

JULY 20, 2009

**RECENT, RELEVANT,
PROFESSIONAL LINES LAW
FOR SUBSCRIBERS**

PLAN Alert updates you on cases that affect your work every day. Cases are divided into six categories:

- Professional Liability / E&O
- Directors & Officers
- Coverage / Bad Faith
- EPL- Labor & Employment
- Fiduciary / ERISA
- Financial Institutions

JOIN US IN ILLINOIS:

Make plans to join us in Schaumburg, September 16th or in Chicago on September 17th. Details to come in the next week.

MEET OUR MEMBERS

Headquarters Location

[Campbell & Chadwick PC](#)
Dallas, TX

[Carlson, Calladine & Peterson, LLP](#)
San Francisco, CA

[Cole, Scott & Kissane, P.A.](#)
Florida

[Edgerton & Weaver, LLP](#)
Hermosa Beach (LA), CA

[Hall, Booth, Smith & Slover, P.C.](#)
Atlanta, GA

[Jones, Skelton & Hochuli, P.L.C.](#)
Phoenix, AZ

[Kaufman, Dolowich Voluck & Gonzo, LLP](#)
New York, New Jersey

[Marson-King, LLP](#)
St. Paul, MN

[McClairRyan](#)
Richmond, VA

[O'Hagan Spencer, LLC](#)
Chicago, IL

[Pietragallo Gordon Alfano Bosick & Raspanti, LLP](#)
Pittsburgh, PA

[Reminger, Co.](#)
Cleveland, OH

[Thornton, Biechlin, Segrato, Reynolds & Guerra, L.C.](#)

San Antonio, TX

For the full text of these cases, visit the Professional Lines Attorney Network [Client Resources page](#)

PROFESSIONAL LIABILITY / E&O

Delaware – July 9, 2009. Influential Court Sets Remedy for Violation of Majority Stockholders' Duty of Disclosure. The court was faced with the precedent-setting question of what remedy is appropriate in a "short form" merger under state law, where the corporation's minority stockholders are involuntarily cashed-out without the benefit of material information regarding the propriety of an appraisal. With a breach of the fiduciary duty of disclosure having been established, the court found that the majority stockholder's duty of disclosure provides important protection for minority stockholders in a short form merger. However, in the court's view this protection in the form of the quasi-appraisal remedy could not be restricted by opt in or escrow requirements.

Berger v. Pubco Corp., No. 509,2008, --- A.2d ----, 2009 WL 1976529 (Del. Supr.).

Sixth Circuit – Michigan – July 6, 2009. Bankruptcy Debtors of Privately Held Company Could Not Access Shareholder Settlement Payments. The federal appeals court addressed a novel question of whether payments to shareholders of a privately held corporation qualified as a "settlement payment" under the bankruptcy statute generally barring the trustee's avoidance of pre-petition settlement payments made by or to a financial institution. This case involved a transaction with the characteristics of a common leveraged buyout involving the merger of nearly equal companies. The court reasoned that the value of privately held securities at issue was substantial and there was no reason to think that unwinding that settlement would have any less of an impact on financial markets than publicly traded securities.

In re QSI Holdings, Inc., --- F.3d ----, 2009 WL 1905237 (C.A.6 (Mich.))

FINANCIAL INSTITUTIONS

Third Circuit – New Jersey – July 13, 2009. Appeals Court Hands Win to U.S. Commodity Futures Trading Commission in Feeder Fund Fraud Case. In a decision that may impact potential defendants in the Bernard Madoff case and others like it, the court held that Equity Financial Group LLC was in fact a commodity pool operator even though it managed a feeder fund that did not execute futures transactions. The fund actually invested in another fund for the purpose of executing futures contracts. However, the solicitation and receipt of funds for the purpose of trading futures contracts placed Equity Financial squarely within the definition of a commodity pool operator according to the court.

Commodity Futures Trading Com'n v. Equity Financial Group LLC, --- F.3d ----, 2009 WL 2005134 (C.A.3 (N.J.)).

FIDUCIARY / ERISA

Seventh Circuit – Illinois – July 2, 2009. "Normal Retirement Age" Under ERISA Not Just the Norm. This federal appeals court took an expansive view of the definition of "normal retirement age" under ERISA stating an age is "normal" because the plan's text makes it so. The age in the plan is "normal" in the sense that it applies across the board, to every participant in the plan. Therefore, the plan's definition of the 5th anniversary from the date of employment as "normal retirement age" was proper regardless of whether this meant an employee reached normal retirement at age at 25. The court noted that a "normal retirement age" in a pension plan does not control when employees must retire, but only when certain rights vest and how benefits are adjusted.

Fry v. Exelon Corp. Cash Balance Pension Plan, --- F.3d ----, 2009 WL 1885485 (C.A.7 (Ill.))

First Circuit -- Massachusetts -- July 8, 2009. Attorney's Fees to Victor in Arbitration Extends to Successful Efforts to Defeat Vacation of Award.

Interpreting a state statute entitling a party to attorney fees following a successful arbitration, the court found that this law entitles the same party to attorney fees incurred in successfully defending against an attempt to overturn the arbitral award in court. The court stopped short of holding that such fees were mandatory under the statute but found them to be within the "usual practice" absent some affirmative reason against making the award.

Janney Montgomery Scott LLC v. Tobin, --- F.3d ----, 2009 WL 1942039 (C.A.1 (Mass.))