

Oral Misrepresentation Could Support Fiduciary Breach Claim, New Jersey District Court Holds

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In ***Lees v. Munich Reinsurance America, Inc.***, a federal district court in New Jersey recently held that an oral misrepresentation could serve as the basis for a fiduciary breach claim.

The plaintiff in *Lees* worked for *American Re-Insurance Company* (a predecessor of the defendant), but was being paid by a related entity. Several years into his employment, the plaintiff was approached about transferring directly to American's payroll. The plaintiff alleged that employees in American's human resources department induced him to agree to the transfer by promising to treat his years with the related entity as pensionable under American's defined benefit plan. According to the plaintiff, he accepted this offer in lieu of a signing bonus. Many years later, the plaintiff was informed that the years with the related entity would not be counted. He sued, alleging, among other things, a fiduciary breach claim under ERISA § 502(a)(2). The defendants moved to dismiss.

The court rejected the defendant's argument that an oral misrepresentation could not support a fiduciary breach claim under ERISA § 502(a)(2). The court's reasoning focused on 3rd Circuit precedent for finding a fiduciary breach, under which a material, affirmative misrepresentation is required. The court found no requirement that the misrepresentation be written, and declined to impose such a requirement in this case. Despite the evidentiary concerns inherent to oral communications, this decision allows the plaintiff to move forward using alleged oral misrepresentations as the basis of his fiduciary breach claim.

Plan representatives should keep in mind that this is a district court decision at a relatively early stage of litigation. The sky is certainly not falling. However, plan representatives should be aware of what they say to participants and beneficiaries; if a case like this is successful, even inadvertent misstatements could come back to haunt them.

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