, 2013 For Your Information](#), we focused on [Rollins v. Dignity Health](#) where the court concluded that church plan status was not available to insulate the plan from ERISA requirements. Since then, other courts have weighed in, and more will follow.

## District Courts in Three Circuits Interpret as Church Plans

Most recently, a Maryland district court granted the defendant Trinity Health Corp.'s motion to dismiss a lawsuit raising the church plan issue ([Lann v. Trinity Health Corp.](#)). With this ruling, the district courts that have considered ERISA's church plan exemption since late 2013 are evenly split, with courts in three of the judicial circuits finding that the pension plans qualify as valid church plans and three courts finding they do not.

The other two cases, [Medina v. Catholic Health Initiatives](#) and [Overall v. Ascension Health](#), have also upheld the church plan exemptions of church-related healthcare companies. The *Overall* case even reached the federal appellate court, but has been returned to the district court to consider a proposed settlement between the parties. If settled, the *Overall* Case will follow the fate of [Thorkelson v. Publishing House of the Evangelical Lutheran Church in Am.](#), an earlier case in which the district court's ruling in favor of church plan status was appealed, but the parties settled before the appellate court could rule. These three recent cases (as well as the earlier Thorkelson case) interpret the 1980 revision of the church plan definition to broaden the types of organizations that can establish a church plan to include church-affiliated organizations, such as hospitals or schools.

## District Courts in Three Circuits Say They Are Not

Three cases that have found in favor of the plaintiffs have interpreted ERISA to provide that only a church may establish a church plan. In addition to *Rollins* (appealed to the 9<sup>th</sup> Circuit in February), [Kaplan v. Saint Peter's Healthcare Sys.](#) (appealed to the 3<sup>rd</sup> Circuit in January). The court in [Stapleton v. Advocate Health Care Network](#) (appealed to the 7<sup>th</sup> Circuit in February) stated that the defendant's reading of ERISA would render meaningless the statutory requirement that a church plan must be established by a church and that contrary findings by other courts

incorrectly look at the expansion in isolation, rather than as a targeted liberalization of the original definition. The court looked at the legislative history of the expanded definition, concluding that it was added to ERISA in response to very specific concerns about pension plans that were established by a church but whose maintenance was delegated to outside pension boards. The court further stated that an IRS private letter ruling issued to Advocate Health concluding that the plan was a church plan was not dispositive and was not entitled to deference.

## Five Plans Still Pending

Five other cases remain pending at the district court level, with no rulings on church plan status to date:

- [\*Chavies v. Catholic Health E.\*](#) (E.D. Pa., complaint filed 3/28/13) — *On hold* pending the 3rd Circuit's ruling in *Kaplan*, which may be binding on the district judge hearing the *Chavies* case
- [\*Owens v. St. Anthony Med. Ctr., Inc.\*](#) (N.D. Ill., complaint filed 6/2/14)
- [\*Morris v. Daughters of Charity Health Sys.\*](#) (N.D. Cal., complaint filed 10/21/14) — Defendants have sought to stay the case pending the 9<sup>th</sup> Circuit's resolution in *Rollins*
- [\*Griffith v. Providence Health & Servs.\*](#) (W.D. Wash., complaint filed 11/7/14) — Participants allege this cash-balance plan violates ERISA. Stayed pending the 9<sup>th</sup> Circuit's resolution in *Rollins*
- [\*Carver v. Presence Health Network\*](#) (N.D. Ill., complaint filed 4/2/15)

## In the Courts – Health Plans Thrown into the Mix

Unlike the pension plan cases, in the health and welfare arena participants have argued in favor of church plan status, which would enable the plaintiffs to litigate their cases in state court.

According to the federal court in [\*Flynn v. Ascension Health Long Term Disability Plan\*](#), the long-term disability (LTD) plan for Ascension Health must be treated as an ERISA plan because Ascension made an election that the LTD plan would be treated as an ERISA plan. The participant asked the court to dismiss her original complaint about an improper benefit denial because the plan should be treated as a church plan. The court refused. The participant pointed to two earlier decisions by other circuit courts in which the Ascension pension plan and the LTD plan — the plan at issue here — were both found to be church plans. The court in *Flynn* said that the decisions on which the participant relied were made in district courts outside the local jurisdiction of the 8th Circuit and did not apply the relevant standard for determining church status. Therefore, those cases were not relevant. Regardless, the election under the Code to be treated as an ERISA plan eliminated the need to rule on the LTD plan's church status.

**Comment:** Interestingly, the court did affirm that an election to have one plan subject to ERISA does not apply to other plans of the employer.

A federal court in Kentucky ([\*Hanshaw v. Life Ins. Co. of N. Am.\*](#)) also denied a motion to remand an LTD case to state court. This court's decision focused on the interpretation of the definition of church plan. The court ruled that the plan was not a church plan because it was sponsored by a healthcare organization whose principal purpose is not the administration or funding of a benefits plan or program.

**Comment:** Both *Hanshaw* and the *Overall* retirement plan cases mentioned above are in the jurisdiction of the 6th Circuit Appeals Court. Despite similar facts, one, *Hanshaw*, finds against church plan status while

the other, *Overall*, finds in favor of church plan status. Ordinarily the appeals court would need to sort this out, but assuming the *Overall* case is settled, this difference may never be resolved.

## At the IRS

Ignoring the battle that rages on in the courts, the IRS continues to confirm the church plan status of church-related tax exempt entities operating with a church-controlled administrator. For examples, see the following rulings:

- PLRs [201505048](#), [PLR 201505049](#), [PLR 201505050](#) and [PLR 201505051](#): Retirement plans sponsored by an organization that provides day care, residential living and services for children and seniors or adults with developmental disabilities
- [PLR 201442072](#): Retirement plan sponsored by an organization that maintains a residential center for girls
- [PLR 201432028](#): Retirement and welfare plans sponsored by organizations that include a university
- [PLR 201421031](#): Retirement and welfare plan sponsored by an organization that operates a residential care center for the elderly and disabled

## At the PBGC

In May 2013, the PBGC reversed course and stated it would guarantee benefits for approximately 800 former employees covered by the pension plan sponsored by the Hospital Center at Orange, a New Jersey hospital that closed in 2004. The PBGC based its decision on the IRS withdrawing a 2003 private letter ruling it had issued finding that the plan was eligible for the church plan exemption after the sponsor became associated with Cathedral Healthcare System, Inc. The amount of the shortfall the PBGC agreed to cover was estimated at \$30 million.

Officials from the PBGC continue to state that they will defer to IRS private letter rulings on a plan's eligibility for the church plan exemption unless (and until) contrary court decisions emerge.

## In Closing

With the district courts evenly split on their interpretation of ERISA and the courts ignoring the rulings on identical plans by courts in different jurisdictions as well as the rulings of the IRS, the area may soon be ripe for review by the US Supreme Court.

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