

Fiduciary Exception to Attorney-Client Privilege for ERISA Plans

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Everyone is familiar with the “attorney-client privilege” doctrine. In the employee benefit plan context, the rules are modified because of the doctrine referred to as the fiduciary exception to the attorney-client privilege. It is important for plan sponsors, fiduciaries, and their legal advisors to understand the rules regarding when the fiduciary exception doctrine can result in communications between a plan fiduciary and an attorney not to be privileged and become susceptible to being produced in litigation. This article explains how the fiduciary exception doctrine applies and provides some basic principles to help clients better understand how best to protect the privacy of their communications and how to anticipate when these communications may be open to examination by plan participants.

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