

Fiduciary Counseling

Responsibility Matters

Complex fiduciary responsibilities and prohibited transaction matters require seasoned attorneys to provide both ongoing counsel and advice in the midst of litigation. Our team has acted on behalf of clients in obtaining approval of voluntary corrections and in defending against actions by federal regulatory bodies, including the U.S. Department of Labor (DOL) and the Internal Revenue Service. We also provide ongoing counseling, routinely advising fiduciaries and plan administrators of their duties regarding investment decisions, governance issues, plan amendments and design, and participant communications.

Reach

Independence

When a plan's normal fiduciaries are conflicted, particularly in situations involving employee stock ownership plans (ESOPs), tender offers, and settlement of fiduciary breach claims, our attorneys draw upon extensive experience in determining the need for and the proper terms for retaining independent fiduciaries. In preparation for DOL audits, we identify potential problem areas, help clients respond to queries from government officials, and negotiate favorable settlements. We also regularly assist with standardizing review processes, developing tools and checklists, and establishing sound policies and procedures for all employment benefits plans.

Approach

Finding Favor

We have obtained groundbreaking prohibited transaction exemptions — from the contribution of employer stock to retirement and health plans — and have obtained from the DOL two favorable Advisory Opinion Letters permitting employers to use plan assets to reimburse the compensation and related expenses of employees who provide services to their plans.

Experience

Pursued a DOL Advisory Opinion for a major client regarding so-called “prohibited transactions” under ERISA.

Provided advice on a DOL health plan audit, successfully refuting the DOL's 12 separate violation allegations that included two breaches of fiduciary duty for misuse of plan assets.

Advised several public companies in connection on multiple issues concerning the operation of the employer stock funds in their 401(k) plans, including restrictions on additional stock investments, fiduciary monitoring of the stock fund, and potential dissolution of the stock fund.

Successfully negotiated a settlement with the DOL regarding operational issues discovered in connection with

loan repayments of a leveraged employee stock ownership plan. The operational issues arose from the incorrect application of pre-payments during the normal course of the operation of the plan and in connection with the termination of the plan.

Obtained relief from the DOL under the Voluntary Fiduciary Correction Program concerning expenses improperly paid as administrative expenses of the company's retirement plans.

Resolved significant issues for a large West Coast manufacturing company concerning the operation of its ESOP, including strategy to obtain IRS compliance statement.

Advised one of the world's leading providers of lighting fixtures in a DOL audit of the company's health plans and navigated issues relating to past plan document deficiencies and Form 5500 compliance issues.

Successfully represented a national beverage manufacturer in a DOL USERRA audit of its defined benefit pension plan.

Represented a Fortune 100 company benefit plan administrator in ERISA case involving over-payments to plan beneficiary.

Advised fiduciaries on the safest available annuity standard and other fiduciary considerations involving several annuitizations of defined benefit pension plans.

Primary Contacts



Mark D. Wincek

Partner
Washington, DC
t 202.508.5801
mwincek@kilpatricktownsend.com



R. Sterling Perkinson

Partner
Raleigh, NC
t 919.788.1664
sperkinson@kilpatricktownsend.com