

# Social

## 6th Circuit: Court Remands Top-Hat Case to Plan Administrator's Review Committee

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A district court was required to send a benefits case back to the plan's review committee after it determined that the committee's analysis was flawed and its factual record incomplete, the 6th U.S. Circuit Court of Appeals ruled.

Plaintiffs brought suit alleging that they were improperly denied pension benefits under Advest Inc.'s Account Executive Nonqualified Defined Benefit Plan. The plan was established for a "select group of highly compensated account executives" and was intended to help ensure that Advest, a securities brokerage firm, would "attract, retain and motivate qualified account executives." The plan provided that accrued benefits would be paid out to participants after they had been enrolled in the plan for 10 years and had reached a designated age. The plan also had specific provisions that, if triggered, would result in the discontinuance of benefit payments and the forfeiture of any benefits accrued, regardless of how long a participant had been enrolled. For example, if an account executive was terminated from employment or engaged in direct competition after ending employment, the participant would forfeit his or her accrued benefits.

The plaintiffs were all former Advest account executives who resigned and began working for other securities brokerage firms. Under the terms of the plan, the plaintiffs' resignations and subsequent employment by a competitor resulted in a forfeiture of the benefits they had accrued. The plaintiffs assert that this refusal to pay their accrued benefits was a breach of contract and the covenant of good faith and fair dealing.

The plan's review committee upheld the denial of benefits, finding that the terms of the plan had been followed. The committee also held that the plan was a top-hat, deferred-compensation plan under section 201(2) of ERISA—a "plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees." Such a top-hat plan is not required to comply with the substantive protections otherwise applicable to ERISA plans, such as vesting requirements.

This committee's decision was appealed to district court. After finding the committee's reasoning to be flawed and its factual record lacking, the district court conducted its own full review of the plan and the facts underlying the plaintiffs' claims. Based on that review, the district court determined that the plan did not qualify as a top-hat plan and was subject to ERISA's vesting rules. The district court accordingly found in favor of the plaintiffs and awarded monetary damages. Advest appealed this decision to the 6th Circuit.

The 6th Circuit concluded that the district court had exceeded its authority when it engaged in an independent review of the plan, including an examination of evidence that had not been presented to the administrative review committee. The 6th Circuit decided that the case needed to be remanded to the committee even though it was clear that the committee had failed to consider all of the qualitative and quantitative factors necessary for deciding whether a plan was a top-hat plan and had failed to gather a complete factual record. There was no question that the committee's decision-making process was flawed and inadequate. Despite the committee's obvious omissions, the district court still could not insert its own judgment.

A court's review of a plan administrator's decision is confined to the evidence in the administrative record. Courts must respect a plan administrator's discretion to interpret the plan. Thus, the district court should have returned the case to the committee for further review, instead of conducting its own examination. In so finding, the 6th Circuit vacated the district court's award of benefits, which hinged on the determination of whether the plan was a top-hat plan. The 6th Circuit explained that the district court had an "obligation to remand," regardless of the statutory violations and abuses of discretion alleged.

*Daft v. Advest Inc.*, 6th Cir., Nos. 08-3212; 10-3151 (Sept. 23, 2011).

**Professional Pointer:** While the 6th Circuit ultimately reversed the decision of the district court and gave plan administrators another bite at the apple, the 6th Circuit's decision does not relieve plan administrators from the duty to engage in a thorough analysis of the plan and to apply the appropriate legal standards to benefits claims. Plan administrators should ensure that they have developed a detailed and complete factual record before deciding benefits claims, regardless of whether the plan is a top-hat plan or subject to ERISA's vesting and other eligibility requirements. Consideration of whether a plan is truly a top-hat plan exempt from ERISA's requirements is only one element of the analysis necessary for a full internal review of an appeal for benefits. Failure to do so might result in liability.

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**Editor's note:** This article should not be construed as legal advice.

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