

Bank Is Not Fiduciary and Prohibited Transaction Does Not Occur When Sweeping Funds from Employer Bank Account

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The U.S. Federal District Court for the Southern District of Texas dismissed claims that a bank was acting as an ERISA fiduciary when it swept the corporate bank account of a financially distressed employer pursuant to its contract with the employer. The employer had failed to timely remit withheld employee deductions for the health plan to the third party insurer. When the employer entered bankruptcy, the insurer sued the bank under ERISA for the amount of the withheld deductions. The insurer claimed that the bank was a fiduciary and had engaged in a prohibited transaction. The court found that the bank was not a fiduciary because it did not have discretionary control over plan assets nor discretion over administration of the plan. The court further found that the bank did not engage in a prohibited transaction because it did not engage in any transactions with the plan. The transaction in question, sweeping the bank accounts, was a transaction between the bank and the employer, not the bank and the plan. *The Guardian Life Insurance Co. of America v Bank of America, N.A.*, No. H-11-0079 (S.D. Tex Mar. 23, 2012).