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ALERT

Court Enforces Fiduciary Exclusion in Staffing Services Liability Policy

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September 24, 2012

An Arizona federal district court has held that an ERISA exclusion in a staffing services liability policy bars coverage for claims arising out of the policyholder's failure to calculate contributions to an employee health plan properly and subsequent termination of the plan. *Enterprising Solutions, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA*, No. 2:10-cv-1430, 2012 WL 3962702 (D. Ariz. Sept. 11, 2012).

The policyholder was a professional employer organization that offered services including the administration of employee health benefit programs. The contribution levels the policyholder established for certain health plans in 2008 and 2009 were insufficient to cover all claims and expenses, and the policyholder consequently terminated the plans. The policyholder received over 550 complaints regarding the termination.

The relevant policy provided coverage for wrongful acts, which included errors in services "in the administration of leased employees assumed from the client." The policy excluded from coverage "any Insured's failure to fulfill any duty or obligation imposed by" ERISA. A separate coverage part provided coverage for errors in the "administration of your employee benefits program," but likewise excluded coverage for loss incurred because of violations of ERISA.

The court rejected the policyholder's argument that the determination of the amount of contributions necessary to sustain a benefit plan could be characterized as "administration" under the policy language. Rather, the court characterized the key liability-causing activity as a discretionary action undertaken in a fiduciary capacity that was subject to ERISA fiduciary standards of care, which was

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accordingly excluded from coverage under the ERISA exclusions.

The opinion is available here.