



employer reduces corrupt executive's accrued benefit

MSK Client Alert

December 11, 2006

Although the problem does not arise every day, employers are sometimes faced with the prospect of terminating an executive who has engaged in some illegal behavior and then having to pay the executive significant benefits that have been earned under a retirement plan. The retirement plan benefits are generally protected by the rule under ERISA and the Internal Revenue Code that you cannot retroactively reduce a participant's accrued benefit and the benefits cannot generally be offset unless the executive's illegal acts involve the pension plan.

In this case, the plaintiff was the former CEO of a charitable foundation. The foundation and the Texas Attorney General had claimed in a prior lawsuit in state court that the executive had received excessive compensation, breached his fiduciary duty to the foundation and violated state law. As part of the relief requested and received in the prior lawsuit, the executive's employment agreement was found void ab initio (from the beginning) because it violated public policy and was not properly authorized. One of the terms of the employment agreement was that the executive was entitled to benefits under the foundation's retirement plan. However, once the prior judgment was entered that the employment agreement was void ab initio, the Foundation took the position that no pension benefits were due. That led to the lawsuit which is the subject of the federal court decision -- a claim for pension benefits brought in federal district court. Under the federal court decision, the executive's claim for pension benefits was dismissed with prejudice on procedural grounds --- the claim was precluded by the doctrine of res judicata (the case has already been decided) as a result of the prior state court decision. Therefore, the court did not have to address the question of whether the protection afforded accrued benefits under ERISA was violated.

The result is somewhat surprising and could still be overturned on appeal. However, if upheld, the case may provide a road map for employers who are reluctant to pay significant pension benefits to an executive who has engaged in illegal or fraudulent activities.

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