

DOL Sues Missouri Bankers Benefit Plan

The Department of Labor has alleged one fiduciary breach against the plan's trustees for operating with negative assets in six of the last seven years.

Reported by [NOAH ZUSS](#)

Acting Secretary of Labor Julie Su targeted the trustees for the Missouri Bankers Association Voluntary Employees Beneficiary Association Plan and its third-party administrator, alleging the trustees for the welfare benefits plan violated their fiduciary duties under the Employee Retirement Income Security Act.

The DOL brought one count alleging fiduciary breach against defendants. The complaint seeks to hold fiduciaries liable for neglecting the plan. The complaint in *Su v. Missouri Bankers Association Inc. et al.* was filed in U.S. District Court for the Western District of Missouri, Central Division. The Jefferson City, Missouri-based Missouri Bankers Association is a 501(c)(6) nonprofit trade association.

"Since at least 2016, Defendants failed to establish and accumulate adequate reserve funds for the proper administration of the Plan and the payment of claims, putting the Plan's ability to continue to pay participant claims at serious risk," the complaint states. "In at least the following years, the Plan operated with negative net assets: 2016, 2017 and 2019 through 2022."

The plan is a self-insured multiple employer welfare arrangement regulated under ERISA section 3(40). The DOL published a guide to proper MEWA operation for fiduciaries in 2002.

The benefit plan provides self-funded medical and other health and welfare benefits to employees and eligible employee dependents of multiple participating employers.

The DOL brought the lawsuit as part of the agency's mandate to administer and enforce federal laws, explains Drew Oringer, a partner in and general counsel at the Wagner Law Group, which is not involved in the litigation.

"MEWAs are in some ways quasi-insurance companies without being actual insurance companies," says Oringer. "As such, they have occasionally been subject to concerns over the years that their administration could, in some cases, not be up to the standards that one might expect to see with a full-blown insurance company. The DOL seems to have come upon a situation in which an alleged lack of reserves may have put plan—or VEBA—participants at risk, and so in furtherance of its general efforts to protect participants, [the DOL] is trying to address the purported shortfall."

The named defendants are the Missouri Bankers Association Inc.; Missouri Bankers Association Voluntary Employees Beneficiary Association Plan; Bankers Benefit Corp.; Missouri Bankers Association Voluntary Employees Beneficiary Association Board of Trustees; and the board's 16 members.

"During the relevant time period, Defendants MBA, BBC and the MBA VEBA Board, including the individual Trustees during their tenures, were jointly responsible for administering the Plan, including determining the premium rates to set and collect, the fees and expenses to be paid, and setting and establishing Plan reserve funds to pay claims, fees and expenses," the complaint states.

Members of the board of trustees include Michael Anderson, chairman, president and CEO at First Bank of the Lake; Patrick Kussman, CEO at Regional Missouri Bank; and Robert Mickey Jr., president and CEO at F&C Bank.

The plan was established in 1976, and the trust agreement was revised and restated in 1983 to create the present trust agreement, according to the complaint.

Representatives for the Missouri Bankers Association Voluntary Employee Beneficiary Association Plan did not reply to a request for comment on the litigation.

Tags

[Department of Labor](#), [Employee Retirement Income Security Act](#), [fiduciary breach](#), [health care](#), [health care benefits](#), [third-party administrator](#), [trustee](#)

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