

MEMO# 11481

December 20, 1999

COURT DECISION CLARIFIES OBLIGATIONS OF THIRD-PARTY ADMINISTRATORS UNDER ERISA

1 See Institute Memorandum to Pension Members No. 23-98, dated March 26, 1998.
[11481] December 20, 1999 TO: PENSION MEMBERS No. 47-99 PENSION OPERATIONS
ADVISORY COMMITTEE No. 59-99 RE: COURT DECISION CLARIFIES OBLIGATIONS OF THIRD-
PARTY ADMINISTRATORS UNDER ERISA

A federal circuit court recently addressed the scope of a service provider's obligations and liability as a third-party administrator. The Ninth Circuit in *CSA 401(k) Plan v. Pension Professionals, Inc.*, 1999 U.S. App. LEXIS 30404 (9th Cir., Nov. 23, 1999), affirmed a district court's ruling that a third-party service provider did not become an ERISA fiduciary when, after discovering that a plan fiduciary may have embezzled plan assets, it notified plan trustees of the deficiencies and took affirmative steps to encourage repayment. In *CSA*, a third-party administrator (the "TPA") that provided nonfiduciary administrative services to the plan discovered that certain employee contributions had not been deposited in the plan. Suspecting that the employer's CEO, a co-trustee of the plan, was embezzling these funds, the TPA notified the plan trustees of the deficiencies. The TPA thereafter agreed to continue its services only if the CEO met certain conditions, which included repayment of the misappropriated funds and a disclosure to participants of the situation. The TPA, however, later resigned after receiving falsified financial statements from the employer. Neither law enforcement authorities nor plan participants were notified of the suspected embezzlement. The court concluded that the TPA was not liable as an ERISA fiduciary because its actions upon the discovery of the missing funds did not rise to the level of exercising discretionary authority or control over the plan. Citing *Beddall v. State Street Bank & Trust Co.*, 137 F.3d 12 (1st Cir. 1998),¹ the court also stated that ERISA does not impose "good samaritan" liability. In addition, as a nonfiduciary, the TPA did not have a duty to report its suspicions regarding the embezzlement to plan participants. Thomas T. Kim Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 11481. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>).