Miller & Chevalier

Another District Court Upholds the DOL Fiduciary Rule

Employee Benefits Alert
12.05.2016

On November 28, 2016, Judge Daniel D. Crabtree of the District of Kansas dealt a second jarring blow to the financial services industry by denying Market Synergy Group, Inc.'s (Market Synergy's) bid to hit the pause button on a portion of the Department of Labor's (DOL's) Fiduciary Rule. Market Synergy had requested a preliminary injunction to halt enforcement of a revised prohibited transaction exemption, PTE 84-24, to the DOL's Fiduciary Rule. Judge Crabtree's ruling potentially carves a steeper path toward a circuit court split and a Supreme Court decision on the Fiduciary Rule. Basing his decision on the narrowest possible rationale, the judge prefaced his ruling by announcing that he "need not decide whether the DOL's amendment to PTE 84-24 is appropriate given the DOL's consumer protection concerns . . . [or] whether the DOL's amendment is improper because it imposes significant challenges to plaintiff's business model." According to Judge Crabtree, the only question before him was whether Market Synergy is likely to succeed in establishing that the DOL failed to follow the Administrative Procedure Act and Regulatory Flexibility Act in exacting the rule changes. The answer is, "No."

In his decision, Judge Crabtree first held that the DOL provided adequate notice of the movement of fixed indexed annuities from PTE 84-24 to the more onerous Best Interest Contract Exemption (the BIC Exemption), and then held that even if the notice was insufficient, the DOL's error was harmless. Judge Crabtree went on to hold that the DOL's decision to move fixed indexed annuities from PTE 84-24 to the BIC Exemption was not arbitrary and capricious because the DOL was able to establish a "reasoned explanation" for the decision. Finally, after concluding that the DOL appropriately weighed the costs and benefits of the movement of fixed income annuities from PTE 84-24 to the BIC Exemption, and that the DOL's decision was a reasonable one, Judge Crabtree echoed the words of fellow Obama-appointee, Judge Randolph D. Moss -- the first judge to uphold the Fiduciary Rule -- and ruled that his court "cannot substitute its judgment [for] that of the DOL."

With Judge Moss' denial of the National Association for Fixed Annuities' (NAFA's) request to stay enforcement of the entire Fiduciary Rule on November 23, 2016 pending appeal to the DC Circuit Court, and NAFA's subsequent filing of an emergency motion to the DC Circuit seeking an injunction pending appeal on November 29, 2016, the financial services industry is finding its options increasingly limited.

Attention is now squarely focused on Judge Barbara Lynn of the United States District Court for the Northern District of Texas. Judge Lynn is currently mulling over the challenges to the Fiduciary Rule posed by lead plaintiff the U.S. Chamber of Commerce.

For more information, please contact:

Erin M. Sweeney, esweeney@milchev.com, 202-626-6053

Theresa S. Gee, tgee@milchev.com, 202-626-5928

Yongo Ding*

Nicholas P. Wamsley*

**Former Miller & Chevalier attorney*