

Employee Benefits Briefing

A bulletin designed to keep clients and other friends informed on employee benefits law matters

June 28, 2002

U.S. DISTRICT COURT DENIES BENEFITS TO INDEPENDENT CONTRACTORS

The Ninth Circuit's rulings in *Vizcaino v. Microsoft Corporation* have fueled a continuing wave of litigation in which workers classified as independent contractors seek benefits employers intended to provide only to their regular employees. Courts across the country have issued decisions in independent contractor lawsuits brought against employers, large and small. The latest decision, issued by a federal district court in Louisiana, is significant because it appears to be the first in which a court has expressly relied upon the doctrine of "equitable estoppel" in rejecting worker claims.

In *Kiper v. Novartis Crop Protection, Inc.*, current and former engineers and technical designers at a chemical production facility sued, claiming that the company had misclassified them as independent contractors. The plaintiffs alleged that they were in fact employees under common law agency principles. Therefore, the plaintiffs argued, they should be entitled to the same pension, 401(k), health, disability, and other benefits provided to the company's regular employees.

Vedder Price attorneys, representing the company and its benefit plans, argued that the plaintiffs' benefit claims had properly been denied. The court agreed.

The court ruled, first, that the plan administrator had correctly interpreted the term "regular employees" and the phrase "carried on the payroll

of the employer" in the governing plan documents. These were interpreted as excluding from company benefit plan participation workers who were not classified as regular employees and who were paid through the company's accounts payable department like other vendors.

The court also agreed with an alternative argument advanced upon the company's behalf, holding that the plaintiffs' claims were barred by the doctrine of equitable estoppel. We believe this analysis properly addresses the unfair and inequitable nature of many *Microsoft*-type claims.

The plaintiffs, the court observed, had previously performed work for the company as employees of various engineering services firms, with the company paying the engineering firm, for example, an hourly rate of \$30 per hour plus a 50% markup to cover payroll taxes, employee benefits provided to plaintiffs, and administrative expenses. The plaintiffs asked the company to hire them directly as independent contractors and to pay them the same rate per hour that the company had been paying the plaintiffs' engineering-firm employers for the plaintiffs' services (\$45 per hour in our example). The new arrangement was cost-neutral from the company's perspective but offered the plaintiffs a significantly higher hourly rate in place of the lower hourly rate (\$30 in the example) they were paid while receiving retirement, health and other benefits as engineering firm employees.

After working under the individually negotiated independent contractor arrangements for several years without complaint, the plaintiffs sued, seeking the same retirement and welfare benefits provided to the company's regular employees. The court rejected their claims, stating that it was inequitable and unreasonable for the plaintiffs, after having worked for years as independent contractors and having received the higher hourly rate they had negotiated in lieu of benefits, to assert entitlement to benefits that the company had never agreed to pay. The *Kiper* litigation is the most recent, but undoubtedly will not be the last, in which workers classified as independent contractors attempt to double-dip, relying upon *Vizcaino v. Microsoft*. If you have any questions about worker classification issues or

claims, please call Chuck Wolf (312/609-7888), Tom Hancuch (312/609-7824), or any Vedder Price attorney with whom you have worked.

If you have any questions regarding material in this issue of the *Employee Benefits Briefing* contact Paul F. Russell (*practice leader*) at 312/609-7740 or at prussell@vedderprice.com.

The *Employee Benefits Briefing* is published by the law firm of Vedder, Price, Kaufman & Kammholz. It is intended to keep our clients and interested parties generally informed on legal developments in Employee Benefits. It is not a substitute for professional advice.

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The Employee Benefits Group

Vedder Price has one of the nation's largest employee benefits practices, with ongoing responsibility for the design, administration and legal compliance of pension, profit sharing and welfare benefit plans with aggregate assets of several billion dollars. Our employee benefits lawyers also have been involved in major litigation on behalf of benefit plans and their sponsors. Our clients include large national corporations, smaller professional and business corporations, multi-employer trust funds, investment managers and other plan fiduciaries.

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