

# THIRD CIRCUIT UPHOLDS PENALTY IMPOSED ON PLAN ADMINISTRATOR FOR FAILURE TO PROVIDE DOCUMENTS

*Hodgson Russ Employee Benefits Newsletter*  
January 31, 2018

**Practices & Industries**

Employee Benefits

A plan administrator is required by the Employee Retirement Income Security Act of 1974 (ERISA) to disclose certain governing documents and records within 30 days of receiving a written request. When a plan administrator fails to provide documents on a timely basis, the plan administrator can be held personally liable for penalties of up to \$110 a day from the date of the failure. The Court of Appeals for the Third Circuit recently ruled that a federal district court in Pennsylvania did not abuse its discretion by imposing a penalty of nearly \$16,000 on a plan administrator for failing to timely produce copies of certain validly requested plan documentation. Aside from the plan administrator's attempt to charge \$1,800 for the cost of furnishing the documents (which far exceeded the 25 cents per page maximum allowable by Department of Labor regulations) and the length of the delay in furnishing documents (which ranged from 300 days to 959 days), the circumstances surrounding the document requests and the plan administrator's delay in furnishing the documents are not particularly remarkable. It is notable, however, that the penalty amount imposed by the district court judge and affirmed by the Third Circuit was well below the maximum penalty allowable under ERISA – the lesser penalty was in part due to a breakdown in communications between counsel for the parties, and the absence of bad faith with respect to furnishing a custodial account agreement. Nonetheless, the case serves as a reminder that plan administrators who do not address document requests on a timely basis risk being subject to substantial monetary penalties. *Askew v. R.L. Reppert, Inc.* (3<sup>rd</sup> Cir. 2017).