

Life cannot survive as a state-law claim for breach of contract, he being a third-party beneficiary of the insurance policy, a contract between Andersen and the insurance company. A suit to enforce a claim for benefits under an ERISA plan can be brought only under ERISA; parallel state-law remedies are preempted. It is not as if Liberty Life were merely a contractor with an ERISA administrator or fiduciary. It is an ERISA fiduciary, and Rud's complaint is that it has failed to comply with the duties that the plan imposed on it." ❖

Owner Of Georgia Insurance Agency Sentenced For Diverting 401(k) Plan Assets

The Superior Court of Cobb County, Georgia, in Marietta has sentenced the owner of the Hoyla Insurance Group to serve five years in prison, to be followed by 15 years of probation, after his plea of guilty to 19 counts of theft, including theft of \$65,000 from the company's 401(k) plan. The case is *The State of Georgia. v. Michael John Hoyla* (Criminal No. 081584-34).

The insurance agency ceased operations on Sept. 6, 2006, after the Georgia Department of Insurance issued a cease and desist order. As of April 5, 2007, the company's 401(k) plan covered seven participants and had assets of \$131,848.

On November 2, Michael Hoyla pleaded guilty to a 19-count indictment of theft under Georgia law that was filed by the Cobb County, Ga., district attorney in April 2008. As part of this plea, Mr. Hoyla pleaded guilty to converting to his own personal use more than \$65,000 in employee contributions owed to the company's 401(k) plan between 2002 and 2006. In addition to the sentence, Mr. Hoyla was ordered to pay a \$30 per month probation fee not to exceed 60 payments and a \$50 probation surcharge. ❖

Utah Restaurant Agrees To Pay \$30,000 To Settle EEOC Pregnancy Discrimination Suit

Tepanyaki, a Clearfield, Utah, Japanese restaurant, has agreed to pay \$30,000 and to furnish other relief to settle a pregnancy discrimination lawsuit filed by the Equal Employment Opportunity Commission. The suit was filed in the U.S. District Court for the District of Utah (Civil Action No. 1:09-cv-43 TS).

In its lawsuit, the EEOC alleged that Tepanyaki of Clearfield LLC discriminated against Alison Woodbury by firing her because of her pregnancy. Ms. Woodbury was hired as a server for Tepanyaki, but during her initial training Tepanyaki discovered that she was pregnant and terminated her.

In addition to the monetary relief, the consent decree settling the lawsuit requires Tepanyaki to provide training and other relief aimed at educating its employees about sex discrimination, including pregnancy discrimination, and their rights under Title VII of the Civil Rights Act.

The EEOC has issued guidance on caregiver discrimination, which includes pregnancy discrimination. The guidance is available at <http://www.eeoc.gov/policy/docs/caregiving.html>. ❖

Eaton's Neck Fire District In New York Settles EEOC Age Discrimination Suit

The Eaton's Neck Fire District on Long Island, N.Y., has agreed to pay \$213,840 to settle a class action age discrimination lawsuit filed by the Equal Employment Opportunity Commission.

Eaton's Neck is located in Western Suffolk County, on the north shore of Long Island. In its suit, the EEOC alleged that the fire district violated the Age Discrimination in Employment Act (ADEA) by refusing to allow volunteer firefighters older than age 65 to accrue credit toward a "length of service award," which was the equivalent of a retirement pension, because of their age. As a result, senior firefighters lost pension amounts after they attained age 65.

The damages will be made in retroactive payments to a group of 15 firefighters who had been discriminated against based on their age and will provide increased monthly pension amounts going forward to several firefighters.

In a press release, acting EEOC chairman Stuart J. Ishimaru stated, "This fire department's system in effect penalized older firefighters because of their age, and that was simply illegal. We welcome the fire district's decision to settle this case in a way that ensures that these brave firefighters, who do heroic work, do not receive different retirement benefits simply because of their age." ❖

44% Of Employers Offer A CDHP: Aon/ISCEBS

Currently, 44% of employers offer a consumer-driven health plan (CDHP), according to research recently conducted by Aon Consulting and the International Society of Certified Employee Benefit Specialists (ISCEBS). The survey, *CDH Plans Shift to HSAs*, also found that 56% of employers offering a CDHP provide a health savings account (HSA), 35% offer a health reimbursement arrangement (HRA), and 9% offer both. Over the last three years, the gap has widened between HSAs and HRAs: the percentage of employers offering HSAs has risen from 48% to 56%, while the number offering HRAs has dropped from 43% to 35%.

Since last year, the percentage of employers that contribute to employees' HSAs has increased from 60% to 66%. Most employers contribute a flat dollar amount of \$500 or more (45%), followed by a flat dollar amount of less than \$500 (15%). In addition, 6% of employers offer a matching employer contribution. The survey also found that employers offering an HRA make a wide variety of contributions to the account for individual coverage: 4% provide less than \$300; 11% provide between \$300 and \$499; 49% provide between \$500 and \$799; 1% provide between \$800 and \$999; and 34% provide \$1,000 or more.

According to the survey, enrollment in CDHPs has increased over the past three years. Sixty-three percent of employers reported having more than 10% of their employees enrolled in CDHPs, which is higher than the 53% of employers reporting 10% or more enrollment in 2006. Employers believe that the main reason employees do not enroll in CDHPs is because they are concerned about high out-of-pocket costs (51%), followed by a traditional plan design preference (20%); lack of knowledge about CDHPs (10%); and a perception that CDHPs are too complex (5%).

The majority of employers (83%) offer a CDHP to employees as an option, while 17% offer the CDHP as a total replacement, where the CDHP is the only plan offered, according to Aon/ISCEBS. The reason most employers cite for offering a CDHP is to control health care plan costs (38%) or to introduce "consumer engagement" into the purchasing of health care for long-term change (35%). Other reasons include: expanding employee choice (14%), encouraging better use of health care services (9%), and providing a vehicle for retiree medical savings (3%).

Of employers not offering a CDHP, 37% indicated that they plan to offer one in the near future. Of this group, Aon/ISCEBS found that 6% are planning to offer a CDHP this year or next; 31% are undecided on an effective date; and 62% are not seriously considering a CDHP as a future plan offering. However, the survey found that 57% of employers believe that CDHPs make employees better, more efficient consumers of health care, and 45% believe that CDHPs will be successful in controlling employers' health care costs in five years.

The survey contains responses from 370 organizations. For further information, visit <http://www.iscebs.org/PDF/surveys/cdhsurveyaon1109.pdf>. ❖