And The Defense Wins

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DRI members **Walter D. Willson**, **Kenna L. Mansfield, Jr.**, and **Joshua P. Henry** of **Wells Marble & Hurst** in Ridgeland, Mississippi, successfully defended Pacific Life Insurance Company in an action brought against various third-party administrators, financial and tax advisers, and Pacific Life in connection with the design, implementation, administration and funding of a defined benefit pension plan. The plan, commonly referred to as a "412(i) plan," was governed by Section 412(i) of the Internal Revenue Code. According to the plaintiffs, the plan did not meet certain funding requirements as required by the IRS to qualify for preferential treatment under the tax code, resulting in substantial penalties and interest assessments.

The action was originally filed in Florida state court. The case was removed to the U.S. District Court for the Middle District of Florida on grounds that the court had original jurisdiction, insofar as the plaintiffs asserted claims falling within the scope of the exclusive civil enforcement provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001, et seq., and which posed one or more substantial federal questions involving the interpretation of specific federal tax laws and related ERISA provisions appearing on the face of the complaint. In denying remand, the court found that ERISA's broad remedial scheme preempted plaintiffs' state law claims, dismissed them and ordered the plaintiffs to file an amended complaint characterizing their claims as one for breach of fiduciary duty under ERISA. The case represents one of the few instances in which a federal court has found ERISA preemption applicable to a 412(i) case involving a pension benefit plan. See *Ehlen Floor Covering, Inc. v. Lamb*, 2008 WL 4097712 (M.D.Fla. September 03, 2008)(finding claims preempted by ERISA); aff'd by *Ehlen Floor Covering, Inc. v. Lamb*, 660 F.3d 1283 (11th Cir. 2011).

Key to the defense was the plaintiffs' inability to establish that Pacific Life occupied a fiduciary role with respect to the plan at issue, much less that Pacific Life breached any duty arguably owed to the plaintiffs respecting the plan. The district court entered summary judgment in Pacific Life's favor, completely dismissing it from the action with prejudice. In a fact-intensive opinion, the court ruled that "[e]ven taking the facts in the light most favorable to plaintiffs, they merely allege that Pacific Life should be liable as a fiduciary because it actively marketed and endorsed their products to fund 412(i) plans like the Plan at issue. Their marketing material and opinion letter regarding the Products continually couches Pacific Life's assurances in caveats that the Products must be tailored to each client. Further, Pacific Life ensures that clients engage a third party administrator in order to administer plans based on that client's particular needs. Cases holding that insurers like Pacific Life are not ERISA fiduciaries are numerous. The Court finds that Pacific Life was not an ERISA fiduciary and thus could not have breached a fiduciary

duty." See *Ehlen Floor Covering, Inc. v. Lamb*, — F.Supp.2d —, 2012 WL 1326823 (M.D.Fla. April 17, 2012)(internal citations omitted).

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