

516 US 489 (1996)

No. 94-1471

In The
Supreme Court of the United States
October Term, 1995

VARITY CORPORATION,

Petitioner,

v.

CHARLES HOWE, ROBERT WELLS, RALPH W.
THOMPSON, PATRICK MOUSEL, on Behalf of
Themselves and as Representatives of a Class of Persons
Similarly Situated, JOHN ALTOMARE, CHARLES
BARRON, ALEXANDER CHARRON, CHARLOTTE
CHILES, ANITA CROWE, RAY DARR, DORIS
GUIDICESSI, BARNETT LUCAS, ROBERT SKROMME,
and the Estate of WALTER SMITH, individually,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION
OF SECURITIES AND COMMERCIAL LAW ATTORNEYS
(NASCAT) IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
A. THE EXISTENCE AND SCOPE OF FIDUCIARY DUTIES UNDER ERISA'S STATUTORY SCHEME: SECTION 404.....	5
B. PETITIONER IS LIABLE UNDER ERISA FOR ACTIONS TAKEN TO IMPLEMENT ITS DECISIONS CONCERNING THE EMPLOYMENT BENEFIT PLANS.....	8
C. UNDER ERISA'S STATUTORY SCHEME, SUB- SECTION 502(a)(3) PROVIDES THE RELIEF GRANTED BELOW.....	17
D. PETITIONER BREACHED ITS FIDUCIARY DUTIES TO RESPONDENTS.....	25
CONCLUSION	29

TABLE OF AUTHORITIES

	Page
CASES	
<i>A.H. Phillips, Inc. v. Walling</i> , 324 U.S. 490 (1945).....	10
<i>Acosta v. Pacific Enterprises</i> , 950 F.2d 611 (9th Cir. 1991).....	26
<i>Adams v. Avondale Industries, Inc.</i> , 905 F.2d 943 (6th Cir. 1990)	12
<i>Alessi v. Raybestos-Manhattan, Inc.</i> , 451 U.S. 504 (1981).....	5
<i>Amalgamated Clothing & Textiles Workers Union, AFL-CIO v. Murdock</i> , 861 F.2d 1406 (9th Cir. 1988).....	18
<i>Anweiler v. American Elec. Power Serv. Corp.</i> , 3 F.3d 986 (7th Cir. 1993).....	18, 23
<i>Barnes v. Lacy</i> , 927 F.2d 539 (11th Cir.), cert. denied, 502 U.S. 938 (1991).....	10, 15, 24
<i>Berlin v. Michigan Bell Tel. Co.</i> , 858 F.2d 1154 (6th Cir. 1988)	7, 14, 24
<i>Bixler v. Central Penn. Teamsters Health & Welfare Fund</i> , 12 F.3d 1292 (3d Cir. 1993)	7, 24
<i>Central States, Southeast & Southwest Areas Pension Fund v. Central Transp., Inc.</i> , 472 U.S. 559 (1985)	6
<i>Coleman v. Nationwide Life Ins. Co.</i> , 969 F.2d 54 (4th Cir. 1992), cert. denied, ___ U.S. ___, 113 S. Ct. 1051 (1993).....	4
<i>Commissioner v. Clark</i> , 489 U.S. 726 (1989)	10
<i>Corcoran v. United Healthcare, Inc.</i> , 965 F.2d 1321 (5th Cir.), cert. denied, ___ U.S. ___, 113 S. Ct. 812 (1992).....	18

TABLE OF AUTHORITIES – Continued

	Page
<i>Curtiss-Wright Corp. v. Schoonejongen</i> , ___ U.S. ___ 115 S. Ct. 1223 (1995)	13
<i>De Marco v. C & L Masonry, Inc.</i> , 891 F.2d 1236 (6th Cir. 1989)	6
<i>Donovan v. Bierwirth</i> , 680 F.2d 263 (2d Cir.), <i>cert.</i> <i>denied</i> , 459 U.S. 1069 (1982).....	6, 9
<i>Donovan v. Cunningham</i> , 716 F.2d 1455 (5th Cir. 1983), <i>cert. denied</i> , 467 U.S. 1251 (1984).....	6, 8, 9
<i>Donovan v. Mazzola</i> , 716 F.2d 1226 (9th Cir. 1983), <i>cert. denied</i> , 464 U.S. 1040 (1984).....	7
<i>Drennan v. General Motors Corp.</i> , 977 F.2d 246 (6th Cir. 1992), <i>cert. denied</i> , ___ U.S. ___, 113 S. Ct. 2416 (1993).....	7, 14, 15, 24
<i>Eaves v. Penn</i> , 587 F.2d 453 (10th Cir. 1978).....	7
<i>Eddy v. Colonial Life Ins. Co.</i> , 919 F.2d 747 (D.C. Cir. 1990).....	7, 18, 24, 25, 27
<i>Farr v. U.S. West, Inc.</i> , No. 93-35086, 1995 U.S. App. LEXIS 15705 (9th Cir. June 26, 1995)	5, 18
<i>Fink v. National Sav. & Trust Co.</i> , 772 F.2d 951 (D.C. Cir. 1985)	6
<i>Firestone Tire & Rubber Co. v. Bruch</i> , 489 U.S. 101 (1989).....	6
<i>Fischer v. Philadelphia Elec. Co.</i> , 994 F.2d 130 (3d Cir.), <i>cert. denied</i> , ___ U.S. ___, 114 S. Ct. 622 (1993).....	7, 14, 24
<i>Forbus v. Sears Roebuck & Co.</i> , 30 F.3d 1402 (11th Cir. 1994), <i>cert. denied</i> , ___ U.S. ___, 115 S. Ct. 906 (1995).....	5

TABLE OF AUTHORITIES – Continued

	Page
<i>Ford v. United States</i> , 273 U.S. 593 (1927)	28
<i>Globe Woolen Co. v. Utica Gas & Elec. Co.</i> , 224 N.Y. 483, 121 N.E. 378 (N.Y. 1918)	25
<i>Hall v. United Technologies Corp.</i> , 1995 WL 20951 (D. Conn. Jan. 12, 1995)	24
<i>Herman & MacLean v. Huddleston</i> , 459 U.S. 375 (1983)	27
<i>Howard v. Gleason Corp.</i> , 901 F.2d 1154 (2d Cir. 1990)	24
<i>Howe v. Varsity Corp.</i> , 36 F.3d 746, (8th Cir. 1994), cert. granted, ___ U.S. ___, 115 S. Ct. 1792	1
<i>In re Unisys Corp. Retiree Medical Benefit ERISA Litigation</i> , No. 94-1875, 1995 U.S. App. LEXIS 15921 (3d Cir. June 28, 1995)	18, 23, 26
<i>Iwans v. Aetna Life Ins. Corp.</i> , 855 F. Supp. 579 (D. Conn. 1994)	24
<i>John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank</i> , ___ U.S. ___, 114 S. Ct. 517 (1993)	10, 11, 12
<i>Kayes v. Pacific Lumber Co.</i> , 51 F.3d 1449 (9th Cir. 1995)	12
<i>Local Union 2134, United Mine Workers of America v. Powhatan Fuel, Inc.</i> , 828 F.2d 710 (11th Cir. 1987)	16
<i>Maez v. Mountain States Tel. & Tel., Inc.</i> , No. 93-1184, 1995 U.S. App. LEXIS 9155 (10th Cir. April 19, 1995)	14

TABLE OF AUTHORITIES - Continued

	Page
<i>Mahoney v. Board of Trustees</i> , 973 F.2d 968 (1st Cir. 1992).....	6
<i>Massachusetts Mut. Life Ins. Co. v. Russell</i> , 473 U.S. 134 (1985).....	6, 18, 19, 20, 21
<i>McMahon v. McDowell</i> , 794 F.2d 100 (3d Cir. 1986), <i>cert. denied</i> , 479 U.S. 971 (1986)	6
<i>Mertens v. Hewitt Assocs.</i> , ___ U.S. ___, 113 S. Ct. 2063 (1993).....	12
<i>Mullins v. Pfizer, Inc.</i> , 23 F.3d 663 (2d Cir. 1994)	14
<i>NLRB v. Amax Coal Co.</i> , 453 U.S. 322 (1981)	8, 9
<i>New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.</i> , ___ U.S. ___, 115 S. Ct. 1671 (1995).....	11, 13
<i>Payonk v. HMW Indus., Inc.</i> , 883 F.2d 221 (3d Cir. 1989).....	16
<i>Peoria Union Stock Yards Co. Retirement Plan v. Penn Mut. Life Ins. Co.</i> , 698 F.2d 320 (7th Cir. 1983).....	7
<i>Petrilli v. Drechsel</i> , 910 F.2d 1441 (7th Cir. 1990)	7
<i>Pilot Life Ins. Co. v. Dedeaux</i> , 481 U.S. 41 (1987)	4
<i>Shaw v. Delta Airlines, Inc.</i> , 463 U.S. 85 (1983)	4
<i>Shurtleff v. United States</i> , 189 U.S. 311 (1903)	27
<i>Simmons v. Southern Bell Tel. & Tel. Co.</i> , 940 F.2d 614 (11th Cir. 1991).....	24
<i>Sokol v. Bernstein</i> , 803 F.2d 532 (9th Cir. 1986)	18

TABLE OF AUTHORITIES – Continued

	Page
<i>Thunder Basin Coal Co. v. Reich</i> , ___ U.S. ___, 114 S. Ct. 771 (1994)	27
<i>Vartanian v. Monsanto Co.</i> , 14 F.3d 697 (1st Cir. 1994).....	7, 15
<i>Waller v. Blue Cross of California</i> , 32 F.3d 1337 (9th Cir. 1994)	14
<i>Warren v. Society Nat’l Bank</i> , 905 F.2d 975 (6th Cir. 1990), <i>cert. denied</i> , 500 U.S. 952 (1991).....	18
<i>Witmeyer v. Kilroy</i> , 788 F.2d 1021 (4th Cir. 1986)	6
 STATUTES, RULES AND REGULATIONS	
5 U.S.C.	
§ 552b.....	2
29 U.S.C.	
§ 1001, <i>et seq.</i>	1
§§ 1001-1145.....	19
§ 1002(21)	12
§ 1021(d).....	26
§ 1022.....	26
§ 1024.....	26
§ 1104(a)	5, 6, 25
§ 1106.....	6, 8
§ 1108(c)(3).....	8, 9
§ 1132(a)	17
§ 1132(a)(1)(B).....	17

TABLE OF AUTHORITIES – Continued

	Page
§ 1132(a)(2).....	17
§ 1132(a)(3)(A).....	17
§ 1132(a)(3)(B).....	17
§ 1132(c)	21
§ 1140.....	22
 SECONDARY AUTHORITIES	
A. Scott & W. Fratchew, <i>The Law of Trusts</i> (1989)	
§ 281.....	20
§ 282.....	20
Edward E. Bintz, <i>Fiduciary Responsibility Under ERISA: Is There Ever A Fiduciary Duty To Disclose?</i> , 54 U. Pitt. L. Rev. 979 (1993).....	7, 27
G.G. Bogert & G.T. Bogert, <i>The Law of Trusts & Trustees</i> (2d rev. ed. 1993) § 543	8
L. Brandeis, <i>Other People's Money</i> (1914).....	2
ERISA Op. Ltr. (Mar. 13, 1986), 13 Pens. Rep. (BNA) 472 (Mar. 17, 1986).....	11, 13
Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1247	2
Restatement (Second) of Trusts	
§ 173, comment d (1959).....	7
§ 295, comment a.....	20
S. Rep. No. 127, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 4638	20
Webster's <i>Third New International Dictionary</i> (1986)	2

INTEREST OF *AMICUS CURIAE*

The National Association of Securities and Commercial Law Attorneys ("NASCAT") is an association of law firms and attorneys who litigate cases involving antitrust, commercial, consumer, employee and retiree benefits, environmental and securities fraud claims in federal and state courts. NASCAT's members represent victims of corporate abuse, fraudulent schemes and so-called "white-collar" criminal activity, including victims of the type of pension and benefits fraud at issue in this case. In civil actions challenging such wrongdoing, NASCAT's members not only seek compensation for victims, but also attempt to deter wrongdoers, modify corporate behavior and improve the access of victims to justice. As part of these efforts, NASCAT advocates the enactment and enforcement of effective state and federal laws to prevent wrongful, fraudulent, deceptive and manipulative business practices.

Claims arising under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, are an important weapon used by NASCAT members to enforce employees and retirees' rights. Accordingly, with the written consent of the parties, NASCAT files its *amicus curiae* brief in support of Respondents and urges this Court to affirm the decision of the court below.¹

¹ The decision of the court below is reported as *Howe v. Varsity Corp.*, 36 F.3d 746 (8th Cir. 1994), *cert. granted*, ___ U.S. ___, 115 S. Ct. 1792. Citations to the slip opinion reprinted in Petitioner's Appendix are stated herein as "___a."

INTRODUCTION AND SUMMARY OF ARGUMENT

As set forth in the undisputed findings of fact entered by the district court and affirmed by the Eighth Circuit Court of Appeals, Petitioner, through a scheme it code-named "Project Sunshine," induced Respondents to transfer their employment to Massey Combines Corporation ("MCC") for the purpose of ridding Massey-Ferguson, Inc. ("M-F") and Varsity Corporation ("Varsity") of substantial obligations for employee benefits. 54a, 57a, 62a, 64a-65a. Acting with intent to deceive, Petitioner made material misrepresentations and concealed material facts in order to induce its employees to cease participation in viable benefit plans and, instead, to join new ones that were doomed to fail. *Id.*

From the outset of its fraudulent scheme, Petitioner purposefully disseminated incomplete, confusing and deceptive communications regarding Project Sunshine.² Although it developed accurate and forthright communications concerning the plans and benefits thereunder, Petitioner opted *not* to disseminate them for fear that employees who obtained accurate and complete information

² The fact that Petitioner named the program "Project Sunshine," casts serious doubt over whether it took its fiduciary obligations under ERISA seriously or even understood the concept. The word "sunshine" is frequently used to refer to hopefulness for the future or openness and disclosure. *See Webster's Third New International Dictionary* 2292 (1986) (listing one definition of "sunshine" as "radiating optimism"); Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1247, codified at 5 U.S.C. §552b (requiring that meetings of federal agencies "shall be open to public observation"); L. Brandeis, *Other People's Money* 62 (1914) ("[s]unlight is said to be the best of disinfectants").

would refuse to be transferred to MCC. 63a-64a. Petitioner misrepresented MCC's financial outlook and the nature of future employee benefits, anticipating and intending that employees would sign up for Project Sunshine, thereby ridding M-F and Verity of huge benefit liabilities and transferring the liabilities to a shell company that was earmarked for failure. 55a-56a, 63a-65a. Petitioner even assured participants that their benefits would remain unchanged, even though MCC was deliberately set up to fail. 64a. Petitioner knew that its communications were materially misleading when they were given and the employees relied on them to their detriment. 65a.

After hearing all of the evidence in this case, the trial court concluded as follows:

Verity and Massey Ferguson were in no different a situation than any of the other agricultural equipment manufacturers experiencing tough financial constraints during this period. However, in the face of difficult financial times Verity disregarded existing law and devised a plan which dramatically cut its debt burden and heritage costs. Project Sunshine was nothing more than a brilliant manipulative effort to sever retiree welfare obligations which had become a burdensome load on a financially strapped company. Project Sunshine was a sucker punch on loyal employees who had given a lifetime of service to a company and who had been induced into believing that their benefits coverage could not be terminated once they retired. ERISA was enacted to prevent just such a maneuver as was undertaken in Project Sunshine.

114a.

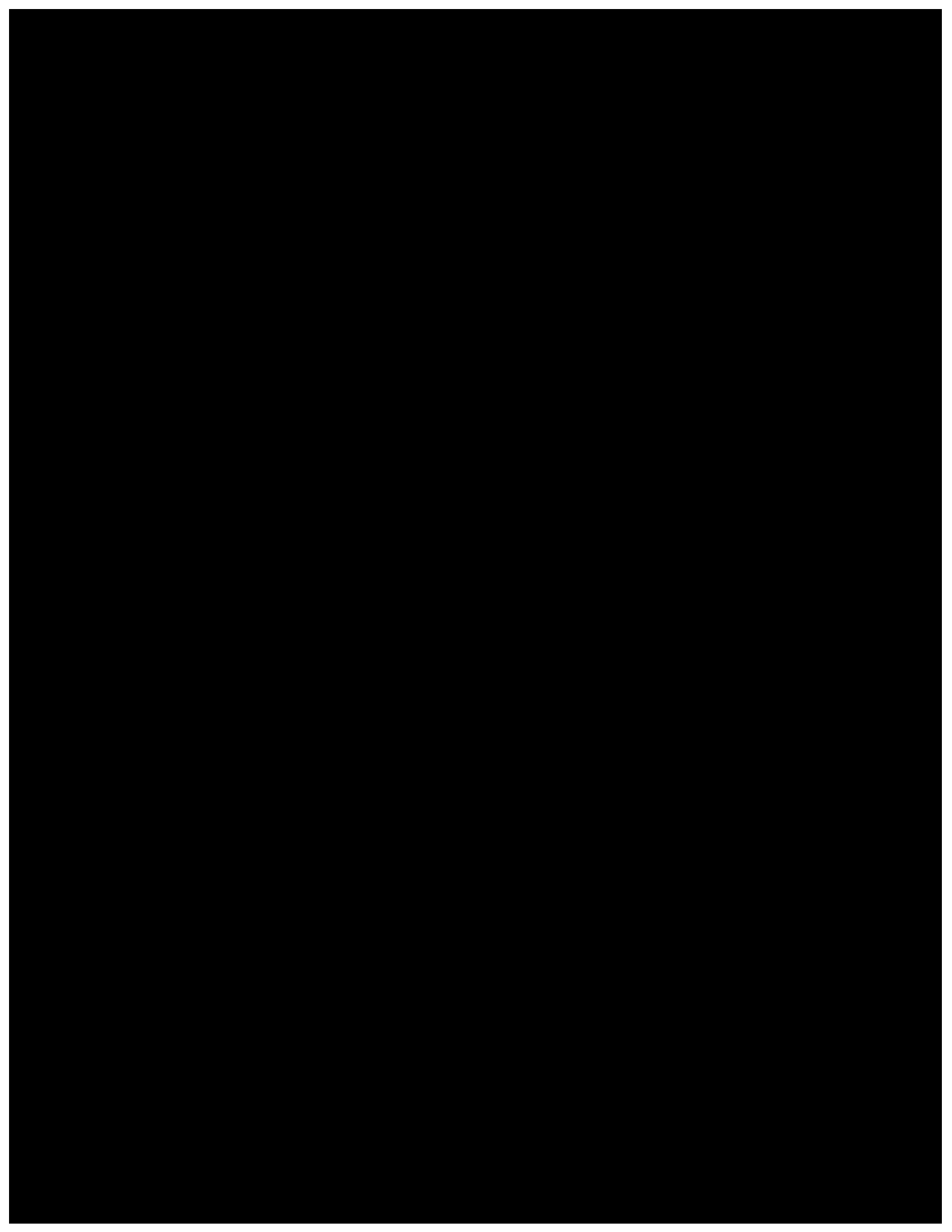
Left with no other argument, Petitioner contends in this Court that it can escape liability for its deliberate misrepresentations because it supposedly made those misrepresentations while acting outside of its fiduciary capacity.³ While it may have been a business decision (exempt from ERISA's fiduciary standards) for Petitioner to improve Varsity's balance sheet by creating MCC and undercapitalizing it, Petitioner was acting as fiduciaries of both the old and new plans when it intentionally misled Respondents into "voluntarily" relinquishing participation in viable plans and induced them to join new ones that were destined to fail.⁴

Petitioner cynically submits that ERISA provides no remedy where (as here) a fiduciary issues false and misleading statements which result in harm to a participant or beneficiary, even though it knows that ERISA may well preempt any remedies that would otherwise be available under state law.⁵ Petitioner's argument finds no support

³ In order to determine whether Petitioner acted as a fiduciary, the Court must examine the particular activity that is at issue and *not* Petitioner's self-proclaimed non-fiduciary status. See *Coleman v. Nationwide Life Ins. Co.*, 969 F.2d 54, 61 (4th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1051 (1993).

⁴ MCC adopted no employee benefits plan for the first year of the company's operation, at which point it adopted the M-F plan. Prior to that, MCC simply used the M-F plan. 76a. Throughout MCC's existence, Varsity and M-F were fiduciaries of MCC's employee benefit plans, M-F's board of directors was the "named fiduciary" and M-F was the "administrator" and "plan sponsor." 78a-79a. Thus, Petitioner was a fiduciary of both the old and new plans.

⁵ See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 48 (1987) (common law tort claims that "relate to" an employee benefit plan are preempted by ERISA); *Shaw v. Delta Airlines, Inc.*, 463



with care, skill, prudence, and diligence. 29 U.S.C. §§ 1104(a), 1106. In the words of Judge Friendly, the obligations of a fiduciary under ERISA are "the highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir.), *cert. denied*, 459 U.S. 1069 (1982) (citation omitted).

By enacting Section 404(a) and 406 of ERISA, Congress intended that fiduciary duties imposed under ERISA should parallel fiduciary duties owed at common law:

[R]ather than explicitly enumerating *all* of the powers and duties of trustees and other fiduciaries, Congress invoked the common law of trusts to define the general scope of their authority and responsibility.

Central States, Southeast & Southwest Areas Pension Fund v. Central Transp., Inc., 472 U.S. 559, 570 (1985) (footnote omitted; emphasis in original).⁶

⁶ See *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111-14 (1989) (ERISA is to be construed under principles of trust law not to afford less protection to employees than they enjoyed before ERISA was enacted); *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 152-53, 156-57 n.6 (1985); *Donovan v. Cunningham*, 716 F.2d 1455, 1464 (5th Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984) (ERISA's legislative history indicates that Congress intended to incorporate in §404 the "core principles of fiduciary conduct" that were developed in the common law of trusts, but with modifications appropriate for employee benefit plans); see also *Fink v. National Sav. & Trust Co.*, 772 F.2d 951, 955 (D.C. Cir. 1985); *Mahoney v. Board of Trustees*, 973 F.2d 968, 971 (1st Cir. 1992) (Breyer, J.); *Bierwirth*, 754 F.2d at 1055; *McMahon v. McDowell*, 794 F.2d 100, 110 (3d Cir. 1986), *cert. denied*, 479 U.S. 971 (1986); *Witmeyer v. Kilroy*, 788 F.2d 1021, 1025 (4th Cir. 1986); *Cunningham*, 716 F.2d at 1464; *De Marco v. C & L Masonry, Inc.*,

At common law, fiduciaries were required, at a minimum, to fully disclose all facts within their knowledge which beneficiaries required to protect their interests. *See, e.g.,* Edward E. Bintz, *Fiduciary Responsibility Under ERISA: Is There Ever A Fiduciary Duty To Disclose?*, 54 U. Pitt. L. Rev. 979, 985-87 (1993) (“*Fiduciary Responsibility*”); *see also* *Restatement (Second) of Trusts* §173, comment d (1959) (“[The trustee] is under a duty to communicate to the beneficiary material facts affecting the interest of the beneficiary which he knows the beneficiary does not know and which the beneficiary needs to know for his protection in dealing with a third person. . . .”). Thus, the duty to tell the truth lies at “the core of a fiduciary’s responsibility” under ERISA. *Eddy v. Colonial Life Ins. Co.*, 919 F.2d 747, 750 (D.C. Cir. 1990); *see also* *Peoria Union Stock Yards Co. Retirement Plan v. Penn Mut. Life Ins. Co.*, 698 F.2d 320, 326 (7th Cir. 1983) (Posner, J.) (“Lying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in [§404]. . . .”).⁷

891 F.2d 1236, 1240 (6th Cir. 1989); *Petrilli v. Drechsel*, 910 F.2d 1441, 1448-49 (7th Cir. 1990); *Donovan v. Mazzola*, 716 F.2d 1226, 1231 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984); *Eaves v. Penn*, 587 F.2d 453, 462 (10th Cir. 1978).

⁷ *Accord* *Vartanian v. Monsanto Co.*, 14 F.3d 697, 702 (1st Cir. 1994); *Bixler v. Central Penn. Teamsters Health & Welfare Fund*, 12 F.3d 1292, 1300 (3d Cir. 1993); *Fischer v. Philadelphia Elec. Co.*, 994 F.2d 130, 133 (3d Cir.), *cert. denied*, ___ U.S. ___, 114 S. Ct. 622 (1993); *Drennan v. General Motors Corp.*, 977 F.2d 246, 251 (6th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 2416 (1993); *Berlin v. Michigan Bell Tel. Co.*, 858 F.2d 1154, 1163 (6th Cir. 1988).

B. PETITIONER IS LIABLE UNDER ERISA FOR ACTIONS TAKEN TO IMPLEMENT ITS DECISIONS CONCERNING THE EMPLOYMENT BENEFIT PLANS

At common law, fiduciaries were prohibited from holding a position that created a conflict of interest (or even a potential conflict of interest) with beneficiaries. In the words of this Court:

To deter the trustee from all temptation and to prevent any possible injury to the beneficiary, the rule against a trustee dividing his loyalties must be enforced with "uncompromising rigidity." A fiduciary cannot contend "that, although he had conflicting interests, he served his masters equally well or that his primary loyalty was not weakened by the pull of his secondary one."

NLRB v. Amax Coal Co., 453 U.S. 322, 329-30 (1981) (citations omitted). This was an absolute rule: Faced with a conflict, resignation or recusal were the only avenues available to the fiduciary. G.G. Bogert & G.T. Bogert, *The Law of Trusts & Trustees* §543, at 218, 264 (2d rev. ed. 1993).

Following the common law, in Section 406 of ERISA Congress enacted a detailed list of prohibited transactions, see 29 U.S.C. §1106, and "[t]he object of Section 406 was to make illegal per se the types of transactions that experience had shown to entail a high potential for abuse." *Cunningham*, 716 F.2d at 1464-65 (citation omitted). Bearing in mind the special relationship between plan sponsors and their plans, however, Congress enacted a limited exception to that common law rule: Under Section 408(c)(3) of ERISA, it is not a *per se* breach of fiduciary duty for a person to serve as a fiduciary and

also be an officer, employee, or other representative of a plan sponsor. See 29 U.S.C. §1108(c)(3); *Cunningham*, 716 F.2d at 1466 (“[I]n ERISA Congress departed from the absolute common law rule against fiduciaries’ dual loyalties.”). As Judge Friendly has stated:

“Since . . . an employer will often be an administrator of his plan, or will function as a trustee or in some other fiduciary capacity, this provision creates a limited exception to the listed proscription against self-dealing. The exception is made in recognition of the *symbiotic relationship* existing between the employer and the plan covering his employees.”

Bierwirth, 680 F.2d at 271 (citation omitted).

Section 408(c)(3), however, presents no license for corporate agents who are also plan fiduciaries to forsake their duties under ERISA in favor of loyalties to the corporation. To the contrary, when acting as plan fiduciaries corporate employees still have the same statutory obligation to discharge their duties “solely in the interest of the participants,” with “care, skill, prudence, and diligence,” and free from prohibited transactions – as plan fiduciaries who are not corporate employees. As this Court has stated:

Although [Section] 408(c)(3) of ERISA permits a trustee of an employee benefit fund to serve as an agent or representative of the union or employer, that provision in no way limits the duty of such a person to follow the law’s fiduciary standards while he is performing his responsibilities as trustee.

Amax Coal, 453 U.S. at 333 n.16. Thus, for corporate directors, officers, or employees who are *also* fiduciaries,

Section 408(c)(3) merely provides an exception to the rule that having dual positions, without more, is a *per se* breach of fiduciary duty.⁸

Since the wearing of "two hats" is permissible, *Barnes v. Lacy*, 927 F.2d 539, 544 (11th Cir.), *cert. denied*, 502 U.S. 938 (1991), the Department of Labor has endeavored to define the function performed by employer/fiduciaries in each of the roles:

[I]n light of the voluntary nature of the private pension system governed by ERISA, the Department has concluded that there is a class of discretionary activities which relate to the formation, rather than the management, of plans. These so-called "settlor" functions include decisions relating to the establishment,

⁸ See ERISA Op. Ltr. (Jan. 31, 1994) ("[S]ection 408(c)(3) has no bearing on the applicability of the fiduciary duties set forth in [S]ection 404 of ERISA"). Exceptions to general policies are generally read narrowly. Thus, the Department of Labor stated in the above-referenced opinion letter that, notwithstanding Section 408(c)(3), a prohibited transaction under Section 406(b)(2) would still occur if a fiduciary's "dual loyalties . . . would prevent him from acting solely in the interests of the plan's participants. . . ." Similarly, this Court is

inclined, generally, to tight reading of exemptions from comprehensive schemes of this kind, *see, e.g., Commissioner v. Clark*, 489 U.S. 726, 739-740 (1989) (when a general policy is qualified by an exception, the Court "usually reads the exception narrowly in order to preserve the primary operation of the [policy]"), *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) (cautioning against extending exemptions "to other than those plainly and unmistakably within its terms,").

John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, ___ U.S. ___, 114 S. Ct. 517, 524-25 (1993).

termination and design of plans and are not fiduciary activities subject to Title I of ERISA.

ERISA Op. Ltr. (Mar. 13, 1986), 13 Pens. Rep. (BNA) 472 (Mar. 17, 1986). In this case, Petitioner seeks a rule that would allow employer/fiduciaries to blur the clear distinction between these functions and thereby enable employer/fiduciaries to deceive with impunity and persuade participants to take a ruinous course designed solely for the employer's advantage.

Thus, the question is squarely presented: Was Petitioner acting as an ERISA fiduciary when *implementing* Project Sunshine and misrepresenting its impact on plan benefits? To answer this question, this Court should look first to the statutory definition of "fiduciary." See *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, ___ U.S. ___, 115 S. Ct. 1671, 1677 (1995) (the Court begins "any exercise of statutory construction with the text of the provision in question, and move[s] on, as need be, to the structure and purpose of the Act in which it occurs"). Indeed, to determine whether conduct is fiduciary in character, courts "examine first the language of the governing statute, guided not by 'a single sentence or member of a sentence, but looking to the provisions of the whole law, and to its object and policy.'" *John Hancock*, 114 S. Ct. at 523 (quoting *Pilot Life*, 481 U.S. at 51). ERISA defines a fiduciary as follows:

[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, . . . or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

29 U.S.C. §1002(21). This is a *functional* test in the sense that a person is a fiduciary whenever he, she, or it is performing *any* of the functions that make a person a fiduciary; indeed, the term "fiduciary" under ERISA is an expansive term. *Kayes v. Pacific Lumber Co.*, 51 F.3d 1449, 1459 (9th Cir. 1995). This Court has recently stated: "Congress commodiously imposed fiduciary standards on persons whose actions affect the amount of benefits . . . plan participants will receive." *John Hancock*, 114 S. Ct. at 524; *see also Mertens v. Hewitt Assocs.*, ___ U.S. ___, 113 S. Ct. 2063, 2066 (1993). Thus, when comparing ERISA to the common law, this Court has held that ERISA "expand[s] the universe of persons subject to fiduciary duties. . . ." *Id.* at 2071.

In applying the definition of "fiduciary" to distinguish between an employer's settlor and fiduciary functions, courts have distinguished between *deciding* to offer (or not offer) benefits, on one hand, and *implementing* that decision, on the other. For example, a quintessential business decision is the determination of employee compensation, including benefits. Nowhere in ERISA did Congress restrict an employer's choice regarding whether to offer benefits and, therefore, courts have taken care to leave that right unaffected. *See Berlin*, 858 F.2d at 1163-64. Likewise, an employer's decision to amend or terminate a plan is not governed by fiduciary standards of conduct. This Court recently stated:

Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans. *See Adams v. Avondale Industries, Inc.*, 905 F.2d 943, 947 (CA 6 1990) ("[A] company does not act in a fiduciary capacity when deciding to amend or terminate a welfare benefits plan").

Curtiss-Wright Corp. v. Schoonejongen, ___ U.S. ___, 115 S. Ct. 1223, 1228 (1995). Accord *New York State Conference*, 115 S. Ct. at 1674 (ERISA “does not go about protecting plan participants and their beneficiaries by requiring employers to provide any given set of minimum benefits”).

In sharp contrast, *implementing* the decision to adopt, amend, or terminate employee benefit plans is purely fiduciary conduct. The Department of Labor has stated:

Although the *decision* to terminate is generally not subject to the fiduciary responsibility provision of ERISA, the Department has emphasized that activities undertaken to *implement* the termination decision are generally fiduciary in nature.

ERISA Op. Ltr. (Mar. 13, 1986), 13 Pens. Rep. (BNA) 472 (Mar. 17, 1986) (emphasis added). *Implementing* the modification or termination of a plan falls squarely within the definitions of “management” (e.g., executive function) and “administration” (e.g., techniques employed in achieving the objectives), which are part of the ERISA definition of “fiduciary.”⁹

⁹ The courts have adopted this same distinction; in the words of the Ninth Circuit:

Plaintiffs allege that Blue Cross breached its fiduciary duty by choosing annuity providers using an infirm bidding process that sacrificed participants’ and beneficiaries’ best interests to maximize the reversion of residual plan assets. . . . Blue Cross maintains that it did not breach its fiduciary duty to the Plan because purchasing annuities as part of a plan termination is not a fiduciary act.

* * *

In addition, individuals and companies act as plan fiduciaries when making material misrepresentations when *implementing* decisions to offer, amend, or terminate benefits:

[W]hile . . . the decision to offer MIPP benefits was a nonfiduciary business decision, we do not agree with the district court's conclusion that it logically follows that any communications or representations made prior to such a decision were also nonfiduciary. On the contrary, we hold that when serious consideration was given by MBT to *implementing* MIPP by making a second offering . . . , then MBT as the plan administrator and/or its Vice President of Personnel Grady, the plan fiduciary, had a fiduciary duty not to make misrepresentations . . . to potential plan participants concerning the second offering.

Berlin, 858 F.2d at 1163-64 (citations omitted).¹⁰

For example, an employer announcing a "one-time offer" of an early retirement plan could be held liable for

By alleging that Blue Cross breached its fiduciary duty in the selection of annuity providers, plaintiffs attack not the *decision* to terminate, but rather the *implementation* of the decision. We believe that this distinction is dispositive and hold that Blue Cross acted in a fiduciary capacity when choosing annuity providers to satisfy plan liabilities.

Waller v. Blue Cross of California, 32 F.3d 1337, 1341-42 (9th Cir. 1994) (emphasis in original).

¹⁰ See also *Maez v. Mountain States Tel. & Tel., Inc.*, No. 93-1184, 1995 U.S. App. LEXIS 9155, *34-37 (10th Cir. April 19, 1995); *Mullins v. Pfizer, Inc.*, 23 F.3d 663, 669 (2d Cir. 1994); *Fischer*, 994 F.2d at 135; *Drennan*, 977 F.2d at 250-52.

breach of fiduciary duty if "such a predictive statement . . . were a 'material misrepresentation.'" *Barnes*, 927 F.2d at 544 (citation omitted). Such "one-time offer" statements would be material misrepresentations if, for example, the employer was seriously considering a second offer. *Id.* Likewise, plan fiduciaries have a duty not to mislead employees as to the prospective adoption of a plan under serious consideration. *Vartanian*, 14 F.3d at 702; *Drennan*, 977 F.2d at 249. Thus, in a case involving a situation similar to the present suit, the Eleventh Circuit reasoned:

It is not clear from the record whether Osborne misrepresented to the employees of Powhatan that they were insured for the health plan when, in fact, they were not. . . . Clearly, if Osborne did make such misrepresentations, he would have breached his fiduciary duty to the health plan. The district court, however, did not make a finding of fact in this regard. The district court's order holding Osborne personally liable was predicated solely on Osborne's decision not to pay the insurance premiums.

* * *

[T]his decision by Osborne to pay bills other than the insurance premiums was not made in his capacity as fiduciary of the health plan, it was made as the president of the corporation. . . . *This distinction in the role of president of the corporation as opposed to the role as fiduciary of the plan does not diminish in any way the obligation of the fiduciary to keep the beneficiaries (employees) advised as to the status of the plan, insurance coverage, etc. . . .*

Local Union 2134, United Mine Workers of America v. Powhatan Fuel, Inc., 828 F.2d 710, 713-14 (11th Cir. 1987) (emphasis added; citations omitted).¹¹

In each of the above-referenced situations, courts determined that deciding to offer a plan or terminate a plan, or which bills to pay, were *business* decisions that did not, standing alone, involve a fiduciary function. The courts ruled, however, that in *implementing* those business decisions, the employers were subject to the fiduciary duties imposed under ERISA which require full and honest disclosure of *all* information that would have a material impact on the participants' own decisions or status. The courts have properly held that these acts constitute discretionary authority or control over the management or administration of the plans and, as such, are subject to the fiduciary duties provided under ERISA.

In the event that this Court concludes that Petitioner was *not* acting as an ERISA fiduciary when misrepresenting the viability of MCC and stating that the employee benefits provided by MCC would be the same as those provided by Petitioner, the jury verdict for Respondents on their common law claims should be reinstated. Specifically at trial, the jury returned a verdict for the Respondents on their common law claims for fraudulent misrepresentation and punitive damages. 25a, 44a, 45a, 112a, 113a. The District Court set aside the jury verdict for fraudulent misrepresentation as preempted by ERISA.

¹¹ Cf. *Payonk v. HMW Indus., Inc.*, 883 F.2d 221, 229 (3d Cir. 1989) ("[A]n employer's lawful termination decision, absent affirmative misrepresentations designed to mislead plan participants, is not governed by ERISA's standards of fiduciary duties.").