

# AFFORDABLE CARE ACT'S BAN ON LIFETIME BENEFIT MAXIMUMS DOES NOT APPLY TO RETIREE-ONLY HEALTH PLANS

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When Gary King retired from United Parcel Service in 2011, he and his wife became participants in the UPS Health and Welfare Package for Retired Employees (“Retiree Plan”). Mrs. King suffered a back infection which required surgery and rehabilitative care resulting in claims in excess of the Retiree Plan’s lifetime maximum benefit of \$500,000. Mrs. King brought suit against UPS, the Retiree Plan and the insurer, alleging breach of contract and breach of fiduciary duties owed to her. After the federal district court granted defendants’ motion for summary judgment, King appealed to the Ninth Circuit Court of Appeals.

The Ninth Circuit panel examined whether ERISA, as amended by the Affordable Care Act (ACA), banned lifetime maximums in retiree medical plans. The ACA amended the Public Health Service Act (PHSA) to provide, “A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish lifetime limits on the dollar value of benefits for any participant or beneficiary.” ERISA incorporated the provisions of the PHSA, but also contained an express exception for certain retiree-only plans. ERISA Section 732, which predated the ACA, provided, “The requirements of this part [] shall not apply to any group health plan [] for any plan year if, on the first day of such plan year, such plan has less than 2 participants who are current employees.”

The appellate court rejected King’s arguments that this provision of ERISA was “impliedly repealed” or in an “irreconcilable conflict” with the PHSA amendment. Instead, the Ninth Circuit held that the ban on lifetime benefit maximums did not apply to the Retiree Plan.

However, the court found that a summary of material modifications issued in 2010 was deficient and that factual issues precluded summary judgment on King’s breach of fiduciary duty claims. Those issues have been reversed and remanded to the federal district court for further proceedings. *King v. Blue Cross Blue Shield of Illinois*, 2017 WL 3928339 (9<sup>th</sup> Cir.).