

## Fifth Circuit Permits Retroactive Amendment to LTD Plan

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In an unpublished opinion, the U.S. Court of Appeals for the Fifth Circuit (which includes Texas) permitted an employer to rely on an amendment to a long term disability (LTD) plan to offset future benefits for a participant's receipt of money from a tort settlement received prior to the plan amendment. The plaintiff in this case was seriously injured in an accident in 1991 and began receiving monthly payments under her employer's LTD plan at that time. Beginning in 1994, the plaintiff received a lump sum payment and monthly payments for 240 months as part of a tort settlement related to her injury. In 1998, the LTD plan was amended to allow the plan to take offsets for monies received from third-parties responsible for an injury. In 2005, the plan sponsor learned that the participant was receiving monies as part of the tort settlement and determined that from 1994-2005 the participant had been overpaid approximately \$82,000 by the LTD plan. The plan sponsor began to withhold the monthly LTD payments to recoup the benefit. The plaintiff sued claiming that the plan sponsor could not rely on the 1998 amendment, since her rights to LTD benefits were vested prior to the amendment. The Fifth Circuit found that since welfare rights do not vest under ERISA, the plan sponsor could rely on the 1998 amendment to recoup benefits. A copy of the unpublished opinion is available [here](#).