Recent Wins for Plan Sponsors in Response to Plan Forfeitures Litigation

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As we previously reported here and here, a recent litigation trend against 401(k) plan sponsors concerns participant claims alleging that the use of plan forfeitures to offset future employer contributions results in a breach of fiduciary obligations even when such forfeiture use is expressly permitted in the plan document. As background, forfeitures generally result when a participant terminates employment prior to completing the plan's vesting service requirement for employer contributions.

A California district court recently issued an opinion in favor of the plan sponsor and determined that such participant claims would add benefits that were not provided under the plan and also conflicted with ERISA's settled practice of permitting the use of forfeitures as authorized under the plan's terms. Further, two other recent plan forfeiture decisions in Mississippi and Texas reached similar results in favor of the employers.

We will continue to monitor these cases and any further updates in this area. In the meantime, and as a reminder, plan sponsors should continue to review their plan documents to determine if the plan authorizes the use of forfeitures for employer contributions and ensure that any ordering rules set forth in the plan document are followed (for example, some plans require plan expenses be paid prior to using forfeitures to offset employer contributions).

The California case is *Hernandez v. AT&T Services, Inc.*, case number 2:25-cv-00676, in the U.S. District Court for the Central District of California.

The Mississippi case is *Brown v. Peco Foods, Inc.*, civil action no. 3:25-CV-491-TSL-RPM, in the U.S. District Court for the Southern District of Mississippi.

The Texas case is *Del Bosque v. Coca-Cola Southwest Beverages LLC,* civil action no. 3:25-CV-01270-X, in the U.S. District Court for the Northern District of Texas.

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