

Fiduciary Exception to Attorney-Client Privilege Does Not Apply to Top Hat Plan

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The court considered an employee's motion to compel documents with respect to her employer's nonqualified pension benefit plan called the "Wealth Accumulation Plan." The employee asserted that the lawsuit turned on the single issue of whether the Wealth Accumulation Plan was a valid "top hat" plan exempt from certain ERISA requirements. The court denied the plaintiff's motion to compel documents, finding that the employer's pleadings and exhibits sufficiently show, for the limited purpose of this discovery dispute only, that the [plan] is a top hat ERISA plan. Therefore, the fiduciary exception to the attorney-client privilege that applies to plans covered by ERISA's fiduciary requirements did not apply and thus the documents protected by attorney client privilege were not discoverable. *Tolbert v. RBC Capital Markets, Corp.*, No. H-11-0107 (S.D. Tex. Mar. 28, 2012).