

Participants' ERISA Retaliation Claim Dismissed

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A federal district court in Illinois held that participants in a multiemployer pension plan failed to plausibly allege that plan fiduciaries retaliated against them in violation of ERISA § 510 by refusing to consider their employer's offer to settle its withdrawal liability to the plan. In lieu of paying withdrawal liability, the employer offered to create a new plan that assumed the former plan's obligations. After the plan fiduciaries rejected the proposal, the participants filed suit, alleging that the refusal to negotiate or even consider the employer's proposal constituted a breach of fiduciary duty. The plan fiduciaries then informed the employer that they would "either negotiate or litigate but not both." The participants thereafter amended their complaint to allege that the plan fiduciaries' position violated Section 510, claiming that the plan fiduciaries' position was motivated by the participants' initial decision to file suit. The district court dismissed the participants' claim as implausible, pointing to the participants' admission that the plan fiduciaries refused to consider the employer's proposal both before and after the participants filed suit. The court also expressed skepticism that the participants could assert a viable Section 510 claim against plan fiduciaries for "failing to do something [they] never had any legal obligation to do in the first place"—that is, accept the employer's proposal to settle its withdrawal liability. The case is *Campbell v. Whobrey*, 2019 WL 184056 (N.D. Ill. Jan. 14, 2019).

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