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SPECIAL REPORT

WHERE DOES IT SAY I HAVE PERSONAL LIABILITY?

04-26-2018

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THE IMPORTANCE OF FIDUCIARY LIABILITY INSURANCE
(IT'S NOT JUST ABOUT 401(K) PLANS)
2018 REPORT

WHAT IS FIDUCIARY LIABILITY INSURANCE

- 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.

PERSONAL LIABILITY OF A FIDUCIARY

- Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

WHEN IS A PERSON A FIDUCIARY

A. According to ERISA, a person is a fiduciary with respect to a plan to the extent:

(1) they exercise any discretionary authority or discretionary control respecting management of such plan or exercise any authority or control respecting management or disposition of its assets;

(2) they render investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of such plan, or have any authority or responsibility to do so, or;

(3) they have any discretionary authority or discretionary responsibility in the administration of such plan. This includes any person designated under Section 1105(c)(1)(B) of this title.

Plan fiduciaries may include, for example, plan trustees, plan administrators, members of a plan's investment committee or a service provider.

B. The plan administrator is the person specifically designated in the plan document or, in most cases, the plan sponsor. The plan administrator oversees the operation of the plan. This should not be confused with a third-party administrator (TPA) who serves as a contract administrator.

TYPES OF FIDUCIARY LIABILITY 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 42% of the claims actually relate to 401(k) Plans.

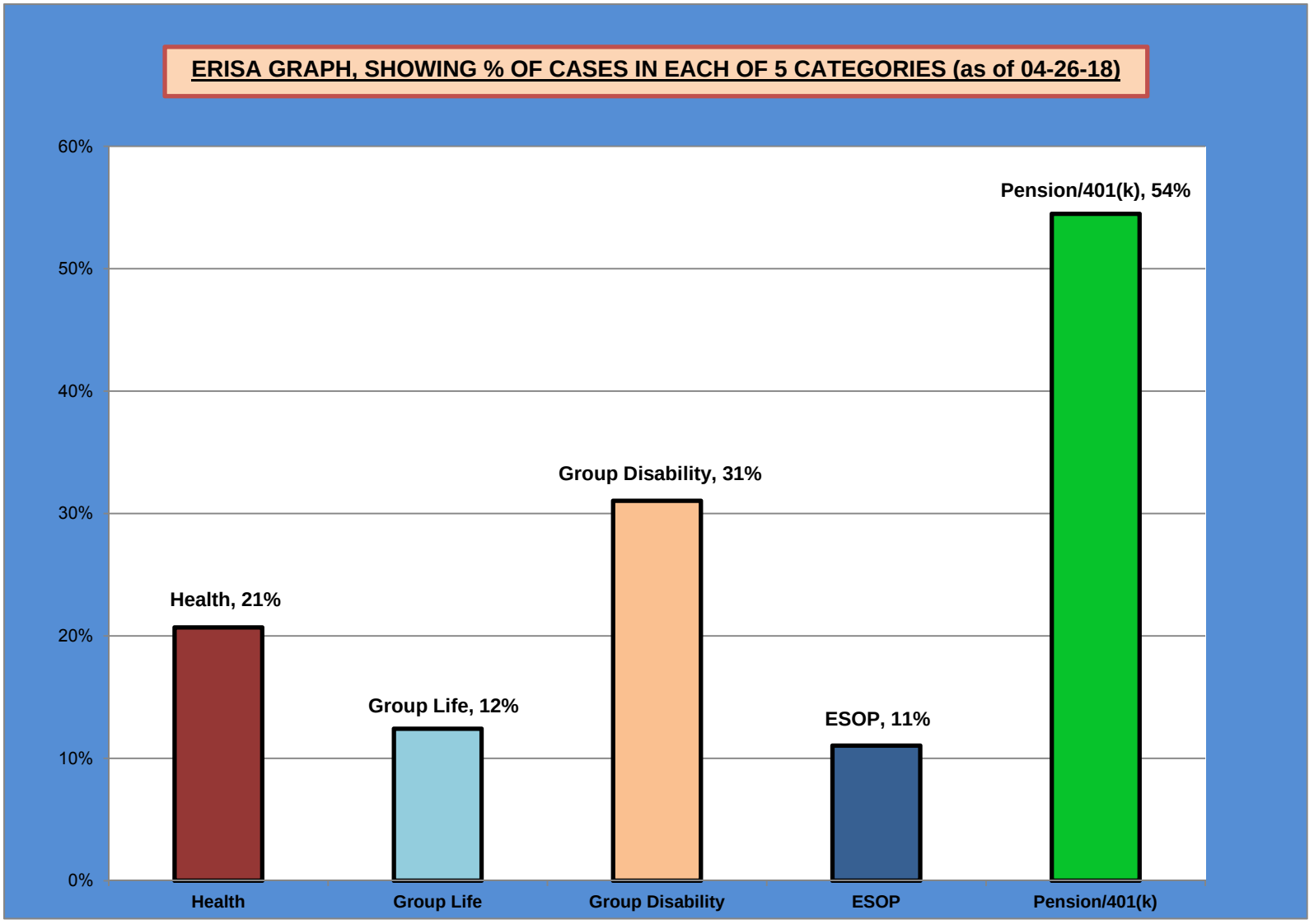
THE FOLLOWING SAMPLING OF BENEFIT PLANS DEMONSTRATES THAT THE MAJORITY OF ERISA CLAIMS RELATE TO OTHER EMPLOYEE BENEFITS SUCH AS GROUP HEALTH, GROUP LIFE, GROUP DISABILITY, AND ESOP CLAIMS.

- The ERISA statute relates to all employee benefit plans, not just a pension and 401(k) plans. A sampling of 188 random ERISA claims show the breakdown by <u>type of employee benefit plan:</u>

BENEFIT PLANS	**# OF CLAIMS**
• Health Insurance	30
• Group Life	18
• Group Disability	45
• ESOP	16
• Pension Plans & 401(k) Plans	79
TOTAL	**188**

109 of 188 claims (or 58% of ERISA claims are for other than 401(k) claims.)

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



NOTE: This ERISA graph represents 188 cases studied in 5 categories.

DESCRIPTIONS OF ERISA / FIDUCIARY CLAIMS

1.	**Rochow v Life Insurance Company of N.A.** *2013-Denial of Disability Benefits*	**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. Facts showed that LINA continually ignored its own plan definitions, wrongly denying benefits for 5 years after the initial request. Plaintiff recovered an additional award for disgorgement of profits in the amount of $3.8M (instead of the initial $910,629) as damages for the breach of fiduciary duty claim in addition to denied benefits.
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** *Change from "Defined Benefit" to "Defined Contri-bution Plan"*	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 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**.
7.	**Scarangella v Group Health** *Medical Benefits*	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. *Eligibility*
8.	**Leimkuehler v Aul**	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**

	401(k) - Who is a 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 Insurance*	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** *Denial of Disability*	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*	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. *Plan Change*
13.	**Hahn Acquisition Corp v Hahn et al.** *Mishandling of Plan*	Plaintiff-corporation brought an ERISA action against **benefit plan** fiduciaries, claiming the fiduciaries **mishandled plan funds**. *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.
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,*	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. *re: Early Retirement Pkg*

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 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 and therefore 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.
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*	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.** *Former Employees*
22.	**Hi-Lex Controls, Inc., et al. v Blue Cross and Blue Shield of Michigan** *Hidden Surcharge*	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. *(2013 Settlement, $6,025,672)* *and Illegal Self Dealing of Fiduciary*
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.
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.

26.	**Lower, et al. v Albert, et al.** *Former Manager*	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. *Sued, re: ESOP Stock Transfer*
27.	**Holsey v Unum Life Ins. Co. of America, et al.** *Disability Denied*	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.** *Claim Against*	Plaintiff-employees and their union sued defendant-corporation and others for breach of fiduciary duty under ERISA. Plaintiffs' claims centered around an ESOP. *Fiduciary, re: 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.** *Investment Advisors*	Plaintiff-ERISA plan trustees sued defendant-investment advisors for breaching **fiduciary duties** when making **investment decisions and charging commissions.** *Sued for Breach of Fiduciary Duties*
32.	**Judge v Metropolitan Life Ins. Co.** *Life Insurance Policy Dispute, MetLife Denied*	Plaintiff plan participant was covered by his employer's term **life insurance** 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 the airlines, underwent heart surgery and applied for benefits, not being able to return to any type of work. His treating providers recommended restrictions, but he was recovering with no evidence of complications. His doctors advised against returning to work. In 2013, the court found that plaintiff was **not permanently disabled** and that MetLife had no conflict of interest that affected its denial decision.
33.	**Gardner v Heartland Industrial Partners** *Former Metaldyne Execs Sued Metaldyne's Owner and other execs*	During the sale of Metaldyne, an automotive supplier, the prospective buyer, Ripplewood, discovered that Metaldyne would owe plaintiffs, former executives, approximately $13M as a result of the sale, under a **change-of-control provision** in its Metaldyne's **SERP** "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 $10M 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' **tortious activity.**

	re: SERP Plan	
34.	**US Airways v McCutchen** *Recouping of Med Costs Paid*	Injured by a third party's negligent driving in a car accident, plaintiff's employer-sponsored **health benefits plan paid his medical bills. Plaintiff retained attorneys, seeking to recover all of his accident-related damages estimated at $1,000,000.**
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 **investments** 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 **fail to respond to a specific request for an election**. 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.
36.	**Seaway Food Town, Inc. v Medical Mutual of Ohio** *Did Not Act as Fiduciary*	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*	Former salaried employee-plaintiffs participated in a **Savings and Stock Ownership Plan** including both a voluntary 401(k) plan and an **ESOP** (employee stock ownership plan). Even though the stock contained in defendant-corporation's 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 diversify the stock.
41.	**Allinder v Inter-City Products Corp. (USA)**	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,

	Disability	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*	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. *Employee Benefit Plan*
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 –*	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**. *Breach of Fiduciary Duty*
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**	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

	Death & Dismem-berment Plan *When does Life Insurance Benefit Go Into Effect?*	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.
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*	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. *Duties*
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)** *401(k) Mutual Fund Choices Benefit Company*	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 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 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. The court 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 Ins. 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. 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 1½ 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**	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

	Disability Benefits & Duty to Inform	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.
62.	**Muhammad v Ford Motor Co.** *Benefit Plan Participant Negligence*	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. 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.
63.	**Peshke v Lincoln Life & Annuity Co. of N.Y.** *Disability Claims & Exhaustion of Remedies*	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. Medical records noted "overall improvement" in plaintiff's condition, so, defendant sent a letter to plaintiff that no benefits would be paid thereafter because the medical documentation failed to support restrictions that would prevent him from working in his occupation, failing to satisfy the plan's definition of "total disability."
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 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 Ins. Benefits / GM Bankruptcy*	GM provided its salaried retired employees with **continuing life insurance**. During re-organization, GM reduced the amount of life insurance. 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." 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. The information was a **truthful statement of the retirees' current benefit.**
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 Assurance Company of Canada and**	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 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

	NEMACO *Optional Higher Life Benefit*	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. An intoxication exclusion precluded plaintiff's claim for accidental death benefits. In a denial letter for plaintiff's claim, however, the explanation indicated "the loss is precluded from coverage by Exclusion 12." Unfortunately, this was an earlier version of Exclusion 12. It had been amended to remove the reference to "driving or operating a motor vehicle." The court properly assessed the insurer a statutory penalty of $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*	As a software engineer employee of Lucent, Plaintiff participated in its **long-term disability** plan. 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 sought treatments until his doctor advised he stop working in 2005. He then received short-term disability benefits for 26 weeks. Plaintiff was denied long-term benefits in 2005, bringing 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, laying out the pension benefits, which was incorporated into a divorce judgment. 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. Plaintiff received certain death benefits from the Pension Fund but was denied monthly surviving spouse benefits, stating that plaintiff was not the spouse at the time of the decedent's retirement, as required by section 1.22. Defendant was the decedent's spouse at the time of his retirement, so defendant was paid monthly surviving spouse benefits. 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*	A Solvay America employee participated in an ERISA-governed Long Term Disability Plan, applying 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'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. Moyer requested **equitable tolling**. He 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.
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.
75.	**Gaylon Hayden v. Martin Marietta Materials, Inc. Flexible Benefits Program** *ERISA Disability*	Gaylon Hayden applied for benefits when she stopped working as an office manager in January 2010. She appealed from two adverse judgments in her suit for **long-term disability benefits**. 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. Hayden suffers from many physical ailments, which exacerbate her mental issues. Her primary physician considers her condition should be met with total permanent disability. Liberty referred her file to two other physicians for review. Both did not see any specific impairment. Liberty denied Hayden's claim 7 months after she left her job. 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. The district court remanded Hayden's claim of mental disability and required Liberty to award benefits consistent with the terms of the Plan.
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. 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 he was engaged in another gainful occupation, managing his business. Insurers stopped paying Total Disability benefits under the 2 lesser policies. Reasonable interpretations of policy language and time spent performing the various portions of his job duties were considerations when a Court of Appeals opinion reversed the district court's denial of penalty interest with instructions to modify the award to include penalty interest.
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. Billions of dollars in value of Bear Stearns' stock was lost during the class period 2006-2008. 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 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.
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 covers investors who bought **AIG securities** between 2006 and 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. 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- and long- term benefits; however, later notified her that they were being terminated. Her appeal 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. 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*	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** 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. Access was gained to Onyx's Detroit offices and 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.
82.	**Raymond Shaw v AT&T Umbrella Plan No. 1** *Disability*	As a customer service representative for Michigan Bell, Shaw, 39, stopped working as a result of chronic neck pain. He was approved for STD benefits and began the process for **LTD benefits** when informed benefits would expire. But he did not qualify. The district court 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. 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 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. The decision-making process was flawed.
83.	**Laura Waskiewicz v Unicare Life**	Plaintiff worked for Ford Motor Co. as a product design engineer from 1990 until Oct. 2010. She subsequently sought **long-term disability** benefits after being terminated, but they were not granted. The

	Long-Term Disability	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, she did not inform Ford within the five-day required period; thus, a certified termination letter was sent to her on Nov. 18. Plaintiff signed for the letter on Nov. 23, sought medical help on Nov. 24, and her doctor returned a disability certificate on Dec. 13. 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.
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. Plaintiffs, prior to GM's most recent financial difficulties, elected to invest in the GM **ESOP**. 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. In 2010, the district court dismissed the suit, applying the presumption of prudence to the behavior of ESOP fiduciaries. In Feb. 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 from July 15, 2008 to March 21, 2009. It was found that the mere fact that GM's stock value decreased after certain dates did not affect their judgment. State Street held more than 40 meetings during the Class Period of less than 9 months to discuss whether or retain GM stock and its experts opined that their process for monitoring GM and other stock was prudent; and other experts – fiduciaries of other pension plans and non-pension plan investment funds – decided also to hold GM Common Stock on each of the four 'imprudent dates' chosen by Pfeil. The bank's actual processes demonstrated prudence.
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. *Settlement, $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 equaling two times her salary. Deductions for the premium were then taken from her paycheck. Later that year, she submitted a change form to increase coverage to three times her salary. 3 years later, she submitted another enrollment change form to increase it to four times her annual salary. 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, it was determined that Church's breached its fiduciary duty and is liable to pay $314,000.
87.	**Schilling v CMS Energy Corp.** *401(k), Breach of Fiduciary Duty; Round-Trip Trading*	In 2001-2002, thousands of employees of Consumer Energy Company, operating as CMS Energy Corp. based in Jackson, participated in one of the company's 401(k) plan options in which some of the money invested by employees was matched by the company in stock shares. Thousands of other employees participated in an employee investment plan in which a small percentage of their salary was earmarked for the matched purchase of stock options. "Round-trip trading" took place, thereby padding CMS' revenues by $4.4B. Revenues appeared larger than they actually were and stock prices began falling rapidly. Class size was estimated at 9,800 employees. *Settlement, $28M.*
88.	**Production Tool Supply v Blue Cross Blue Shield** *Breach of Fiduciary Duty*	BCBS was accused of self-dealing and breaching its fiduciary duties in violation of ERISA. It collected hidden fees by secretly marking up certain hospital claims that it passed along to the plaintiff's ERISA plan. Customer complaints were minimized because the markups would be "no longer visible to the customer." BCBSM admitted it was collecting the markups but that the reimbursement claim was time-barred. *Settlement, $2.5M.*
89.	**Johns v Blue Cross Blue Shield** *Breach of Fiduciary Duty*	In this class action lawsuit, BCBS of Michigan refused coverage for behavioral therapy for children with ASD (autism spectrum disorder). Defendant had denied coverage since the therapy was experimental. Actions were arbitrary and capricious. *Settlement: $1M* to reimburse all families who paid for behavioral therapy for their children at Beaumont's GIFT program after May 1, 2003 if they were covered under a BCBS insurance policy.
90.	**Perez v Bruister** *ESOP Mismanagement*	As owner of a DirecTV installation company, Bruister mismanaged an ESOP and must turn over 3 vehicles as part of the judgment, as well as $3M in attorneys' fees, for causing the employee stock ownership plan to purchase his company stock at an inflated price. *(Mississippi settlement, $6.5M)*
91.	**EEOC v Det. Community Health** *ERISA, Disability*	Detroit Community Health Connection violated federal law by both denying a disabled medical biller a reasonable accommodation and firing her because of her disability after she had requested a 2-week leave of absence because of her rheumatoid arthritis.
92.	**U.S. v U of M** *ERISA, Disability*	The Univ. of Michigan was sued by a disabled employee that questioned the school's policy that required an employee to be the best qualified for a vacancy when seeking reassignment. The Dept. of Justice ruled this policy is a violation of the Americans with Disabilities Act which merely requires that a disabled employee be "qualified," not the "best qualified." Contrary to most employers' hiring practices, the ADA deems that a qualified disabled employee be given preference for a job opening, even if there is a better qualified applicant. *Settlement: $215K.*
93.	**U.S. Justice Dept v Scooter Store**	The Scooter Store's advertising enticed seniors to obtain power scooters paid for by Medicare and then sold patients more expensive scooters that they did not want or need. In 2005 the U.S. Justice Dept. sued the

	Disability Ad's	store. *2007 Settlement: $4M.* However, by 2011 government auditors estimated the store received $47M - $88M in improper payments for scooters. Believing this estimate was flawed, the Scooter Store offered to repay $19.5M in overpayments. The store spent near $1M lobbying Congress during 2011-2013, laid off employees, eliminated more jobs, and in 2013 announced it was shutting down following the loss of its Medicare business. In 2013, the EEOC settled Americans with Disabilities Act (ADA) claims for *$99,000* in a 5-year consent decree with Scooter Store-Levittown.
94.	**EEOC v Dillard's** *Medical Disclosure/ Terminations*	A national retail chain's longstanding national policy and practice of requiring all employees to disclose personal and confidential medical information in order to be approved for sick leave became a 2008 class action disability discrimination lawsuit, which also resolved claims that Dillard's terminated a class of employees nationwide for taking sick leave beyond the maximum amount of time allowed, in violation of the ADA*. 2012 Settlement, $2M.*
95.	**EEOC v J.A. Thomas & Asso.** *Disability & Termination Discrimination*	In a settlement agreement filed with U.S. District Court for the Eastern District of Michigan, the company agreed to pay *$350K* in back pay and compensatory damages to a former employee, a bilateral amputee, who was a health information management specialist who alleged that the company did not rehire her due to her disability, after the company decided to make the position remote, violating the ADA.
96.	**EEOC v Pace Solano** *Medical Disclosure/ Terminations*	A California organization providing training and employment services for adults with developmental disabilities, agreed to pay *$130K* to a woman who was refused a job at the agency because she suffered from partial paralysis in her left hand. Due to her disclosure of the condition during her pre-employment physical, even though she successfully completed all tests and was cleared to do the job by Pace Solano's own occupational health provider, it refused to hire her as an instructor because of her paralysis.
97.	**EEOC v American Tool & Mold** *Medical Disclosure/ Terminations*	A Clearwater, Fla.-based company violated federal disability discrimination law by withdrawing a job offer as a process engineer because of the applicant's old back injury. The job offer preceded a health release. The post-offer medical exam revealed his successful back surgery 6 years prior. He was falsely regarded as disabled, the job offer was withdrawn and he was terminated after he had actually performed the job at ATM for 2 months while he attempted to obtain the requested medical release. He was in good health and had no physical limitations on his ability to perform his job. *2014 Settlement, $150K.*
98.	**EEOC v The Scooter Store** *Disability Termination*	An employee's request for a temporary leave of absence due to a knee injury was refused. He was then fired from its Farmingdale, N.Y. store, purportedly for job abandonment, although he had presented medical documentation of his psoriatic arthritis. *Settlement, $99K.*
99.	**EEOC v Womble Carlyle Sandridge & Rice** *Disability Discrimination*	Diagnosed with breast cancer in July 2008, a support services assistant received treatment for the cancer, including the removal of some lymph nodes. Her job required her to perform copying, scanning, and other duties in the law firm's copy rooms. In 2009, she developed lymphedema which is a physical impairment caused by cancer treatment where the lymphatic system is damaged and/or lymph nodes are removed. By June 2010, her lymphedema was exacerbated by lifting boxes and she suffered swelling in her shoulder, neck, arm, thumb and finger. A doctor's note stated she was unable to lift over 10 lbs. Her Feb. 2011 follow-up doctor's note stated she could lift up to 20 lbs. She was immediately placed on disability leave and was

		fired in August 2011.
100.	**EEOC v Journal Disposition** *Disability Discrimination*	The operator of a full-service print, manufacturing and distribution company in St. Joseph, Mich. agreed to settle a disability discrimination suit for $*55,000*. The operator terminated a long-time employee diagnosed with cancer because he exhausted his time under its short-term disability insurance policy. The employee, prior to the exhaustion of his leave, returned back to work, working part-time hours while he received chemotherapy, performing all essential functions of his job. His accommodation request to work part-time for about 5 months was acknowledged by the company, but in violation of ADA, he was terminated until he could work full time.
101.	**Montanile v Bd. Of Trs. of Nat'l Elevator Ind. Health Benefit Plan** *Health Care*	In 2008, a man was injured in Florida by a drunk driver. He received a settlement from that driver, but in 2015 the U.S. Supreme Court heard oral arguments as to whether the injured man is required to **reimburse his health plan administrator** for medical expenses. *Reimbursement*
102.	**Cipriani v Liberty Life Assur. Co.** *Disability Discrimination*	In 2014, a Pennsylvania court in an ERISA disability case addressed whether the plaintiff would be allowed to take two depositions. The case arose after Liberty terminated the plaintiff's disability payments after he reached the two-year **change in definition** from "own occupation" to "any occupation." Liberty Life objected to the depositions on the grounds that the depositions related to the merits of the claim decision, which it claimed was not an appropriate subject of discovery.
103.	**Williams v Rohm & Haas Pension Plan** *Pension Plan Cost*	The Plaintiff Class alleged that the Rohm and Haas **Pension Plan** violated ERISA by failing to include a **cost-of-living** adjustment (COLA) in lump sum distributions from the Plan. *(Settlement: $180M, including $43.5M in attorney's fees)* *of Living*
104.	**Call v Ameritech Mgmt. Pension Plan** *Pension Plan*	A participant in a defined-benefit **pension plan** was given a choice between taking pension benefits as an annuity or in a lump sum. The **lump sum must be so calculated** as to be the actuarial equivalent of the annuity. *(Settlement: $31M)* *Calculations*
105.	**Esden v Bank of Boston Retirement Plan** *Pension Benefit*	The first case to successfully challenge case balance type defined-benefit plans, this matter required the attorneys to navigate the complex parallel statutory provisions of the Internal Revenue Code, ERISA and its regulations to remedy the **improper reduction of pension benefits** by the defendant. *(Settlement: $7M)* *Reductions*
106.	**Berger v Xerox Retirement Income Guar. Plan** *Pension Plan*	Attorneys contested the legality of Xerox's **cash balance pension plan** on behalf of a class of over 15,000 of its retirees and obtained a $255M judgment for the class. Xerox's cash balance plan failed to include the value of future interest credits up through a plan participant's normal retirement date in valuing the participant's lump sum pension benefit. *(Settlement: $239M)*
107.	**Cooper v IBM Personal Pension Plan** *Pension Plan*	A class of IBM retirees challenged IBM's **pension equity plan** on the grounds that it violated ERISA's prohibition against **age discrimination.** *(Settlement: $324M)*

108.	**Malloy v Ameri-tech Pension Plan** *Pension Plan*	Attorneys challenged the mortality table used by the plan to calculate payments to those plan participants who, upon termination of employment, elected to receive their **pension** benefits in the form of a **lump sum distribution** rather than a monthly annuity benefit as violative of ERISA. *(Settlement: $185M for 17,000 former Ameritech employees)*
109.	**Laurenzano v BCBS of Mass. Ret. Inc. Trust** *Pension Plan*	Under the benefit plan at issue in this class action, a participant's normal **retirement benefit** was a life annuity beginning at age 65. It increased every year to include a **cost-of-living** adjustment payment that reflected changes in the Consumer Price Index. Rather than receive a life annuity, plaintiff elected to receive the present value of his pension in a single, lump sum distribution; however, it did not include the present value of the projected cost-of-living adjustment payments.*(Settlement: $18M for BCBS retirees)*
110.	**Clevenger v Dillards, Inc.** *Pension Plan Calculations*	The plaintiff accrued substantial benefits under a benefit plan that was terminated the year her employer was sold to Dillards. She claimed the manner in which l**ump sum benefits were calculated** under the plan and its late amendments violated ERISA. *(Settlement: $35M)*
111.	**Tullock v K-Mart Employees Retirement Plan** *Pension Plan*	Participants in K-Mart's employee **retirement plan** alleged that lump sum distributions from the plan violated ERISA because they were computed using the **wrong interest rate**. *(Settlement: $1.25M)*
112.	**Asbury v May Dept. Store Co. Ret. Plan** *Pension Plan*	$600,000 was recovered in **pension** benefits for retirees whose lump sum **distributions were undervalued**.
113.	**Kohl v Asso. Of Trial Lawyers of America** *Pension Plan*	A class of retirees claimed that the value of a **cost of living** adjustment should have been included in their **lump sum distributions**. *(Settlement: $450K)* *Cost of Living*
114.	**Nichols v B.P. America Pension Plan** *Pension Benefits*	20,000 former employee's lump sum **pension** benefits were miscalculated. *(Settlement: $71M)*
115.	**Berkowitz v Nat'l Westminister Bancorp Ret. Plan** *Pension Miscalc.*	A Connecticut district Court **pension miscalculation** case resulted in $4M to the putative class.
116.	**Pierce v Gold Kist** *Pension Miscalc.*	This is an ERISA class action concerning **miscalculated lump sum distributions.** *(Settlement: $920K)*
117.	**Richardson v Fairchild Space & Defense**	This is an ERISA class action concerning **undervalued lump sum distributions**. *(Settlement: $740K)* distributions. *(Settlement: $740K)*

	Pension Distrib.	
118.	**Seifert v May Dept Stores Pension Plan** *Pension Miscalc.*	Approximately $28M was recovered in **pension benefits for retirees** whose lump sum distributions were **miscalculated.**
119.	**Graf v Automatic Data Processing** *Pension Miscalc.*	More than 5,000 former employees of ADP whose **pensions were miscalculated** shared in a settlement of $7M.
120.	**Dunn v BOC Group Pension** *Pension Miscalc.*	A $69M settlement was reached for former employees whose **pension benefits were miscalculated.**
121.	**Pikas v Williams Companies** *Pension Miscalc.*	Williams is liable to Pikas and the Class for failing to provide the actuarial equivalent of the normal retirement benefit, for providing cost of living adjustments **(COLA's)** to annuitants.
122.	**MetLife v Glenn** *ERISA Claims Denials*	In 2008, the Supreme Court held that federal courts reviewing claims denials by ERISA administrators should take into account the fact that **plan administrators face a conflict of interest** because they pay claims out of their own pockets and arguably stand to profit by denying claims.
123.	**Rosamaria Powell v Aetna** *Recovery of Disability Overpayments*	In 2011, A former Ernst & Young senior manager claimed Aetna underpaid her **long-term disability** benefits because Aetna failed to factor in her state and federal tax payments when calculating the benefit amount. Having begun receiving benefits in 2009, by February 2011, Aetna reduced her monthly payments by the amount of Social Security disability benefits she started receiving. Because the SSDI benefits were retroactive to 2008, Aetna notified Powell that she had been overpaid and if it could not **recover the overpayment,** her benefits would be suspended. Powell's calculation however, was that Aetna owed her an additional $41,500. In March 2013, U.S. District Judge ruled that Aetna had not abused its discretionary authority to determine whether and to what extent employees and beneficiaries are entitled to benefits and to construe any disputed or doubtful terms of the policy.
124.	**Mildred Thomas v Aetna** *Life Insurance Requirements*	Thomas sought to recover **accidental death and personal loss benefits** under her late daughter's plan in excess of $550,000, and statutory penalties in excess of $165,000, after Aetna paid Thomas the life insurance benefit under the plan. Aetna denied Thomas' request, citing that her claim did not establish a loss that fell within the **coverage requirements** of the policy.
125.	**Jessica Tracey Thomas Scott v Aetna** *Life Insurance Death Coverage*	In 2011, a Bank of America assistant vice president **died** from an overdose of drugs, some of which had been prescribed for pain relief following jaw surgery. Aetna **disagreed that her death was an accident covered under the ADPL policy** because some of the drugs found in Scott's system exceeded levels of what had been prescribed. It was ruled that Aetna's denial of the claim was **reasonable** and plaintiff had not proffered any admissible evidence demonstrating the existence of a genuine issue of material fact. Aetna's motion to dismiss the statutory penalty claim was granted.
126.	***(unknown)***	A **long-term disability** case was paid in full for a total settlement of over $800,000. First, the claim was denied on initial application, but the plaintiff was able to successfully appeal this denial and produced

	Disability	medical and vocational evidence that convinced the insurance company to place the plaintiff back in pay status. Then, after less than two years in pay status, the carrier terminated plaintiff's benefits after surveillance was conducted and the carrier found out that the claimant had traveled out of the country.
127.	***(unknown)*** *ERISA/Disability*	A 55-year-old woman filed an application for **long-term disability** benefits. The client was presenting symptoms of severe arthritis in both knees causing her to limp significantly, along with major back problems including degenerative disc disease with disc bulges. Complicating matters was her inability to tolerate major pain medicines such as oxycodone and tramadol. The woman held a physically taxing job at a local airport where she was charged with lifting, pushing, and carrying heavy items.
128.	***(unknown)*** *Health*	In an appeal of denial of insurance coverage for psychiatric hospitalization, BCBS claimed that the hospitalization, which was for over two months, was not considered medically necessary. The entire medical records included extensive documentation that the **hospitalization was medically necessary** and convinced BCBS in this **ERISA administrative appeal** to pay the claim.
129.	***(unknown)*** *Disability Records*	The basis of an appeal of a denial of long-term **disability benefits** is profound fatigue. The carrier claimed that records did not include specific restrictions and limitations on why the client could not work nor were diagnostic tests provided. Benefits were awarded after additional medical records and reports were obtained that rebutted the denial decision. Diagnostic **test results were provided** as well as clear delineation of restrictions and limitations on activities.
130.	***(unknown)*** *Disability*	Claimant had both hips replaced and has low back pain and osteoarthritis. Plaintiff requested **long term disability and social security disability** benefits. The LTD and SSD benefits were awarded on initial application and the client remains in pay status.
131.	***(unknown)*** *Disability Termination*	In this **disability** case, the client has Multiple Sclerosis. The LTD carrier **terminated benefits** based on a single office visit not from the treating neurologist indicating that the client had an excellent exam. It required several supplemental statements from the neurologist, submission of MRI film, a vocational expert report, statements from client and spouse, and Insurance Medical Exam, and legal briefs to finally obtain **reinstatement** with payment of retroactive benefits. Plaintiff also won SSD benefits on initial application.
132.	***(unknown)*** *Disability Termination*	Plaintiff's basis of **disability** is lupus and she appealed termination from LTD benefits. Benefits were **terminated** because her treating doctor reported that her condition had stabilized and she was able to travel to visit her sick parent and move out of the country because of her husband's employment. She, however, was not well enough to resume working. Benefits were **reinstated** after supporting statements and medical records were submitted by the current treating physician out of the country as well as additional information from her prior treating physician in the U.S.
133.	***(unknown)*** *Disability Term; Application Filing*	Plaintiff's basis of **disability** is osteoarthritis of the right knee for which client underwent a total knee arthroplasty. The benefits manager at the client's company **never properly filed** the initial application with the carrier and the plaintiff was no longer eligible to apply for benefits. However, they were able to prove that the plaintiff had filed the application timely and provided sufficient evidence to have the claim awarded.
134.	***Miriam Teper v Park West Galleries, Inc.***	In 1976 plaintiff was hired as a part-time bookkeeper, but within two months became full time. In 1978 she was promoted to executive assistant. She then became director of marketing, auction and sales. The owner **assured** plaintiff at various times during her employment that her position was a secure one which would be

	Pension Plan; Wrongfully Dis-Charged; Future Benefits	available for her **lifetime** if she continued to perform well. In 1980 she qualified for participation in its defined benefit pension plan, but in 1981 she was discharged. She filed a claim in 1982 alleging that she had been **wrongfully discharged** in violation of her contract of employment. She claimed damages in the nature of past and future compensation, including future pension benefits. The principal interest in the appeal is the preemption provision of the ERISA. The court must show whether the award of **future benefits** imposes an administrative, fiscal, or legal burden upon the employee benefit plan. It must be determined whether there is language in the plan itself concerning the determination of future benefits.
135.	***Selflube v JJMT*** *Retirement Funds*	Employer had standing to seek injunction **barring former employee from transferring funds** out of his retirement account without providing employer with advance notice after employer obtained a default judgment against former employee on its fraud, civil conspiracy, tortious interference and conversions claims arising out of former employee's embezzlement, though federal courts had exclusive jurisdiction of civil actions brought under ERISA, as employer's claims were state laws rather than ERISA claims, and employer's request for an injunction was based on state law.
136.	***Clayton Group Services v First Allmerica Financial Life Ins.*** *Health Insurance*	In 1997 there was an unusually large claims history made under plaintiff's health plan. Due to anticipation of 1998's higher premiums, plaintiff wanted to change health coverage to an HMO. Being impossible to enroll all employees throughout the country in an HMO before plan termination with First Allmerica, some employees were left on the First Allmerica plan until an HMO plan could be effectuated for them. There was **misrepresentation of the terms of the plan** regarding whether the premiums would be based on the number of employees insured under the plan beginning on the first day of each month, or rather the third preceding month.
137.	***Cheryl A. MacINNES v Joe Dee MacINNES*** *Life Insurance*	Former husband waived his rights as beneficiary to **proceeds from former wife's life insurance policy** of $95,000. Provision in consent judgment of divorce released all rights of either party to proceeds of any life insurance policy on life of the other. Language was explicit in its intent to divest former husband of his interest in life insurance proceeds from policies owned by former wife. Stipulation and property settlements in a divorce are construed as a contract. Also, a plan administrator should be controlled solely by plan documents; however, it must be determined if an **effective waiver** occurred. Defendant waived his rights to the proceeds from this ERISA-governed plan.
138.	***Edward G. McMartin, Jr. v Central States, SE & SW Areas Pension Fund*** *Disability Pension*	Plaintiff began working for Presto Trims in 1967 as a carpet cutter. In 1979, muscular dystrophy rendered him unable to work. For the purposes of social security benefits, he was totally and permanently disabled. However, **disability pension was denied**, due to an insufficient level of contributions. Plaintiff believed that defendant either failed to inform or misinformed plaintiff's union bargaining agent as to the benefit class that would be necessary to provide disability benefits. This theory is closely akin to a claim of breach of fiduciary duty. The phrase, "under the terms of the plan," must be read restrictively. In the court of appeals in Michigan, this case was affirmed in part, and reversed in part; no costs, neither side prevailing in full.
139.	***BPS Clinical Labs v BCBS of Mich.*** *Health Ins.*	Plaintiffs, independent clinical laboratories and two physicians, alleged that they wrongfully were denied the opportunity to **participate as panel providers** in defendant's new health care program, Premier PLUS. The complaint also alleged an unlawful attempt to establish a monopoly in violation of the Antitrust Reform Act. The Michigan court of appeals reversed part of the Prudent Purchaser Act (PPA) order which found

		defendant in violation of the PPA and ordered it amended to reflect a grant of summary disposition for defendant in light of defendant's preemption defense under ERISA.
140.	***Spectrum Health Hospital v Stephanie Jean Lehr and NGS American*** *Health Care Denial to Surrogate Mother*	Third-party plaintiff Stephanie Lehr became pregnant with triplets after being implanted with embryos created by Angela and Scott Sarver. Plaintiff Spectrum Health treated Lehr during her pregnancy. Third-party defendant NGM American denied coverage for Spectrum's services alleging that the Lehr's plan did not cover charges incurred by a **surrogate mother**. The ERISA plan in this case gave NGS discretionary authority to determine eligibility for benefits and to construe the terms of the plan. It was concluded that Lehr was a surrogate mother under NGS's **reasonable interpretation** of the plan and that its interpretation was not arbitrary and capricious, nor was NGS's decision to deny benefits.
141.	***Auto Club Ins Asso v Frederick & Herrud v Pent-water Wire Prod.*** *Health Plan*	Plaintiff Auto Club paid no-fault auto benefits to 7 of its insureds who worked for defendant, Frederick & Herrud. The court needed to decide 1) the **primacy of insurance liability** between plaintiff no-fault insurer and two different employee health benefit plans established by defendants pursuant to ERISA in which each contract with their insured contains unambiguous **coordination-of-benefits (COB) clauses**; 2) whether **ERISA permits subrogation** of claims; 3) whether the issue was properly preserved for the court's review; 4) and whether the existence of "**stop-loss**" insurance has any bearing on its determination of the first issue. The judgment ordered both parties to pay half the benefits owed to the insureds.
142.	***CC Midwest v Howard McDougall*** *Trust / Pension*	Plaintiff argued that the circuit court erred when it concluded that its claims were preempted by ERISA; however, the court of appeals disagreed. The question was whether defendants' communications with beneficiaries of a trust they administered were "related to" defendants' **trust administration** under the ERISA.
143.	***Pamela Townsend v Brown Corp of Ionia*** *Health Ins. Cobra Rights*	A retired employee's wife brought action against an employer alleging refusal to extend health insurance coverage to which wife was entitled under the ERISA. Within 14 days after plaintiff's husband ceased employment, defendant sent the required **COBRA rights** notice to their last known address; however, they had moved and provided no forwarding address. Plaintiff subsequently suffered a heart attack, incurring substantial medical expenses. She learned about her COBRA rights from an insurance agent and contacted defendant immediately, requesting forms to elect continuation coverage. Although she did fill out the forms, the required premium payment was not received. Her mailed check was never cashed. She did not pay the premium. The case also included whether the defendant had a duty to notify plaintiff of a 45-day grace period for payments. The court of appeals disagreed. The trial court's findings of fact were not clearly erroneous.
144.	***AAA Mortgage Corp. v Christopher P. Legghio & NTMP*** *Pension Plan*	Plaintiff AAA sold and serviced residential loans under employee benefit programs. Defendant Legghio was the Millwrights' Fund second counsel. Two years later, Carpenters Fund and AAA entered into a similar agreement with AAA acting as agent of the Fund. Defendant NTMP was counsel for the Fund. The Dept. of Labor (DOL) investigated AAA and determined that it is a fiduciary because it exercises discretion with respect to matters involving the **Plans**. **ERISA violations** included many discrepancies. Two years later, DOL's investigative conclusions were: There were no provisions in the Plan authorizing exemptive relief; loans were not available to all participants and beneficiaries on a reasonably equivalent basis or made in

		accordance with specific provisions in the Plan; failure to specify one or more named fiduciaries. Two weeks later, the Carpenters Fund gave AAA notice of termination within 30 days. DOL filed suit against the Carpenters Fund and 9 trustees. DOL filed suit against the Millwrights Fund, several trustees and others. Trustees of the Millwrights and Carpenters filed suit against AAA alleging breach of fiduciary duties, misappropriation of trade secrets, and conversion.
145.	***Delbert Scheuneman v GM Corp.*** *Pension & WC Benefits*	Claimant sought judicial review of the Worker's Compensation Appellate Commission's (WCAC) determination that employer properly coordinated claimant's **mutual pension benefits** with claimant's **workers' compensation benefits**. The court considered whether the ERISA preempted Kentucky common law allowing employers to reduce the amount of worker's compensation payments an employee received by the amount of the payments the employee received under a disability pension plan covered by the ERISA. The court concluded ERISA did not preempt the Kentucky common law and ERISA does not preempt Section 354 of the WDCA.
146.	***American Medical Security v Allstate Ins.*** *Health Reimbursement*	The victim of an auto accident was injured and incurred medical expenses. He had medical coverage through his mother's employer, administered by plaintiff. Medical coverage was provided by the United Wisconsin Life Ins. Co. The victim was also covered by a no-fault insurance policy issued by defendant to his mother. Both policies contained **coordination of benefits clauses**. Though medical benefits were paid to victim by plaintiff under the policy issued by United Wisconsin, plaintiff thereafter sought reimbursement from defendant, claiming that defendant was first in priority to pay the medical expenses pursuant to the coordination of benefits clause found in United Wisconsin's Certificate of Group Insurance. It was determined that Section 3109a is not preempted in a situation where the ERISA plan is not self-funded but has purchased insurance coverage.
147.	***Kenneth Hill v Ford Motor Co.*** *Early Retirement Benefits*	Employee brought action against his former employer alleging breach of contract and misrepresentation in connection with employer's payments of **early retirement benefits**. The benefit plan was preempted by the ERISA. Accordingly, defendant was entitled to summary disposition as to the breach of contract claim. The court of appeals affirmed in part, reversed in part and remanded.
148.	***Jerry D'Avanzo v Wise & Marsac v Unum Life Ins.*** *Disability*	Plaintiff is a former associate with defendant law firm. Two months after his termination, they negotiated a severance agreement that provided that defendant would pay plaintiff's salary, together with all insurance and other benefits provided to associates of the firm for 6 months after his termination. Defendant continued to pay premiums on plaintiff's behalf to UNUM Life Ins. Co. A year later, plaintiff filed a claim for disability benefits, alleging that the disability arose during the 6-month severance period. UNUM denied the claim, suggesting the claim was **not timely**. Plaintiff was informed by UNUM that his coverage had ceased on his last day of employment. UNUM eventually credited defendant for the premiums paid on plaintiff's behalf for the 6 months. Former employee brought breach of contract and misrepresentation action against former employer arising from severance agreement provision relating to **long-term disability benefits.** It was concluded that the agreement was ambiguous and that the preemption question cannot be determined until the intent of the parties concerning the disability benefit promised in the severance agreement is resolved by the trier of fact.

149.	***State Treasurer v Thomas K. Abbott & Auto Body Credit Union*** *Pension*	The Treasurer filed a complaint under State Correctional Facility Reimbursement Act (SCFRA) seeking to **recover costs of confining a prisoner**. The trial court's order for defendant to receive his **pension benefits** at his prison address, with the warden to appropriate the funds from defendant's prison account under the SCFRA was reversed by the court of appeals because ERISA prohibits an assignment or alienation of pension benefits. However, the Michigan Supreme Court has determined that the trial court's order did not violate the federal statute. The federal ban on alienation or assignment of pension funds does not extend to benefits that the pensioner has already received. The Supreme Court reversed the judgment of the court of appeals and reinstated the trial court's judgment.
150.	***CC Midwest v Howard McDougall*** *Pension*	Plaintiff CC Midwest is a trucking company, subsidiary of CenTra. Until 1996, Centra also owned Central Transport, another trucking company. At the time of the 1996 sale, Transport employed about 235 truck drivers, represented by the Teamsters, as independent contractors. These drivers were entitled to take part in a **Pension Fund**. As part of a collective bargaining agreement between Transport and the Teamsters, Transport made financial contributions to the Pension Fund on behalf of the drivers it employed. Following the sale, Transport negotiated with the Teamsters the closing of its business, agreeing to pay a **severance package** totaling $4.6M. Defendants agreed to permit the former independent contractors to make self-contributions into the Pension Fund for up to 5 years. Plaintiff negotiated independent contractual agreements with 59 owner-operator Transport drivers. Afterward, defendant advised the drivers that they would not be able to continue to make self-contributions to the Pension Fund if they performed work for plaintiff or any other company affiliated with CenTra, resulting in 12 of 59 drivers terminating their contracts with plaintiff.
151.	***Marilyn Virginia Sweebe v Herbert Orville Sweebe*** *Life Insurance*	Plan administrator was required by ERISA to distribute insurance proceeds to beneficiary named by participant, his former wife, even though former wife renounced her interest in the insurance proceeds in a binding judgment of **divorce**. Preemption provision of ERISA does not preclude a named beneficiary from **waiving** the proceeds of a **life insurance policy**. Former wife validly waived her right to retain insurance proceeds distributed to her as plan participant's named beneficiary. Thus, former wife was required to pay an amount equal to the insurance proceeds to participant's estate.
152.	***State Treasurer v Sprague*** *Pension Benefits*	The court of appeals agrees that the defendant must notify his former employer, Dow Chemical Co., that his **pension benefits** be mailed to his prison address rather than deposited directly into his credit union account. Once the funds have been deposited into the **prisioner**'s account, the State Treasurer may obtain an order directing that institution to disburse the appropriate portion of those funds to the state.
153.	***Sun Life Assurance v Richard Jackson*** *Life Insurance Beneficiary*	As of Dec. 13, 2017, an appeal from the U.S. District Court agreed that though in 2003 a father's life insurance policy listed an uncle as sole beneficiary, his divorce decree in 2006 listed a daughter who would benefit from the policy. The father who died in 2013 never changed the beneficiary designation in his policy to account for the terms of the divorce decree. Sun Life paid the proceeds to the uncle; however, Sun Life was ordered to pay the daughter along with interest. In cases like this, two questions must be resolved: 1) What is the test for determining whether a qualified **domestic relations order permissibly changed the beneficiary of an ERISA-covered life insurance plan**; and 2) Does the divorce decree satisfy that test.

154.	***Underwood v Carpenters Pension Trust Fund*** *Disability*	After a fairness hearing in November 2016 it was determined that the disabled retirees of the Carpenters Pension Trust Fund—Detroit and Vicinity Pension Plan, including 324 class member plaintiffs, would receive over $15,000,000 in back benefits and more than $24,000,000 in future benefits. The plan had dramatically **reduced benefits** due to an August 2013 plan amendment by an average of more than 61% and threatened total elimination of their DRB.
155.	***Michigan Girl Scouts v Girl Scouts USA*** *Pension Fund*	Girl Scouts Heart of Michigan includes Girl Scouts operations in 34 counties in lower Michigan. They alleged in a 2017 lawsuit that "**coercive" actions by Girl Scouts** of the USA have **ballooned the national group's unfunded liabilities** and forced drastically higher payments from local councils. They are asking the judge to reign in Girl Scouts USA's authority to compel pension contributions and to stop the national group's efforts to recover the pension funds through arbitration.
156.	***Davidson v Henkel Corp*** *Retirement Program*	In 2011, Henkel advised previous executive retirees that were part of a top-hat deferred retirement program that an **error had been made and that FICA benefits should have been subject to FICA at the time of retirement**. If Henkel had assessed the FICA at the time of retirement, the retirees would have never again been subject to FICA taxes and would have had the benefit of the **one-time "non-duplication tax rule.**" As it was, retirees had to pay FICA going forward for the remainder of their lives. Remuneration was obtained for the error. (*2016 Settlement, $3,350,000)*
157.	***Confidential*** *Health Benefits*	A 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." The court found that such distinctions do not preclude class certification because the defendant insurer has determined, on a class-wide basis, that **ABA is experimental therapy** in all cases. *(2013 Settlement, $2,455,000)*
158.	***Confidential*** *Denied Pension due to Race*	Plaintiff was **denied a duty disability pension because of his race**. (*2017 Settlement, $1,858,553)*
159.	***Potter & Boyer v BCBSM*** *Health Benefits*	The children of both plaintiffs were diagnosed with **autism**. BCBSM **denied coverage** associated with applied behavior analysis (**ABA) therapy** for their treatments, claiming it was experimental or investigative. As a result, the court certified the case as a national class action and determined that BCBS's exclusion of ABA therapy as experimental was arbitrary and capricious.
160.	**Patti Okuno v Reliance Standard Life Ins. Co.** *Disability Benefit Denial*	Plaintiff was wrongfully **denied long-term disability benefits** after exhausting the short-term benefits. Initially, the denial was based on the plan's pre-existing condition limitation. But through appeal, it was found that her current disability was not related to her prior diagnoses. After several appeals, it was found that decisions were not rational based on plan provisions, and that determination was arbitrary and capricious due to the lack of documented failures of diligence and reasoned resolution. *(Ohio case.)*
161.	**BAI v Bruister, et al** *ESOP*	After a 19-day trial, fiduciaries of Bruister and Associates Inc. were ordered to pay into two of the company's **ESOP's**. Between 2002 and 2005, the owner of the company sold his $24M stock to his employees through two ESOP plans, however, causing the employees purchasing the stock to pay an **inflated price for shares** based on flawed valuations. *(2014 Mississippi Settlement, $6,500,000)*

162.	***Thomas Perez v Calif. Pacific Bank*** *ESOP*	The Bank, its CEO and Directors, who were all trustees, violated ERISA as fiduciaries of the **Bank's ESOP** by: 1) failing to cash out ESOP participant accounts when the ESOP was terminated in 2010, 2) the improper diversion of ESOP assets to the Bank connection with a real estate "receivable," 3) failure to hold ESOP assets in interest-bearing accounts at the Bank, and 4) a second improper diversion of ESOP assets to the Bank. *(2013-2016 California case.)*
163.	***Solis v Caputo, Bankert, Thielking, ESOP*** *ESOP – Misuse of Company Funds*	Defendant Plan trustees and CPA were parties in interest to the **ESOP Plan**, with investments exclusively in Company stock. When participants and beneficiaries terminate their employment, they are paid in cash based on the value of the vested portion of their account. Between 2000 and 2006, Caputo paid over $800,000 in **personal expenses** from the Company's operating account, but on Statements, those expenses were recorded as **receivables** and personal loans, making up about 97% of the Company's total assets. None of the Plan fiduciaries took action to remedy the **misuse of Company funds**. As a result, Thielking's valuation of the Company's stock was inflated. *(Florida case)*
164.	***Employees v St. Francis Hospital*** *Pension "Church Plan"*	Connecticut-based St. Francis Hospital, part of Livonia-based Trinity Health, mismanaged its pension plan by improperly classifying its pension as a "**church plan**" exempt from the Employee Retirement Income Security Act, which requires pension plans to have adequate funding to pay their promised benefits. The pension was underfunded by $139M. If the hospital is unable to make the payments, Trinity Health is required to step in and make the contributions. *(2016 Michigan Settlement: $107,000,000)*
165.	***Overall v Ascension*** *Pension "Church Plan"*	In this 2013 class-action lawsuit, Ascension pension plans will still be considered non-ERISA "**church plans**" which are exempt from ERISA; but Ascension has agreed to make an $8M cash payment to its pension plans and adopt certain ERISA-like protections, including a guarantee of plan benefits through June 30, 2022 and regular financial notices about the plans. Previously, it had been alleged by an employee that the pension plans were underfunded by $444.5M, affecting 122,000 employees; however, Ascension countered the plans were "very well-funded." Ascension will pay an additional $2M for attorneys' fees and expenses. *(2015 Michigan Settlement: $8,000,000)*
166.	***In re Wheaton Franciscan ERISA*** *Pension "Church Plan"*	This class-action lawsuit was filed against the Ascension Health system and subsidiary Wheaton Franciscan Services, alleging Wheaton erroneously treated its pension plan as a "**church plan**" exempt from ERISA. Ascension will now guarantee payment of the first $29.5M paid out under the Wheaton pension plan in the event the plan cannot cover the payments itself. Ascension will also provide plan participants with annual notices of the plan's funding levels. An additional $2.25M will also be paid for legal fees and expenses. *(2017 Illinois Settlement: $29,500,000)*
167.	***Garbaccio v St. Joseph's Hospital*** *Pension "Church Plan"*	In this "**church plan**" dispute, St. Joseph's will improve the retirement security of all Plan participants and beneficiaries by having already contributed $42.5M to the Plan plus an additional $2.5M. This amount had reduced the underfunding of the Plan by about 50%. Accrued pension benefits of the Plan's participants are substantially more secure. *(2017 Washington, D.C. Settlement: $45,000,000)*
168.	***Griffith & Wenzl v Providence Health*** *Pension "Church Plan"*	This case claimed that ERISA protections were denied to Plan participants and beneficiaries of Providence's Retirement Plan which incorrectly claimed the Plan qualified as an ERISA-exempt "**church plan**." Cash payments of $500 each will now be made directly to each of the 3,802 former participants who terminated with insufficient years of service under the terms of the Plan to vest under the current Plan

		terms, but who would have been entitled to vested benefits under ERISA. In addition, Providence will continue to make minimum contributions to the Plan with the intent to fully fund the Plan by Year 2029. Separately, attorney fees, expenses, and incentive fees for the plaintiffs will not exceed $6.5M. *(2016 Washington Settlement: $351,900,000)*
169.	***Lann v Trinity Health Corp.*** *Pension "Church Plan"*	In order to guarantee that Trinity's pension Plan will have sufficient funds to pay accrued benefits payable to participants under the terms of the Plans for 15 years, Trinity has made financial commitments for participants should there be a plan termination or merger with 15 years and, during this period, Trinity will not amend a Plan to decrease the accrue benefit. Like most "**church plans**," they are "fund-specific," limited solely to the amount of assets held in the Plans' trust fund. A $75M contribution over 3 years will improve the Plan. Additional payments will be made to approved individuals meeting specific requirements. *(2016 Maryland Settlement: $75,000,000M)*
170.	***Jeffrey Tucker v Baptist Health System*** *Pension "Church Plan"*	The Baptist Health System was improperly classified as a "**church plan**" under ERISA and significantly underfunded. Seven months after plaintiff filed the case, the Plan's sponsor, Baptist Health System, Inc., contributed $88.9M to the Plan to fund the deficit. This payment caused the Plan to be 102.7% funded. Baptist Health will contribute an additional $11M to the Plan over the next 10 years to cover any additional funding requirements that might arise. The settlement also prohibits the Plan from being terminated unless there are sufficient assets to pay outstanding liabilities for 8 years. *(2016 Alabama Settlement: $11M)*
171.	***Butler and Fitzsimmons v Holy Cross Hospital, et al.*** *Pension "Church Plan"*	Claiming that the pension plan at Holy Cross Hospital was exempt from ERISA protection because it was a "**church plan**" participant, a settlement was negotiated for $4M to settle the suit for former plan participants, along with $5.1M in undistributed plan trust assets to go to 2,000 participants. *(2017 Illinois Settlement: $9,100,000)*
172.	***Hodges v Bon Secours Health System*** *Pension "Church Plan"*	The "total amount" of Plan underfunding, due to its "**church plan**" classification, will take place over a 7-year period. The hospital will pay $300,000 to 530 employees who would have received additional benefits had the hospital used a pension-vesting schedule complying with ERISA. Over 20,000 Plan participants will benefit from this deal. Other protections will also be in place until at least 2025. Participants' attorneys will also receive additional fees of up to $3.5M. *(2017 Maryland Settlement: $98,300,000)*
173.	***Nicholson v Franciscan Missionaries of Our Lady Health System*** *Pension "Church Plan"*	"**Church Plan**" status has been revised to guarantee plan participants that their promised benefits will be paid for the next 15 years. Franciscan will pay $450 each to 2,087 plan participants who took lump-sum buyouts in 2016. They will contribute $125M to three pension plans over the next five years. *(2017 Louisiana Settlement: $125,000,000)*
174.	***Singing River Health System*** *Pension contributions*	Due to claims that SRHS has not made contributions to the **pension plan** since 2009 and that retirees claimed they were sent documents that assured them investments were being made to the plan well after 2009, a settlement was made that represents the amount the system failed to contribute to the pension from 2009-2014, when plan members thought contributions were being made. The payments will be stretched

		over 35 years and include interest. Legal fees will also be paid. The settlement applies to all 3,173 current and former participating employees. *(2016 Mississippi Settlement: $150,000,000)*
175.	***Kruger v Novant Health*** *Retirement Plan*	Fiduciaries were alleged to seven **retirement plans** sponsored by Novant by charging excessive fees and channeling profits. Novant operates clinics, outpatient centers and hospitals in four states. Novant DC plan executives breached their fiduciary duties by providing excessive compensation to service providers and investment options were unreasonably expensive. *(North Carolina 2015 Settlement, $32,000,000)*

MORE EXAMPLES OF FIDUCIARY LIABILITY CLAIMS (listed by type of company): #'s 176-188 (below)

176.	**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 **401(k) plan**. 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.
177.	**Telecom** *Failure to Fund Benefits*	A telecommunications firm maintained a **self-insured health plan**. 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.
178.	**Telecom** *Breach of Fiduciary Duty*	The Department of Labor investigated a communications company for the methodology the company used in determining the **allocation of Plan earnings** 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.
179.	**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 **ESOP** at a price below fair market value. The insurance company spent $800,000 to resolve the matter with the Department of Labor.
180.	**Manufacturing** *Breach of Fiduciary Duty*	A Midwestern manufacturer failed to submit the requisite forms for an employee's **life insurance** 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.
181.	**Transportation** *ERISA Violation*	A private company pension plan trustee invested plan assets in an **off-shore investment fund**. When the investment lost 60% of its value, the trustee sued, claiming the investment fund misrepresented the nature of the investment. The off-shore investment fund counter-sued, alleging the 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.
182.	**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 **health care benefits** 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 **ERISA**. The insurance company defended the suit and the case was dismissed after incurring $30,000 in fees.
183.	**Business Services** *Benefits Communication*	Six retired employees of a nonprofit consulting firm sued the firm, alleging entitlement to early **retirement benefits.** The plaintiffs alleged they relied on oral and written representations of the 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.
184.	**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.
185.	**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.
186.	**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.
187.	**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.
188.	**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.