

## Insurance Transactional and Regulatory

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In *Yenchi v. Ameriprise Financial, Inc.*, the **Supreme Court of Pennsylvania, Western District** addressed whether a **fiduciary duty** can arise in a **consumer transaction** for the purchase of a whole life insurance policy based upon the advice of a **financial advisor**, where the consumer purchasing the policy does not cede **decision-making control** over the purchase to the financial advisor. The court found that no fiduciary duty arose because reliance on another's **specialized skill or knowledge** in making the purchase, without more, does not create a fiduciary relationship. (June 20, 2017)

In *Skotnicki v. Insurance Department*, the **Commonwealth Court of Pennsylvania** addressed when an insurer may **cancel a policy** due to a change in **assumed risks**. The court held the insurer properly cancelled the homeowner's policy due to a substantial change in the insurer's assumed risk because there was substantial evidence indicating the insured's **dog attacked a neighbor without provocation**. (August 17, 2016)

In *Johnson v. Roselle EZ Quick LLC*, the **Supreme Court of New Jersey** considered whether a statute allowing a **personal injury protection** insurance carrier to obtain **reimbursement from a tortfeasor's** insurer applied **retroactively**. The court held that the law's amendment does not present any of the factors necessary to rebut the presumption that, as a newly enacted law, it should be applied prospectively. Accordingly, the amendment did not apply to the plaintiff's claims for personal injury that predated the amendment's effective date. (July 27, 2016)

In *Teamsters Local 237 Welfare Fund v. AstraZeneca Pharmaceuticals*, the **Supreme Court of Delaware** addressed whether **third-party payor health insurers (TPPs)** that provided prescription drug benefits to union members **failed to state a claim** under **state consumer fraud laws** that AstraZeneca **falsely advertised** the more expensive **patented** drug, Nexium, as superior to the less expensive **generic** drug, Prilosec, causing the TPPs to overpay for Nexium. The **consumer fraud laws** required that the TPPs be **injured by** or a **victim of** allegedly **false advertising**. The court found that the TPPs could not meet the standard because any harm was **self-inflicted**, as they were **aware** of the false advertising and continued to list Nexium on their formularies and reimburse members for it throughout the several-year-long course of litigation. (April 12, 2016)

In *Erie Insurance Exchange v. Pennsylvania Insurance Department*, the **Commonwealth Court of Pennsylvania** addressed whether the **transactions relating to the retention of service charges and added service charges** by an insurance company violated the standards contained in the **Insurance Holding Companies Act**. The court found that the insurance company's allegations of **impropriety** relating to the transactions did not fall within the Department's **jurisdiction** and are not so complex that they required the special competency of the Department. (January 27, 2016)

In *Contact Chiropractic, P.C. v. New York City Transit Authority*, the **New York Supreme Court, Appellate Division, 2d Department**, determined that an action by an injured claimant to recover **first-party no-fault benefits** from a defendant who is **self-insured** is subject to a six-year **statute of limitations**, since the claim is essentially **contractual**, as opposed to statutory, in nature. (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 *In re: Penn Treaty Network America Insurance Company in Rehabilitation*, the **Supreme Court of Pennsylvania** addressed whether, on a petition seeking **conversion of an insurance company's rehabilitation to liquidations**, deference is owed to the statutory rehabilitator. The court found that under state law, judicial review of a petition for conversion is to be undertaken **with due deference** to the statutory rehabilitator. (July 20, 2015)