DoL pursues 2004 group annuity kickback case against PA broker

By Editor Test *Tue, Sep 18, 2012*

Dietrich & Associates inflated bids from other insurers to hide a secret 2% payment from The Hartford on a $26.1 million pension deal in 2004, the Labor Department claims.

Six years after The Hartford settled with prosecutors in Connecticut and New York over taking kickbacks from insurance brokers on defined benefit pension plan termination deals, the Department of Labor is still trying to get one of the brokers in the case to pay back at least $522,000.

A complaint filed August 27, 2012 by Secretary of Labor Hilda Solis against Kurt E. Dietrich & Associates, Plymouth Meeting, Pa., alleges that Dietrich inflated the competing bids of five other group annuity providers to conceal the fact that Hartford's bid of $26.1 million included a 2% brokerage fee, or $522,047, which was paid to Dietrich in early 2004.

The fee was over 10 times larger than the $50,000 that Memorial Hospital-West Volusia had contracted to pay Dietrich for helping it solicit bids from insurance companies and select the low bidder for a group annuity to replace its defined benefit pension.

The Hartford settled the dispute separately with then-Attorney General Ralph Blumenthal of Connecticut and then-Attorney General Eliot Spitzer of New York in May 2006 without admitting or denying their claim that it had conspired to pay incentives to brokers for steering terminal funding agreements for defined benefit plans its way while participating in what should have been a fair bidding process for the business. The incentives were then built into the cost that the DB plan sponsor paid for the group annuity.

"Hartford paid back the plans affected through its settlement with the states of New York and Connecticut and, as part of that agreement, Hartford represented that it would not seek contributions from any other party," said DoL spokesperson Joanna Hawkins in a recent email to *RIJ*.

By concealing the fee and passing the cost through to the hospital, all in violation of his advisory contract with the hospital, the DoL alleged, Dietrich had engaged in a prohibited transaction and violated his ERISA fiduciary duties to the hospital. The action was filed in U.S. District Court, Eastern District, Pennsylvania, on August 27, 2012.

"By deceiving the Pension Plan and its fiduciaries, and by receiving and retaining impermissible compensation from the insurer, Dietrich & Associates and Kurt E. Dietrich were unjustly enriched by violations of ERISA," the complaint said.

"Moreover, they prevented the Pension Plan and its sponsor from knowing the true cost of Dietrich & Associates' services; concealed their financial arrangement with Hartford and the resulting conflict of interest with respect to the Hartford bid; and deprived the Pension Plan and its sponsor of the opportunity to negotiate the amount of any insurer-paid commission or other payment as an element of the total cost of the annuity.

"Instead of honoring their contractual commitments and adhering to their fiduciary obligations under ERISA, Dietrich & Associates and Kurt E. Dietrich pocketed more than a half-million dollars in unjust profits, representing ten times more than their agreed-upon fee."

According to the complaint, Dietrich testified that in his own view he wasn't bound by his advisory contract with the hospital.

Whether or not Dietrich violated his fiduciary responsibility to the plan sponsor, the DoL charged, he engaged in transactions prohibited under ERISA. The DoL also asked the court for an injunction that would prevent Dietrich & Associates from advising an ERISA-covered employee benefit plan in the future.