

# Client Alert

A report  
for clients  
and friends  
of the firm July 2006

## District Court Denies Motion To Dismiss ERISA Claims Based on Alleged FLSA Violations

### Background

On June 12, 2006, the U.S. District Court for the Northern District of California denied IBM's motion to dismiss two ERISA claims arising out of IBM's alleged violation of the overtime requirements of the Fair Labor Standards Act ("FLSA"). *Rosenburg v. International Business Machines Corp.*, Slip Op. No. C 06-0430 PJH (N.D. Cal. June 12, 2006). If followed, the ruling could open up a new pathway for ERISA claims under circumstances that, until now, would have provoked claims only against employers, and only under the FLSA.

The lawsuit was brought on behalf of a class of current and former IBM "technical support workers" who sought overtime pay and other relief resulting from IBM's alleged misclassification of them as exempt from the overtime provisions of the FLSA. Four of the named plaintiffs also brought ERISA claims, alleging that: (i) IBM failed to maintain records from which to determine the amount of benefits due, or which might become due, since there were no records kept regarding the amount of overtime worked; and (ii) IBM violated its fiduciary duties under ERISA by failing to credit, or investigate crediting, unpaid overtime hours for which additional compensation might have been due.

### The District Court's Ruling

In denying the motion to dismiss, the district court rejected IBM's argument that its determinations as to how to classify its employees were either business decisions or ministerial functions that were not properly the subject of ERISA's fiduciary regulations.

In support of this argument, IBM pointed out that, under the terms of the plan, plaintiffs were entitled to credit only for compensation that was actually paid, and not for compensation that should have been paid. Plaintiffs contended, on the other hand, that the decision neither to credit nor to investigate crediting unpaid overtime hours constituted an act of plan administration giving rise to fiduciary breach claims. After observing that other courts had divided over this issue, and that the issue was "a close call," the court determined that whether and when IBM assumed fiduciary status over the plan involved at least some questions of fact and was therefore inappropriate for resolution on a motion to dismiss.

The court also rejected IBM's argument that the ERISA claims should be dismissed because they were improperly brought under ERISA § 502(a)(3), ERISA's "catchall" provision, when in fact their claims were properly asserted under ERISA § 502(a)(1)(B) as ordinary claims for benefits. In so ruling, the court observed that plaintiffs were not seeking plan benefits, but instead were seeking an order enjoining IBM from maintaining faulty records and requiring IBM to compile the appropriate wage and hour records so that overtime pay, if owing, could be properly credited. As to the ERISA fiduciary breach claim, plaintiffs were seeking to remedy a failure by IBM to determine whether overtime should be considered for the purpose of crediting compensation under the terms of the plans. The court agreed that the plaintiffs were seeking injunctive and declaratory relief instead of plan benefits, and thus that their claims were properly brought under ERISA § 502(a)(3). For this same reason, the court also rejected IBM's alternative contention that plaintiffs were required to exhaust their claims for benefits.

Finally, the court rejected IBM's argument that the ERISA claims were not ripe because, even though the validity of the claims were dependent on the validity of the FLSA claims, plaintiffs were not seeking damages for wrongs that had not yet occurred.

## Implications for Plan Sponsors and Fiduciaries

Because the *Rosenberg* decision merely denied an initial motion to dismiss, without affirmatively recognizing ERISA claims for failure to credit overtime worked, the implications of the decision are unclear. Nevertheless, there are at least two potentially serious implications for employer plan sponsors and fiduciaries. First, by allowing the ERISA claims to proceed, the decision may increase resort by the plaintiffs' bar to this additional avenue of potential redress for FLSA or state wage law violations. Secondly, insofar as the court equivocated on whether the plan's failure to award credit could give rise to a fiduciary breach claim, notwithstanding plan provisions that limited such credit to compensation paid, the decision may contribute to a further evisceration of the distinction between plan sponsor and fiduciary functions, thereby increasing the risks posed to plan fiduciaries.

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### Client Alert

Proskauer's Employee Benefits and Executive Compensation Law Practice Group includes over 50 attorneys with significant and diverse tax, executive compensation, and employee benefits law experience. The following individuals serve as contact persons with respect to this Client Alert and would welcome any questions you might have:

#### NEW YORK

**Myron D. Rumeld**

212.969.3021 – mrumeld@proskauer.com

**Russell L. Hirschhorn**

212.969.3286 – rhirschhorn@proskauer.com

#### NEWARK

**Edward Cerasia II**

973.274.3224 – ecerasia@proskauer.com

#### LOS ANGELES

**Anthony J. Oncidi**

310.284.5690 – aoncidi@proskauer.com

#### WASHINGTON, DC

**Lawrence Z. Lorber**

202.416.6891 – llorber@proskauer.com

#### BOSTON

**Mark W. Batten**

617.526.9850 – mbatten@proskauer.com

#### BOCA RATON

**Allan H. Weitzman**

561.995.4760 – aweitzman@proskauer.com

#### NEW ORLEANS

**Howard Shapiro**

504.310.4085 – howshapiro@proskauer.com

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