

Ruling has pension suit implications

BY GARY T. PAKULSKI
BLADE BUSINESS WRITER

When Continental Capital Corp. went under five years ago in a fraud scheme at the Sylvania investment firm, so did the retirement savings account of obstetrician-gynecologist David Tullis.

He and business partner Michael Mack lost more than \$1.7 million combined.

But when they sued the plan trustee used by the Toledo Clinic Inc., their employer, for allegedly failing to properly oversee Continental, federal Judge Jack Zouhary threw out the case. Only plan administrators - not individual participants - have the right to file such suits, he ruled in U.S. District Court in Toledo.

But late last month, a U.S. Court of Appeals panel in Cincinnati reinstated the lawsuit.

In doing so, the panel stepped into a heated debate now before the nation's highest court over who has the right to try to recover from trustees when pension plan funds are lost because of wrongdoing.

Previous court rulings have found that, under pension laws enacted 34 years ago, only plan administrators may sue.

"It's a very significant decision," said Toledo attorney David Zoll, who is not involved in the case but who represented another former Continental Capital client who lost pension money. The Jan. 28 decision likely helped persuade National City Bank, trustee for that person's plan, to reach a "very fair settlement" three days ago, Mr. Zoll said. The terms were not disclosed.

The appeals court ruling has important implications for so-called "self-directed" retirement-savings plans in which participants, often physicians and other professionals, choose their own investment advisers, lawyers said.

"This was an excellent outcome," said Maumee lawyer Gregory Elder, who handled the appeal with colleagues Marvin Robon and David Mylander. He noted that plan administrators are discouraged from taking on trustees because they are typically required to pay legal fees of both sides in disputes.

Mark Abromson, a Toledo attorney who represented defendant UMB Bank NA, of Kansas City, noted that the appeals panel didn't rule on the merits of the local case.

While it now will go forward, the U.S. Supreme Court likely will decide who has standing to sue in such cases, he said.

William C. Davis, a broker and former president of Continental, is serving 15 1/2 years in federal prison in Milan, Mich., for defrauding 250 investors.

Contact Gary Pakulski at: gpakulski@theblade.com or 419-724-6082.

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The Toledo Blade Company, 541 N. Superior St., Toledo, OH 43660, (419) 724-6000

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