



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

RUTH A. GWIN, STEVEN E. COKER,)
SANDRA H. TURNER, and a class of)
similarly situated individuals,)
)
Plaintiffs,)
)
v.)
)
NATIONWIDE LIFE INSURANCE)
COMPANY, NATIONWIDE)
RETIREMENT SOLUTIONS, INC.,)
ALABAMA STATE EMPLOYEES)
ASSOCIATION, PEBCO, INC., and)
FICTICIOUS DEFENDANTS A to Z,)
whose names are now unknown and are to)
be added when their names are available,)
)
Defendants.)

Civil Action No.: 2007 - 04052

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Ruth A. Gwin, Stephen E. Coker and Sandra H. Turner (“Plaintiffs”), on behalf of a class of similarly situated individuals (collectively, “Plan participants”), move pursuant to Ala. R. Civ. P. 65, for a preliminary injunction requiring Defendants Nationwide Life Insurance Company, Nationwide Retirement Solutions, Inc. (collectively, “Nationwide”), Alabama State Employees Association (“ASEA”), and PEBCO, Inc., to hold future periodic payments by Nationwide to ASEA or PEBCO in a trust account for the benefit of Plan participants. In support of this motion, Plaintiffs rely on their brief that is being filed and on additional filings (to be filed under seal after a Protective Order is entered) and state as follows:

1. Plaintiffs are participants in a deferred compensation plan or plans (the “Plan”) established under Alabama Code § 36-26-14, Alabama Code §§ 36-27C-1 to 36-27C-9, and I.R.C. § 457.

2. Under Alabama Code § 36-26-14, ASEA recommends a deferred compensation plan and the Alabama State Personnel Board is directed to adopt that plan, making ASEA a fiduciary as to Plan participants. PEBCO is a wholly-owned subsidiary of ASEA that performs some of ASEA’s fiduciary responsibilities.

3. ASEA negotiated with Nationwide to perform Plan administrative and investment services, making Nationwide a Plan fiduciary, since Nationwide holds and handles Plan participants’ retirement savings.

4. Under I.R.C. § 457, annuity contracts can hold participants’ retirement savings and be the trust required by federal law. Nationwide issued annuity contracts that serve as this type of trust for the Plan.

5. As a trust for a § 457 plan, such annuity contracts are required by federal law to “make it impossible . . . for any part of [Plan participants’ retirement savings] to be used for, or diverted to, purposes other than for the exclusive benefit of [Plan] participants and their beneficiaries.” 26 C.F.R. § 1.457-8(a)(2).

6. Instead of ASEA’s negotiating with Nationwide for the exclusive benefit of Plan participants, ASEA and Nationwide negotiated payments based on Plan participants’ retirement savings that diverted benefits to ASEA or PEBCO, which includes Nationwide’s huge periodic payments to ASEA or PEBCO.

7. Nationwide’s payments to ASEA or PEBCO are the result of self-dealing and each payment breaches Defendants’ fiduciary duties.

8. Because ASEA or PEBCO profit from their fiduciary positions, Plaintiffs have an equitable ownership interest in Nationwide's payments to ASEA or PEBCO that is protected by a constructive trust, with Plan participants as the constructive trust beneficiaries, over Nationwide's payments to ASEA or PEBCO.

9. If Nationwide continues to make the periodic payments to ASEA or PEBCO, ASEA will continue to spend these Plan-derived funds out of the constructive trust, thereby dissipating the funds resulting from Nationwide's payments to ASEA or PEBCO.

10. As Alabama law requires to obtain a preliminary injunction, Plaintiffs can establish that (1) Plaintiffs have at least a reasonable chance of success on the merits; (2) Plaintiffs will suffer immediate and irreparable injury; (3) Plaintiffs have no adequate remedy at law; and (4) the hardships imposed on Defendants by the injunction would not reasonably outweigh the benefit accruing to Plaintiffs. *See Perley v. Tapscan, Inc.*, 646 So. 2d 585, 587 (Ala. 1994) (listing requirements for a preliminary injunction).

WHEREFORE, Plaintiffs respectfully requests the Court grant this Motion and enter an order requiring Nationwide's periodic payments to ASEA or PEBCO to be held in a trust account for the benefit of Plan participants.

/s/ James S. Christie, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2008, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system, which will send notification of such filing to the following:

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