

Life, Health, Disability and ERISA

In *Pennsylvania Life and Health Insurance Guaranty Association v. Pennsylvania Insurance Department*, the **Commonwealth Court of Pennsylvania** addressed whether federal **Medicare law preempted** a Pennsylvania law, the Pennsylvania Life and Health Insurance Guaranty Association Act (the Act). The Act authorized **assessments** on insurers to fund an association that provides protection to Pennsylvania insureds whose coverage was provided by an insolvent life and health insurer. To calculate the assessment, the association used each insurers **Medicare Part C and D premiums** to determine their share of the market. The court found federal law preempted this assessment method because Medicare regulations prohibited any assessment imposed by the states based on Medicare Part C & D premiums. (September 9, 2019)

In *Bergamatto v. Board of Trustees of the NYSA*, the **United States Court of Appeals for the Third Circuit** addressed whether a **pension-plan director** was liable for fines under the **Employee Retirement Income Security Act (ERISA)** when the plan specifically designated the Board of Trustees as the **administrator**. The court rejected the argument that the director was a de facto administrator liable for ERISA-imposed fines because the statute imposes liability solely on “administrators,” a statutory term of art that did not apply to the director. (August 6, 2019)

In *Hess v. Commissioner of Social Security*, the **United States Court of Appeals for the Third Circuit** addressed an Administrative Law Judge’s (ALJ) determination that an applicant was not entitled to **social security disability benefits** due to the applicant’s “moderate difficulties” in concentration, persistence, or pace. The court explained that the ALJ’s statement that an applicant was confined to **“simple tasks” is permissible after a finding of “moderate” difficulties** in “concentration, persistence or pace” if the ALJ offers a **valid explanation** for it. (July 30, 2019)

In *Caesars Entertainment Corporation v. International Union of Operating Engineers Local 68 Pension Fund*, the **United States Court of Appeals for the Third Circuit** addressed **whether an employer was required to continue to contribute** to a pension fund governed by the Employee Retirement Income Security Act (ERISA) when it partially withdrew by **“bargaining out.”** The employer closed one location and continues to operate three other locations where union members continue to perform work. The court interpreted the statutory phrase **“work... of the type for which contributions were previously required”** to mean that contributions are no longer required. Accordingly, the **employer no longer had to contribute** to

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the fund for that location. (August 1, 2019)

In *Sweda v. University of Pennsylvania*, the **United States Court of Appeals for the Third Circuit** addressed whether participants in a university 403(b) defined contribution, individual account and employee pension benefit plan (Plan) could survive dismissal of their ERISA claims including breach of fiduciary duty in violation of 29 U.S.C § 1104(a)(1) and prohibited transactions in violation of 29 U.S.C. § 1106(a)(1). The court held that the participants plausibly alleged that the **university failed to conform to the high standard required of plan fiduciaries** under § 1104(a)(1), but the **participants did not plausibly allege that the university caused the Plan to enter prohibited transactions** under § 1106(a)(1). (May 2, 2019)

In *Oliveira v. Commerce Insurance Company*, the **Appeals Court of Massachusetts** held that the unmarried partner of a woman living in the same household as the policyholders—the woman’s mother and stepfather—was not a **“household member”** for purposes of **underinsured motorist automobile coverage** in a personal automobile policy. The policy defined “household member” as anyone living in the insured’s household who was related to the insured **“by blood, marriage or adoption.”** The individual seeking coverage alleged that he was related by blood to the policyholders because he had a biological son with his partner, who was the biological daughter of one of the policyholders. The court held that because there was no **genetic relationship** between the individual seeking coverage and either of the policyholders, he was not a “household member” under the policy. (October 23, 2018)

In *American Orthopedic & Sports Medicine v. Independence Blue Cross Blue Shield*, the **United States Court of Appeals for the Third Circuit** addressed whether **anti-assignment clauses** in health insurance plans governed by the **Employee Retirement Income Security Act (ERISA)** are generally enforceable. Although the court found that neither the language of ERISA nor the public policy considerations at issue were determinative, it concluded that such anti-assignment clauses are enforceable because, as has been found by other circuits, **unambiguous terms of a private contract** must be enforced. The court further found that the anti-assignment clause was **not waived** by routinely processing the claim form and issuing a check to the insured at an out-of-network rate. (May 16, 2018)

In *Barchock v. CVS Health Corporation*, the **United States Court of Appeals for the First Circuit** ruled that a group of **ERISA plan** members failed to state a claim when they alleged that their plan administrator imprudently managed their retirement fund by pursuing an overly conservative investment strategy. The court found that, although the members asserted that their **defined-benefit plan** was too heavily allocated to cash-based securities, they neglected to offer a theory for determining how much liquidity would be “too much” such that imprudence could be reasonably inferred. (March 23, 2018)

In *Rickard v. American National Property and Casualty Company*, the **Superior Court of Pennsylvania** held that any **contractual obligation** relating to subrogation or reimbursement that a decedent may have owed an ERISA Health and Welfare Plan **does not transfer to a** spouse or minor daughter’s distinct and separate recovery under the **Pennsylvania Wrongful Death Act** because they did not receive any benefits from the Welfare Fund related to the decedent’s injuries. (October 25, 2017)

In *In re Estate of Easterday*, the **Superior Court of Pennsylvania** addressed the rights of an estate and a decedent’s spouse in regard to the decedent’s **pension benefits** where the spouse was the **named beneficiary**, but had signed a

postnuptial agreement waiving her rights to pension proceeds. The court determined that **ERISA** did not preempt the spouse's state law waiver of pension benefits and, therefore, the decedent's estate could recover the pension benefits. (October 3, 2017)

In *Dowling v. Pension Plan for Salaried Employees of Union Pacific Corporation*, the **United States Court of Appeals for the Third Circuit** examined when a **retirement plan's** terms move from merely complex to **ambiguous** so that a claim could not be established that the **administrator** violated the **language of the plan**. The court noted that, generally, **deference** is given to the **plan drafter**, and that based on the plan's **structure** and **silence** on how to calculate disability compensation, the plan was sufficiently **ambiguous** so that any claims that the administrator violated the language of the plan would fail. (September 18, 2017)

In *Advocate Health Care Network v. Stapleton*, the **United States Supreme Court** addressed whether **pension plans** administered by internal benefits committees at hospitals run by **church-affiliated** nonprofits are exempt from the regulations of the **Employee Retirement Income Security Act of 1974** as a **church plan**. The Court held that such a pension plan is exempt as a church plan because the internal benefits committee of a church-affiliated hospital qualifies as what the Court identified as a **principal purpose organization**. (June 5, 2017)

In *Secretary United States Department of Labor v. Kwasny*, the **United States Court of Appeals for the Third Circuit** addressed the standard for an **ERISA violation** by a trustee and fiduciary of a **401(k) plan**. Where plan contributions are **comingled with general assets** and not directed to the plan itself, a violation of ERISA occurs. The court further held that claims for such violations brought by the Secretary of Labor are not precluded by similar claims asserted by private litigants. (April 5, 2017)

In *Doe v. Standard Insurance Company*, the **United States Court of Appeals for the First Circuit** addressed the year of disability onset in determining **long-term disability payments** under **ERISA**. The court held that where an insurer charges an additional premium for **"Own Occupation" insurance**, the assessment of an environmental lawyer's disability turns on when she is unable to perform the material duties in her **specialized area of legal practice**. Here, the insurance carrier's reliance on a generic "lawyer" description rather than environmental lawyer job description was arbitrary and capricious. (March 24, 2017)

In *Prime Healthcare Services v. United Nurses and Allied Professionals, Local 5067*, the **United States Court of Appeals for the First Circuit** considered whether a dispute between a Union and its members' successor employer regarding the prior employer's funding of the **pension** must be resolved in **arbitration** or the courts. The court found that the issue of **arbitration preemption** under the **Employee Retirement Income Security Act (ERISA)** was not an issue of **arbitrability**. The question is not whether the Union can bring its claim, but who decides, court or arbitrator, whether the Union can bring its claim and the latter question an arbitrator can decide. (February 3, 2017)

In *Ovens v. Danberg*, the **Supreme Court of Delaware** addressed **whether a prison is a place of public accommodation for purposes of the Equal Accommodations Law**. A "place of public accommodation" is defined under 6 Del. C. §4502(14) as "any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public. The definition includes state agencies, local government agencies, and state-funded agencies performing public functions." The Court held that **a prison** does not meet this definition and it is, therefore,

not a place of public accommodation. (October 19, 2016)

In *Bowerman v. National Life Insurance Company*, the **United States Court of Appeals for the Third Circuit** addressed an insured's entitlement to **continuing residual disability benefits** after his 55th birthday. In finding that the insured was no longer entitled to benefits, the court found that the policy unambiguously provided a **definition of "occupation"** that used one standard ("occupation of the Insured at the time such disability begins") in the period of continuous disability up to the first ten years or age 55 whichever is later, and a second standard to define the term after that ("any occupation for which the Insured is or becomes reasonably fitted by education, training or experience."). (July 7, 2016)

In *Zubik v. Burwell*, the **United States Supreme Court** considered whether federal regulations, which require religious nonprofit organizations to **cover contraceptives as part of their insurance plans** unless they submit a form stating their objection on religious grounds to providing contraceptive coverage, is a substantial burden on the exercise of their religion in violation of the **Religious Freedom Restoration Act of 1993**. The Court expressed no view on the merits of the case, and **vacated** the judgments below and **remanded** to the respective U.S. Courts of Appeals. On remand, the Court urged the parties to reach a settlement. (May 16, 2016)

In *Santana-Diaz v. Metropolitan Life Insurance Company*, the **United States Court of Appeals for the First Circuit** addressed whether the **time limitation** for filing an **ERISA** suit was subject to **equitable tolling** where the plan administrator had **failed to include** that time period for filing suit in its **denial of benefits** letter. The court held that the plan **administrator's failure to comply with its regulatory obligation** to include the time period for filing suit in the benefits denial letter **rendered the statute of limitations period inapplicable**, and permitted the case to proceed. (March 14, 2016)

In *Stephanie C. v. Blue Cross Blue Shield of Massachusetts HMO Blue*, the **United States Court of Appeals for the First Circuit**, reviewing an **ERISA challenge** regarding **denial of a claim for benefits**, addressed what a plan sponsor or claims administrator must do **to reserve discretion in the handling of benefits** claims. A challenge to denial of benefits is reviewed de novo unless the benefits plan gives the administrator discretionary authority to determine eligibility for benefits. Here, the court considered whether the plan contained an adequate grant of discretionary decision-making authority with the statement that the administrator "**decides** which health care services and supplies that you receive (or are planning to receive) **are medically necessary and appropriate for coverage.**" The court concluded that **this language falls well short** of a clear grant of discretionary authority. (February 17, 2016)

In *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, the **United States Supreme Court** addressed whether an **Employee Retirement Income Security Act (ERISA) plan administrator** could recover on a **lien** for medical expenses paid, when the **plan participant** received a **settlement** but spent those funds on **nontraceable items**. The Court held that the enforcement of a **lien** is **equitable** for which the **remedy** is the **enforcement of identifiable funds** within the **participant's possession**. Therefore, the Court held that the **lien** was **unenforceable** because the **identifiable funds** had already been spent on **nontraceable items**, and the **plan administrator** could not proceed against the **plan participant's general assets**. (January 20, 2016)

In *Mirza v. Insurance Administrator of America Inc.*, the **United States Court of Appeal for the Third Circuit** addressed whether plan administrators under **ERISA** must inform employees of **plan-imposed deadlines for judicial review** in their notifications denying benefits. The court held that the plan administrators **must inform the employees**. The court also held that the appropriate **remedy** for this regulatory violation is to set aside the plan's time limit and **apply the limitations period from the most analogous state-law cause of action**. (August 26, 2015)

In *Inter-Reco, Inc. v. Transcorp Construction Corporation*, the **New York Supreme Court, Appellate Division, 2d Department**, the court found that the insured owed the insurance company additional premiums pursuant to an audit conducted after the **expiration of the policies** in accordance with the terms of the policies. The court stated that the **Insurance Law** provides that no authorized insurer shall knowingly "charge or demand a rate or receive a **premium** that departs from the rates, rating plans, classifications, schedules, rules and standards in effect" and found that the insurance company's rates were the same for its **classifications**, thus entitling it to the balance of the earned premiums due and owing. (June 24, 2015)

In *Uribe v. Maryland Automobile Insurance Fund*, the **Supreme Court of Delaware** addressed whether Delaware's **long-arm statute** conferred personal jurisdiction over the Maryland insurance fund in Delaware for a suit stemming from a **no-fault auto accident claim**. The court held that an **insurer is not subject to personal jurisdiction** solely on the grounds that its insured was **involved in an accident in Delaware** because, as a no fault claim, **the action did not sound in tort** and therefore did not fall under Delaware's long-arm statute. Nor did the **mere provision of insurance** to a driver operating a vehicle in Delaware constitute "**conducting business**" within the state. (May 21, 2015)

In *Tibble v. Edison International*, the **United States Supreme Court** addressed the issue of whether **ERISA's six-year statutory bar** for breach of fiduciary duty complaints should apply to a claim for **imprudent selection of mutual funds** when the complaint was not filed within six years of the date the mutual funds were selected. The Court held that **a trustee has a continuing duty to monitor and remove imprudent trust investments**, and this duty is separate and apart from the duty to exercise prudence in the initial selection of investments. Thus, a claim alleging breach of continuing duty of prudence is timely so long as the **breach occurred** within **six years of suit**. (May 18, 2015)

In *Cottillion v. United Refining Company*, the **United States Court of Appeals for the Third Circuit** addressed whether an **employer** who mistakenly fails to account for **age at retirement** when calculating **pension benefits**, may later collect funds overpaid despite **ERISA's "anti-cutback"** rule. The "**anti-cutback**" rule prohibits **employers** from altering a plan to reduce **benefits** already accrued under the previous plan. The court held that the **benefits** plan unambiguously provided funds without any reduction based on **age at retirement**, and any steps to later reduce or recoup such funds violated **ERISA's "anti-cutback"** rule. (March 18, 2015)

In *Cigna Corp. v. Executive Risk Indemnity, Inc.*, the **Superior Court of Pennsylvania** addressed the **fraudulent acts exclusion** under a **fiduciary liability policy**. The insured's employees alleged that retirement plan amendments had the net effect of impermissibly reducing benefits in violation of ERISA. The court noted that it is **against public policy** to provide insurance coverage for **intentional acts**. The court held that insured's conduct amounted to fraud, and that the fraudulent act exclusion operates as an **exception** to the more general **wrongful acts coverage provision**. (February

27, 2015)

In *Santomenno v. John Hancock Life Insurance Company*, the **United States Court of Appeals for Third Circuit** evaluated whether an insurance company had charged **excessive fees for its services in breach of its fiduciary duty** under the Employee Retirement Income Security Act of 1974 (**ERISA**), 29 U.S.C. § 1001 et seq. The court held that the insurance company was **not a fiduciary** with respect to the alleged breaches. (September 26, 2014)

In *Princeton South Investors, LLC v. First American Title Insurance Company*, the **Superior Court of New Jersey, Appellate Division**, addressed, in the context of **title insurance claims**, whether a **pending tax appeal** by a municipality creates an **encumbrance** on a property's title. The court held a municipality's tax appeal **does not concern title to the property**, but rather, its valuation for tax purposes, and taxes do not become a lien on property until they are assessed. As the title insurance policy at issue excluded coverage for liens "attaching...subsequent to Date of Policy," the court found no coverage existed. (September 8, 2014)

In *Alexander Menkes v. Prudential Insurance Company of America*, the **United States Court of Appeals for the Third Circuit** addressed whether certain **supplemental insurance coverage** purchased to augment basic benefits is governed by the **Employee Retirement Income Security Act of 1974 (ERISA)**. The court held that since the **supplemental insurance plans** were governed by the same **insurance booklet certificate** and **summary description plan** as the basic benefits, the **supplemental coverage could not be "unbundled" from the basic benefits**, which were irrefutably covered by **ERISA**. Consequently, **ERISA preempted** plaintiffs' claims of **fraud, breach of contract and punitive damages**. (August 6, 2014)

In *Burwell v. Hobby Lobby*, the Supreme Court of the United States addressed whether the Religious Freedom Restoration Act of 1993 (RFRA) permits the United States Department of Health and Human Services to demand that closely held corporations provide health-insurance coverage for methods of contraception that violate the sincerely held religious beliefs of the companies' owners. The Court held that the regulations that impose this obligation violate the RFRA, which prohibits the federal government from taking any action that substantially burdens the exercise of religion of a person unless that action constitutes the least restrictive means of serving a compelling government interest. (June 30, 2014)

In *Fifth Third Bancorp v. Dudenhoeffer*, the **United States Supreme Court** addressed whether **fiduciaries of an employee stock ownership plan** are entitled to a special presumption of prudence. The Court held that such fiduciaries are **subject to the same duties as ERISA fiduciaries in general**, except that they need not diversify the fund's assets. (June 25, 2014)

In *Mass. Casualty Ins. Co. v. Sun Life Assurance Co. of Canada*, the **United States Court of Appeals for the Second Circuit** addressed whether a court had to consider whether the **insurer obscured the terms** of a disability policy or **outright deceived** the insured, thereby triggering Pennsylvania's requirement that a court interpret a contract based on the **"reasonable expectations"** of the insured. The Second Circuit held that Pennsylvania's reasonable expectations doctrine must be applied to the insured's reformation claims. Here, the plaintiffs had put forth **sufficient evidence** to create a **material issue of fact** as to whether they reasonably expected that the insurance policies would provide a certain type of coverage based on the insurance agents' representations, even though those representations were not

incorporated into the insurance policies. (May 15, 2014)

In *Riley v. Metropolitan Life Insurance Company*, the **United States Court of Appeals for the First Circuit** addressed whether **the statute of limitations** barred a claim for unpaid **ERISA benefits** under a **long-term disability insurance plan** where benefits were paid in monthly installments at a lower rate than the employee expected. The court determined that the cause of action **accrued** when the employee **first discovered** that he was receiving an amount lower than he expected. The court, joining the **Second, Third, and Ninth Circuits**, rejected the employee's argument that the ERISA plan should be analogized to an **installment contract**, an argument that would have permitted each monthly payment to form the basis of a cause of action. (March 4, 2014)

In *In the Matter of James D. Cook*, the **New York Supreme Court, Appellate Division**, confirmed the Attorney General's denial of a police officer's application for **performance of duty disability retirement benefits** stemming from his involvement in a January 10, 2009 shootout with an armed suspect. The court held that the application was properly denied because the police officer failed to provide a **timely written notice** of the incident as required by **Retirement and Social Security Law § 363-c(e)(a)**. (January 16, 2014)

In *Kolbe v. Tibbetts*, the **New York Court of Appeals** addressed whether, under the **New York Insurance Moratorium Law**, an employer can make **unilateral modifications** to the **health insurance coverage** of its retirees. The court held that because the employees **collectively bargained** for the right to have their health insurance coverage remain the same from the time they retired until they reach age 70, the New York Insurance Moratorium Law does not provide a basis for abrogating their **vested contractual rights**. (December 12, 2013)

In *Papotto v. Hartford Life & Accident Insurance Co.*, the **United States Court of Appeals for the Third Circuit** addressed whether a remand order from the District Court to the Plan Administrator in an ERISA action constituted a "final" order for purposes of appeal. The remand order required fact-finding as to whether a causal connection existed between the insured's intoxication and the loss for purposes of an **accidental death policy**, which excluded losses sustained while intoxicated. Because the remand order did not determine eligibility, the court held that the order was **not** immediately **appealable** as a final order. (September 26, 2013)

In *Edmondson v. Lincoln National Life Insurance Company*, the **United States Court of Appeals for the Third Circuit** addressed whether an insurer of an **ERISA-governed employee welfare benefit plan**—the terms of which **did not specify the method of payment** of life insurance proceeds—acted as an ERISA **fiduciary** when it held **and invested for its own profit** the funds backing retained asset accounts used to pay plan beneficiaries their proceeds. The court held that because Lincoln exercised **authority and control** over the policy when it selected the method the plaintiff would be paid, it acted as a **fiduciary** in "manag[ing]" or "administrat[ing]" the plan. (August 7, 2013)

In *In re Lehman Bros. ERISA Litigation*, the **United States Court of Appeals for the Second Circuit** addressed whether members of Lehman's benefits committee breached their **fiduciary duties** to members of the company's Employee Stock Ownership Plan by continuing to invest Plan assets in Lehman while the company faced severe financial strains. The plaintiffs' allegations largely relied on warning signs included in **non-public information**, which were not submitted directly to the defendants. The court held that the **ERISA fiduciaries** had no obligation to seek out non-public information, and that the allegations based on a purported duty to review such information could not succeed.

(July 15, 2013)

In *St. Peter's University Hospital v. New Jersey Building Laborers Statewide Welfare Fund*, the **Superior Court of New Jersey, Appellate Division**, decided the issue of **preemption** under the **Employee Retirement Income Security Act (ERISA), 29 U.S.C.A. § 1001 to §1461**, in a hospital's state law breach of contract action against an ERISA-based employee welfare benefit plan. The hospital filed suit, where payment for services was not timely, seeking the difference between the bargained-for discounted rate for medical services and the hospital's customary rate. The hospital argued that its claims merely "involved" an ERISA plan, and had too attenuated a connection to the plan to warrant preemption under the "**related to**" standard of the statute. The court found that the hospital's claims were preempted as the claims "would not exist but for the presence of an ERISA plan that provided coverage to the patient." (July 2, 2013)

In *Hillman v. Maretta*, the **United States Supreme Court** held that the Federal Employees' Group Life Insurance Act of 1954 (**FEGLIA**) preempted **Virginia law** which permits a cause of action against a former spouse who collected life insurance benefits by the individual who would have collected said benefits had there been a change of beneficiary after the change in marital status. Under FEGLIA, **an employee's choice of beneficiary** was given **highest priority** and their **right of designation** must **not be restricted**. Virginia law circumvented the aim of FEGLIA as it directs that the proceeds belong to someone other than the named beneficiary by creating a cause of action for their recovery by a third party. (June 3, 2013)

In *Caminiti v. Board of Trustees, Police and Firemen's Retirement System*, the **Superior Court of New Jersey, Appellate Division**, addressed whether a police officer who underwent extremely harsh anti-HIV/AIDS treatment after being stuck with a needle while frisking a drug addict had to demonstrate that being stuck constituted "**a terrifying or horror-inducing event**" in order to receive **accidental disability benefits**. The Board argued that this standard applied because there was **no physical injury which precipitated the emotional trauma**. The court found that **this standard is inapplicable** where a petitioner suffers both a physical and psychiatric injury. The fact that the appellant had been stuck was a "physical injury," because after being stuck he suffered the emotional fallout of fearing he would develop HIV/AIDS and underwent extremely harsh treatment to prevent transmission of HIV/AIDS. (May 30, 2013)

In *U.S. Airways v. McCutchen*, the **United States Supreme Court** considered a claim by an employer for **reimbursement of medical benefits** it paid to a **plan beneficiary** from a **settlement** in a related **personal injury case**. The employer was permitted to recover its lien against the employee's **third-party recovery** because neither general **unjust enrichment principles** nor specific doctrines reflecting those principles—such as the **double-recovery** or **common-fund rules** invoked by plaintiff—could override the applicable **contract**. (April 16, 2013)

In *Dallas School District v. Northeast Pennsylvania School Districts (Health) Trust*, the **Commonwealth Court of Pennsylvania** addressed the "**the exclusive benefit rule**" of the **Employee Retirement Income Security Act of 1974 (ERISA)** and the issue of whether the Trust was an **aggregate of segregated single employer welfare plans** or a **multiple employer pooled plan**. The court held that the Trust is not made up of separately **segregated accounts or funds**, for each member school district, and therefore concluded that the school districts seeking to withdraw from the Trust cannot prevail on their claim that the "**exclusive benefit rule**" requires the Trust to carve out a portion of the surplus in the Trust Fund for the exclusive benefit of the withdrawing School Districts' employees. (April 17,

2013)

In *Heimeshoff v. Hartford Life & Accident Insurance Company*, the **United States Supreme Court** granted a petition for a writ of certiorari to address the question of when the **statute of limitations** should **accrue** for judicial review of a disability plan's **adverse benefits determination**. (April 15, 2013)

In *Colby v. Union Security Insurance Company & Management Company for Merrimack Anesthesia Associates Long Term Disability Plan*, the **United States Court of Appeals for the First Circuit** addressed whether risk of **drug addiction relapse** can constitute a current disability triggering the obligation to pay **long-term disability benefits** under a group insurance plan governed by **ERISA**. The court determined that it was an **abuse of discretion** for the plan administrator **to deny coverage** without considering whether the **insured's addiction** and accompanying risk of relapse rose to the level of a disability that prevented her from performing at least one of the material duties of her regular occupation. (January 17, 2013)

In *In Re: Schering Plough Corp.*, the **United States Court of Appeals for the Third Circuit** addressed whether a **release signed by the plaintiff-class representative** in connection with her separation from the corporation **violated ERISA** and was therefore void. The Court held that it was and explained that: 1) ERISA **section 410(a) does not render** the plaintiff's individual release and covenant not to sue **void against public policy**, and the effect of her release must be considered as the section extends only to contractual or other devices that purport to alter the statutory obligations of a fiduciary under ERISA, and not to reach a release of claims signed by an individual claiming the breach of a fiduciary duty; 2) the plaintiff's release **does not bar her from bringing the section 502(a)(2)** claim on behalf of the Plan; 3) the **district court must give further consideration** to the interests of the members of the class, and the impact of the release and covenant not to sue, as bearing on the plaintiff's ability to be an adequate class representative; and 4) the district court **erred** in granting an **open-ended class period**. (May 16, 2012)

In *Fleisher v. Standard Insurance Co.*, the **United States Court of Appeals for the Third Circuit** addressed the **proper standard of review** to be used when reviewing a plan **administrator's interpretation** and factual findings with respect to an **ambiguous term** in the plan, when the plan grants its administrator **discretionary authority**. The court held that "when a plan's language is ambiguous and the administrator is authorized to interpret it, courts 'must defer to this interpretation unless it is **arbitrary and capricious**.'" Further, the court held that when reviewing a benefits decision for abuse of discretion, a court may not construe ambiguous plan terms against the party that drafted the plan. (May 17, 2012)

In *MacFarlan v. Ivy Hill SNF*, the **United States Court of Appeals for the Third Circuit** held that the **Family and Medical Leave Act (FMLA)** does not require an employer to provide reasonable accommodation to facilitate return to an **equivalent position** following leave because the entitlement to restoration requires that the employee be able to perform essential job functions without accommodation. (March 29, 2012)

In *Ronald Shaver v. Siemens Corp.*, the **United States Court of Appeals for the Third Circuit** addressed whether Siemens and its retirement plans violated the **Employee Retirement Income Security Act of 1974 (ERISA)** by refusing to provide certain former employees with **permanent job separation pension benefits (PJS benefits)** when Siemens terminated their employment. Siemens was a successor employer that employed legacy employees while the

original employer continued to offer for a brief period the legacy employees benefit credit for service and compensation. The court held that **Siemens did not establish an ERISA “transition” plan** by virtue of the arrangement because that arrangement **did not require Siemens to perform the administrative undertaking** that is the hallmark of an ERISA plan. The court therefore concluded that **none of the former employees were entitled to PJS benefits** from Siemens. (February 29, 2012)

In *Barnett v. SKF USA, Inc.*, the **Supreme Court of Pennsylvania** addressed whether **Section 514(a)** of the **Employee Retirement Income Security Act of 1974 (ERISA)** preempted a breach of contract claim asserted by employees of SKF USA Inc. under Pennsylvania law. The court held that the employees' **breach of contract claim was preempted by ERISA** and that the lower courts erred in denying the employer's motion for summary judgment. (February 21, 2012)

In *US Airways, Inc. v. McCutcheon*, the **United States Court of Appeals for the Third Circuit** held that an injured party who received benefits under an **ERISA** plan may assert equitable limitations, such as **unjust enrichment**, on the lien holder's equitable claim. (November 16, 2011)

In *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust and Lincoln Nat'l Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust*, the **Supreme Court of Delaware** addressed a challenge to a life insurance policy for lack of an **insurable interest**. The court first held that the **expiration of the contestability period** does not bar a challenge to the validity of a life insurance policy based on a lack of insurable interest because the policy is **void at its inception**. The court then held that the insurable interest requirement is not violated even if the insured procures the policy with the **intent to immediately transfer** it to a person lacking an insurable interest. The court further held that the trustee of a Delaware **trust** has an insurable interest in the life of that individual even though the insured intends to transfer the beneficial interest in the trust to a third-party investor with no insurable interest, **as long as the insured individual established the trust**. (September 20, 2011)

In *Renfro v. Unisys Corporation*, the **United States Court of Appeals for the Third Circuit** addressed whether an employer and a trustee breached their **fiduciary duties to retirement plan participants** by inadequately investigating **investment options** into which plan contributions could be allocated. The court held that the employer satisfied its fiduciary obligations by offering 73 different investment options. The court further held that the trustee could not be liable because it did not select the investment options offered under the retirement plan. (August 19, 2011)

In *In re: Marcal Paper Mills, Inc.*, the **United States Court of Appeals for the Third Circuit** addressed whether under the **Employee Retirement Income Security Act (ERISA)**, as amended by the **Multiemployer Pension Plan Amendments Act (MPPAA)**, the portion of **withdrawal liability** that is attributable to the post-petition time period constitutes an administrative expense entitled to priority under the Bankruptcy Code. The court held that withdrawal liability can be apportioned between pre- and post-petition time periods and the **post-petition portion** can be classified as an **administrative expense**. (June 16, 2011)

In *Cigna Corp. v. Amara*, the **Supreme Court of the United States** addressed whether the District Court applied the correct legal standard in determining whether CIGNA's **adoption of a new pension plan for its employees violated its obligations under ERISA**. The United States Supreme Court concluded that ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) did not authorize the relief provided by the District Court, but that another equity-related ERISA provision

- § 502(a)(3) - to which the District Court referred in its opinion, did. (May 16, 2011)

In *Henderson v. UPMC*, the **United States Court of Appeals for the Third Circuit** addressed whether employee benefit plans under **ERISA** require an employer to maintain records of **uncompensated hours worked**. The court found that the extent and nature of the records required to be maintained is contingent on **the plain language of the pension plans** and, unless those plans explicitly link contributions to hours worked, records of uncompensated hours worked need not be maintained. Because the plans at issue only required records of the plaintiff's compensation **actually paid** to determine the benefits due, the court held that maintenance of uncompensated hours worked was **not required**. (April 5, 2011)

In *Baldwin v. UPMC*, the **United States Court of Appeals for the Third Circuit** addressed whether an **adoptive mother** had **standing** to receive **proceeds of insurance policies**, subject to the **Employee Retirement Income Security Act (ERISA)**, which were purchased by the children's biologic mother. The court held that an adoptive mother is entitled to offer evidence as to the **insured's intent**. (March 29, 2011)

In *Miller v. American Airlines*, the **Third Circuit Court of Appeals** examined whether an **employer's administrative process** for terminating **long-term disability benefits** complied with the procedural mandates of **ERISA**. The court held that the process was **arbitrary and capricious**, based on its consideration of various factors including the employer's "structural conflict of interest," reliance on fictitious plan requirements, and its employee's ability to perform the job requirements in light of his diagnoses. (January 25, 2011)

In *Russo v. Board of Trustees, Police & Firemen's Retirement Sys.*, the **Supreme Court of New Jersey** granted a **Petition for Certification of Appeal** to consider a question related to a **police officer's entitlement to accident disability benefits**. The question the court agreed to consider is: "Did the work-related incident that directly caused this officer's permanent **psychological disability** qualify as a "traumatic event" under the standards set forth in **Patterson v. Board of Trustees, State Police Retirement System**, 194 N.J. 29 (2008)?" (October 7, 2010)

In *Barnett v. SKF USA, INC.*, the **Supreme Court of Pennsylvania** granted a **Petition for Allowance of Appeal** to address several **ERISA preemption** questions. In particular, the court agreed to consider the following questions:

Whether the Superior Court panel majority erred as a matter of law in deciding that Respondents' **common law breach of contract claim for enhanced pension benefits** was not preempted by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a), 1144(a), where the Superior Court:

1. grossly mischaracterized Respondents' breach of contract claim "for lost pension benefits" in finding that it had only an "incidental" relationship to Petitioner SKF's ERISA pension plan;
2. adopted a new standard for ERISA preemption that directly conflicts with controlling U.S. Supreme Court jurisprudence and the Third Circuit's recent decision in *Hooven v. Exxon Mobil Corp.*, 465 F.3d 566 (3d Cir. 2006), in which the Third Circuit held that common law claims, whether styled as seeking "severance benefits" or "early pension vesting rights," are preempted by ERISA if they require payment of benefits contrary to the terms of the applicable pension plan; and

3. rendered a decision that materially interferes with the administration of ERISA benefits plans in Pennsylvania?
(October 4, 2010)

In *Howley v. Mellon Financial Corp.*, the **United States Court of Appeals for the Third Circuit** addressed a claimed ERISA violation associated with the denial of benefits under Mellon Financial's **Displacement Program**. Mellon Financial denied the claim based on a "**sale of business**" exception contained in the program. The Displacement Program provides benefits-including severance pay and continued eligibility to participate in and receive benefits from other Mellon Financial benefit plans, including pension plans-to an employee of Mellon Financial whose "employment ceases due to technological change or another business reason not related to individual performance." The Third Circuit held that the District Court erred in applying a heightened standard of review because the administrator's **conflict of interest was merely one factor to be considered** in evaluating whether Mellon Financial's decision constituted an abuse of discretion. In addition, the Third Circuit held that the District Court **improperly relied on evidence**-generated during discovery-that was **not before the administrator** when the administrator made the contested decision. Nonetheless, the Third Circuit held that Mellon Financial abused its discretion in denying the plaintiff's claim for benefits. (August 31, 2010)

In *Edwards v. A.H. Cornell and Sons, Inc.*, the **Third Circuit Court of Appeals** determined, on an issue of first impression, whether the **anti-retaliation provision of Section 510 of ERISA, 29 U.S.C. § 1140**, protects an employee's **unsolicited internal complaints** to management. The Third Circuit agreed with the holdings in the Second and Fourth Circuits, and held that unsolicited internal complaints are not protected. (June 24, 2010)

In *Hardt v. Reliance Standard Life Insurance*, the **Supreme Court of the United States** addressed **whether, under ERISA, a fee claimant must have an enforceable judgment to be eligible for an award of attorney's fees**. Petitioner Hardt filed suit against her employer's disability insurance carrier, Reliance, alleging that it had wrongfully denied her benefits claim, in violation of ERISA. The District Court denied Reliance's summary judgment motion because it found "compelling evidence" in the record that Hardt was totally disabled, and Reliance's denial of benefits was not based on complete medical information. The court ordered Reliance to consider all of the evidence and to act on Hardt's application, and indicated that, if Reliance failed to do so, the court would enter judgment in Hardt's favor. After further review, Reliance awarded benefits to Hardt. Hardt then **filed a motion for attorney's fees under 29 U.S.C. § 1132(g)(1), a fee-shifting statute**. The District Court granted the motion, concluding that Hardt had attained the requisite "prevailing party" status. The Fourth Circuit vacated the award, holding that Hardt failed to establish that she qualified as a "prevailing party" because, *under Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 598, 604 (2001), a fee claimant is a "prevailing party" only if the claimant has obtained an enforceable judgment on the merits or a court-ordered consent decree. The Supreme Court reversed and remanded, holding that **so long as the fee claimant has achieved "some degree of success on the merits," a fee claimant need not be a "prevailing party" to be eligible for an attorney's fees award under § 1132(g)(1)**. (May 24, 2010)

In *Conkright v. Frommer*, the **United States Supreme Court** addressed **whether a deferential standard for reviewing decisions of ERISA plan administrators should have been applied** by the district court on remand. The dispute at issue concerned how to account for past distributions, which were paid to employees who received lump-sum payments of retirement benefits, when calculating their current benefits upon their return to employment. The plan

administrator initially interpreted the Plan under the "phantom account" method that considers the time value of money. The district court granted summary judgment for the Plan, applying a deferential standard of review to the plan administrator's interpretation as set forth in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). The Second Circuit vacated and remanded, holding that the administrator's interpretation of the Plan was unreasonable. On remand, the district court then considered other approaches and adopted a proposed approach that did not account for the time value of money. The Supreme Court reversed, holding that the district court **owed deference to the plan administrator's interpretation of the Plan to protect the interests of efficiency, predictability, and uniformity under Firestone.** (April 21, 2010)

In *Battoni v. IBEW Local Union 102 Employee Pension Plan*, the **United States Court of Appeals for the Third Circuit held that an amendment to a welfare plan which, by its function, amends a pension plan, violates ERISA's anti-cutback rule.** In *Battoni*, a merger of two unions resulted in the merger of their welfare and pension plans. The merged welfare plan was amended to condition the receipt of healthcare benefits on not taking a lump sum payment from the merged pension plan. This condition was not previously in place for one of the merged unions, and its members argued that the amendment violated ERISA's anti-cutback rule. **The anti-cutback rule provides that an accrued benefit may not be decreased by a plan amendment.** The District Court of New Jersey held that the amendment violated the anti-cutback rule, and the Third Circuit **affirmed** the decision of the District Court. Although the union argued that the amendment was to the welfare plan only and, therefore, was exempt from the anti-cutback rule, the Third Circuit found that **the function of the welfare plan amendment was to indirectly amend the pension plan by imposing a condition on the receipt of benefits that had not previously existed.** Thus, the amendment violated the anti-cutback rule. (February 5, 2010)

In *Hardt v. Reliance Standard Life Ins.*, the **Supreme Court of the United States granted certiorari** to decide two issues related to the award of **attorney's fees in ERISA cases.** The issues the Court will decide are: 1) whether the Fourth Circuit erred in holding that ERISA § 502(g)(1) provides a district court discretion to award reasonable attorney's fees only to a prevailing party; and 2) whether a party is entitled to attorney's fees pursuant to § 502(g)(1) when she persuades a district court that a violation of ERISA has occurred, successfully secures a judicially-ordered remand requiring a re-determination of entitlement to benefits, and subsequently receives the benefits sought on remand? (January 15, 2010)