



March 2017

Sixth Circuit Joins Six Other Circuits in Ruling Exhaustion of Plan's Administrative Procedures Not Required When Asserting Statutory Violations

On Tuesday, March 14, 2017, in *Hitchcock v. Cumberland University*, No. 3:15-cv-01215, 2017 WL 971790 (6th Cir. Mar. 14, 2017), the Sixth Circuit Court of Appeals joined six other federal circuits in ruling that Employee Retirement Income Security Act ("ERISA") plan beneficiaries are not required to exhaust administrative remedies prior to filing suit when asserting statutory violations as opposed to claims for benefits.

Plaintiffs, former employees of Cumberland University (the "University"), were participants in a defined contribution pension plan (the "Plan") sponsored by the University for its employees. In 2009, the University adopted a five percent matching contribution, whereby the University would match an employee's contributions to the Plan up to five percent of the employee's salary. On October 9, 2014, the University amended the Plan retroactively to 2013 to replace the match with a discretionary match, whereby the University would determine the amount of the employer's matching contribution on a yearly basis. The University also announced that the employer matching contribution for the 2013-14 year, and for the 2014-15 year, would be zero percent.

On November 12, 2015, Plaintiffs filed a class action complaint against Defendants alleging (1) wrongful denial of benefits; (2) violation of ERISA's anti-cutback provisions; (3) failure to provide notice to participants and beneficiaries; and (4) breach of fiduciary duty.

The Middle District of Tennessee dismissed the first, second and fourth claims for failure to exhaust administrative remedies and dismissed the third claim for failure to state a claim. The workers then appealed.

The Sixth Circuit panel reversed and remanded, ruling that the district court erred by ordering the workers to pursue a “futile” administrative process before bringing their suit in court. In so holding, the court stated as follows:

[I]n cases where the plaintiff challenges the legality of a plan’s methodology, the claimant typically concedes that her benefit was properly calculated under the terms of the plan as written, but argues that the plan itself is illegal in some respect. Because the question of legality is one within the expertise of the courts[,] the decision to require such a claimant to exhaust administrative remedies in order to recalculate a benefit she concedes was already properly calculated under the terms of the plan as written, misses the point of the dispute. In situations where a claimant concedes her benefit was properly calculated under the terms of the plan as written, exhaustion wastes resources rather than conserves them. Consequently, we have held that, in an ERISA case, when the plaintiff’s suit is directed to the *legality* of a plan, not to a mere *interpretation* of it, exhaustion of the plan’s administrative remedies would be futile. (emphasis in original) (citations omitted).

The court also highlighted that “[i]f such exhaustion were required for those statutory claims, in order for Plaintiffs to receive proper resolution from the plan administrator, the administrator would need to determine whether the retroactive amendment was properly instituted in the first place, i.e., whether the amendment was legal.” The Sixth Circuit held this not to be the administrator’s role, but the role of the courts.

The decision aligns the Sixth Circuit with the Third, Fourth, Fifth, Ninth, Tenth, and D.C. circuits, which have already ruled that participants and beneficiaries need not exhaust the administrative process when suing plan fiduciaries on the basis of an alleged violation of duties imposed by statute, while the Seventh and Eleventh circuits have held to the contrary.

Notably, the Sixth Circuit included an important caveat pointing out that this exception to the exhaustion requirement does not apply to “plan-based claims artfully dressed in statutory clothing, such as where a plaintiff seeks to avoid the exhaustion requirement by recharacterizing a claim for benefits as a claim for breach of fiduciary duty.” (citations omitted).

The *Hitchcock* decision is likely to drive further disputes within the Sixth Circuit as to whether a claim is truly an assertion of a statutory right, thereby falling within the exception, or is simply a disguised benefits claim requiring administrative review.

This *GT Alert* was prepared by **Todd D. Wozniak** and **Jack S. Gearan**. Questions about this information can be directed to:

- > [Todd D. Wozniak](mailto:wozniakt@gtlaw.com) | +1 678.553.7326 | wozniakt@gtlaw.com
- > [Jack S. Gearan](mailto:gearanj@gtlaw.com) | +1 617.310.5225 | gearanj@gtlaw.com
- > Any member of Greenberg Traurig’s [Labor & Employment Group](#)
- > Or your [Greenberg Traurig](#) Attorney

Amsterdam + 31 20 301 7300	Denver +1 303.572.6500	Northern Virginia +1 703.749.1300	Tallahassee +1 850.222.6891
Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
Austin +1 512.320.7200	Houston +1 713.374.3500	Orlando +1 407.420.1000	Tel Aviv[^] +03.636.6000
Berlin⁻ +49 (0) 30 700 171 100	Las Vegas +1 702.792.3773	Philadelphia +1 215.988.7800	Tokyo[¤] +81 (0)3 4510 2200
Berlin-GT Restructuring⁻ +49 (0) 30 700 171 100	London[*] +44 (0)203 349 8700	Phoenix +1 602.445.8000	Warsaw[~] +48 22 690 6100
Boca Raton +1 561.955.7600	Los Angeles +1 310.586.7700	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Boston +1 617.310.6000	Mexico City⁺ +52 55 5029.0000	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Chicago +1 312.456.8400	Miami +1 305.579.0500	Seoul[∞] +82 (0) 2.369.1000	West Palm Beach +1 561.650.7900
Dallas +1 214.665.3600	New Jersey +1 973.360.7900	Shanghai +86 (0) 21.6391.6633	

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁻Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻ Berlin - GT Restructuring is operated by Köhler-Ma Geiser Partnerschaft Rechtsanwälte, Insolvenzverwalter. ^{}Operates as a separate UK registered legal entity. ^{**}Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [¤]Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [~]Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2017 Greenberg Traurig, LLP. All rights reserved.*