

Verne, B. Michael

801.1 (b)

From: [REDACTED]
Sent: Wednesday, May 10, 2006 3:34 PM
To: Verne, B. Michael
Subject: Pension Trust Question

Mike,

Two quick questions concerning control of pension trusts:

My client established a pension trust for its employees, which currently holds significant assets. Assuming the trust is irrevocable, the pension trust agreement states that a Benefit Plan Committee has the right to remove and replace 100% of the pension trust's trustees. The Benefit Plan Committee is appointed by my client's board of directors but has a fiduciary duty to the pension plan beneficiaries not my client. Since my client does not have the direct contractual right to appoint trustees, does my client "control" the pension trust ?

If my client does not control the pension trust by means of an contractual right to remove and replace trustees, I have one additional question. The Pension trust agreement states that the trust is "irrevocable" but that my client can terminate the trust. Upon termination of the trust, the corpus of the trust will go to my client's employees and no trust assets will revert to my client. Our trust people have advised that such a trust is irrevocable since my client cannot recover any of the assets of the trust. Is this the PNO's position?

Thanks so much for your time.

[REDACTED]

I think your client does control the trust because it appoints the committee that has the right to remove and replace the trustees. The second paragraph is our position.

B. Michael
5/10/06