

# FYI<sup>®</sup> Alert

## For Your Information<sup>®</sup>

Volume 38 | Issue 71 | May 15, 2015

## Ascension Health Settles ERISA Church Plan Exemption Lawsuit

In a proposed settlement, the plan participants in *Overall v. Ascension Health* have agreed to drop their claim that Ascension's plans are ineligible for ERISA's church plan exemption in exchange for an \$8 million contribution to the Ascension plans and up to \$2 million for attorney's fees. The sponsor also agreed to amend its plan documents and administrative procedures to include certain ERISA-like protections, and to "guarantee" that plan benefits will be paid through June 2022.

### Ascension Sued by Participants Seeking ERISA's Protections

As we described in our [May 4, 2015 For Your Information](#), Ascension Health Alliance (a tax-exempt organization that operates a group of hospitals) was sued by plan participants who claimed that its 16 defined benefit pension plans were not eligible for ERISA's church plan exemption because the plans were not established by a church. The district court in the Eastern District of Michigan [ruled](#) in favor of Ascension's motion to dismiss, holding that a plan need not be established by a church to qualify for ERISA's church plan exemption, and that Ascension can sponsor church plans because it is controlled by and associated with the Roman Catholic Church. The plaintiffs appealed the dismissal of the case to the Sixth Circuit Court of Appeals.

### Settlement Agreement Reached

Subject to preliminary approval and class action certification by the district court, the parties have come to an agreement with the help of a mediator.

In addition to making an \$8 million contribution toward reducing a purported \$444 million deficit, and paying up to \$2 million in attorney's fees, the terms of the agreement require the following ERISA-like protections even though the plan will still be considered exempt from ERISA's coverage as a non-electing church plan (barring a significant change in the law):



- Ascension will “guarantee” plan payments received by participants (at the level provided for under the terms of the plans) through June 30, 2022 — even in the event of a plan merger or plan termination.
- Ascension will not be permitted to amend the plan to cut back benefits below current levels or eliminate joint and survivor annuity options through June 30, 2022.
- The plan sponsor will amend the governing plan documents by adding certain provisions. The amendments will identify a named fiduciary, allocate administrative responsibility among the various parties, specify a funding policy and method, and establish plan amendment and claims and appeals procedures.
- The plans will furnish a document similar to an ERISA summary plan description within four months of the final settlement date. The SPD-like document will include a description of the plan’s claims review procedures.
- The plans will furnish an annual summary (similar to a summary annual report) by October 1 of each year, and will provide participant benefit statements at least once every three years.
- The plan will furnish an accrued benefit statement within 30 days upon receipt of a written request from a participant.

Under the settlement, participants and beneficiaries agree to waive all future ERISA claims based on the plans not qualifying for ERISA’s church plan exemption, unless:

- The Roman Catholic Church disassociates itself from Ascension
- The IRS issues a private letter ruling stating that the plan is not a church plan
- Either a federal law is enacted, or the US Supreme Court rules, that a church plan must be established by a church (or a convention or association of churches)

The agreement also requires certain notices about the settlement (and the hearing) to be provided to class action participants at Ascension’s expense. After the notices are provided, participants will have an opportunity to voice their objections to the settlement and have a chance to speak in court at a fairness hearing.

## In Closing

Although Ascension has agreed to provide certain ERISA-like protections, the settlement appears to reflect that the participants were far from certain that the appellate court would rule in their favor. The \$8 million to be contributed to the Ascension retirement plans under the settlement is small relative to the funding shortfall (claimed to be \$444 million in a 2013 court filing), and the settlement allows Ascension to decide to split this amount among its 16 plans any way it wishes. The “guarantee” of benefit payments through June 2022 will apparently be secured only by the renewed threat of an ERISA lawsuit. Furthermore, the settlement does not change the plans’ church plan status, so the participants will still lack ERISA protections (including PBGC plan termination insurance coverage).

**Authors**

Fred Farkash, CEBS, Fellow - ISCEBS  
Joanne Jacobson, JD, LLM

**Produced by the Knowledge Resource Center of Buck Consultants at Xerox**

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email [fyi@xerox.com](mailto:fyi@xerox.com).

You are welcome to distribute *FYI*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.