U.S. Administration on Aging
Pension Counseling & Information Program
2020 National Training Conference
Presented By
Pension Rights Center

Case Law Update

May 21, 2020

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The Topics

- Who is a Fiduciary?
- Substantive Issues
- Exhaustion
- Arbitration
- Other Supreme Court Cases

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Who Is A Fiduciary?

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ERISA's Definition of Fiduciary

A person is a fiduciary with respect to a plan to the extent

- (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
- (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
- (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

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Fiduciary – Pick One Of Three

- *Dawson-Murdock v. National Consulting Group, Inc.*, 931 F.3d 269 (4th Cir. 2019).
- The beneficiary had alleged (a) the employer failed to inform her husband that his move to part-time employment would end his eligibility for the plan (even though he had continued paying premiums) and/or to notify him of his options for converting his life insurance coverage, and (b) that, in response to her request for advice regarding the insurer's denial of her claim, the employer's vice president had advised her she need not appeal the denial and continued to assure her regarding the employer's efforts to have the claim approved until after the deadline to appeal had passed.

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Fiduciary – Pick One Of Three

- *Dawson-Murdock v. National Consulting Group, Inc.*, 931 F.3d 269 (4th Cir. 2019).
- Rejecting the lower court's finding that these actions were "administrative," the Fourth Circuit found that the employer was a fiduciary because it was not only the designated plan administrator, but the named fiduciary of the plan.
- The Fourth Circuit held that there is no requirement to allege that the plan administrator and named fiduciary also is a functional fiduciary in order to state a plausible ERISA fiduciary breach.

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Fiduciary – Exercise Of Control

- *Electrical Workers Pension Plan*, Local 103, IBEW v. Herold, No. 18-cv-11037, 2019 WL 4192149 (D. Mass Sept. 4, 2019).
- ERISA fiduciary breach and self-dealing claims against beneficiary's son to recover $54,511.57 in benefit payments that had been deposited to the account of a deceased beneficiary before the plan learned of her death.
- The Court stated the amounts paid into the beneficiary's account after her death were "indisputably plan assets."
- The court finds that the beneficiary's son is a fiduciary because he had exercised control over the beneficiary's account after her death and had been responsible for deciding how the account, including the post-death payments, would be used.
- The Court found the level of discretion exercised by the son sufficient to establish him as an ERISA fiduciary.

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Fiduciary – Authority Over Plan Assets

- *Cusack-Acocella v. Dual Diagnosis Treatment Ctr., Inc.*, No. 8:18-cv-01009-AGKESx, 2019 WL 2621921 (C.D. Cal. May 1, 2019).
- On a motion to compel brought by plan beneficiaries against plan administrator, the beneficiaries claimed administrator could not withhold communications related to plan administration based on administrator's fiduciary relationship.
- The court held that beneficiaries presented evidence that administrator exercised authority over management and disposition of plan assets because it established a bank account in its own name that was used to hold plan assets, paid claims from the fund, and made decisions about transferring funds and the order of paying claims.
- The administrator also exercised discretion by deciding when to suspend administration and by allowing the plan sponsor to fund claims via check versus the administrator's standard electronic transfers.

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Fiduciary – Authority Over Plan Assets

- *Fletcher v. ConvergEx Group LLC*, 388 F. Supp. 3d 293 (S.D. NY 2019).
- Insufficient allegations of exercise of authority or control over ERISA plan assets when providing transition management services or executing securities trade orders where there were no facts that alleged the brokers had any influence or control over which or how many securities to buy or sell or the authority to initiate trade orders unilaterally.
- The brokers were also not operating in a fiduciary capacity when they realized trading profits because such profit was dependent on factors over which they had no control.

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Fiduciary – Timing

- *Nelsen v. Principal Global Investors Trust Co.*, 362 F. Supp. 3d 627 (S.D. Iowa 2019).
- The Court dismissed participants' claim that trustees and advisors breached their fiduciary duties when selecting investment options, holding that they were not fiduciaries during that time because selection occurred prior to the execution of participation agreements.
- However, the Court held that the trustees and advisors were fiduciaries after the execution of participation agreements because the agreements expressly named the trustees and advisors as fiduciaries and they had the exclusive right to control plan assets, thus creating a duty to monitor investments and to replace imprudent investments.

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Substantive Issues

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Accrual of Statute of Limitations: What is Actual Knowledge?

Intel Corp. Investment Policy Committee v. Sulyma, 589 U.S. __, 140 S. Ct. 768 (Feb. 26, 2020).

Issue: Whether the three-year limitations period in ERISA Section 413(2), which runs from "the earliest date on which the plaintiff had actual knowledge of the breach or violation," bars suit when all the relevant information was disclosed to the plaintiff by the defendants more than three years before the plaintiff filed the complaint, but the plaintiff chose not to read or could not recall having read the information.

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Accrual of Statute of Limitations: What is Actual Knowledge?

Holding: Under ERISA's requirement that plaintiffs with "actual knowledge" of an alleged fiduciary breach must file suit within three years of gaining that knowledge, a plaintiff does not necessarily have "actual knowledge" of the information contained in disclosures that he receives, but does not read or cannot recall reading.

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Failure to Provide Documents

- Courts generally reject a de facto plan administrator theory.
- Only a named plan administrator can be held liable for a failure to furnish plan documents. Duty to disclose documents lies with plan administrator.
- *Bergamatto v. Bd. of Trs. of the NYSA-ILA Pension Fund*, 933 F.3d 257, 268 (3d Cir. 2019).
- *Minerley v. Aetna, Inc.*, No. CV 13-1377 (NLH/KMW), 2019 WL 2635991 (D.N.J. June 27, 2019).
- *Brende v. Reliance Standard Life Ins. Co.*, No. 15-CV-9711-JAR-TJJ, 2019 U.S. Dist. LEXIS 87777, at *17-18 (D. Kan. May 24, 2019) (echoing Tenth Circuit position.)

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Alternative Claims – Failure To Provide Documents

- *Cotten v. Altice USA, Inc.*, No. 19-CV-01534 (RJD)(ST), 2019 U.S. Dist. LEXIS 223252, at *9 (E.D.N.Y. Dec. 30, 2019).
  - A claim for failure to provide plan documents was likely duplicative of a breach of fiduciary duty claim, but declined to dismiss the claim as duplicative until after limited discovery was completed.

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Alternative Claims – Benefit Cutback

- *Smith v. I.A.T.S.E. Local 16 Pension Plan*, 2019 WL 6327554, 2019 US Dist LEXIS 206452 (N.D. Cal. Nov. 26, 2019).
- Allegation that benefits were unlawfully "cutback" pursuant to a 2017 plan amendment after she attested to engaging in prohibited employment
- Brought Section 502(a)(3) and Section 502(a)(1)(B) claims
- Defendants argued for dismissal of plaintiff's Section 502(a)(1)(B) claim because there was no plan determination with respect to claim denial concerning Plaintiff's post-retirement employment.
- General allegations that the plan had indicated that the 2017 amendment applied to her were sufficient to support her claim that the plan terms were ambiguous, and for clarification of her rights.
- Court denied defendant's motion to dismiss the 502(a)(1)(B) claim, but order plaintiff to amend her to complaint to clearly seek clarification of plan terms.

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Section 502(a)(1) Can Be Used To Enforce Reformed Plan.

- *Laurent v. PricewaterhouseCoopers LLP*, 945 F.3d 739 (2d Cir. 2019).
- Plaintiff had brought a class action, successfully claiming that the plan's method of calculating normal retirement age was unlawful under ERISA.
- The court upheld a "two-step" reformation and enforcement process.
- A court has the authority to reform an unlawful plan provision under Section 502(a)(3), and then proceed to enforce the reformed provision pursuant to Section 502(a)(1)(B).

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Substantial Compliance

- *Fessenden v. Reliance Standard Life Ins. Co.*, 927 F.3d 998 (7th Cir. 2019).
- Court refused to adopt *Halo v. Yale Health Plan*, 819 F.3d 42 (2d Cir. 2016) (requiring strict compliance), but held that "substantial compliance" does not apply to deadlines imposed on plans to decide benefit claims. "'In no event' can a deadline be extended further.
- In *Edwards v. Briggs & Stratton Retirement Plan*, 639 F.3d 355 (7th Cir. 2011) the court refused to permit late submission of claim appeal. Thus, *Fessenden* ruled, "What's good for the goose is good for the gander."

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Misrepresentations

- *Cunningham v. Wawa, Inc.*, 387 F. Supp. 3d 529 (E.D. Pa. 2019
- ESOP participants challenged two amendments to the plan. One eliminated a terminated participants' right to hold the ESOP stock through age 68; the and required participants to sell their stock at an alleged unfair price.
- Plaintiffs argued that Defendants breached their fiduciary duties by misrepresenting to certain participants that they could hold their stock through age 68.
- The court found that **Plaintiffs did not need to show individual detrimental reliance on the misrepresentation to pursue reformation and surcharge** and that, even if they did, the court could presume such reliance on a class-wide basis.

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Misrepresentations

- *Coutu v. Bridgestone Americas, Inc.*, No. 3:17-CV-01492, 2019 US Dist LEXIS 136499, 2019 WL 3802097 (M.D. Tenn. Aug. 13, 2019).
- Plaintiff claimed Defendant breached its fiduciary duty of loyalty by providing "lackluster responses" about his questions as to which pension plan he participated in and whether Defendant would honor his years of service. Plaintiff also claimed Defendant provided inaccurate calculations and dates in the online benefits calculator.
- The Court granted defendant's motion for summary judgment on this claim, finding the alleged inaccuracies during the three-year limitations period were not material misrepresentations, **as Plaintiff failed to assert that he relied on them to his detriment.**

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Inaccurate Information

- *Kushner v. Nationwide Mut. Ins. Co.*, No. 2:17-CV-00715, 2019 WL 4696306 (S.D. Ohio Sept. 26, 2019).
- No dispute that defendants had provided inaccurate information.
- Defendants argued that the misrepresentations were based on clerical error and thus could not constitute a fiduciary breach.
- The Court rejected this argument noting that a question of fact remained as to the source and cause of the error. It remained possible that the error was caused by an employee error, which could have been remedied by a more robust training protocol, or by an internal system defect caused by defendant's failure to adequately maintain its system.
- Result: Denial of summary judgment relating to participant's allegation the he relied to his detriment on misrepresentations contained in plan communications that erroneously inflated his monthly benefit.

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Standard of Review: Conflict

- *Kirkendall v. Halliburton, Inc.*, 760 Fed. Appx. 61 (2d Cir. 2019).
  - **Issue**: Whether plan participants could "grow into" early retirement eligibility for benefits they accrued before the plan sponsor sold their employer's business.
  - The plan's benefits committee determined that participants could not earn service credit after the sale because they were no longer employed by an entity related to the plan sponsor.
  - Plaintiffs' alleged the defendant suffered from a "categorical potential conflict of interest"—because it both funded the plan and was the claim's decision-maker.
  - The court held that the conflict did not affect the application of the abuse of discretion standard of review **in the absence of a showing by the plaintiffs that the conflict actually affected the plan administrator's decision-making**. The court upheld the benefits committee's denial, even though the Court believed the plaintiffs' reading of the plan language was "more reasonable."

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Suspension of Benefits

- *Meakin v. California Field Ironworkers Pension Trust*, 774 F.App'x 1036 (9th Cir. 2019).
- In 2018, the Trustees approved Plaintiff's "Golden 85" pension application and his work application to continue working for the same employer in a different position. In 2011, the Trustees entered into a voluntary compliance plan with the IRS and adopted procedures that would cease improper distributions to putative retirees who never actually retired. Subsequently, the Trustees denied Meakin's pension because he had not completely refrained from employment in the construction industry.
- Meakin challenged the denial of benefits, arguing that the denial was unlawful as an impermissible cutback of an accrued benefit or because of equitable estoppel.
- The court held that the new interpretation was not unreasonable. The interpretation did not constitute a cutback because it did not involve a new condition, rather enforcement of an existing condition. Equitable estoppel did not apply because there are no "extraordinary circumstances" and such relief would contradict written plan provisions since Plaintiff never retired and payment of the pension would contradict written terms of the Plan.

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Suspension of Benefits

- *Cohen v. Retail, Wholesale & Dep't Store Int'l Union & Indus. Pension Plan*, 2019 WL 2357584, 2019 EBC 204128 (E.D. Pa. June 4, 2019).
- Plaintiff worked as a bakery manager for Pathmark Stores and participated in the Defendant Pension Plan as a union member. When Pathmark's bankruptcy led to the closure of his store, Plaintiff began working as an assistant bakery manager for Giant Supermarkets, but took a pay cut. He applied for and was denied retirement benefits due to his current employment.
- The court found that the decision to deny his benefits was not arbitrary and capricious based upon the Trust terms and his disqualifying employment in the jurisdiction of the Union and in the same, trade, craft or occupation.
- Pathmark's bankruptcy filing was irrelevant to the analysis. The purpose of reemployment suspension clauses is not intended to prohibit competition with the former employer. If Plaintiff could collect retirement benefits in addition to his wages from Giant, that would subsidize Giant's low-wage hiring practices and suppress wages for other plan participants.

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Spousal benefits

- *Parsons v. Bd. of Trustees of Boilermaker-Blacksmith Nat'l Pension Tr.*, No. 2:20-CV-00132, 2020 WL 1917338 (S.D.W. Va. Apr. 20, 2020).
- Defendant argues Plaintiff, former spouse of the now deceased participant, is not entitled to any benefits because husband was not married at the time he commenced benefits and he elected a ten-year certain benefit.
- Plaintiff argued the divorce decree constituted a QDRO and Defendant's legal counsel agreed it was a QDRO. The QDRO granted her all benefits husband was entitled to at the time of the divorce. Because the plan has an automatic form of payment for married participants of 50% joint and survivor annuity, Plaintiff claims she is entitled to the benefits that were payable at the time of the divorce, i.e. the 50% survivor annuity, rather than benefits based on husband's election at the time of benefit commencement.
- The court found the language adequate to meet the requirements of ERISA § 206(d)(3) and explicitly granted Plaintiff all benefits to which husband was entitled to, including the 50% survivor annuity.

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Grammar Matters

- *Tyll v. Stanley Black and Decker Life Ins. Program*, 403 F. Supp. 3d 27 (D. Conn. 2019).
- Plan provided coverage in the Principal Sum of "Five (5) times Salary subject to a Minimum of $100,000 and a Maximum of $1,000,000."
- Decedent's salary was above $1
- Does policy provide $1M or $5M in coverage?
- Court ruled that term was ambiguous and could modify "salary."
  - Doctrine of contra proferentem.- Reading the clause as Mrs. Tyll suggests—so that the words "minimum" and "maximum" modify the word salary—is no more or less reasonable than reading the same words to modify Principal Sum, as the defendants contend. Indeed, it is the most reasonable reading given that the phrase "subject to ..." is immediately preceded by, and thus grammatically-speaking modifies, the word salary.

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Social Media

- *Williamson v. Aetna Life Ins. Co.*, 2019 WL 1446957 (D. Nev. Mar. 31, 2019).
- Plaintiff repeatedly reported to insurer that she could not drive, used a cane, and could stand only for short periods of time.
- Facebook posts showed her traveling, posing on a motorcycle, and boating.
- Surveillance showed her driving to the store and lifting gallons of milk and water bottles into her car.

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Social Media

- The court found the insurer's denial arbitrary and capricious because it was based almost solely on social media and surveillance, and medical reviews did not adequately explain why medical evidence no longer supported disability (plaintiff's claim had been approved for several years).
- Surveillance showed activity for 11 minutes out of a 72-hour period.
- But several courts have found reliance on social media and surveillance reasonable when the administrator also relied on medical evidence in denying a claim.
  - *Davis v. Aetna Life Ins. Co.*, 699 F. App'x 287 (5th Cir. 2017); *Wehner v. Standard Ins. Co.*, 2019 WL 6052639 (S.D. Ohio Nov. 15, 2019); *Austin-Conrad v. Reliance Standard Life Ins. Co.*, 2016 WL 5400366 (W.D. Ky. Sept. 26, 2016)

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Cybersecurity

"A lawsuit ... brought by a participant in the Estee Lauder plan whose account was stolen by an imposter was recently settled.... [A]nother lawsuit has been filed by a participant whose plan account also was stolen by an imposter. This time, the plan sponsor defendant is Abbott Laboratories, but the recordkeeper, Alight (formerly Aon) is the same.... The facts as alleged in the complaint are troubling. This was not a direct hack into the system. The imposter engaged in phone conversations with an Alight call center representative because the imposter was unable to process account withdrawals online without assistance."

Bartnett v. Abbott Laboratories, No. 20-2127 (N.D. Ill. complaint filed Apr. 3, 2020).

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Exhaustion

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Exhaustion

- *Wallace v. Oakwood Healthcare Inc.*, 2020 WL 1522833 (6th Cir. March 31, 2020)
- Because Defendant did not describe any internal claims review process or remedies in its plan document, the plan did not establish a reasonable claims procedure pursuant to ERISA regulations; therefore, Plaintiff's administrative remedies must be deemed exhausted.

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Exhaustion

- Concurrence Judge Amul Thapar
- Argues as to the underlying basis for the exhaustion requirement
- Judge-made doctrine based on "unabashed purposivism," "policy judgments, legislative-history tea-reading, and an unexplained analogy to the Taft-Hartley" Act.
- Thwarting of Plaintiffs' rights where statute and plan documents are silent

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Exhaustion

- *Olivares v. Luling Care Ctr. Nursing Operations, LLC*, No. 1:18-CV-892-RP, 2020 WL 1677674 (W.D. Tex. Apr. 6, 2020).
- Plaintiff Filed a benefits claim alleging that she was injured in an attack at her workplace that left her unable to return to work. Her lawyers appealed and requested documents related to the denial of her claim. The plan did not provide the documents.
- Plaintiff filed suit against the plan, alleging claims for relief for plan benefits. The plan contended that Plaintiff failed to exhaust her appeals.
- The court found the plan "flatly denied access to the majority of the documents" requested, including the claim file, which the plan claimed was "company property and not released upon request." The court ruled that this was a violation of ERISA regulations, and that Plaintiff therefore did not receive a "full and fair review". The court denied Defendants' motion regarding Plaintiff's alleged failure to exhaust.

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Exhaustion

- *Jones v. Aetna Life Ins. Co*., 943 F.3d 1167 (8th Cir. 2019).
  - Attempt to repackage her denial of benefit claims as breach of fiduciary duty claims in order to avoid ERISA's exhaustion requirement was rejected.

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Arbitration

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Fiduciary Breach Claims Are Generally Arbitrable

- *Dorman v. Charles Schwab*, 934 F.3d 1107 (9th Cir. 2019) and 780 Fed. Appx. 510 (9th Cir. Aug. 20, 2019) (unpublished), *pet. for rehearing and rehearing en banc denied*, No. 18-15281 (9th Cir. Nov. 07, 2019).
- The Ninth Circuit held that because the arbitration provision was contained in the plan document, the plan had consented to individual arbitration and thus ERISA fiduciary breach claims were, generally, arbitrable.
- In its unpublished opinion, the Ninth Circuit held that fiduciary liability under ERISA was inherently individualized when brought in the context of a defined contribution plan like that at issue.

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In what document is the arbitration clause?

- *Munro v. Univ. of S. Cal.*, 896 F.3d 1088 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1239 (2019).
  - The arbitration provision was contained in an employment agreement with the individual employee and not in the plan document.
  - The Ninth Circuit refused to compel individual arbitration of an ERISA fiduciary breach claim against the fiduciary of a defined contribution plan because fiduciary breach claims are, by their nature, plan claims and the plan did not consent to arbitrate.
  - The Ninth Circuit held that, because "a plaintiff bringing a suit for breach of fiduciary duty similarly seeks recovery only for injury done to the plan," the participant lacked the right to force the plan's claim into individual arbitration on the basis of an employee's individual arbitration agreement.
  - As a side note, relying on precedent, the Ninth Circuit held that a release signed by an individual participant cannot release the plan's claim.

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When was the clause added to the plan?

- *Brown v. Wilmington Tr.*, N.A. , 2018 BL 262035, S.D. Ohio, No. 3:17-cv-00250, 7/24/18 (order denying defendant's motion to compel arbitration)
  - Plaintiff did not have to arbitrate her ESOP lawsuit challenging a $165 million stock sale to the plan.
  - The transaction at issue—the Henny Penny stock sale to its employee stock ownership plan for $165 million—took place in 2014. The arbitration clause was added more than two years later, in January 2017. During this time, the investor had already left her employment at Henny Penny and completely cashed out of the plan.
  - The addition of the arbitration clause does not necessarily bind individuals who have ceased all participation in the plan and whose cause of action accrued before the modification took place.
  - The Court rejected the arguments of Henny Penny and Wilmington Trust that because the fiduciary breach claims belong to the plan, and the plan consented to arbitration, it didn't matter that the investor didn't personally agree to arbitrate the claims.

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When was the clause added to the plan?

- *Casey v. Reliance Trust Co.*, 2019 U.S. Dist. LEXIS 223195; 2019 WL 7403931 No. 18-cv-424 (E.D. Tex.)
- Plan was a Leveraged ESOP sponsored and administered by non-party RVNB, Inc. Two former participants filed claims against the former plan trustee, Reliance, pursuant to ERISA including under claims under § 502(a)(2)
- After the plan was terminated, it was amended to include an arbitration agreement that required arbitration of all claims on an individual basis.
- Several months into litigation, RVNB, Inc. produced a copy of the arbitration clause. Reliance then moved to compel arbitration.

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When was the clause added to the plan?

- Magistrate recommended against arbitration.
- Arbitration provision was put in after termination.
- No Notice: Participants were fully vested and no longer participants when plan was amended.
- Neither the plan nor the plan fiduciaries are defendants in the case.
- Reliance was not a signatory to the arbitration agreement, was not the plan trustee when the arbitration clause was added, and had no notice of the provision.

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Benefit Claims

- The claims regulation permits arbitration only if it is purely voluntary or as only one step of the appeals process.
- The claims reg rejects mandatory arbitration and requires that an appeal can be brought under 502(a).
- Some plan counsel have mulled over challenging the claim regulations.

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OTHER SUPREME COURT CASES

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Burden of Proof in Fiduciary Breach Claim

- *Putnam Investments, LLC v. Brotherston,* 907 F.3d 17 (1st Cir. 2018), *cert. denied,* (U.S. Jan.13, 2020) (No. 18-926).
  - Who bears burden of proving or disproving causation once plaintiff has proven loss in wake of imprudent decision
- Circuit split (subject to dispute):
  - Burden shifts to fiduciary: 1st, 4th, 5th, 8th
  - Plaintiff bears burden: 2nd, 6th, 7th, 9th, 10th,11th
- First Circuit adopted burden-shifting approach –
  - Statutory language silent –
  - Common law of trusts –
  - Fiduciary has more knowledge about causation

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Preemption: Will 2 New Justices Change The Law?

Rutledge v. Pharmaceutical Care Management Association, 891 F.3d 1109 (8th Cir. 2018), *cert. granted*, No, 18-540 (Jan. 10, 2020).

Issue: Whether ERISA preempts an Arkansas state law that regulates drug reimbursement rates at which pharmacy benefits managers (PBMs) reimburse pharmacies.

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Preemption: Will 2 New Justices Change The Law?

- 36 states have such laws.
- Laws come in several flavors:
  - protect pharmacies from excessively low reimbursement rates (Arkansas law is of this type)
  - protect consumers from high PBM spread between acquisition price and retail price
- Government recommended the Court grant the petition and agreed with the states that Arkansas' law on PBMs is not preempted.

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Preemption: Will 2 New Justices Change The Law?

- Decision turns on the application of *Travelers* and the relationships between the pharmacy network, PBMs, and their customers, including ERISA plans.
- Important substantive issue, but also gives Court opportunity to clarify/further muddle preemption
- Implications for state payroll deduction IRAs?
- Case is briefed but oral argument postponed

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State Payroll Deduction Programs

- Numerous states are helping individuals increase their retirement security by providing access to simple, low-cost, retirement savings programs through an employer.
  - Payroll deduction IRAs, Multiple Employer Plans, Marketplace Retirement Programs
- Payroll Deduction IRAs have generated the most litigation.

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State Payroll Deduction Programs

- *ERIC v. Read*, Case No. 3:17-cv-01605-YY (D. Ore. 2018).
  - Challenging required reporting by employers which offered retirement plans.
- *Howard Jarvis Taxpayers Association, et al. vs. the California Secure Choice Retirement Savings Program*, No. 2:18-cv-01584-MCE-KJN, 2020 BL 89150 (E.D. Cal. Mar. 10, 2020), *appeal docketed*, Apr. 1, 2020.
  - ERISA neither regulates nor preempts the CalSavers program.
  - Program is not an ERISA covered plan.
  - Trump administration had filed a statement of interest arguing against for preemption.

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Preemption: Health Care

- *ERISA Industry Committee v. City of Seattle*, No. C18-1188 TSZ, 2020 WL 2307481 (W.D. Wash. May 8, 2020)
- ERIC sued the City of Seattle, alleging that the city's ordinance requiring hotel and hotel-related businesses to make "healthcare expenditures" on behalf of covered employees is unenforceable because it is preempted by ERISA.
- The court granted Seattle's motion to dismiss, finding that the ordinance's "direct payment option," in which employers could pay employees directly for healthcare-related expenses, did not constitute an ERISA benefit plan because the payments were similar to wages and the ordinance only imposed minimal record-keeping and administrative requirements on employers.
- The court further found that the ordinance did not impermissibly connect with or refer to an ERISA plan because payment of expenses through ERISA-governed plans was only one option under the ordinance. The ordinance was "fully functional" without any ERISA plan.
- Finally, the ordinance did not "bind, regulate, or dictate" the terms of an ERISA plan. The amount of the payments under the ordinance was not predicated on the amount of benefits payable under any ERISA plan; the amounts were calculated based on the employee's status.

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