

In this issue

\$3.1 Million Verdict for RG Client
Page 1

Evidence of Bank Fraud and Unfair Trade Practices Enough, Judge Rules
Page 1

The Interplay of Long-Term Disability and Social Security Disability Insurances
Page 2

In the News...
Page 3

Will There Be Estate Tax Relief?
Page 4



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\$3.1 Million Verdict for RG Client

A federal jury awarded a prominent radiation oncologist \$3.1 million in her retaliation suit against UPMC after six days of testimony. Our client complained to hospital administration that women were being passed over for promotions and prestigious positions in favor of less qualified male colleagues. She was passed over for two medical director positions and in 2007, UPMC declined to renew or renegotiate her contract. She filed suit claiming gender discrimination and retaliation.

Colleen Ramage Johnston was the lead attorney on the case, with assistance from associate Nikki Velisaris Lykos, Paralegal Chuck Vrscak and Legal Assistant Lisa Weber. Ultimately, the jury awarded Dr. Gerszten \$200,000 in compensatory damages, \$1.6 million in back pay, \$827,000 in front pay and \$500,000 in punitive damages for her retaliation claims.

Evidence of Bank Fraud and Unfair Trade Practices Enough, Judge Rules

A Common Pleas Court Judge ruled that there is enough evidence that First Commonwealth Bank committed fraud and unfair trade practices to allow a Class Action case to move forward. Judge R. Stanton Wettick, Jr. rejected attempts by First Commonwealth to dismiss the lawsuit, which was filed earlier this year on behalf of more than 300 bank customers. According to allegations in the complaint, those customers were defrauded into believing that if they opened certain IRA accounts at the Bank back in the 1980s, those accounts would carry a minimum 8% interest rate until retirement. Instead, the Bank now takes the position that the promise was only good for 90 days. It thus attempted to close down those accounts in late 2008, which prompted the lawsuit.

The case is being handled by Frank Salpietro, a partner in our Commercial Litigation department. "We have received sworn affidavits from dozens of First Commonwealth customers that the Bank, from top executives on down, mislead those customers, and apparently hundreds of others, into investing their hard-earned money over the course of more than 20 years under the promise that their hard-earned retirement nest-egg would grow at a steady rate without worrying about market fluctuations," Salpietro said. "Instead, in 2008 the Bank suddenly announced that what the customers were told earlier was untrue, and that the Bank's IRA contracts allowed it to close down the accounts at any time. That's unfair, deceptive, and fraudulent."

Continued on page 3

The Interplay of Long-Term Disability and Social Security Disability Insurances

By Shelley W. Elovitz, Esq.

Many employers provide health insurance, life insurance, and Long-Term Disability (LTD) insurance to their employees. When LTD insurance is provided through an employer, it supplements Social Security Disability Insurance (SSDI). LTD benefits are typically paid as a percentage of a person's pre-disability earnings. However, LTD policies are usually reduced by the Social Security Disability Benefits. Most of these plans contain terms that allow the disability insurance company or plan administrator to recover benefits that have been "overpaid."

If the disabled person is first paid LTD benefits and then later wins Social Security benefits, Employee Retirement Income Security Act (ERISA) policies allow the disability insurance company or self funded ERISA plan to recover the "overpayment." An overpayment may result when the full amount of LTD benefits is given upfront but a later award of social security disability means that a lower amount of LTD should have been paid. Some policies give the employee the option of taking the reduced payment (when calculating the theoretical social security monthly award) or taking the full monthly disability amount which could result in a larger "overpayment".

Offsets are typically calculated as follows: the amount of the LTD benefit is a percentage of the disabled persons' pre-disability wage (this percentage varies from policy to policy but it is often approximately 60%). The LTD benefit is then further reduced by Social Security benefits and any other income, such as workers' compensation.

For example, if the disabled person earned \$24,000 per year before becoming disabled, his or her pre-disability income was \$2,000 a month. If his or her LTD pays 60%, the gross monthly LTD benefit would be \$1,200. If the disabled employee won his or her Social Security benefits and the primary insured amount (what would be received on a monthly basis) is \$900 per month, the net LTD benefits would be reduced to \$300 per month.

Consequently if the disabled employee is paid \$12,000 per month for 24 months and then later wins the Social Security benefits of \$900 per month, the disability insurance carrier will seek to recover the \$21,600 (24 x \$900) that the person was overpaid.

It is my opinion that, in general, most people fortunate enough to have employer sponsored LTD benefits should opt for the lesser monthly amount so as to not be in the unenviable position of paying back the larger overpayment. (Please also see this writer's previous article entitled "How Long is the Long in Your Long-Term Disability Benefits").

Is a Favorable Finding of Disability by the Social Security Administration Binding on the LTD Carrier who has Required the Disabled Worker to File for SSD?

There are instances where after a favorable Social Security Disability decision, the LTD carrier will decide to stop benefit payments, essentially thumbing its nose at the favorable determination. A lay person would logically think that if the LTD carrier or ERISA plan is going to reap the benefit of Social Security's favorable decision by then claiming an offset, then it should also be bound by that decision to continue the person's LTD benefits, albeit at a lesser rate. Unfortunately, the case law in the various Federal Circuit Courts differs and the general rule is that the LTD carrier or ERISA plan administrator is not bound by a Social Security Administrations' favorable disability determination when reviewing a claim for benefits under an ERISA LTD plan.

While an ERISA decision maker is not automatically bound by the favorable findings of the Social Security Administration that a person is disabled, the ERISA decision maker is not free to ignore the decision of the Social Security Administration. The fact that a person has been found disabled by the Social Security Administration is a factor that courts will consider when reviewing the denial of LTD benefits.

When a court is determining just how much weight should be given to a Social Security decision, the court generally looks at the decision and the context of the record as a whole. A court should apply increasing amounts of skepticism to the LTD carrier's decision making, taking into account such factors as: whether the plan required the disabled employee to apply for Social Security Disability Benefits, and whether the LTD carrier benefited financially from the favorable decision from the Social Security Administration.

In this writer's opinion, both the purchasing employ-

er and the employee should scrutinize the terms and conditions of any LTD policy and determine if it is worth the premium that the employer is paying or that the employee is sharing with the employer.



Shelley Elovitz heads the Workers' Compensation and Social Security Disability Department of Rothman Gordon. With over 30 years of practice, he has counseled clients in such areas as workers' compensation, social security disability, long-term disability, and wrongful discharge. Shelley can be reached at (412) 338-1180 or swelovitz@rothmangordon.com

Evidence of Bank Fraud and Unfair Trade Practices Enough, Judge Rules

(continued from page 1)

Indeed, according to the papers filed in 1998, First Commonwealth, which was then named National Bank of the Commonwealth, sent each of its IRA customers a letter stating that the 8% guaranteed rate "will continue going forward on deposits presently in the account and on annual additions." The Bank argued to the court that this letter was meaningless, but the Judge disagreed, stating that it would be up to a jury to decide what the letter means.

According to Frank, the next step is for the Bank's executives and employees to be questioned under oath about the case. Any customers who believe they are affected by the Bank's actions are urged to call Frank at (412) 338-1185.



Rothman Gordon is proud to again be a sponsor of the Pittsburgh Marathon.

In the News...

Bernie Puzzuole a Finalist



Bernie Puzzuole was selected as a finalist for the Distinguished Service Award, given by the Pittsburgh Airport Area Chamber of Commerce at the Annual Celebration of Excellence Awards in recognition of her enterprising and supportive approach to business.

Louis Kushner Named the Best Lawyers' 2010 Pittsburgh Labor & Employment Lawyer of the Year



Louis Kushner has been named the "Best Lawyers' 2010 Pittsburgh Labor and Employment Lawyer of the Year." After more than a quarter of a century in publication, *Best Lawyers* is designating "Lawyers of the Year" in high-profile legal specialties in large legal communities. Only a single lawyer in each specialty in each community is being honored as the "Lawyer of the Year."

Best Lawyers compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The current, 16th edition of *The Best Lawyers in America (2010)*, is based on more than 2.8 million detailed evaluations of lawyers by other lawyers.

Sam Douglass Recognized for 50 Years of Practice and Contributions to the Bar



The Allegheny County Bar Association honored longtime practitioners celebrating their 50 and 60 year milestones at the annual Diamond and Golden Ceremony, held on November 30, 2009 at the Duquesne Club.

In addition to being honored, Sam was chosen to share his reflections. In addition to the many changes to both the practice of law and the City of Pittsburgh, Sam attested, "There are always new things to keep your attention and to keep your mind going - new twists and turns, new adventures."

Tom Solomich Selected as a Corporate Counsel Super Lawyer

Tom Solomich was selected for the *2010 Super Lawyers, Corporate Counsel* Edition in the area of Real Estate.

Will There Be Estate Tax Relief?

By Doug DeNardo, Esq.

Congress has a full plate with health care and the economy, but another issue needs rapid attention - the federal estate tax. President George W. Bush signed tax legislation early in his administration that includes estate tax reform measures. Currently, every taxpayer has a credit that allows him or her to transfer up to \$3,500,000 free from the federal estate tax. Additionally, the maximum estate tax rate is 45%. The law then provides for a complete repeal of the federal estate tax in 2010, and then a return to 2001 laws in 2011 wherein the maximum rate goes back up to 55% and the credit is reduced to a level that only allows a taxpayer to transfer \$1 million free from the federal estate tax.

This creates an issue not only for the very wealthy. For example, land, equipment, inventory, etc., of a family owned business are all included in the valuation of the entity, so many family businesses will exceed the \$1 million threshold. Because federal estate tax would then be imposed on the transfer of the business from the senior to junior generations, the business would potentially need to be sold to meet the estate tax obligations (rather than letting it be passed to the next generation). Moreover,

because the death benefit of life insurance is taxable for federal estate tax purposes, a greater number of families will be subject to the estate tax (as even the death benefit of term and employer provided insurance is included in one's estate for federal estate tax purposes).

As of now, the status of any legislation is uncertain. It is our belief that we will most likely see a simple, one year extension of the 2009 laws into 2010 to avoid the one-year repeal. After 2010, however, it is anyone's guess as to the final resolution.

Rothman Gordon is continuously monitoring activity in Washington and we will apprise our clients of any decision which may impact their family and/or business.



Douglas DeNardo Chairman of the Estates, Trusts & Taxation Department. He represents individuals and businesses, working with them to develop strategies to meet their wealth transfer goals.

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