SPECIAL REPORT

LARGEST ERISA CLAIMS
01/02/2017

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THE IMPORTANCE OF FIDUCIARY LIABILITY INSURANCE (IT'S NOT JUST ABOUT 401(K) PLANS)

- Fiduciary liability insurance will defend and pay, where required, for settlement and judgments arising out of employee benefit plans that are governed by the Federal ERISA statute.
- The ERISA statute relates to employee benefit plans. The attached claims examples have 99 ERISA claims:

BENEFIT PLANS	# OF CLAIMS
• Health Insurance	17
• Group Life	12
• Group Disability	22
• ESOP	10
• Pension Plans & 401(k) Plans	38
TOTAL	**99**

61 of 99 claims (or 60%) of ERISA claims are for other than 401(k) claims.

- Types of Claims

1.	Hidden Costs	9.	Denial of Life Claim
2.	Autism	10.	Failure to Inform, re: Plan Change
3.	Experimental Treatment	11.	Mishandling Plan Funds
4.	Disability Claim Denials	12.	Plan Termination
5.	Change from Defined Benefit to Defined Contribution	13.	Misappropriation of Funds
6.	Failure to Monitor Fees	14.	Class Action by Former Employees
7.	Imprudent Plan Selection	15.	ESOP Issues
8.	Who is a Fiduciary?		

- Many business people say that they are not concerned about claims against them as the fiduciary of their 401(k) Plan because it is "self-directed."
  - As you can see, in a random sampling of ERISA claims, only 40% of the claims actually relate to 401(k) Plans.

THIS SAMPLING OF BENEFIT PLANS DEMONSTRATES THAT THE MAJORITY OF ERISA CLAIMS RELATE TO OTHER EMPLOYEE BENEFITS SUCH AS GROUP HEALTH, GROUP LIFE, GROUP DISABILITY, AND ESOP CLAIMS.

(See the following descriptions of ERISA / Fiduciary claims.)

DESCRIPTIONS OF ERISA / FIDUCIARY CLAIMS

	Case	Description
1.	**Rochow v Life Insurance Company of N.A.** *2002-Denial of Disability Benefits. Final adjudication 2015.* *$910,629*	**Fiduciary Duty Claim**. Employer forced plaintiff to resign in 2002 due to short term memory loss, etc. whereby he could no longer perform his duties as president. A month later he was diagnosed with HSV-Encephalitis, a rare and severely debilitating brain infection. LINA denied **long-term disability** benefits because his employment ended before his disability began. ERISA has a goal of ensuring that plan fiduciaries act solely in the interest of the participants and providing benefits, not in punishing the defendant, while also having a goal of providing inexpensive and expeditious dispute resolution. Although discovery may slow down litigation in some cases, risk of liability and extensive discovery will act as an incentive to ensure plan administrators act in the interest of the plan participants throughout the claims process. Facts showed that LINA continually ignored its own plan definitions, wrongly denying benefits for 5 years after the initial request. Plaintiff sought to recover an additional award for disgorgement of profits in the amount of $3.8M as damages for the breach of fiduciary duty claim in addition to denied benefits; however, the entire 6th Circuit reversed, based on the claim that the wrongful denial of benefits also constituted a breach of fiduciary duty, absent a showing that the remedy was inadequate. Receiving damages would have resulted in an impermissible duplicative recovery, contrary to clear Supreme Court and Sixth Circuit precedent. Rochow was made whole under § 502(a)(1)(B) through recovery of his disability benefits, attorney's fees and potential recovery of prejudgment interest.
2.	**Kimberly A. Frazier v Life Ins. Co. of N.A.** *Long-Term Disability*	Employee working as a "mail sorter" for a publishers printing company sought to obtain **long-term disability** ("LTD") and other benefits allegedly owed her under an employer-sponsored insurance policy when, at the age of 42, she suffered pain in her back that radiated down both legs, underwent an MRI of her lumbar spine, began physical therapy and later lumbar epidural injections. Her employer's benefit plan administrator had the discretionary authority to deny the claim, which it did.
3.	**Confidential** *Autism Denied Under Group Health*	In an ERISA claim alleging that the plan administrator acted arbitrarily in denying insurance benefits, two families of children with autism brought suit against defendant national insurance company and its subsidiaries in a federal court on behalf of all other similarly-situated families who were denied coverage for applied behavior analysis therapy. The insurer had designated coverage as "experimental."
4.	**CIGNA Corp. v Amara**	CIGNA changed its **pension plan** from a **"defined benefit plan"** to a "cash balance" **defined contribution** plan in 1998. To do this, they converted the previously accumulated old-plan

Change from "Defined Benefit" to "Defined Contri-bution Plan"	benefits to an "opening amount" in each employee's cash balance account. The method for making and calculating this opening amount became a source of dispute. A class of about 25,000 beneficiaries sued.
5. **Tussey v Abb** *401(k) Administrative Fees*	The district court certified the case to be a class action suit and refused to dismiss the case, also ruling that failure to disclose revenue sharing payments to plan participants is not a breach of fiduciary duty, as it is not explicitly required by ERISA or the DOL (Dept. of Labor). Following a 4-week bench trial, favor was found with the plaintiffs, awarding damages of nearly $37,000. Result: $35M verdict against **401(k) plan** fiduciaries, plus $1.7M against provider for improper use of "float" income. **Failure to monitor administrative fees, failures as to fund selection, and misuse of revenue sharing** for non-plan related purposes.
6. **Tibble v Edison Int'l** *401(k) Imprudent Plan Selection*	Facts of the case included allegations of fiduciary breach and prohibited transactions relating to investment funds, revenue sharing and other matters. Verdict was made against **401(k) plan fiduciaries** for using **more expensive share classes**. The Court held that ERISA fiduciaries have a continuing duty to monitor investment options and that plan participants have six years from the date of an alleged violation of that duty to file a lawsuit against the plan's fiduciaries. This case outcome is expected to put more pressure on the employers to regularly review their plans' fees, as well as to negotiate with financial institutions to reduce their fees. This ongoing fiduciary duty means structuring the retirement plans and developing a process to protect the best interests of those beneficiaries which includes monitoring trust investment and removing imprudent ones. Good practices would be to determine and document which parties are responsible for investment decisions, review and update the investment policy statement, follow the policy for ongoing review and monitoring procedures for investment options and fees, consider fiduciary training, keep detailed documentation, and review effectiveness of any outside investment advisor.
7. **Scarangella v Group Health** *Medical Benefits Eligibility*	In a claim for **medical benefits**, the wife of a Village Fuel employee incurred medical expenses. The carrier, GHI, determined that her husband and family **did not satisfy the eligibility requirements** and denied reimbursement.
8. **Leimkuehler v Aul** *401(k) - Who is a Fiduciary*	AUL provided a variable annuity contract platform for plaintiff's **401(k) plan** and received revenue sharing from funds. Plaintiffs and DOL claimed functional fiduciary status for AUL. All 3 theories brought to **establish fiduciary status** for AUL were rejected; i.e., selecting available funds under FAC ≠ fiduciary status; authority over general account ≠ fiduciary authority over mutual funds/revenue sharing; non-exercise of discretion over plan investments ≠ fiduciary status.

9.	**Moon v BWX Technologies** *Denial of Life Ins.*	Plaintiff sued in the Circuit Court for payment of deceased husband's **life insurance** under the company plan when former employer denied claim based on the fact that husband was on LTD and his **termination of employment made him ineligible** for life insurance.
10.	**Porter v Lowe's** *Denial of Death Benefits*	The surviving spouse of a Lowe's employee, who participated in a **death benefits plan,** sued when his wife died in a car crash while driving to work to respond to an alarm. The plan administrator denied the death benefit claim because the plan excluded death sustained "during travel to and from work."
11.	**Graf v DaimlerChrysler** *Disability Denial*	Plaintiff sued in state court alleging that he was discharged in violation of Sect. 510 of ERISA after seeking continued entitlement to **disability benefits** under defendant-employer's benefit plan.
12.	**Peterman v Metro Life** *Failure to Inform of Plan Change*	Plaintiff-wife asserted that defendant-ERISA plan administrator breached its fiduciary duty to her decedent husband by allegedly not informing him regarding a **change in his plan** coverage.
13.	**Hahn Acquisition Corp v Hahn et al.** *Mishandling of Plan Funds*	Plaintiff-corporation brought an ERISA action against **benefit plan** fiduciaries, claiming the fiduciaries **mishandled plan funds**.
14.	**Hamilton et al. v Carell et al.** *Who is a Fiduciary*	Plaintiff-independent **ERISA trust fund fiduciary** sued defendant-**third party administrator** regarding alleged **breaches of fiduciary duties** arising out of certain investment services defendant provided to the fund.
15.	**Briscoe et al. v Fine et al.** *Who is a Fiduciary*	Employees filed a class-action lawsuit against 5 defendant-employer's (Fine) former officers and directors and third-party administrator of its **healthcare plan,** Preferred Health Plan, alleging that plaintiffs **violated their fiduciary duties** imposed by ERISA.

Case	Description
16. **Hoger v Rospatch Corp** *Who is a Plan Fiduciary*	Plaintiff sued defendant-employer for an ERISA violation. Defendant did not have ERISA liability because it was not the plan fiduciary and never knew about the ERISA violation. After a corporate reorganization, defendant terminated plaintiff CEO of one of defendant's subsidiaries. Plaintiff sued for violation of ERISA by company **failing to put stock in his 401(k) plan.**
17. **Miller v Retirement Funding Corp** *Breach of Fiduciary Duties*	Plaintiff was trustee of a **defined benefit plan which received investment advice from defendant**. But, some of the advice was unsound and caused the plan financial losses. The plan was terminated and replaced. Plaintiff sued defendant for breach of fiduciary duties under ERISA and for state law claims.
18. **James et al. v Pirelli Armstrong Tire Corp** *Misled Employee, re: Early Retire-ment Pkg*	Former employer misled plaintiff about **ERISA medical benefits** as part of an **early retirement package.** Federal district court erred by limiting relief to only those individuals who directly asked questions about the benefits and were given misleading information.
19. **Guyan v Professional Benefits Administrators** *Fiduciary Misappropriated Plan Funds*	Four company plaintiffs (Permco, Precision Gear, Pritchard, and HAPCA) had each established an **employee benefit plan** under ERISA funded by a combination of employer contributions and covered employee payroll deductions. PBA would provide the services for the plans. PBA Federal district court ruled that defendant was a fiduciary with respect to plaintiffs' employee benefit plans; therefore, PBA could be sued for breaching its duty as an ERISA fiduciary after it **misappropriated over $1.4M in plan funds** for its own purposes while medical claims remained unpaid. Damages were awarded to each plaintiff.
20. **Richards v GM** *Breach of Fiduciary Duty*	Defendant-employer acting in bad faith **breached fiduciary duties owed to plaintiffs under ERISA** by firing plaintiffs and unilaterally offsetting … non-forfeitable benefits in the **stock option purchase plan**.
21. **Griffin et al. v Flagstar Bancorp, Inc., et al.** *Class Action by Former Employees*	Class-action lawsuit was filed by 2,952 **401(k)** plan participants, all former Flagstar Bank employees, who claimed ERISA duties were breached by **continuing to offer its own stock as an investment option even though the bank was in serious financial trouble.**

No.	Case	Summary
22.	**Hi-Lex Controls, Inc., et al. v Blue Cross and Blue Shield of Michigan** *Hidden Surcharge and Illegal Self Dealing of Fiduciary*	Hi-Lex corporation, on behalf of itself and the Hi-Lex Health & Welfare Plan, filed suit in 2011 alleging that BCBSM **breached its fiduciary duty** under ERISA by inflating hospital claims by as much as 13% with **hidden surcharges**, keeping the markups as additional administrative compensation, then providing false reports that hid the markups.
23.	**Smith, et al. v Provident Bank, et al.** *Trustee Breached Fiduciary Duty – Conversion*	ERISA **benefit plan trustee** breached its fiduciary duty to a plan participant after being **replaced as plan trustee** because it was still a fiduciary because it controlled the plan assets. Six months after participant instructed Provident to purchase shares of Ameritrust Bank **stock,** Provident was removed as trustee for the Plans and was replaced by Society Bank. Weeks later he discovered Ameritrust shares were missing from his account. Provident had transferred the money which represented the purchase price less dividends he had received. However, the **shares had largely increased**. It was disputed as to what he should be compensated because the value of the stock continued to rise. He and the plans filed an ERISA action against Provident for its fiduciary duty as plan trustee and for damages. They also asserted negligence and common law claims against all the defendants for conversion.
24.	**Best, et al. v Cyrus** *Breach of Duty – Failure to File 5500 Forms*	In error, the federal district court ruled that defendant-ERISA **plan trustee** could not be liable for breach of his fiduciary duties when he did **not ensure that contributions and repayments** were made to the plan. Even though he was not specifically directed to act under the plan document, he still breached his fiduciary duties because a trustee has a duty to act in the interest of the plan's beneficiaries. ERISA imposes additional duties on trustees through its incorporation of the common law of trusts.
25.	**Quade v Anderson, et al.** *Plan Sued to Recover Benefits it Paid*	Even though defendants were holding funds owed to plaintiff's **welfare benefit plan**, defendants did not qualify as "fiduciaries" under ERISA. Injured in a hunting accident, defendant's medical expenses were paid by plaintiff's welfare benefit plan. According to the plan, it became subrogated to any damages he received from the tortfeasor. After hiring defendant attorney to sue and obtaining a large settlement, plaintiff wanted the entire amount. Plaintiff has moved for summary judgment. The court must **reject the view that defendants are "fiduciaries" because they had authority over the disposition of plan assets**. Plaintiff may be able to recover the funds under a federal common law breach of contract theory.

	Case	Summary
26.	**Lower, et al. v Albert, et al.** *ESOP Stock Transfer*	Plaintiffs, former managers of defendant-corporation, claimed that individual defendants, directors of the corporation as well as trustees of an employee stock ownership trust, told them that company stock would be put into the **ESOT and ESOP**. Instead, available stock was sold to the individual defendants personally.
27.	**Holsey v Unum Life Ins. Co. of America, et al.** *Disability Denial*	Anesthesiologist Plaintiff sued defendant-employer and insurance company claiming he was wrongfully denied **disability** payments when he became totally disabled due to blindness. He also has diabetes. When applying for disability benefits, he was told there was a **pre-existing** condition exclusion. Plaintiff argued he was misled as to his benefits.
28.	**Van Noord v Advantage Health, et al.** *Dispute was Life Benefit*	Where the amount of **life insurance benefits** defendant-employer agreed to provide plaintiff's husband was ambiguous, defendant must pay plaintiff the greater amount. Where a summary of an ERISA plan is different than the actual plan, the circuit court ruled that the summary may be relied upon by the employee. Where there is an ambiguity in benefit coverage in ERISA plans, the court must construe that **ambiguity in favor of the employee.**
29.	**Grindstaff, et al. v Green, et al.** *Fiduciary Breach, re: ESOP*	Plaintiff-employees and their union sued defendant-corporation and others for **breach of fiduciary duty** under ERISA. Plaintiffs' claims centered around an ESOP.
30.	**Olson v Chem-Trend Inc.** *Claim Against Fiduciary, re: ESOP*	During his employment, plaintiff participated in defendant's employee stock option plan (ESOP) and accumulated 744 shares of stock. After discharge, he asked for **redemption of the ESOP stock**. Defendant used a recent audit to value the stock at $126.58 per share. Eight months later, the president retired and the company was sold. The ESOP stock was sold for $270 per share. Plaintiff sued defendant with regard to the redemption of his stock, believing they assigned an unrealistically low value to his stock and withheld information about the impending sale of the company.
31.	**Wright, et al. v Heyne, et al.** *Breach of Fiduciary Duties*	Plaintiff-ERISA plan trustees sued defendant-investment advisors for breaching **fiduciary duties** when making **investment decisions and charging commissions.**

32. **Judge v Metropolitan Life Ins. Co.** *Life Insurance Policy Dispute, MetLife Denied*	Plaintiff plan participant was covered by his employer's term **<u>life insurance</u>** policy which provided for early payment of benefits if employee became permanently disabled, which was defined by the plan as being unable to do the employee's own job and any other job for which he was fit by education, training or experience. Plaintiff was a baggage handler and ramp agent for Delta Airlines, underwent heart surgery and applied for benefits, not being able to return to any type of work. His treating providers recommended restrictions, but that he was recovering well with no evidence of complications. His doctors advised against returning to work. Key Issues: Was MetLife required to 1) obtain vocational evidence, 2) send plaintiff for an IME, 3) use a doctor, rather than nurse, to review medical files? Answer to all, "No." In 2013, the court found that plaintiff was **<u>not permanently disabled</u>** and that MetLife had no conflict of interest that affected its denial decision.
33. **Gardner v Heartland Industrial Partners** *Former Metaldyne Exec's Sued Metaldyne's Owner and other executives involving SERP Plan*	During the sale of Metaldyne, an automotive supplier, the prospective buyer, Ripplewood, discovered that Metaldyne would owe plaintiffs, former executives, approximately $13,000,000 as a result of the sale, under a **<u>change-of-control provision</u>** in its Metaldyne's **<u>SERP</u>** "Supplemental Executive Retirement Plan." It threatened to back out of the deal. In response, executives persuaded Metaldyne's Board to declare the SERP invalid without notifying plaintiffs. The sale closed a month later. One executive personally collected more than $10,000,000 as a result. Plaintiffs claimed tortious interference with contractual relations. Plaintiffs were not seeking their SERP benefits, therefore they did not have a claim for benefits under ERISA. Rather, they sought damages from defendants, and not from SERP, for defendants' **<u>tortious activity.</u>**
34. **US Airways v McCutchen** *Recouping of Medical Costs Paid*	Injured by a third party's negligent driving in a car accident, plaintiff's employer-sponsored **<u>health benefits</u>** **<u>plan paid his medical bills. Plaintiff retained attorneys, seeking to recover all of his accident-related damages estimated at $1,000,000</u>**.
35. **Bidwell/Wilson v University Medical Center/Lincoln Retirement Services Co.** *401(k) Investment Choices*	Breach of fiduciary duty under ERISA in connection with the transfer of Bidwell's and Wilson's **<u>investments</u>** from a stable value fund to a Qualified Default Investment Alternative was denied. Upon proper notice, participants who previously elected a specific investment could become non-electing plan participants if they **<u>fail to respond to a specific request for an election</u>**. The court found that the method of notice was sufficient because it was "reasonably calculated to ensure actual receipt." Participants who fail to take requested action after having been given notice should not be heard to complain of the consequences.

No.	Case	Description
36.	**Seaway Food Town, Inc. v Medical Mutual of Ohio** *Did Not Act as ERISA Fiduciary During Negotiations*	Seaway alleged that BC/BS breached its fiduciary duties to Seaway by failing to (1) use accurate data to estimate the amount of discounts BC/BS expected to receive from **healthcare** providers, (2) disclose the true nature and extent of the **provider discounts** it actually received, and (3) pass along to Seaway the provider discounts it actually received. Seaway also alleged Ohio common law claims of breach of contract and conversion.
37.	**Libbey-Owens-Ford Co v BCBS of Ohio, et al.** *Restitution of Rebates*	Defendant, BCBS, received claims from **medical providers**, paid them, and had the authority to resolve disputes over coverage and claims. When it paid hospital claims, defendant customarily received a 3% discount or rebate, as well as other rebates when it eliminated any unnecessary charges. Defendant did not pass these rebates along to plaintiff. Plaintiff sued for an **accounting and restitution of the rebates.**
38.	**Mich. Affiliated Health Care System v CC Systems** *Who is a Plan Fiduciary*	Employee was diagnosed with breast cancer, her doctor recommended specific bone marrow transplant with high-dose chemotherapy, **coverage was denied** by defendant-plan administrator (CC Systems) because of the **experimental nature** of the treatment, and claim was referred to plaintiff-employer (Lansing General), who authorized treatment and paid for the treatment. But, when plaintiff submitted its claim to defendant-SLI, SLI denied it because treatment was experimental.
39.	**Hoeberling v Nolan** *Profit Sharing Plan - Dismissed*	Plaintiff sued in his “individual capacity” for defendant’s breach of fiduciary duties in connection with the management of an ERISA **profit sharing plan’s investments**.
40.	**Kuper, et al. v Iovenko, et al.** *Employee Stock Ownership Plan (ESOP)*	Former salaried employee-plaintiffs participated in a **Savings and Stock Ownership Plan** including both a voluntary 401(k) retirement plan and an **ESOP**. Even though the stock contained in defendant-corporation’s employee stock ownership plan (ESOP) declined in value between the sale of a subsidiary and the stock’s eventual transfer to the subsidiary’s benefit plan, the trial court properly found that defendant’s plan administrators did not violate their fiduciary duties by failing to immediately distribute the stock or diversity the stock.

	Case	Summary
41.	**Allinder v Inter-City Products Corp. (USA)** *Disability*	Defendant sprayed plaintiff's workplace with termite pesticide. Plaintiff's adverse reaction to the chemical forced her to quit work. Plaintiff filled out the claimant's section of the **long-term disability benefits** form; however, defendant refused to fill out its section because it believed she was ineligible for benefits. Bypassing defendant, plaintiff was able to receive full disability benefits from the disability insurance provider 4 years later. Despite recovery, **plaintiff sued defendant-employer under ERISA for 1) breach of its duty** to provide requested information about a disability plan and 2) damages for breach of fiduciary duties.
42.	**Sengpiel v B F Goodrich** *Transfer of Retiree's Pension and Welfare Benefits*	When B.F. Goodrich (BFG) spun off its tire division to a new company as a joint venture with Uniroyal Tire Company, it **transferred its retirees' pension and welfare benefits** obligation to the new company. Issues on appeal are: 1) Whether in effecting this transfer BFG violated its **fiduciary duties** under ERISA and 2) Whether the transferred retirees were denied benefits promised to them.
43.	**Dawson, et al. v Detroit Lumber & Building Ass'n Retirement Plan, et al.** *Termination of Employee Benefit Plan – Statute of Limitations applies*	During the seven years or so that plan trustees decided to **terminate its employee benefit plan** and when the actual termination commenced, the Pension Benefit Guaranty Corporation objected to the termination. During those years, other employers contributing to the plan incurred **extra financial obligations**. Plaintiffs sued the plan, defendant-McLeods, and others, alleging violation of ERISA.
44.	**Consumers Energy v Smith Barney Corp. Trust v Comerica Bank** *Breach of Fiduciary Duties*	Defendant-investment firm, SBCT, was under the mistaken impression that plaintiff-plan administrator replaced defendant as an individual plan custodian, **liquidating savings and pension plan** investments. Investments were liquidated and plaintiff was sent the proceeds. Plaintiff says the liquidation was a mistake and that it was only replacing the "general custodian" with Comerica (third-party defendant) and not the individual custodians, such as defendant. Plaintiff sued for breach of fiduciary duties.

45.	**Schaefer v Multibrand** *Indemnity Agreements are Enforceable for Fiduciary Duty Breaches*	In a settled Dept. of Labor claim, plaintiff-corporate directors and trustees were claimed to have breached their fiduciary duties by purchasing company **stock at inflated prices** for employee stock ownership plans. An arbitrator concluded that an **indemnification agreement** was void, disregarding clearly established legal precedent, including that of the Sixth Circuit court, that they are enforceable. Result: Sect. 410(a) of ERISA declares that if there is any provision in an agreement that purports to relieve a fiduciary from responsibility, diminishing its statutory obligations, it shall be void as against public policy. However, Sect. 410(b) provides that **insurance may be purchased to cover a fiduciary's potential liability**
46.	**Tassinere v American Nat'l Ins. Co.** *Director Liability – Breach of Fiduciary Duty*	Plaintiff-agents filed a suit against defendant-directors for breach of fiduciary duty. Plaintiffs appealed the dismissal and alleged that defendant failed to secure certain **pension benefits**.
47.	**Burmania v Hartford** *Denial of Long-Term Disability Benefits*	Plaintiff suffered from multiple objectively verified medical conditions, causing him pain and limiting his ability to walk, stand, squat, and bend. The issue on appeal was whether those problems prevented him from performing sedentary work or not. Plaintiff contended that the denial of his claim for **long-term disability** benefits was arbitrary and capricious because defendant did not have any rational basis for ignoring the opinions of his three treating physicians in favor of the flawed opinions of two non-treating physicians which defendant paid for in order to review his claim for disability benefits.
48.	**Wohlfert v Sealed Power Technologies Accidental Death & Dismemberment Plan** *When does Life Insurance Benefit Go Into Effect?*	Plaintiff's husband was enrolled in the $100,000 **life insurance coverage benefit** plan provided for employees by defendant-SPT. Only **active workers** could receive benefits. Laid off workers were eligible for the benefit if they paid the premiums themselves. When plaintiff was laid off he did not continue payment of the premium. The parties dispute whether he was given information about the payment option. Though he was scheduled to return from layoff of a specific day, the personnel office called him on that day, extending his layoff for another week. Plaintiff claims defendant told him that his benefits would go into effect during that week. Defendant denies this. **Plaintiff drowned on the morning he was to return back to work**, just hours before his shift began. Plaintiff sought insurance benefits claiming her husband had become an active worker on that day. Defendants refused to provide the insurance, arguing he had not become an active worker until he actually resumed working.

#	Case	Summary
49.	**Wernimont v Unum Ins. Co.** *Long-Term Disability*	Not long after an auto accident injury, plaintiff began to report a number of neurological symptoms and his employer noticed his pace and quantity of work decreased during his contract term at Fiduciary Solutions. Six months later he was informed his contract would be terminated. Plaintiff submitted a **long-term disability** claim to the defendant who denied the benefits because plaintiff had not 1) sustained the necessary 20% loss in earnings required by the definition of disability and 2) plaintiff had not demonstrated lost income due to sickness or injury.
50.	**Gregg, et al. v Transp. Workers of America Int'l, et al.** *Breach of Fiduciary Duties Regarding Insurance Premiums*	Plaintiff-members believed defendant-union **breached its fiduciary duties** regarding **insurance premiums**. Plaintiffs participated in questions/answer sessions regarding the policy. Defendants distributed bulletins as well as question/answer sheets. Defendants' answers to questions were extraordinarily misleading or outright false. Sufficient evidence was provided that showed **incomplete and inaccurate information** was given.
51.	**Taveras v UBS AG** *401(k) Company Stock Investment*	This 2nd Circuit Court case involved two UBS **401(k) plans** that held UBS stock as an investment. The price declined over 74% from trading high. "*Moench"* presumption of prudence upheld for plan that stated that UBS stock "shall" be an investment option. No **presumption of prudence** for plan that did not require or strongly encourage company stock investments.
52.	**Harris v Amgen, Inc.** *401(k) Company Stock Investment*	A 9th Circuit Court case involved two Amgen **401(k) plans** that held company stock as an investment. There was a price decline due to publicity of drug safety concerns. There was no presumption of prudence because plans provided only that they "may" provide for a company stock fund.
53.	**Andochick v Byrd** *Retirement and Life Insurance Plan Beneficiary Payments*	ERISA preempted a state court order requiring Andochick to turn over benefits received under ERISA **retirement and life insurance** plans owned by his deceased ex-wife. ERISA obligates a plan administrator to pay plan proceeds to the named beneficiary, here Andochick. The only question before the court was whether ERISA prohibits a state court from ordering Andochick, who had previously waived his right to those benefits, to relinquish them to the administrators of his ex-wife's estate.
54.	**"In-House" Plan Litigations (3)**	3 Cases, re: Retirement Plan Investment. Plaintiffs **pulled fund providers under ERISA fiduciary umbrella via their own plan sponsorship**. **Conflict of interest** equaled less deferential court review of fiduciary conduct. Satisfaction of **PT exemption** unequaled prudent

401(k) Mutual Fund Choices Benefit Company	fiduciary conduct. 1) Bilewicz v FMR (Fidelity): The claim was that Fidelity's **officers chose high-fee Fidelity mutual fund products to benefit Fidelity**. Evidence indicated that they repeatedly added funds to the plan with little or no track record, the plan's fees were very high for a multi-billion dollar plan, and that they failed to follow **sound fiduciary practices** for multi-billion dollar plans. Plaintiffs sought to make this case a class action. 2) Knee v JP Morgan: This ERISA case concerned fairly complex retirement plan investment fund structures. Ultimately, the case was a simple scheme of **self-dealing**. Defendants abused their fiduciary responsibilities to acquire control from another company of a "stable" retirement fund by first driving it into the ground and then acquiring its asset management and participants at no cost. In a 72-page Arbitration Award against JPM and in favor of that company, American Century Corporation, the arbitrators found that JPM had committed the **wrongful conduct** alleged and awarded American Century in excess of $132M in damages. 3) Krueger v Ameriprise: Plaintiffs alleged that Ameriprise and plan fiduciaries **breached their fiduciary duty** under ERISA with respect to the Ameriprise 401(k) plan by using Ameriprise-affiliated funds in the fund menu and that these funds charged excessive fees or underperformed relevant benchmarks. Other issues involved the use by "in-house" plans of financial services companies of **"in-house" funds**. The issue regarded the application of ERISA's prudence standard to the selection and monitoring of funds in a 401(k) plan fund menu and the application of the rules laid out in that regard.
55. **Plambeck v The Kroger Co.** *Medical Claim Denied*	Plaintiff asserted a claim for money contending a right to equitable relief to be reimbursed for a **denied medical claim** for the amount she would have been reimbursed if her medical claim had not been denied under her health insurance.
56. **DiFelice v U.S. Airways** *401(k) Savings Plan – Stock Drop case*	Participants in US Airways' **401(k) Savings Plan** filed a case against US Airways and the plan's directed trustee, alleging a **breach of fiduciary duties** by 1) failing to provide complete and accurate information regarding investments in USAG stock, and 2) including USAG stock as an investment option in the plan in light of USAG's directors and officers liability financial condition.

57.	**Edgar v Avaya, Inc.** *401(k) Plan's Failure to Disclose - Stop Drop case*	3rd Court of Appeals affirmed dismissal of an ERISA stock drop case. Plaintiffs alleged that plan fiduciaries **breached their duties of prudence and disclosure** by offering Avaya common stock as an investment option in Avaya's **401(k) plans**. They alleged the price of the stock was artificially inflated by inaccurate earnings forecasts and that fiduciaries were liable for failing to disclose material adverse facts that eventually led to a 25% decline in the stock's value.
58.	**In re Schering-Plough Corp.** *ERISA Litigation re: Retirement Plan Disclosures*	This case relates to discerning when **financial representations in SEC filings** give rise to a fiduciary claim under ERISA. In general, **statements made in communications that are required only by federal securities** laws, such as SEC filings, do not constitute fiduciary communications for purposes of ERISA liability. However, when financial statements are incorporated by reference into plan documents or when plan participants are encouraged to review the company's SEC filings, those statements may be deemed to have been made in a fiduciary capacity. In this case, the SPD (Summary Plan Description) merely advised participants that they could obtain copies of prospectuses and financial reports upon request, but did not expressly incorporate the SEC filings or encourage reliance by participants. Result: The court, nevertheless, held that the SPD **impliedly incorporated the filings.** A $12.5M settlement was reached in this case, accusing the pharmaceutical giant of mishandling its **retirement plan** by **improperly steering employees into buying company stock.**
59.	**O'Neil v O'Neil** *Life Insurance Beneficiary, Not Removed*	Decedent never removed his wife as the beneficiary on his ERISA-based **life insurance policy**. Defendant-wife did not violate a separate-maintenance judgment by making a claim for the proceeds upon his death because under ERISA, the judgment was insufficient to extinguish her rights to the proceeds.
60.	**Constance O'Neil v Unum Life Ins. Co. of America** *Disability Benefits Declined*	In Plaintiff's Motion to Remand, plaintiff maintained the case was improperly removed from the Cumberland County Superior Court because her sole count alleges a **breach of contract** claim governed by state law. Defendant asserted the claim is pre-empted by ERISA. Case History: Originally hired as an associate in a law firm, plaintiff became a partner and shareholder of the firm. Years later, the law firm submitted a long-term disability claim on behalf of plaintiff, who did receive **disability benefits** for 1 ½ years, until defendant notified her by letter that she was no longer eligible to receive disability benefits. Plaintiff appealed; defendant denied her appeal following its review. Plaintiff initiated suit and asserted breach of contract against defendant in state court.

61.	**Krohn v Huron Memorial Hospital** *Disability Benefits & Duty to Inform*	Registered nurse-plaintiff suffered a closed-head injury in a car accident resulting in permanent disability, making her eligible for **both short- and long-term disability benefits** for a period of 23 years. Defendant's personnel assistant discussed options with plaintiff's husband and said 1) employees would normally opt for the car insurance and that they normally paid a higher rate, and 2) they couldn't collect any money from the short-term disabilities if they were collecting it from other companies. They turned in the completed short term disability plan, explaining that they opted to collect the higher "lost wage" benefits under her auto insurance policy. Her hospital, however, never filed the form with the insurance company. Three years later the auto insurance benefits were exhausted so they filed a long term disability claim which was insured by UNUM, but it was denied because it had not been filed. The filing date must be by the end of the initial 180-day waiting period. They had not been notified of any of this. Krohn sued for breach of fiduciary duty, and the district court granted summary judgment in favor of Huron. Krohn appealed and the Court of Appeals agreed with Krohn: Her husband's failure to specifically request information about long term disability benefits did not relieve Huron of its fiduciary duty to provide complete and accurate information about all her disability options. Also, Huron failed its fiduciary duty to notify UNUM of her claim after returning the completed short term form.
62.	**Muhammad v Ford Motor Co.** *Benefit Plan Participant Negligence in Updating Eligibility Information*	Plaintiff-employee participant in **benefit plan** was negligent in providing **updated eligibility information** by way of documentation when asked by employer-defendant four times to do so. As there was no proof in the way of income tax returns or proof of residency of four of his dependents, defendant chose to deduct payments from the plaintiff's paycheck as reimbursement for benefit payments that were made on those dependents' behalf. Although the plaintiff provided a divorce judgment indicating that he was obligated to provide health benefits for one of his daughters until she turned 18, the tax returns he supplied did not list that daughter as a dependent. As a result, the court agreed that the defendant did not act arbitrarily or capriciously by determining the daughter was ineligible for coverage after she turned 18. The court also held that the plaintiff failed to exhaust his administrative remedies with respect to the three remaining audits which were never appealed internally before filing suit. It is a recent trend that with the rising cost of health insurance, more and more employers that offer some type of employee benefit plan are conducting dependent eligibility audits as a way to control costs by confirming eligibility through some form of documentation rather than simply accepting an employee's word.
63.	**Peshke v Lincoln Life & Annuity Co. of N.Y.** *Disability Claims*	Human Relations VP-Plaintiff submitted a short-term **disability claim**, due to chronic neck/back pain, to defendant-employer listing his work restrictions for the next 2 months. Defendant approved and, subsequently, extended payments for another month and notified plaintiff if further extension was requested, he would need to provide current medical documentation including medical records and physical therapy notes. In evaluation of the April – July medical records,

	& Exhaustion of Admin. Remedies before Appealing	defendant noted “overall improvement” in plaintiff’s condition, increased range of motion in all directions and decreased neck pain. So, defendant sent a letter to plaintiff that no benefits would be paid after July 28 because the medical documentation failed to support restrictions that would prevent him from working in his occupation as a VP, therefore, failing to satisfy the plan’s definition of “total disability” which requires the insured not be able to perform each of the main duties of his own occupation.
64.	**Boyle v BCBS of N.C.** *Health Care Benefits Denied*	The father and legal guardian of a minor child suffering from autism (ABA) seeks to recover full **health care benefits** from defendant Continental Automotive Welfare Benefits Plan who refuses to provide or allow for coverage for a scientifically validated and beneficial treatment for **autism**, despite the State of North Carolina’s finding that ABA is not an experimental treatment.
65.	**Karen McClain v Eaton Corp. Disability Plan** *Disability Benefits (ERISA)*	An assembler with Eaton Corporation suffered a back injury on the job. She had purchased the highest level of **long-term disability** insurance which was designed to replace 70% of her monthly base pay. She received disability benefits during the first 24 months under the First Tier of the Plan’s coverage which defined her disability as being “totally and continuously unable to perform the essential duties of your **regular**” job. The Second Tier coverage, however, provides coverage if “you are totally and continuously unable to engage in **any** occupation . . .”
66.	**Haviland v Metropolitan Life Insurance Co.** *Retiree Life Insurance Benefits / GM Bankruptcy*	GM provided its salaried retired employees with **continuing life insurance**. As part of its re-organization, GM reduced the amount of life insurance to $10,000. The retirees sued MetLife based on letters received saying, “this life insurance remains in effect, without cost to you, for the rest of your life.” 1) Because the GM plan and summary plan description both adequately reserved GM the right to amend, reduce, or end the benefit, the promissory estoppel claim was rejected because the **“reservation of rights” language** was unambiguous. The letters were merely a description of the retirees’ current benefit; not a statement about future benefit. 2) The breach of fiduciary duty claim was also rejected because the information was a **truthful statement of the retirees’ current benefit**. 3) The retirees’ claims that MetLife had breached the GM plan’s terms and claims of unjust enrichment and for equitable restitution were also quickly rejected.
67.	**James v Liberty Life Assurance Co. of Boston** *Disability Claim*	As a passenger rear-ended by a truck, a 55-year old female buyer for DTE Energy initially sustained arm and back pain and later, mental health treatments for depression and posttraumatic stress disorder. Her claim for **disability** benefits was denied with defendant claiming that plaintiff failed to provide objective evidence that her condition precluded her from performing her job.
68.	**Kathy Braun v Sun Life**	Nemaco employee died three years after he began paying for Optional Group Life Insurance through payroll deductions. At the time of his death he was entitled to $100,000, although he was

	Assurance Company of Canada and NEMACO *Employer Failed to Process Employee's Request for Optional Higher Life Benefit*	only paid $40,000. Plaintiff's complaint is based on the ERISA and federal common law regarding **breach of the terms of an employee group benefit plan** to provide certain life insurance benefits in the amounts and at the coverage levels promised and for recovery of damages, costs, and attorney fees incurred. Plaintiff requests full benefits, disgorgement of profits or gain, reasonable attorney fees, and an order for defendants to disclose plan documents and internal documents.
69.	**Plan Participants v ABB Inc.** *Fiduciary Liability (Excessive 401(k) Plan Fees)*	In one of the first 401(k) fee cases to go to trial, ABB was ordered to pay $35,200,000 and Fidelity Investments to pay $1,700,000 in a suit over ABB's 401(k) plan. The judge said ABB and Fidelity **violated their fiduciary duty** to employees and retirees by, among other things, "selecting more expensive share classes . . . when less expensive share classes were available." Revenue-sharing payments generated by ABB's 401(k) plan subsidized other services that Fidelity provided to ABB. It was to ABB's benefit that **opaque revenue sharing** was used rather than hard dollar fees which were clearly visible to the participants.
70.	**Cultrona v Nationwide Life Ins. Co.** *Life Benefits*	Plaintiff's decedent applied for **accidental death benefits** from her insurer, Nationwide, when her intoxicated husband returned home, apparently passed out and died from positional asphyxiation and acute ethanol intoxication. The federal district court correctly ruled that an intoxication exclusion precluded plaintiff's claim for accidental death benefits. In a denial letter for plaintiff's claim, the explanation indicated "the loss is precluded from coverage by Exclusion 12" although, unfortunately, the letter cited an earlier version of Exclusion 12: "The *Covered Person* being deemed and presumed, under the law of the locale in which the Injury is sustained, to be driving or operating a motor vehicle while under the influence of alcohol or intoxicating liquors." In a letter seven days later, StarLine acknowledged the erroneous reference to an earlier version of Exclusion 12 and further explained it was amended to remove the reference to "driving or operating a motor vehicle." The court properly assessed the insurer a statutory penalty of $55 per day (total, $8,910) for its delayed response to plaintiff's written request to furnish a copy of the insurance policy.
71.	**Nilratan Javery v Lucent Technologies Long Term Disability Plan** *Disability*	As a software engineer employee of Lucent, Plaintiff participated in its **long-term disability** plan (the administration of the Plan was delegated to a third party, CIGNA) which is offered to those who meet its defined requirements for eligibility. While plaintiff's work was fast-paced and involved supporting Lucent employees and consultants around the clock, in excess of 70-75 hours per week over 5-6 months straight, plaintiff developed back pain in 2002 and he sought treatments until his doctor advised he stop working in 2005. He then received short-term disability benefits for 26 weeks. Plaintiff's denial from the administrator to begin receiving long-term benefits in 2005

	brought him to filing Chapter 13 personal bankruptcy in 2007. In 2009 plaintiff filed a complaint in the U.S. District Court regarding his denial of benefits being in violation of ERISA.
72. **Ruff v Ruff & Operating Engineers' Local 324 Pension Fund** *Retirement Benefits*	In December 1989, decedent while married to defendant, retired and began receiving benefits from the Pension Fund which provided for surviving spousal benefits. They divorced in 1993 and entered into a consent agreement which was incorporated into a divorce judgment. Verbage laid out the pension benefits. In 1997 the decedent married plaintiff and in 2011 he executed a beneficiary election form awarding plaintiff "any death benefits" that he was entitled to from the Pension Fund. "Surviving spouse benefits" were not referenced. The decedent passed away shortly after executing the beneficiary form, and plaintiff received certain death benefits from the Pension Fund. Plaintiff also applied for monthly surviving spouse benefits, but the Pension Fund denied her request, stating that plaintiff was not the spouse at the time of the decedent's retirement, as required by section 1.22. However, because defendant was the decedent's spouse at the time of his retirement, the Pension Fund paid defendant monthly surviving spouse benefits of $521.08. Consequently, plaintiff filed the instant action against defendant, alleging **breach of contract**, **promissory estoppel**, **and unjust enrichment**, **and sought declaratory relief and imposition of a constructive trust**.
73. **Joseph Moyer v Metropolitan Life Ins. Co.** *Fiduciary; Disability Denial*	Solvay America employee, Moyer, participated in its ERISA-governed Long Term Disability Plan. He applied for **disability benefits** in 2005. MetLife initially approved the claim, but reversed its decision in 2007 after determining Moyer retained the physical capacity to perform work other than his former job. Moyer filed an administrative appeal, and MetLife affirmed the revocation of benefits. Moyer's adverse benefit determination letter included notice of the right to judicial review but failed to include notice that a **three-year contractual time limit** applied to judicial review. The Summary Plan Description failed to provide notice of either Moyer's right to judicial review or the applicable time limit for initiating judicial review. In 2012 Moyer sued MetLife, seeking recovery of unpaid plan benefits. The district court concluded that MetLife provided Moyer with constructive notice of the contractual time limit for judicial review. Moyer appealed, requesting **equitable tolling**. Being unaware of the contractual time limit, Moyer filed his complaint late. He asked the U.S. Court of Appeals to toll the filing deadline, alleging that MetLife **breached its obligations** under ERISA by failing to include in his benefit revocation letter the time limit for seeking judicial review. The court agreed that on the date his revocation letter was sent, it was required to include the time limit for judicial review. ERISA § 1133 governs adverse benefit determination letters.
74. **Smith v Continental Casualty Co.** *ERISA, Disability*	The federal district court's upholding of an insurance company's denial of plaintiff's application for **short-term disability benefits** was vacated because the denial was arbitrary and capricious. The record shows that in denying the claim, CCC, the plan administrator, incorrectly asserted in a letter that plaintiff had returned to work when, in fact, this was not true. In addition, there were unexplained discrepancies in the number of pages of medical records sent for review and the

	actual number of pages reviewed. Plaintiff's treating physician was not interviewed, nor was plaintiff seen by an independent examiner. Finally, CCC never obtained plaintiff's job description. In summary, the process CCC used in making Smith's disability determination rendered a decision that was arbitrary and capricious. The case was vacated and remanded.
75. **Gaylon Hayden v. Martin Marietta Materials, Inc. Flexible Benefits Program** *ERISA Disability*	Gaylon Hayden appeals from two adverse judgments in her suit for **long-term disability benefits** under ERISA against her former employer, Martin Marietta Materials, Inc. She applied for benefits under their long-term disability plan, which was insured and administered by Liberty Life Assurance Company of Boston ("Liberty"), when she stopped working as an office manager on January 4, 2010. Her claims are related to physical- and mental-disability benefits. Any employee that desires benefits must have proof that they are disabled beyond the ability to perform their job adequately, disabled being defined under the Plan as being "unable to perform the Material and Substantial Duties of his Own Occupation" as well as "unable to perform the Material and Substantial Duties of Any Occupation." Hayden suffers from many physical ailments, which exacerbate her mental issues. Her primary physician considers her condition should be met with total permanent disability. Her file was then referred by Liberty to two other physicians for review. Both did not see any specific impairment, brushing off her mental disabilities to general fatigue and weakness. Liberty then denied Hayden's claim for benefits seven months after she left her job. Hayden then brought suit under ERISA. The district court denied her physical-disability claim, but opined that Liberty's review of Hayden's mental-health records was faulty. After another review by another doctor, the court affirmed Liberty's denial of benefits. Hayden's arguments assert that Liberty and the district court ignored evidence from her primary care physician, with Liberty not being seen as arbitrary or capricious in these conclusions. In relation to these findings, the remand of the court of another doctor in the review of Hayden's records was found to be inadequate in the proper definition of mental disability as well as that Hayden's mental health issues were made with her job in mind. In the end, the district court remanded Hayden's claim of mental disability and required Liberty to award benefits consistent with the terms of the Plan and for such incidental relief as the district court finds appropriate.
76. **Louis Leonor v. Provident Life and Paul Revere Life** *Disability*	A dentist suffered an injury and in March 2009 had a cervical spine surgery that prevented him from performing dental procedures. The **dentist owned 3 disability income insurance policies**. He claimed benefits for total disability and in July 2009 both Provident and Paul Revere began paying Total Disability benefits. After his injury, he was still able to manage and operate the other businesses he owned, as well as more aggressively seek out investment opportunities in terms of purchasing dental practices, successfully increasing his overall income. The insurers made payments until September 2010 when the insurers decided that Leonor was engaged in another gainful occupation, managing his business. In August 2011, the insurers stopped paying Total Disability benefits under the 2 lesser policies. Each provided "total disability benefits" if he became

	unable to perform "the important duties of his Occupation." The Court of Appeals ruled in favor of the insured and that the policy language did not necessarily mean "all the important duties." Reasonable interpretations of policy language and time spent performing the various portions of his job duties were considerations. A Court of Appeals opinion reversed the district court's denial of penalty interest with instructions to modify the award to include penalty interest under that statute.
77. **Farmington Hills Employees Retire-ment Sys v Wells Fargo** *Investment Fiduciary*	Under its securities lending program, Wells Fargo Bank lent its clients' securities to third parties. In turn, the borrowers deposited cash collateral to secure the lent securities' return; Wells Fargo then invested the cash collateral and split the proceeds with the clients. The invested cash collateral suffered losses which plaintiffs claimed came despite Wells Fargo's assurance that the investments would be safe and conservative. The class action settlement will be shared by approximately 100 pension funds, corporations, insurance companies and others who participated in the **Bank's securities lending program**. Settlement amount, $62M.
78. **Bear Stearns Cos Ins Securities** *Pension Plans*	A $294.9M settlement against Bears Stearns, former officers and directors, and former outside auditor was reached due to **misrepresentation** of its exposure to the subprime mortgage lending crisis before its collapse. Although billions of dollars in value of Bear Stearns' stock was lost during the class period of Dec. 14, 2006 to March 14, 2008, the class members supported the verdict because of the case's complexity, the amount of discovery completed, the difficulty of pinpointing damages, and the challenge of maintaining a class action for a protracted period. Defendant Deloitte & Touche, which certified Bear Stearns' 10-K and other filings, is responsible for paying $20M to settle claims it ignored red flags about Bear Stearns' alleged wrongdoing. This case reflects the influence of major institutional investors such as the Michigan public pension funds. The class was led by lead plaintiff, State of Michigan Retirement Systems, in the multidistrict litigation, which invests on behalf of Michigan public school employees, state employees, state police and state judges. The beneficiaries of the **state pension funds** total about 563,500 people and include 1 in 18 Michigan residents. The state retirement systems bought 494,600 shares of Bear Stearns common stock and sold 11,600 during the class period. It lost about $62M when the firm collapsed. The settlement is one of the **top 40 largest settlements** since the passage of the PSLRA and far above the average and median recoveries of similar credit-crisis cases.
79. **American Int'l Group Inc., 2008 Securities Litigation** *Pension Plans*	A $970.5M settlement was reached for American International Group Inc. (AIG) shareholders resolving claims they were misled about its subprime mortgage exposure, leading to a liquidity crisis and $182.3B in federal bailouts. This is one of the **largest class action settlements** to come out of the 2008 financial crisis. No criminal or regulatory enforcement actions were ever pursued. The settlement amount was very substantial and shareholders would face significant risk if they continued to litigate instead of settling. The settlement covers investors who bought **AIG securities** between March 16, 2006 and Sept. 16, 2008, when the company received its first

		bailout. Investors led by the State of Michigan Retirement Systems, which oversees several state pension plans, accused AIG of failing to disclose the risks it took on through its portfolio of credit default swaps and a securities lending program. They said the failures led investors to buy stock and debt they otherwise would not have bought, resulting in billions of dollars in losses. A government rescue in 2008 led taxpayers to take a nearly 80% stake in the New York-based insurer.
80.	**Marie C. Kellow v Lincoln Financial Group** *Disability*	Plaintiff Kellow became disabled as a result of fibromyalgia and sued Lincoln regarding **long-term disability benefits** denial through employer, Hospice of Michigan. Lincoln had approved short-term benefits and initially approved her claim for long term; however, later notified her that her benefits were being terminated. She appealed the decision, but it was denied. During the appeal, various documents were requested from Lincoln, including the Policy and the Summary Plan Description (SPD). The SPD, however, was not furnished until 11 months after the request. Kellow claimed she was entitled to an award of statutory damages based upon Lincoln's failure to furnish the SPD. The Policy did not identify the Plan administrator or the Plan sponsor; however, the SPD did identify Hospice as both the Plan administrator and Plan sponsor, and also that Hospice is the designated agent for the service of legal process for the Plan.
81.	**General Retirement Sys of City of Detroit v Onyx Capital Advisors LLC** *Pension mismanagement; Conversion*	2014: Two Detroit pension funds and the Pontiac pension fund entered into a partnership with Roy Dixon to invest monies in a limited partnership. Following a period of due diligence, these funds had invested more than $23M with the Onyx Fund between 2007 and 2009. Plaintiffs argued that **pension funds were mismanaged**, with substantial portions of it converted by a number of the defendants to their own benefit through a fraudulent scheme. Defendants had directed the majority of the funds earmarked for other investments to Dixon's friend, Michael Farr, and his Second Chance Motors family of companies; also, the taking of impermissible management fees and using investment funds to build a multimillion-dollar Atlanta residence for Dixon. The retirement systems were able to get preliminary injunctive relief to prevent the spoliation of evidence and gain access to Onyx's Detroit offices. Following substantial document and deposition discovery and dispositive motion practice, judgment was entered in favor of the funds and against Onyx, the Second Chance Motors entities and Farr, in the combined amount of $119,099,721, exclusive of attorney fees and taxable costs. In 2015, Dixon, who embezzled $3.1M from Detroit and Pontiac pension funds, was sentenced to federal prison, having paid $244,500 in bribes to at least 7 Detroit and Pontiac former pension officials, while pitching a business deal that cost the 3 pension funds their entire investment of $23.8M. The Detroit pension fund lost more than $95M in a series of corrupt deals awarded to businessmen who bribed officials with cash, trips, free drinks and other valuable items.
82.	**Raymond Shaw v AT&T Umbrella Plan No. 1**	As a customer service representative for Michigan Bell, Shaw, 39, stopped working as a result of chronic neck pain. He was covered under the AT&T Midwest Disability Benefits Program. STD benefits were approved, but when he was informed that the STD benefits would expire, he began

	Disability	the process for **LTD benefits**. He did not qualify. The plaintiff sued AT&T for long-term disability (LTD) denial. The district court had granted summary judgment to the Plan and found it had properly denied benefits. However, the U.S. Court of Appeals reversed this judgment and found the Plan acted **arbitrarily and capriciously** in denying LTD benefits. Shaw demonstrated that he was denied benefits to which he clearly was entitled; therefore, the case was remanded to the district court and directed to enter an order awarding Shaw LTD benefits. The Court of Appeals had concluded that the Plan had ignored favorable evidence submitted by Shaw's treating physicians, selectively reviewed evidence that it did consider from treating physicians, failed to conduct its own physical examination, and heavily relied on non-treating physicians. The Plan had also made a factually incorrect assertion that Shaw had not submitted specific measurements of range of motion. It also ignored a doctor's residual-functional-capacity questionnaire which had been submitted as part of Shaw's appeal and concluded that Shaw could perform sedentary work. A plan cannot reject summarily the opinions of a treating physician but must, instead, give reasons for adopting an alternative opinion. The Plan also ignored favorable evidence from Shaw's treating physicians by failing to make a reasonable effort to speak with them; instead, those physicians were given only 24 hours to respond before they made their disability decisions. Finally, this selective review of the administrative record in justifying a decision to terminate coverage was arbitrary and capricious. The Plan's decision-making process was unquestionably flawed. Objective medical evidence show that Shaw is disabled, unable to sit or stand for more than 30 minues and has to lie down for an hour to recuperate.
83.	**Laura Waskiewicz v Unicare Life** *Long-Term Disability*	Plaintiff Waskiewicz worked for Ford Motor Co. as a product design engineer from 1990 until Oct. 26, 2010. She subsequently sought **long-term disability** benefits. Unicare serves as the claims processor for the Plan and did not grant the benefits because she had already been terminated by Ford when she sought those benefits. The court reversed the decision. Plaintiff suffers from Type-1 diabetes, major depression, and gender identity disorder (she was formerly known as David Waskiewicz). Absent for more than 5 consecutive workdays, plaintiff did not inform Ford within the five-day required period. Rather, her father notified Unicare of the disability claim on behalf of his daughter in December. Her parents had lost contact with her on Oct. 15, came to check on her weeks later, and found her barricaded in her home. A human resources employee indicated she sent a certified letter to her on Nov. 18, 2010 informing her that her employment with Ford had been terminated because of her failure to report to work or to provide satisfactory medical or other documentation to justify her absence. Plaintiff signed for the letter on Nov. 23, 2010. Ford averred that she was fired under the '**5-day quit rule**.' Plaintiff did not seek medical help until Nov. 24. The doctor returned a disability certificate on Dec. 13. Since plaintiff had not been treated between Oct. 24 and Nov. 24, her treatment was untimely as far as long-term benefits were concerned. The court decided that rubber-stamp decisions by plan administrators were unfair. The plaintiff was a Covered Employee at the onset of her disability, and thus entitled to benefits. Failure to comply with the notification deadlines was understandable since she was suffering from severe mental

illness. Ford's termination and denial of disability benefits was found to be inconsistent with the spirit of employer-provided health care benefits. In fact, the Plan mentions, 'unless the Participant is Disabled on that date.' The spirit of ERISA is designed to protect employee benefits, not subject them to arbitrary termination. Unicare's denial of benefits was arbitrary and capricious. Plaintiff will be given the opportunity to show that her alleged failure to comply with requirements of the Plan were due to the very disability for which she seeks benefits.

84. **Pfeil v State Street Bank**

ESOP imprudence

A bank's decision to keep buying General Motors stock for plaintiff's Employee Stock Ownership program and **not divest its GM holdings** while market conditions declined was **not "actionably imprudent"** under the Employee Retirement Income Security Act. ESOPs are designed to invest primarily in qualifying employer securities rather than to diversity across securities of many companies. Plaintiffs, prior to GM's most recent financial difficulties, elected to invest in the GM **ESOP**. State Street Bank served as fiduciary of certain pension plans, including the Common Stock Plan for employees of GM. The Plan lost money in 2008, but the bank declined to stop buying GM stock until Nov. 8, 2008, and did not divest the fund of GM stock until March 31, 2009. A week later, Pfeil filed suit against State Street, claiming that its investment decisions to continue to buy and also to decline to sell GM common stock during certain dates in 2008 were actionably imprudent under ERISA. In 2010, the district court dismissed the suit on State Street's motion, applying the presumption of prudence to the behavior of ESOP fiduciaries. On Feb. 22, 2012, the 6th U.S. Circuit Court of Appeals reversed, holding that the presumption of prudence did not apply earlier than the summary-judgment stage of proceedings. On remand, the parties agreed to certify a class. The Class Period extended from July 15, 2008 to March 21, 2009. After class certification, State Street moved for summary judgment. The district court, applying the presumption of prudence at the summary-judgment stage, granted the motion. Pfeil timely appealed. In evaluating State Street's conduct at the time it occurred, the mere fact that GM's stock value decreased after certain dates did not affect their judgment. To fulfill its responsibilities, State Street discussed GM stock scores of times during the class period. State Street's managers repeatedly discussed at length whether to continue the investments in GM that are at issue in this case. State Street's Independent Fiduciary Committee held more than 40 meetings during the Class Period of less than 9 months to discuss whether or retain GM stock. At those meetings, bank employees discussed the performance of General Motors, both its stock and its business, and factors that may have affected that performance. State Street's experts opined that State Street's process for monitoring GM and other stock was prudent; and other experts – fiduciaries of other pension plans and non-pension plan investment funds – decided, like State Street, to hold GM Common Stock on each of the four 'imprudent dates' chosen by Pfeil. Pfeil failed to demonstrate a genuine issue as to whether State Street satisfied its duty of prudence. The bank's actual processes demonstrated prudence, as well as the decision of other expert professionals both to invest and not to divest on or near the dates that State Street made those decisions. The nature of those decisions was reasonable.

85. **Vella v Adell Broadcasting Corp.** *ERISA, Disability*	Plaintiff's decedent Robert Vella worked for WADL Channel 39 as an account executive in sales. Just days following the renewal of his health insurance, he suffered a heart attack and later learned he had bladder cancer, as well. While in the hospital, WADL owner, Kevin Adell, ordered that Vella be re-categorized as an exempt independent contractor without benefits. When Vella discovered his insurance had been cancelled, he made a written complaint and was terminated minutes later, which plaintiff alleged was retaliation. WADL disputed plaintiff's unemployment until the COBRA window closed. Vella was unable to afford insurance and suffered severe complications, ultimately dying mid-litigation. An expert testified that prompt treatment of the bladder cancer that killed Vella had a 90% cure rate. The case was pleaded as an ERISA and ADA discrimination and retaliation case, with pendent claims under the Persons With Disabilities Civil Rights Act and various state common law theories including fraud, silent misrepresentation and unjust enrichment. Vella's daughter was also considered as loss of consortium. The case settled for $1.3M.
86. **Van Loo v Cajun Operating Co.** *Life Ins., Breach Of Fiduciary Duty*	In 2007, when Donna Van Loo began working full time at Church's Chicken, she opted for supplemental life insurance coverage that would equal two times her salary. Deductions for the premium were then taken from her paycheck. Later that year, she again submitted a change form to increase coverage to three times her salary. Three years later, she submitted another enrollment change form to increase it to four times her annual salary. By 2013, her salary had surpassed $120,000. Church's regularly deducted premium payments from her paycheck. When she took disability leave, she paid the premiums directly and without interruption. Upon her death from cancer, the plaintiff's estate submitted a claim which was partially denied because the plaintiff's decedent had never completed the EIF form which had never been mailed to her. Instead of the full insurance benefit payout of $614,000, only $300,000 was paid to the estate. Because payments were paid and Church's accepted, and because Church's communications with plaintiff's decedent throughout her employment constituted material misrepresentations regarding her coverage and a breach of fiduciary duty, decedent was granted pre-trial motion for summary judgment, determining that Church's breached its fiduciary duty and is liable to pay $314,000.

MORE EXAMPLES OF FIDUCIARY LIABILITY CLAIMS (listed by <u>type</u> of company): #'s 87-99 (below)

87. **Agriculture** *Breach of Fiduciary Duty*	Two employees filed a lawsuit against a seed manufacturer, alleging they had been told they were automatically enrolled in the company **<u>401(k) plan</u>**. The plaintiffs claimed their employer had a fiduciary duty to inform them of their non-enrollment and opportunity to enroll. The insurance company paid $80,000 in defense costs before summary judgment was granted in the insured's favor.

88.	**Telecom** *Failure to Fund Benefits*	A telecommunications firm maintained a **<u>self-insured health plan</u>**. When the company was forced into bankruptcy, employees sued officers and management of the company for failure to ensure that company funds would be used to pay outstanding medical benefits rather than general company obligations. Ultimately, a summary judgment in favor of the telecom firm resulted. The insurance company paid in excess of $200,000 toward defense fees.
89.	**Telecom** *Breach of Fiduciary Duty*	The Department of Labor investigated a communications company for the methodology the company used in determining the **<u>allocation of Plan earnings</u>** and expenses between active and non-active participant accounts. The Department of Labor initially asserted losses in the range of $317,000 to non-active participants' accounts. The case was settled by the insurance company for $120,000.
90.	**Manufacturing** *ERISA Violation*	The Department of Labor alleged the Employee Stock Ownership Plan trustees violated ERISA by the sale of non-publicly traded stock from the **<u>ESOP</u>** at a price below fair market value. The insurance company spent $800,000 to resolve the matter with the Department of Labor.
91.	**Manufacturing** *Breach of Fiduciary Duty*	A Midwestern manufacturer failed to submit the requisite forms for an employee's **<u>life insurance</u>** policy, but continued to deduct premium from the employee's paycheck. When the employee died, the life insurer denied the claim. The employee's heirs sued the plan fiduciary and recovered $250,000 from the insurance company.
92.	**Transportation** *ERISA Violation*	A private company pension plan trustee invested plan assets in an **<u>off-shore investment fund</u>**. When the investment lost 60% of its value, the plan trustee sued, claiming the investment fund misrepresented the nature of the investment. The off-shore investment fund counter-sued, alleging the plan trustee violated ERISA in making the investment. The insurance company agreed to defend the counterclaim. Subsequently, the Department of Labor filed suit against the plan trustee for losses. The insurance company entered into a settlement agreement with the DoL for $50,000, the investment loss caused by the trustee's breach of fiduciary duty.
93.	**Transportation** *Failure to Pay Health Care Benefits*	The parents of a deceased child sued a trucking company and a third-party administrator for payment of **<u>health care benefits</u>** by a local hospital. The third-party administrator, on review of hospital charges, reduced the charges by more than $100,000. The suit alleged the failure to pay violated insured's fiduciary duty under **<u>ERISA</u>**. The insurance company defended the suit and the case was dismissed after incurring $30,000 in legal fees.
94.	**Business Services**	Six retired employees of a nonprofit consulting firm sued the firm, alleging entitlement to early **<u>retirement benefits.</u>** The plaintiffs alleged they relied on oral and written representations of the

	Benefits Communication	plan administrator, an employee in the human resources department. The plan document was alleged to be ambiguous, preventing a successful motion for summary judgment. The insurance company provided defense to its insured and paid $150,000 in resolving the dispute.
95.	**Business Services** *Benefits Eligibility*	A group of independent contractors sued a company, asserting they were eligible to participate in the insured's sponsored employee **benefit plans**. The plaintiffs, who were accountants hired during the tax season, argued that they met the plans' eligibility requirements. The plaintiffs sought retroactive benefits, including matching contributions in the **401(k) plan** and earnings on those contributions. The court granted summary judgment to the insured; however, the insurance company paid more than $1,000,000 in legal defense fees.
96.	**Technology** *Breach of Fiduciary Duty*	A software manufacturer faced a claim for **life insurance** benefits. While the plaintiff was out of work on **long-term disability**, the insured made the decision to change life insurance carriers. During the transition, the insured neglected to identify the plaintiff as an employee. The plaintiff subsequently died, and the new life carrier denied coverage, citing a policy that only covered active employees. Since the death did not occur during the old policy period, the old carrier also denied the claim. A claim was subsequently made by the decedent's estate against the insured for the life insurance benefits. The insurance company contributed to a settlement including contributions from both the old and new carrier.
97.	**Technology** *Failure to Act in a Timely Manner*	A former employee of an internet services provider filed a suit against the company, claiming they failed to transfer his **401(k) plan** funds in a timely manner to a new plan when he resigned his employment, resulting in $25,000 in losses. The insurance company paid $15,000 to settle the claim after paying $7,500 in legal fees.
98.	**Retail** *Failure to Provide Disability Coverage*	An employee enrolled in the **long-term disability plan** filed suit against a clothing store, alleging violations of **ERISA,** the Americans with Disabilities Act, and Title VII. Specifically, the plaintiff alleged the insured had wrongfully terminated her due to disability. The insurance company afforded a defense. At trial, it was determined that the plaintiff was entitled to long-term disability benefits and that the insured had breached its duty in failing to fully consider all of the medical information. The case was appealed and was settled prior to a decision. In addition to significant defense costs of $300,000, the insurance company agreed to pay the plaintiff's attorney fees in the amount of $250,000.
99.	**Retail** *Miscalculation of Pension Benefits*	Retirees of a national retailer filed a class-action challenging the computation of **lump-sum distribution** of pension benefits. The dispute involved the pension **formula,** which contained a cost-of-living adjustment benefit. The insurance company defended and the case was ultimately settled with a recalculation of the pension formula. The insurance company agreed to pay

	plaintiff's attorney fees as part of the settlement and paid in excess of $200,000 to resolve the claim.

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