

Ninth Circuit Overturns Trust Fund's Refusal to Pay Benefits

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The Labor and Employment Practice Group of Williams Kastner has seen a sharp increase in trust fund litigation against union signatory employers, and also a refusal by trust funds to pay benefits on behalf of participating owners under so-called Associate Agreements. Employers involved in litigation with union trust funds often learn that trust documents and collective bargaining agreements are construed in favor of the trust funds. That's why the recent decision of *Brown v. Southern California IBEW-NECA* is of interest.

Appellant James Brown was a member of the Southern California International Brotherhood of Electrical Workers, and trust fund contributions were made on his behalf for many years. Pursuant to the terms of the Trust, Brown took an early retirement and, instead of playing golf, went to work for Siemens installing heating, ventilation, and air conditioning equipment. When the Union and Trust learned of this, they suspended his early retirement benefits based upon an express proscription in the Trust Agreement of "employment as an electrical contractor" for persons drawing early retirement benefits. Brown sued under ERISA and argued that the Trust Fund's interpretation of the proscription was erroneous since he had not set himself up as an independent contractor or business owner in the electrical industry, but was simply an employee. The Federal District Court agreed and ordered the Trust Fund to pay Brown withheld benefits, along with attorneys' fees, expenses, and costs. The Trust Fund appealed to the Ninth Circuit Court of Appeals which has jurisdiction over Washington.

The Court of Appeals affirmed, holding that the plain language of the trust agreement proscribed the receipt of early retirement benefits by retirees who set themselves up as electrical contractors. In this case, Siemens was deemed to be the electrical contractor and Brown merely an employee performing electrical construction work. The Court determined that the Trust's attempt to apply the proscription to all employment involving electrical construction was not supported by the Plan documents.

Clients should therefore be wary of initial refusals by trust funds to pay benefits. This is especially true for benefit payments for owners and supervisors participating under Associate Agreements covering non-bargaining members.