Updates in Benefits Litigation

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International Foundation OF EMPLOYEE BENEFIT PLANS

Overview of Benefits Litigation

- This presentation is in two overall parts
  - Tips to avoiding being in this outline next year.
  - Overview of select cases and lessons learned.

Note: I have included more cases than we will cover.

Overview

- The Supreme Court was been busy earlier this year with many significant issues.
- Most did not involve ERISA plans, however, some of which have and will continue to have major repercussions in the ERISA world
  - Chevron deference
  - Loper Bright/Relentless cases

Overview

- Much fiduciary litigation continues to revolve around a few key themes
  - Class actions
    - Fee litigation against pension/401(k) plans
    - Other breaches including investment process
    - The extension of class actions to Health Plans
  - Full and fair review of Benefit Claims and other plan administration issues

Overview

- Other areas include:
  - Mental Health Parity and Addiction Equity Act ("MHPAEA") litigation
  - COBRA litigation
  - Cases on assignment of claims, arbitration of benefit claims, withdrawal liability and preemption are included as supplemental material at the end.
- Understanding these cases and their lessons will help you keep out of court

Overview—The Ds

- Ds to Remember:
  - **Dignity**
  - **Discretion**
  - **Diversity**
  - **Due Process**
  - **Due Diligence**
  - **Disclosure**
  - **Documentation**
- Ds to Avoid:
  - **Delay**
  - **Discrimination**
  - **Deceit**

Dignity

"Don't look at this as a demotion, look at it as the stripping away of your last shred of dignity."

Dignity

- Treat employees with courtesy and respect
- Listen carefully
- Be as responsive as possible
- Practice the Golden Rule

Discretion

"But I do exercise. I exercise discretion."

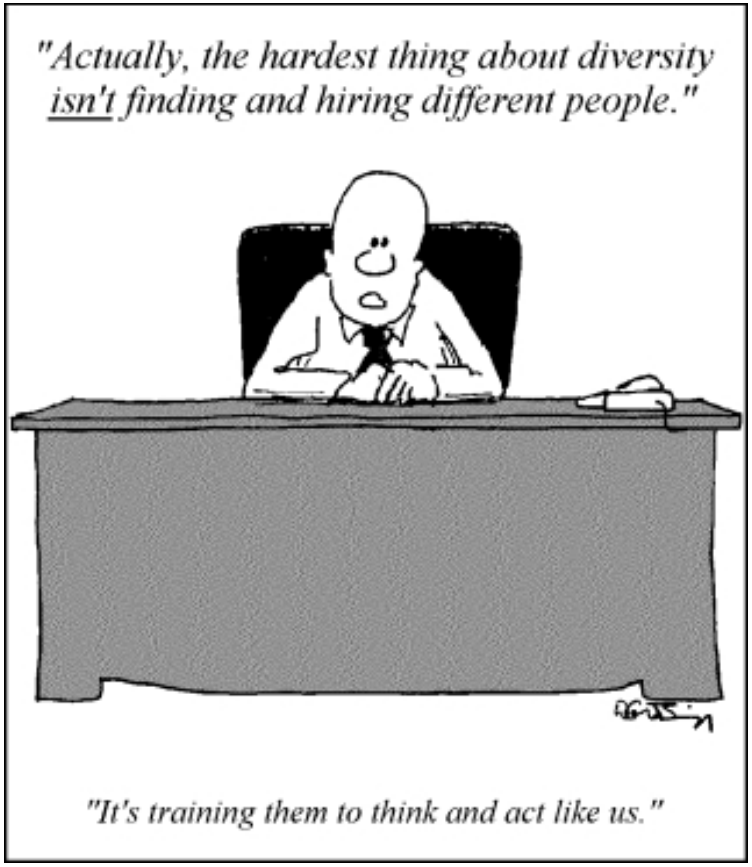
Discretion

- Make sure plan and SPDs and other benefit communications provide discretion to the employer/administrator
  - To construe, interpret and apply terms and to resolve ambiguities
  - To amend or change those policies/handbooks/plans at any time

Discretion

- Exercise discretion reasonably and consistently
  - Provide adequate notice/avoid retroactive amendments whenever possible
- Still must comply with the law, the plan and the SPD

Diversity


"Actually, the hardest thing about diversity isn't finding and hiring different people."
"It's training them to think and act like us."

Diversity

- Age
- Gender
- Ethnic background
- Race
- Religion
- National origin
- Disability/different abilities
- Color
- Gender identity
- Sexual orientation
- Military service or veteran status
- Genetic information
- Other factors such as economics, educational background, political and cultural differences, past experiences (including trauma)

Diversity

- Diversity, equity, inclusion, belonging and cultural competency are watchwords, but also be sensitive to people's varying backgrounds and special needs.
- Develop a communication style that works for you and then adapt as needed to each individual's needs.
- Create an atmosphere of dignity and respect where each person feels that their contributions are valued and where diversity is celebrated.
- Be alert to possible accommodations that may be needed.
- It is not enough not to engage in intentional discrimination. Active efforts are needed geared to issues in your unique workplaces.

Some Thoughts

- Administrators and Trustees need to be visibly committed
  - The tone set from the top is critical to success
- Boards should be involved and trained as part of their general fiduciary oversight
- Get experienced advice
  - Be aware that lawsuits can result from improper application of ESG or DEI principles.

Disclosure / Communication / Loose Lips Sink Ships

Disclosure / Loose Lips

- Use all available communications opportunities and frame communications so that they will be most likely to be understood by all.
- Avoid legal or highly technical language.
- And always remember: Loose lips sink ships!

Due Diligence

"Benson is conscientious
to a fault..."

Due Diligence

- Due diligence means doing your homework.
- Investigate thoroughly
  - Don’t rely on stereotypes, hearsay, or assumptions.
- Due diligence is important in all aspects of plan design and administration from development of the SPD and the ensuring of consistent treatment, to the adoption of an investment policy and the careful selection of investments or a PBM and the regular review and monitoring of same.
- Equally important in running the benefits office

Due Diligence

- Stay current and get appropriate advice before taking the action
  - Retain appropriate expertise if you are not adequately qualified.
  - Remember to monitor the professionals that you do select; Sift all recommendations with an eye to practicalities, financial and legal ramifications and public perception.
  - Document your process and why you made the decisions you did.

Due Process

Due Process

- Develop sound policies and procedures and adhere to them.
- Beware of overly complicated processes.
- Usually, processes should be in writing or otherwise clearly published.
- Importance of both procedural and substantive due process.

Documentation

I HAD NO CHOICE, HIS DOCUMENTATION WAS WEAK.

Documentation

- The reasons for good documentation are many, not the least of which is that judges, juries, arbitrators and administrative agencies expect it.
- Know the difference between good and bad documentation.
- Don’t promise more documentation than you can deliver.
- Document facts rather than conclusions.

Delay

Delay

- Act/respond as promptly as possible under the circumstances.
- Always adhere to any time limits set forth in your plan documents, SPD, CBA or other relevant source.
- Document agreements to extend timelines.
- Investigations should be as prompt as possible under the circumstances.
- Keep employees informed of need for additional time.

Delay

- Be proactive
  - Try to anticipate potential issues and;
  - Plan your strategy ahead of time so that you can respond quickly.

Discrimination

"Why me and not you?"

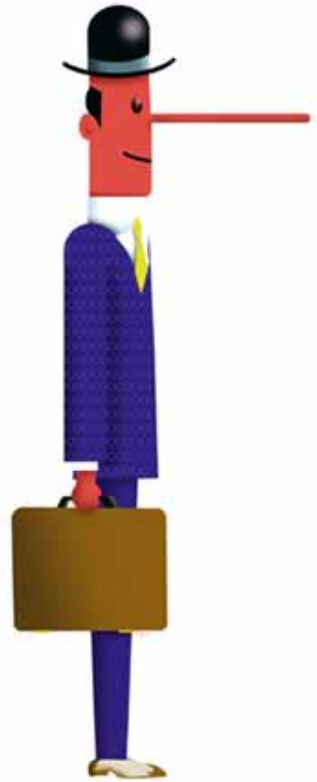
Discrimination

- Avoid illegal discrimination or the appearance of it
  - Remember an intent to discriminate is not necessary if there is an adverse disparate impact on a protected class.
- Consistency is perhaps the single most important guiding principle in handling benefits issues.

Discrimination

- This consistency should include:
  - Consistency with the plan/SPD/policy and how it has been previously interpreted and applied to other employees.
  - Consistency among departments, divisions, locations, and supervisors.
  - Internal consistency vis-à-vis the employee.

Deceit



Deceit

- It is better to say nothing than to lie.
- Using a false reason for a decision can cause an inference of illegal discrimination.

Key Takeaways

Ds to Remember:

- Dignity
- Discretion (Loper Bright)
- Diversity (E.W., Ian C.)
- Due Process (Goldman, Watson, Harmon, Ian C.)
- Due Diligence (Lewandowski, Perkins, Ian C., DOL and COBRA cases)
- Disclosure/communication (Parmenter, Watson, Ian C., COBRA)
- Documentation (Watson, Goldman)

Ds to Avoid:

- Delay (Watson)
- Discrimination (E.W., Ian C.)
- Deceit (Watson)

U.S. Supreme Court

Supreme Court Overturns Chevron Doctrine Upending a Foundational Principle of Administrative Law for the Last Forty Years in its Loper Bright and Relentless Decisions

Loper Bright Enterprises v. Raimondo

- Two of the major cases decided by the Supreme Court this term were Loper Bright Enterprises v. Raimondo and Relentless, Inc. et al. v. Dept of Commerce, et al.
- They involves the so-called "Chevron rule," established by the Court's 1984 decision in Chevron v. Natural Resources Defense Council.

Loper Bright Enterprises v. Raimondo

- In Chevron, the Court developed the concept now referred to as "Chevron deference".
- That concept generally means that the federal courts will defer to any reasonable interpretation of an ambiguous statute by the federal agency charged by Congress with interpreting it and issuing related regulations.

Loper Bright Enters. v. Raimondo, Sec'y of Commerce, No. 22–451, 45 F. 4th 359 No. 22–1219, 62 F. 4th 621 (U.S. Jun. 28, 2024)

Loper Bright Enterprises v. Raimondo

- The courts applied a two-step approach in Chevron cases
  - The first step was to determine whether Congress clearly intended to delegate to the agency authority to interpret a given statute.
  - If the law in question is silent or ambiguous on the point, as it often is, the courts would defer to any reasonable interpretation by that agency.

Loper Bright Enterprises v. Raimondo

- In a 6-3 decision authored by Chief Justice Roberts, SCOTUS overturned Chevron, calling it inconsistent with the Administrative Procedure Act ("APA").
- Post-Loper Bright, the reviewing court must exercise its independent judgment in deciding whether an agency has acted within its statutory authority—It may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Effects of Loper Bright

- This decision will take many years and much litigation to shake out its full effects.
- For starters, it will be much easier for courts to strike down regulations or other administrative interpretations by federal agencies, *e.g.*, the DOL, IRS, PBGC, HHS, EEOC, NLRB, OSHA, SEC, etc.

Effects of Loper Bright

- This can lead to a patchwork of inconsistent interpretations, one of the very concerns behind the passage of ERISA 50 years ago.
- The concerns of the compliance burdens imposed by ERISA were seen 50 years ago to be outweighed by the benefits of ERISA preemption of state laws.

Effects of Loper Bright

- Chevron deference is not unlike the deference shown by the courts to benefits plan administrators when plan documents provide that the administrator has discretion to interpret the plan and resolve ambiguities.
- Plan sponsors and administrators work within a complex regulatory framework that is intended to provide uniform national guidance.

Effects of Loper Bright

- Loper Bright and Relentless are not ERISA cases nor preemption cases.
- Post-Loper Bright, the concerns of multistate employers and other large plan sponsors about having to deal with multiple interpretations across state lines will again be front and center.

Effects of Loper Bright

- Challenges to regulations will also increasingly be brought in venues where a favorable judge may be found—“Forum-shopping”.
- The pressure on the already overloaded court system will be intense.

Effects of Loper Bright—ESG

- *e.g.*, the day Loper Bright was decided, several AGs, citing it, filed papers with the 5th Circuit which had been considering whether to uphold a 2022 DOL rule permitting plan fiduciaries a bit more leeway to take nonpecuniary factors (such as environmental, social and corporate governance goals) as a tie breaker when selecting plan investments.

Effects of Loper Bright—ESG

- DOL immediately responded, making clear it had not relied on Chevron deference in making its case and that there was no need to resort to Chevron to find in favor of the DOL Rule.
- On 7/18, the 5th Cir. vacated and remanded the case to the lower court to reconsider its decision in light of Loper Bright.

Loper Bright / Relentless

- Rules by many other agencies will be challenged
- Their defenses will vary
  - *e.g.*, the NLRB will point out it was accorded deference due to its special expertise in labor relations decades before Chevron was decided.
- Forum shopping will escalate
  - 5th Circuit and Texas will see increasing docket load.

Supreme Court Declines to Limit to Administration Communications With Social Media Platforms

Murthy et al. v. Missouri, et al.

- The case arose out of:
  - Requests by White House officials to social media platforms to address vaccine misinformation and
  - A health advisory by Surgeon General Vivek Murthy encouraging the platforms to take steps to prevent COVID-19 misinformation “from taking hold.”

Murthy v. Missouri, No. 23-411 83 F. 4th 350 (U.S. Jun. 26, 2024)

Murthy et al. v. Missouri, et al.

- Two states and five individual social media users sued dozens of Executive branch officials and agencies;
- Alleging that the government had pressured the platforms to censor their speech in violation of the First Amendment.

Murthy et al. v. Missouri, et al.

- In a 6-3 decision authored by Chief Justice Roberts, on 6/26/2024, in Murthy et al. v. Missouri, et al., the Court found that neither the individual nor the state parties to the action had standing

Supreme Court in Rarely Used Move Dismisses the Case of Moyle v. U.S. and Idaho v. U.S.

Moyle v. U.S. and Idaho v. U.S.

- The 6/27 *per curiam* decision dismisses the writs of *certiorari* as "improvidently granted" and the stays vacated, thus deciding not to clarify whether pregnant women have the right to emergency medical care under EMTALA.
- This is not a ruling on the merits and the case will now return to the lower courts for decision.

Moyle v. United States, No. 23-726 (U.S. Jun. 27, 2024)

FDA v. Alliance for Hippocratic Medecine

- On 6/13/2024, the Court, in a unanimous decision authored by Justice Kavanaugh, held that the plaintiffs lacked standing to challenge the FDA's actions regarding mifepristone tablets used in early term abortions. FDA v. Alliance for Hippocratic Medicine and Danco Labs v. Alliance for Hippocratic Medicine.

Food Drug Admin. v. All. for Hippocratic Med., No. 23-235 78 F. 4th 210 (U.S. Jun. 13, 2024)

Riding the Circuits

Class Action Fee Litigation Continues

Class Action Fee Litigation Continues

- The apparently never-ending torrent of class action fiduciary lawsuits alleging excessive investment and recordkeeping fees, or otherwise breaching ERISA's fiduciary provisions continues.
- One notable case out of the 5th Circuit was Perkins v. United Surgical Partners International, Inc., et al.

Perkins v. United Surgical Partners Int'l, No. 23-10375, __ F. App'x __, 2024 WL 1574342 (5th Cir. Apr. 11, 2024)

Class Action Fee Litigation Continues

- The 5th Circuit overturned the district court's dismissal of a putative class action case for fiduciary breach based on:
  1) Offering retail share classes rather than less expensive institutional share classes and
  2) Causing the plan to pay excessive recordkeeping fees.

Class Action Fee Litigation Continues

- The court noted that the more expensive retail shares hold identical investments, have the same manager and cannot be differentiated from institutional shares by having
  - A potential for higher return,
  - Lower financial risk,
  - More services offered, or
  - Greater management flexibility.

Class Action Fee Litigation Continues

- The court then examined the allegation that the Plan Committee had used a flawed process for selecting the Plan's investment options.
- The court found retail and institutional shares "identical" except that—The retail shares were more expensive.
- It also found that the plan offered both classes rather than only the less expensive institutional shares.

Class Action Fee Litigation Continues

- Plaintiffs argued that the court could infer that the Committee's failure to replace the Plan's retail shares "with the cheaper and otherwise identical institutional shares" was a breach of the duty of prudence.

Class Action Fee Litigation Continues

- The court rejected defendants' contention that plaintiffs had failed to rebut the "obvious alternative explanation" that retail shares permit revenue sharing which, in turn, helps to defray and better allocate revenue sharing which may help defray and better allocate recordkeeping costs.

Class Action Fee Litigation Continues

- The court instead found that “another plausible explanation is that the Committee included retail shares in the Plan due to mismanagement” especially given the higher recordkeeping costs than comparable plans.

Class Action Fee Litigation Continues

- The court concluded that plaintiff's allegations about comparative costs and services were sufficient to survive dismissal, noting that plaintiffs had
  - Not only pointed to industry-wide averages, but also
  - Compared the Plan's recordkeeping costs with the costs for similar recordkeeping services provided to a similar number of plan participants.

In another class action investment case, the 2nd Circuit overturns class disloyalty claim against Goldman Sach's Retirement Plan Committee

Falberg v. The Goldman Sachs Group

- On 2/14/2024, the 2nd Circuit determined that the GS Retirement Plan Committee did not breach its fiduciary duties in an ERISA class action involving a 401(k) plan.
- The case alleged that the defendants breached their duties by giving preferential treatment to five mutual funds managed by Goldman Sachs Asset Management ("GSAM").

Falberg v. The Goldman Sachs Grp., 22-2689-cv (2d Cir. Feb. 14, 2024)

Falberg v. The Goldman Sachs Group

- Plaintiffs argued that defendants breached their duty of loyalty by retaining the challenged funds for the benefit of Goldman at the expense of plan participants
  - By using a less rigorous selection process for GSAM funds compared to nonproprietary funds and;
  - By retaining those funds even though they cost more or performed worse than similar options.

Falberg v. The Goldman Sachs Group

- The 2nd Circuit upheld the district court's dismissal of those claims for breach of loyalty.
- The court also reviewed the investment process and found it to be both rigorous and robust, notwithstanding the failure to adopt a formal investment policy statement for selecting and monitoring plan investments.

Falberg v. The Goldman Sachs Group

- The court noted that the district court correctly determined that Falberg failed to introduce sufficient evidence that a prudent fiduciary in defendant's position would have acted differently.

Falberg v. The Goldman Sachs Group

- The court noted many factors favorably, such as:
  - The members of the Committee were experienced financial professionals
  - The Committee was supported by qualified ERISA counsel and independent investment advisors
  - Regular training and updates were provided

Falberg v. The Goldman Sachs Group

- The court found the Committee followed a "deliberative and rigorous process" when selecting and monitoring investments including
  - Continuous monitoring by the Committee's independent advisor and
  - The provision of monthly and quarterly performance reports and other information to the Committee
    - Reviewed by the Committee before Committee meetings.

Fee Litigation Extends to Health and LTC Plans

Lewandowski v. Johnson Johnson

- Class action suit filed 2/15/2024 D.N.J. alleging fiduciary breach by mismanaging prescription drug benefits, costing ERISA plans and their participants millions of dollars in:
  - Higher payments for prescriptions
  - Higher payments for premiums
  - Higher payments for deductibles
  - Higher payments for coinsurance
  - Higher payments for copay
  - Lower wages/wage grants

Lewandowski v. Johnson & Johnson Case No. 3:24-CV-00671

Lewandowski v. Johnson Johnson

- Specifically called out were
  - Prices to PBM Express Script for generic drugs widely available at “drastically” lower prices
  - Excessive administrative fees
- See also Navarro v. Wells Fargo

Fee Litigation Extends to LTD Plans

- Increasing premium rates for LTD policies can also engender fiduciary challenges.
- Parmenter v. Prudential Insurance Company of America, decided 2/14/2024 by the 1st Circuit

Parmenter v. Prudential Ins. Co. of Am., 93 F.4th 13 (1st Cir. 2024)

Parmenter v. Prudential Ins. Co. of America

- Plaintiff, Barbara Parmenter, was an employee of Tufts University, the plan sponsor.
- She claims that before she enrolled in the LTD plan, she attended a meeting at which representatives of Prudential
  - "Assured prospective enrollees that any future premium increases would need to be approved by the Massachusetts Commissioner of Insurance before the increase could become effective."

Parmenter v. Prudential Ins. Co. of America

- This same promise was contained in the foreword to the contract of insurance which allowed Prudential the right to increase the premiums “subject to the approval of the Massachusetts Commissioner of Insurance.”
- The “subject to” language was not included in the other two contractual references to fees.

Parmenter v. Prudential Ins. Co. of America

- Parmenter sued both Prudential and Tufts for breach of fiduciary duty after Prudential increased the premiums 40% in 2019 and another 19% in 2020 without seeking or obtaining the approval of the Massachusetts Commissioner of Insurance.

Parmenter v. Prudential Ins. Co. of America

- The district court dismissed the claims, and the 1st Circuit agreed with respect to the claims against Tufts.
- It reversed the decision in favor of Prudential, however, and remanded it to the district court for further proceedings.

10th Circuit Decision in Watson v. EMC Corp Reinforces the Need for Accurate Communication of Plan Terms

Watson v. EMC Corp— Holding

- On 2/9/2024, the 10th Circuit, consistent with other circuit courts which have addressed these issues, found that ERISA can provide *monetary* relief for fiduciary breach even where there is no claim for benefits under the terms of the plan.

Watson v. EMC Corp., No. 22-1356, __ F. App'x __, 2024 WL 501610 (10th Cir. Feb. 9, 2024)

Watson v. EMC Corp— Background

- Watson was a participant in the EMC group life plan for many years
- In 2015 he accepted a voluntary separation plan under which EMC continued to pay him and to keep his benefits in place.
- Under the VSP, his employment would end on 11/24/2016)

Watson v. EMC Corp— Background

- Watson could then convert his group life to an individual policy and remain eligible for continued group health.
- On 11/29/2016, Watson emailed EMC asking how to start paying for his benefits for the next year.
- Watson was told that he would be receiving a bill from ADP and that benefits would remain active during the transition.

Watson v. EMC Corp— Background

- Watson never actually converted his MetLife life insurance from a group to an individual policy but did pay each life insurance bill he received from ADP.
- He died less than a year later on 9/18/2017.
- His widow filed a life insurance claim with MetLife.

Watson v. EMC Corp— Plan Denial Appealed

- MetLife denied the claim because:
  - Coverage under the group plan ended 11/24/2016,
  - Watson had failed to convert to an individual plan,
  - Therefore, there was no policy in effect.
- Watson's widow sued EMC for breach of fiduciary duty because of its misleading 11/30 email and actions causing Watson to believe he still had basic life coverage.

Watson v. EMC Corp— Overturned by 10th Circuit

- Her equitable claim for a surcharge in the amount of the life insurance benefits of $663,000 was denied by the district court.
- On appeal, the 10th Circuit found that the district court committed legal error and abused its discretion by treating his widow's Sec 1132(a)(3) claim for fiduciary breach as a Section 1132(a)(1)(B) claim to recover under the plan.

Watson v. EMC Corp— Case Remanded

- Section (a)(1)(B) allows recovery of benefits due under the terms of the plan whereas (a)(3)(B) allows equitable relief.
- Because Mr. Watson failed to convert his group life policy, he was not entitled to benefits under the terms of the plan.
- However, Mrs. Watson could sue for breach of fiduciary duty seeking equitable relief. The case was remanded for further proceedings.

Full and Fair Review of Benefit Claims—Krishna and Harmon

Krishna v. National Union Fire Insurance Company

- On 3/11/2024, the 5th Circuit upheld National Union's denial of travel accident insurance benefits to an employee during a business trip, holding that:
  1) The abuse of discretion standard rather than *de novo* review was appropriate
  2) The plan terms were unambiguous
  3) The late decision on appeal did not mean that a full and fair review had not been conducted given the careful review of the claim and the lack of prejudice to the claimant.

Krishna v. Nat'l Union Fire Ins. Co. of Pittsburgh, No. 23-20289, __ F. App'x __, 2024 WL 1049474 (5th Cir. Mar. 11, 2024)

Harmon v. Unum Life Insurance Company

- The 6th Circuit on 3/12/2024 upheld the insurer's decision to terminate long-term disability (LTD) benefits for a facilities technician for 24 Hour Fitness in Memphis, Tennessee who had injured his back and thus could no longer lift 50 pounds as required by his work.

Harmon v. Unum Life Ins. Co. of Am., No. 23-5619, 2024 WL 1075068 (6th Cir. Mar. 12, 2024)

Harmon v. Unum Life Insurance Company

- Unum approved his application for LTD benefits and then extended those benefits after a two-year review.
- Shortly thereafter, Harmon applied for Social Security disability benefits.
- He was denied because he could not only perform sedentary work but also other light work positions such as a cashier, ticket seller or assembler.

Harmon v. Unum Life Insurance Company

- Nonetheless, Unum found that there was still no gainful employment available in Memphis and, thus, allowed his benefits to continue.
- A few months later, however, Harmon disclosed to Unum that he had moved to Miami, Florida and was repeatedly lifting ten- to fifteen-pound weights as part of his regular exercise regimen.

Harmon v. Unum Life Insurance Company

- Unum contacted Harmon's treating physician about his ability to work—The physician replied with two contradictory faxes.
- Unum also conducted a new vocational assessment, this time focusing on the Miami area, and;
- Found there was gainful employment that Harmon could perform within the limitations that both Unum and SSA found he could handle.

Harmon v. Unum Life Insurance Company

- The court reviewed the decision under an arbitrary and capricious standard.
  - Thus the decision would be upheld if it were the result of a “deliberate principled reasoning process” and “supported by substantial evidence.”

Harmon v. Unum Life Insurance Company

- The court rejected Harmon's concern that Unum relied on an in-house reviewing physician.
- It found that it was reasonable for Unum to do so, given that the treating physician had provided no compelling reason to the Unum in-house physician to change her position.

Harmon v. Unum Life Insurance Company

- It also rejected Harmon's challenge to the in-house doctor's qualifications because she specialized not in orthopedics but in internal medicine,
- The court found that the Employee Retirement Income Security Act (ERISA) "does not demand an examination by the narrowest of specialists" and that Harmon had not asserted his treating physician specialized in orthopedics either.

Harmon v. Unum Life Insurance Company

- Finally, the court found that Unum's dual role of paying benefits and determining eligibility did not cause a fatal flaw.
- In the court's view, such a conflict matters only if there is evidence suggesting that the conflict "materialized in a concrete way" such as to unduly influence the administrator's decision.

Harmon v. Unum Life Insurance Company

- The court found that the structural conflict does not rebut the fact that the ultimate decision was the result of a “deliberate principled reasoning process” and was “supported by substantial evidence.”

Mental Health Parity and Addiction Equity Act ("MHPAEA") Litigation

E.W. v. Health Net Life Insurance Company

- On 11/21/2023, the 10th Circuit considered a case involving a minor who had been denied continued coverage for mental health and eating disorder treatment at a residential facility on the grounds it was no longer “medically necessary”.
- This case marks the first time a Circuit Court has spelled out its view on the necessary elements of a MHPAEA claim.

E.W. v. Health Net Life Ins. Co., 86 F.4th 1265 (10th Cir. 2023)

E.W. v. Health Net Life Insurance Company

- In reversing the lower court, the 10th Circuit found the plaintiffs had sufficiently pled a MHPAEA violation and set out what it pronounced the four necessary elements for such complaints:

E.W. v. Health Net Life Insurance Company

1. The complaint must plausibly allege that the group health plan is subject to MHPAEA;
2. The complaint must identify a specific treatment limitation applied to mental health or substance use disorder benefits covered by the plan;

E.W. v. Health Net Life Insurance Company

3. The complaint must identify medical or surgical care covered by the plan that is analogous to the mental health or substance use disorder care for which the plaintiffs are seeking benefits; and

E.W. v. Health Net Life Insurance Company

4. The complaint must plausibly allege a disparity between the treatment limitation on mental health or substance use disorder benefits as compared to the limitations that the plan would apply to the analogous medical or surgical benefits.

Ian C. v. UnitedHealthcare Insurance Co.

- In the second case, decided on 12/5/2023, the 10th Circuit again dealt with a claim on behalf of a minor whose continued treatment at a residential treatment facility was denied after a brief initial period of coverage.

Ian C. v. UnitedHealthcare Ins. Co., No. 22-4082, __F.4th__, 2023 WL 8408199 (10th Cir. Dec. 5, 2023)

Ian C. v. UnitedHealthcare Insurance Co.

- The minor had a dual diagnosis for both mental health and substance abuse disorders.
- United denied continued coverage, plaintiff appealed, and the district court granted summary judgment to United.

Ian C. v. UnitedHealthcare Insurance Co.

- The 10th Circuit reversed.
  - The plan granted discretion to the administrator, thus the applicable standard of review was whether the administrator had acted arbitrarily and capriciously.
  - The court rejected the plaintiffs' suggestion that the review should instead be *de novo* because of the administrator's failure to comply with the procedural requirements under ERISA.

Ian C. v. UnitedHealthcare Insurance Co.

- The 10th Circuit then discussed whether there had been a "full and fair review" of the claim as required by ERISA and found that there had not.
- The court noted that a meaningful dialogue and an ongoing good faith exchange of information is required.

Ian C. v. UnitedHealthcare Insurance Co.

- It also opined that the reviewer on appeal must reevaluate the claim “on a clean slate” without deference to the initial determination, providing the participant with “a true second bite at the apple”.

Ian C. v. UnitedHealthcare Insurance Co.

- In this case the initial denial by the administrator had indicated that the minor had “made progress” such that it was no longer medically necessary for him to stay in a residential facility for treatment.

Ian C. v. UnitedHealthcare Insurance Co.

- On appeal, additional medical records were submitted to support the minor's need for continued residential care based on substance use disorder,
- Pointing out that the minor was still showing acute symptoms and;
- Referring United to its own separate substance use guidelines for medical necessity.

Ian C. v. UnitedHealthcare Insurance Co.

- The appeal was denied on the basis that the minor was not eligible under United's mental health guidelines, but that decision on appeal failed to make any mention of the minor's substance use disorder.
- The court was critical of the failure to consider "all" information submitted by the claimant regardless of whether that information had been submitted at the time of the initial claim.

Ian C. v. UnitedHealthcare Insurance Co.

- The court found that the complete failure to address the substance use issue was so egregious as to be arbitrary and capricious, rejecting United's argument that the "primary driver" for the treatment.

DOL Files Against UMR (Subsidiary of United Health)

- The Department of Labor ("DOL") also filed recent complaints against health insurers, including one filed in the federal district court for Wisconsin in July 2023 against UMR, a subsidiary of UnitedHealth for illegally denying coverage of emergency room and urinary drug screening claims for thousands of patients in violation of DOL claims procedures and the ACA.

DOL Files Against Blue Cross Blue Shield of Minnesota

- In January 2024, DOL filed a complaint against Blue Cross Blue Shield of Minnesota alleging that it had passed along tax obligations of health care providers to multiple self-funded health plans without disclosing that it had done so.
- Query if cases will follow questioning whether health plan sponsors are being sufficiently diligent in monitoring the fees and taxes they are being charged.

COBRA Litigation

COBRA Litigation

- Dozens of class action lawsuits have been filed in the last several years based upon the defective COBRA notices to plan participants and their dependents.
- Most of these cases are either dismissed or are voluntarily settled.

COBRA Litigation

- The rate at which these cases are being filed has slowed but at up to $110 per violation per day, the potential exposure can mount up, especially in cases where the classes involve hundreds or thousands of plaintiffs or in cases where prompt corrective action is not taken to correct defective notices.

COBRA Litigation

- One common claim is that the COBRA notice is deficient because it fails to include the contact information of the plan administrator.

Bryant v. Walgreen Co.

- Several courts including the Northern District of Illinois in the August 2023 decision in Bryant v. Walgreen Co. have rejected that argument, since the notice clearly identified the contact information for the party responsible for administering COBRA.

Bryant v. Walgreen Co., No. 23 CV 1294, 2023 WL 5580415 (N.D. Ill. Aug. 29, 2023)

Bryant v. Walgreen Co.

- The plaintiffs also alleged that the election form was not attached.
- This too was rejected by the court because the regulation does not require the form be included with the notice if there is a reasonable procedure to obtain it.
  - Here, the plaintiff did not allege that calling the call center was not sufficient to produce the desired information and form.

Bryant v. Walgreen Co.

- The court did allow the plaintiffs to proceed to trial on the issue of whether the notice gave erroneous notice of the enrollment deadline for electing COBRA given the federal deadline extension during the COVID-19 pandemic.

Termination for “Gross Misconduct”

- Unlike defective notice cases which are often filed as class actions, individuals may sometimes challenge the failure to provide the option to elect COBRA to employees alleged to have been terminated for “gross misconduct”.

Johnson et al v. City of Kewanee

- In November 2023, the Central District Court of Illinois reviewed a motion for summary judgment on the papers in a case involving a married couple denied the ability to elect COBRA.
- The city alleged that they had been fired for gross misconduct for taking a hard drive with personally identifiable employee information from over fifty thousand employee files and deleting that information from the city computer.

Johnson et al v. City of Kewanee

- The court concluded that the case was fact specific and must go to trial to determine whether one or possibly both members of the couple were guilty of gross misconduct.

Johnson v. City of Kewanee, 2023 WL 8091963 (C.D. Ill. 2023)

Two Areas of Developing Concerns: Cybersecurity and Artificial Intelligence

Two Areas of Developing Concerns: Cybersecurity and Artificial Intelligence

- These issues are ever-present and likely to be so for the foreseeable future with the risks inherent in the rapidly evolving technological landscape.
- Even though we are only at the beginning of seeing these cases reach the courts, much more activity can be expected in coming years.
- Plan sponsors and administrators should be taking steps now to deal with risks from the rise of artificial intelligence as well as updating and monitoring their cybersecurity practices.

Cybersecurity

- In 2021, DOL issued guidance on best practices for service providers, fiduciaries, and participants in protecting plans, plan assets, and plan participants against cybersecurity risks.
- DOL has incorporated demands for the production of cybersecurity documentation including for reported vendor cybersecurity practices in the course of plan audits.

Cybersecurity

- On 9/6/2023, DOL published updated guidance clarifying that its guidance applies to all employee benefit plans, including health and welfare plans.
- DOL stressed that all ERISA covered plans need to implement appropriate best practices to help protect participants and beneficiaries from cybercrime and emerging threats.
- It reminded plan sponsors its continuing investigations of ERISA violations relating to cybersecurity.

Cybersecurity

- The guidance complements EBSA's regulations on electronic records and disclosures to plan participants and beneficiaries including provisions on ensuring that electronic recordkeeping systems have:
  - Adequate controls,
  - Adequate records.
  - Management practices in place, and;
  - Measures calculated to protect personally identifiable information.
- DOL referred to DHHS publications that may also help health plans and their service providers maintain good cybersecurity practices.

Cybersecurity—Giannini v. Transamerica Retirement Solutions, LLC

- A main focus of litigation to date has been on cybertheft of plan assets.
- As an example, a class action filed in New York alleged that plan participants had been the victims of identity theft following the theft of their personal information from the plan including addresses, Social Security numbers, retirement plan distributions and tax information.

Giannini v. Transamerica Retirement Solutions, LLC (7:21-cv-10282)

Cybersecurity—
Horizon Actuarial Services Settlements

- In September 2023, a proposed plan of settlement was sought under which Horizon Actuarial Services would pay $7.75 million to resolve multiple state law claims including claims that:
  - Horizon's data security and privacy safeguards were inadequate
  - Horizon had delayed notifying plan participants of breaches in 25 multiemployer plans for nearly 8 months after it happened

Cybersecurity—HHS

- Just a few months ago, HHS announced its first settlement involving a ransomware attack and a phishing attack that concerned the protected health information of almost a quarter of a million persons.

Cybersecurity—HHS

- HHS on 12/6/2023 released its paper "Healthcare Sector Cybersecurity: Introduction to the Strategy of the US Department of Health and Human Services", outlining steps HHS is taking including enhanced enforcement and seeking increased civil monetary penalties.

Cybersecurity

- With the growing awareness among cyber attackers that employee benefit plans can be particularly lucrative targets, plan sponsors and administrators would do well to focus on addressing these risks.

Cybersecurity

- For plan fiduciaries, the first step is to focus on compliance with the DOL's best practices guidance as well as updating systems in place to protect plan data assets in accordance with HIPPA privacy and security rules, where applicable.

Cybersecurity

- Some security vendors are advising that traditional questionnaire-based evaluations and SOC-2 reports and other point in time reports are not sufficient to ensure plan vendors are adequately protecting planned data continuously
- However, there are also dangers and warnings about using embedded trackers and any HIPAA covered entity should review its business associate agreements carefully.

Cybersecurity

- More attacks, audits, lawsuits and guidance in the future.
- Expert advice should be sought as needed and documentation maintained to have available in the event of an audit or lawsuit.

Artificial Intelligence

Artificial Intelligence

- Artificial intelligence (“AI”) and the legal issues that arise from it are every day.
- Congress, statehouses and city halls across the country, and federal and state regulators are considering those risks and determining how to address them.

President Issues Executive Order on AI

- In October 2023, President Biden issued an Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.
- This Executive Order considers multiple issues including worker job displacement which it seeks to address with worker retraining programs and related initiatives.

President Issues Executive Order on AI

- The Executive Order also seeks to establish AI principles and best practices in the workplace, dealing with issues such as equity, protected activity, compensation, health and safety implications, and collection of employee data.

President Issues Executive Order on AI

- This Executive Order follows on the heels of the 2022 White House Blueprint for an AI Bill of Rights.
- The Blueprint set out five principles to guide the design and use of automated systems and includes a focus on algorithmic discrimination protections and data privacy.

Class Action Against United Health for AI Misuse

- On the litigation front, in November 2023, a class action was filed against United Health in the federal District Court for the District of Minnesota alleging that
- United had used AI to wrongfully deny elderly patients covered under United's Medicare Advantage plan with coverage for medically necessary rehabilitation care after hospitalization.

The Estate of Gene B. Lokken et al. v. UnitedHealth Grp et al., cv-03514

Class Action Against United Health for AI Misuse

- The complaint alleged that the UH Predict algorithm is:
  - Known to have a high error rate and
  - Used to systematically deny needed residential care for elders
  - "By overriding their treating physicians' determinations as to medically necessary care based on an AI model."

Class Action Against United Health for AI Misuse

- The algorithm is reportedly also used by Humana and several other health plans.
- The claims are similar in nature to allegations made against Cigna suggesting its PXDX payment system allows physicians to deny multiple claims in seconds without reviewing the patient files.

Artificial Intelligence

- It will take years to see appellate cases dealing in AI cases, but that the process has begun.

Key Takeaways

- Studying the facts and the lessons of key cases will help you keep your plans and your companies, unions, nonprofits, governmental entities and yourselves out of court.
- Remember the Ds!

Your Feedback Is Important. Please Scan This QR Code.

Session Evaluation

The Guiding Principles—The Ds

- Ds to Remember:
  - **Dignity**
  - **Discretion**
  - **Diversity**
  - **Due Process**
  - **Due Diligence**
  - **Disclosure**
  - **Documentation**
- Ds to Avoid:
  - **Delay**
  - **Discrimination**
  - **Deceit**

Questions?

Supplemental Cases

Assignment

9th Circuit Allows Surgical Center to Sue for Reimbursement where there had been a Valid Assignment of Patient Claims

11th Circuit Affirms Dismissal of Physician's ERISA Claims Under Plans Anti-Assignment Provisions

South Coast Specialty Surgery Center, Inc. v. BC of California, DBA Anthem BC

- On 1/10/2024, the 9th Circuit in a published assignment case found that a Specialty Surgery Center could file suit against Anthem seeking recompense for alleged underpayments in over 100 claims amounting to over $5 million
- It based this on the finding there had been a valid assignment of benefits from its patients to SCSSC.

S. Coast Specialty Surgery Ctr. v. Blue Cross of Cal., 90 F.4th 953 (9th Cir. 2024)

South Coast Specialty Surgery Center, Inc. v. BC of California, DBA Anthem BC

- The district court had tossed the claims because the form of assignment only conveyed the right to receive direct payment from Anthem, not the right to sue.
- The 9th Circuit reversed and found that the provider did have derivative authority to sue if it possessed a valid assignment of rights, which in this case it did.

South Coast Specialty Surgery Center, Inc. v. BC of California, DBA Anthem BC

- The 9th Circuit found that:
  - The language of the form conveyed an intent to make a valid assignment
  - The form need not specifically state that the right to sue was included in the assignment because an assignment of a right to benefits generally encompasses the right to sue for nonpayment of benefits.

South Coast Specialty Surgery Center, Inc. v. BC of California, DBA Anthem BC

- The court limited its decision to whether Section 502(a) of ERISA permits a healthcare provider to bring a derivative suit for payment of benefits under the plan when it has been given a "valid assignment" and found that it did.
- It did not find all assignments confer the right to sue under ERISA.

South Coast Specialty Surgery Center, Inc. v. BC of California, DBA Anthem BC

- The court noted its decision:
  - Does not provide standing to sue to third parties with no relationship to the beneficiary, such as parties that purchase assignments of claims for the purpose of litigating them
  - Was consistent with that of other circuits on the issue of derivative authority to sue under valid assignments of rights.

Griffin, MD v. BCBS Healthcare Plan of Georgia, et al.

- On 3/1/2024, in an unpublished decision, 11th Circuit affirmed lower court's decision that a doctor could not bring a suit for her fees.
- The lower court had found:
  - That all of the ERISA plans at issue contained valid anti-assignment provisions
  - ERISA permits such provisions regardless of state laws to the contrary, and
  - Dr. Griffin lacked standing because she was not a beneficiary under the plans.

Griffin, MD v. BCBS Healthcare Plan of Georgia, et al.

- The 11th Circuit explained that physicians and other healthcare providers are generally not participants or beneficiaries under ERISA.
- They may be able to obtain "derivative standing" for payment of medical benefits through a written assignment from a plan participant or beneficiary.

Griffin v. Blue Cross Blue Shield Healthcare Plan of Ga., No. 22-14187, 2024 WL 889560 (11th Cir. Mar. 1, 2024)

Griffin, MD v. BCBS Healthcare Plan of Georgia, et al.

- The Court relied on its own prior precedent that where the plan's anti-assignment language is unambiguous, the anti-assignment language is enforceable.
- State laws limiting anti-assignment provisions were found preempted by ERISA.

Arbitration of ERISA Cases

Arbitration of ERISA Cases

- There has been a lot of activity on the arbitration front. Back in June 2023, in a non-ERISA case, the Supreme Court in Coinbase v. Bielski ruled that court proceedings must be stayed during appeals over arbitration.

Coinbase, Inc. v. Bielski, 143 S. Ct. 1915, 216 L. Ed. 2d 671 (2023)

Arbitration of ERISA Cases

- The focus of much of the current litigation focuses on whether arbitration can be made mandatory for ERISA claims.
- Generally, the answer is yes, ERISA claims can be compelled to go to arbitration.

Arbitration of ERISA Cases

- However, multiple cases including three circuit court decisions have refused to enforce mandatory arbitration provisions where those provisions prospectively precluded participants from seeking plan-wide relief.

Berkelhammer v. ADP Group

- If the mandatory arbitration clause is found in the plan itself, a different result sometimes occurs, for example, in Berkelhammer v. ADP Group
- In that case the NFP Retirement 401(k) plan itself agreed to arbitrate claims against NFP.

Berkelhammer v. ADP Group, No. 22-1618, __ F. 4th __, 2023 WL 4554581 (3d Cir. Jul. 17, 2023)

Berkelhammer v. ADP Group

- Thus, as a contractual matter, the participants stood in the plan's shoes and were bound by the mandatory arbitration clause despite not having provided individualized consent.

Mandatory Arbitration Provision Found Unenforceable by 2nd Circuit in Cedeno v. Sasson et al.

Cedeno v. Sasson et al. (May 1, 2024)

- Ramon Cedeno sued his former employer, the Trustee of the company's Employee Stock Ownership Plan (the "Plan") and others, alleging that they had caused the Plan to buy shares of the company for more than fair market value in breach of their fiduciary duties.

Cedeno v. Sasson, 100 F.4th 386 (2d Cir. 2024)

Cedeno v. Sasson et al. (May 1, 2024)

- Mr. Cedeno brought a claim under ERISA section 502(a)(2) which gives a plan participant the right to bring a civil suit for relief under ERISA under Section 409(a) which makes breaching fiduciaries liable to make good to the plan any losses to the plan because of those breaches.

Cedeno v. Sasson et al. (May 1, 2024)

- He alleged that the breaches had caused substantial losses to the Plan and sought restoration of Plan-wide losses, a surcharge, accounting, constructive trust of wrongfully held funds, disgorgement of profits and further equitable relief.

Cedeno v. Sasson et al. (May 1, 2024)

- The Defendants moved under the Federal Arbitration Act to enforce the Plan's mandatory arbitration provision, which limited relief to remedies impacting the participant's own account and forbade any relief that would benefit any other employee, participant, or beneficiaries.

Cedeno v. Sasson et al. (May 1, 2024)

- In short, the provision was aimed at preventing exactly the type of class wide relief sought by Mr. Cedeno. The Plan's arbitration provision required that the entire arbitration provision would be null and void if any part of it were found unenforceable.

Cedeno v. Sasson et al. (May 1, 2024)

- The Defendants' motion was denied by the district court and again by the 2nd Circuit on the grounds that the arbitration provision would prevent Mr. Cedeno from pursuing the Plan-wide remedies provided by Sections 409(a) and 502(a)(2).

Cedeno v. Sasson et al. (May 1, 2024)

- The 2nd Circuit discussed prior Supreme Court precedent that had noted that the FAA was adopted in response to widespread judicial hostility to arbitration such that "courts must rigorously enforce arbitration agreements according to their terms.

Cedeno v. Sasson et al. (May 1, 2024)

- It relied on the 2022 U.S. Supreme Court decision in Viking River Cruises in interpreting the FAA not to require courts to enforce arbitration agreements to the extent they prevent litigants from vindicating a statutory right in arbitration.

Cedeno v. Sasson et al. (May 1, 2024)

- This interpretation is sometimes referred to as the “effective vindication” doctrine.
- Thus, the 2nd Circuit now joins the 3rd, 7th and 10th Circuit in concluding that Plan arbitration provisions cannot prevent a plan participant from seeking to vindicate statutory claims under ERISA Section 502(a)(2).

Cedeno v. Sasson et al. (May 1, 2024)

- There is a Circuit split on this issue, given that the 9th Circuit has held that class action claims brough on behalf of the entire plan are subject to individual arbitration with relief limited to that person's claims.

Cedeno v. Sasson et al. (May 1, 2024)

- The 6th Circuit is also considering the issue. Accordingly, it is likely that at some point the issue may reach the U.S. Supreme Court to resolve the Circuit split.

Two Rare Unanimous Supreme Court Decisions on Arbitration Issued in May 2024

Smith v. Spizzirri

- The case involved wage claims by delivery drivers for an on-demand delivery service that they had been misclassified as independent contractors and other claims under federal and state law.

Smith v. Spizzirri, No. 22-1218 62 F. 4th 1201 (U.S. May. 16, 2024)

Smith v. Spizzirri

- They brought the case in state court, the employers removed the case to federal court and sought to compel arbitration and dismiss the suit.
- The district court compelled arbitration and dismissed the action without prejudice.

Smith v. Spizzirri

- The 9th Circuit affirmed, but the Supreme Court unanimously reversed and remanded, explaining that the FAA requires a court to stay the proceeding upon request and that it has no discretion to do otherwise.

A Second Unanimous Supreme Court Decision Affirms That Courts Rather Than Arbitrators Will Decide Which of Two Contracts Controls

Coinbase, Inc. v. Suski

- Justice Jackson wrote the opinion in Coinbase, Inc. v. Suski decided 5/23/2024, which held that where parties have agreed to two contracts, one sending arbitrability disputes to arbitration and the other sending arbitrability disputes to the courts, a court must decide which contract governs.

Coinbase, Inc. v. Suski, No. 23-3 (U.S. May. 23, 2024)

Withdrawal Liability

Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund

- In March, the 7th Circuit issued a significant decision in a withdrawal liability case, reversing a prior district court decision.
- Bulk Transport and Teamsters Local 142 had two collective bargaining agreements (CBAs), a main agreement called the construction agreement, and another agreement known as the Steel Mill Addendum that applied to “Steel Mill Operation Work” only.

Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund

- In 2004, Bulk won a contract to haul commodities called “LISCO work” that the company and the union agreed
- LISCO work did not constitute steel mill operation work
- But the union threatened to strike if Bulk did not contribute to the pension fund for workers doing LISCO work.

Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund, No. 23-1563, __F.4th__, 2024 WL 1230236 (7th Cir. Mar. 22, 2024)

Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund

- Bulk eventually made the contributions for the workers doing the LISCO work even though there was no writing creating the obligation.
- The court relied on the Taft-Hartley Act, 29 USC §186(c) (5)(B), which states that “the detailed basis on which such [pension contributions] are to be made is specified in a written agreement with the employer.”

Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund

- The addendum was in writing but did not cover LISCO work; Thus, Bulk was making contributions for more work than the addendum required.
- When Bulk lost the LISCO work, it ceased making those contributions
- The pension fund assessed more than $2 million in withdrawal liability.

Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund

- The arbitrator upheld the assessment, but the court disagreed since the contributions should not have been made in the first place.
- The pension fund was ordered to repay the withdrawal liability paid by Bulk.
  - It found the fund was not entitled to attorney fees.

Trustees of the IAM National Pension Fund v. Ohio Magnetics, Inc.

- Another interesting withdrawal liability case, decided by the D.C. Circuit on 2/9/2024, focuses on whether an actuary may set actuarial assumptions for a given measurement date after the measurement date, based on information that was available “as of” the measurement date.

Trs. of the IAM Nat'l Pension Fund v. Ohio Magnetics, Inc., 656 F. Supp. 3d 112 (D.D.C. 2023)

Trustees of the IAM National Pension Fund v. Ohio Magnetics, Inc.

- The D.C. Circuit, in consolidated cases brought by the trustees of the IAM National Pension Fund against Ohio Magnetics, Inc., and M K Employee Solutions, decided in the affirmative.

Trustees of the IAM National Pension Fund v. Ohio Magnetics, Inc.

- On appeal of the arbitrator's decision, the circuit court determined that the district court had correctly found that the arbitrator had erred in concluding that the actuary must use the assumptions and methods in effect on the relevant measurement date when calculating withdrawal liability.

Trustees of the IAM National Pension Fund v. Ohio Magnetics, Inc.

- The court also affirmed the district court's decision that the arbitrator had erred in determining that one of the employers, M K, was not entitled to the free-look exception.

Preemption of State Laws Continues to Get Court Attention

McKee v. BFP, INC d.b.a. Thrifty Med Plus Pharmacy

- In a case decided by the 6th Circuit on 3/21/2024, McKee Foods Corporation won an appeal allowing it to proceed in its lawsuit to prevent Thrifty Mid Plus Pharmacy from rejoining McKee's pharmacy network under Tennessee's "any willing pharmacy" law based on McKee's view that such laws are preempted by ERISA.

Mckee Foods Corp. v. BFP, Inc., No. 23-5170 (6th Cir. Mar. 21, 2024)

Another 6/27 Supreme Court Ruling Dealt With the Purdue Pharma Proposed Settlement

Harrington v. Purdue Pharma, L.P.

- Harrington v. Purdue Pharma, L.P., authored by Justice Gorsuch in a 5-4 decision, held that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without the consent of affected claimants.

Harrington v. Purdue Pharma L.P., 603 U. S. ___ (Jun. 27, 2024)