

Gabriel Revisited

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In our [June 2014 newsletter](#), we discussed the Ninth Circuit's decision in *Gabriel v. Alaska Electrical Pension Fund*, 755 F.3d 647 (9th Cir. 2014). Following a petition for rehearing, the Ninth Circuit recently withdrew its earlier opinion and issued a new decision. *See, Gabriel v. Alaska Electrical Pension Fund*, --- F.3d ---, 2014 WL 7139686 (9th Cir. Dec. 16, 2014). While the Ninth Circuit left intact the earlier holding that equitable estoppel and reformation were not "appropriate equitable remedies" under ERISA § 502(a)(3) for the harm alleged by Gabriel, the Court reversed course regarding the unavailability of a surcharge remedy to Gabriel. The new opinion withdrew guidance regarding the specific factual circumstances under which a surcharge remedy would be "appropriate," and remanded the issue to the district court to be considered in the first instance by the court below.

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