

**EQUITABLE ESTOPPEL
IN ERISA BENEFIT CLAIMS**

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I. ESTOPPEL

A. The Estoppel Claim

1. Not the same as Fiduciary Misrepresentation Claim

- (1) A fiduciary misrepresentation claim is brought under 1109 and 1132(a)(2).
- (2) 1132(a)(2) fiduciary claims are plan-wide actions for misrepresentations made by fiduciaries to a class of employees. *Corcoran v. United Healthcare*, 965 F.2d 1321 (5th Cir. 1992).
- (3) Equitable Estoppel claim is brought under 1132(a)(3) as “other equitable relief” and under federal common law principals.
- (4) Comprehensive review of how equitable estoppel works is in *Coker v. TWA*, 165 F.3d 579 (7th Cir. 1999).
- (5) Equitable estoppel is an individual action for individual claims of misrepresentation made primarily at the bureaucratic level.

2. Elements of Equitable Estoppel

(1) Knowing misrepresentation

- *A mens rea* is required.
- Evil intent.

Stang v. Clifton, 71 F.Supp. 2d 926 (W.D. Wis. 1999).

(2) In Writing

- Must be an official writing which will be reasonably relied upon. *Coker v. TWA*, 165 f.3d 579 (7th Cir. 1999).
- Usually an SPD

Palmisano v. Allina Health Sys., 190 F.3d 881 (8th Cir. 1999).

3. Misrepresentation must relate to “Ambiguous Plan Terms”

- *In Re Unysis*, 58 F.3d 896 (3rd Cir. 1995)

- *Knight v. Cendant Corp.*, 64 F.Supp. 2d 902 (D.S.D. 1999)
- Unilateral authority to modify Plan (*Firestone* language) will defeat most equitable estoppel claims.
- *Sprague v. GM*, 133 F.3d 388 (6th Cir. 1998).
- *Int'l Union, United Auto v. Skinner Engine*, 188 F.3d 130 (3rd Cir. 1999).
- *Voyk v. Brotherhood of Locomotive Engineers*, 198 F.3d 599 (6th Cir.).

4. Reasonable Detrimental Reliance

- *Katz v. Comprehensive Plan . . . Alltel*, 197 F.3d 1084 (11th Cir. 1999).
 - Can't rely on erroneously deducted premium payments when participant knows they are ineligible.
- *Schonholtz*, 87 F.3d 72 (2nd Cir. 1996).

6. "Extraordinary Circumstances"

Similar to intent and mens rea, this is an *ad hoc* safety valve for gross abuses and a way to dismiss puny claims.

- *Aramony v. United Way*, 191 F.3d 140 (2nd Cir. 1999).
- *Unisys*, 58 F.3d 896, 907 (3rd Cir. 1995).

2. Estoppel In General

Estoppel is frequently alleged in connection with a denied benefit. A typical example is where a human resources representative tells a plan participant of benefit eligibility; it later turns out the information was incorrect, and a claim is made that the participant relied on that statement in deciding to terminate employment.

A successful estoppel claim in an ERISA case requires a participant to prove the common law elements of estoppel, (misrepresentation of existing facts, reasonable and detrimental reliance on the misrepresentation, and harm) and also prove that the misrepresentation relates to an interpretation of an ambiguous plan term. See, e.g., *Coleman v. Nationwide Life Ins. Co.*, 969 F.2d 54, 58-59 (4th Cir. 1992) (an estoppel claim can be effective only with respect to an interpretation of the plan terms, not with respect to the terms themselves); *Watkins v. Westinghouse Hanford Co.*, 12 F.3d 1517 (9th Cir. 1993); *Cinelli v. Security Pacific Corp.*, 61 F.3d 1437 (9th Cir. 1995) (both holding that estoppel not permitted where it would contradict the written terms of the plan); *Russo v. Health, Welfare & Pension Fund*, 984 F.2d 762 (7th Cir. 1993).

Estoppel claims require proof that defendants made a misrepresentation, that defendants knew the representation was false and that defendants intended plaintiffs to rely on it. Mistakes, even big ones, are not sufficient to demonstrate intent to mislead. See, e.g., *Sutter v. BASF Corp.*, 964 F.2d 566, 563 (6th Cir. 1992) (no showing of deceit); *Easa v. Florists' Transworld Delivery Ass'n*, 5 F. Supp. 2d 522, 527 (E.D. Mich. 1998) (mere mistake in benefit calculation not sufficient to show that defendants concealed true facts from plaintiff). As a practical matter, estoppel claims bridge the gap between benefits claims and fiduciary breach claims.

A good introduction to the topic was provided by the Seventh Circuit in *Coker v. Trans World Airlines, Inc.*, 165 F.3d 579 (7th Cir. 1999), where the court reviewed the law of estoppel as it relates to ERISA claims. After first noting, "It is not easy to apply estoppel principles to ERISA cases in the face of the rule requiring modifications to plans to be in writing, 29 U.S.C. § 1102(a)(1), and the required procedures for amending plans, 29 U.S.C. § 1102(b)(3)," the court recognized that some circuits have refused to accept estoppel claims at all. See, e.g., *Miller v. Coastal Corp.*, 978 F.2d 622, 624-25 (10th Cir.1992). Also, the court explained a general principle "that the estoppel doctrine does not override the rule forbidding oral modifications to an ERISA plan." See, e.g., *Frahm v. Equitable Life Assurance Soc'y*, 137 F.3d 955, 961 (7th Cir.1998). The court also pointed out that the nomenclature of estoppel

has been used rather loosely, referring to Comment, Kimberly A. Kralowec, *Estoppel Claims Against ERISA Employee Benefit Plans*, 25 U.C. Davis L.Rev. 487 (1992). However, what *Coker* emphasized is that “The cause of action has four elements: (1) a knowing misrepresentation; (2) made in writing; (3) with reasonable reliance on that misrepresentation by the plaintiff; (4) to her detriment.” 165 F.3d 585-586.

Estoppel is also distinct from “waiver,” a similar equitable principle but one that has not been adopted in ERISA claims. In *Thomason v. Aetna Life Ins. Co.*, 9 F.3d 645 (7th Cir. 1993), the court extensively discussed waiver and while leaving open the question of whether waiver could ever apply in ERISA claims, the court held, “Waiver and estoppel are distinct, although related, concepts. Waiver is the “voluntary and intentional relinquishment or abandonment of a known existing right or privilege, which, except for such waiver, would have been enjoyed.”” *Buffum v. Chase National Bank*, 192 F.2d 58, 60-61 (7th Cir.1951), *certiorari denied*, 342 U.S. 944, 72 S.Ct. 558, 96 L.Ed. 702; accord *Loyola University of Chicago v. Humana Ins. Co.*, 996 F.2d 895, 901 (7th Cir.1993). An estoppel, on the other hand, “arises when one party has made a misleading representation to another party and the other has reasonably relied to his detriment on that representation.” [citations omitted]. Facts that give rise to an estoppel need not support a finding of waiver, and vice versa.

According to *Thomason*, unlike “estoppel,” “waiver” does not generally require reliance. See, e.g., 46 C.J.S. Insurance §§ 785-786 (1993) (“[C]onsideration is unnecessary to establish a waiver or estoppel on the part of the [insurance] company precluding it from avoiding or forfeiting the contract of insurance. * * * [A waiver] may arise without the insurance company doing anything to mislead the insured to his disadvantage, prejudice, or injury.”).

Because a waiver can often be a “something for nothing” proposition, the Seventh Circuit rejected application of “waiver” in *Thomason* because it failed to meet the policy justification for recognizing estoppel claims.

In cases such as these where there is no danger that others associated with the Plan can be hurt, there is no good reason to breach the general rule that misrepresentations can give rise to an estoppel. There is no reason for the employee who reasonably relied to his detriment on his employer's false representations to suffer. There is no reason for the employer who misled its employee to be allowed to profit from the misrepresentation.” *citing [Black v. TIC Investments,]* 900 F.2d at 115 (emphasis added). The concern was both for detriment to the relying party and for unjust enrichment on the part of the party to be estopped. The waiver principles that the plaintiff argued should be applied to her ERISA claims were based neither on detriment to her nor on benefit to Aetna. To the extent that the common law will sometimes hold parties to the terms of a misleading representation for no reason other than the circumstance that such a misleading representation was made, such is not the common law of ERISA in this Circuit. 9 F.3d at 649-50.

B. Estoppel Claims Recognized

The key to obtaining recognition of an estoppel claim requires proof that (1) the plan is ambiguous and (2) the challenge is to an interpretation of that ambiguous plan term. See, e.g., *In re Unisys Corp. Retiree Medical Benefit “ERISA” Litigation*, 58 F.3d 896, 907 (3d Cir. 1995); *Tregoning v. American Community Mut. Ins. Co.*, 12 F.3d 79, 83 (6th Cir. 1993); *Miller v. Taylor Insulation Co.*, 39 F.3d 755 (7th Cir. 1994). Without any ambiguity in the plan, there can be no estoppel claim according to the Eighth Circuit in *Algren v. Pirelli Armstrong Tire Corp.*, 197 F.3d 915 (8th Cir. 1999), which rejected a retiree health benefit claim. However, even where ambiguity is claimed, it must be a true ambiguity, since mere silence will not support an estoppel claim. *Houghton v. Sipco, Inc.*, 38 F.3d 953, 958 (8th Cir. 1994); *Pisciotta v. Teledyne*, 91 F.3d 1326 (9th Cir. 1996). Thus, in *Bolton v. Construction Laborers’ Pension Trust*, 56 F.3d 1055 (9th Cir. 1995), a claim for equitable estoppel was allowed where a pension plan rule contained a “latent ambiguity,” where plan officials made interpretive representations to participant and intended participant to rely on their answer, and participant actually relied to his detriment.

One of the most frequently cited rulings regarding estoppel is *Kane v. Aetna Life Ins.*, 893 F.2d 1283, 1286-87 (11th Cir. 1990); *cert. denied* 111 S.Ct. 232 (1990), where the court allowed an estoppel claim to provide coverage of medical benefits that were misrepresented. *Kane* is consistent with the two-part requirement set forth above, and was most recently revisited by the Eleventh Circuit in *Katz v. Comprehensive Plan of Group Insurance*, 197 F.3d 1084 (11th Cir. 1999), where the court upheld a denial of life insurance benefits to the widow of a corporate executive who died of AIDS because the employee was not “actively employed” at the time he sought to enroll in the benefit program. Addressing the plaintiff's claim that her late husband was misled into believing he was eligible for coverage, the court ruled that there was no estoppel claim because the plan provisions relating to active service were unambiguous.

Kane is not universally accepted, though. In the Second Circuit, the court has explicitly rejected *Kane*. *Bonovich v. Knights of Columbus*, 146 F.3d 57 (2d Cir. 1998). In addition to the four requirements of estoppel set forth above, the Second Circuit also requires “extraordinary circumstances.” This requirement was reinforced in *Aramony v. United Way Replacement Benefit Plan*, 191 F.3d 140 (2d Cir. 1999), where the disgraced former head of the United Way sued to recover benefits denied him as a result of fraud committed against the charitable organization. Emphasizing that estoppel requires surrounding circumstances “beyond the ordinary,” and requires “remarkable consideration” . . . such as the use of a promise of benefits to induce certain behavior on the employee’s part.” (citing *Devlin v. Transportation Communications, Intl.*, 173 F.3d 94 (2d Cir. 1999)). Although Aramony claimed reliance on United Way’s offer of benefits, the court found nothing out of the ordinary about the circumstances surrounding the promises that were made—specifically, nothing was promised to Aramony to induce him to act on United Way’s behalf which was later reneged upon. Although the court recognized that the root of much of ERISA law regarding estoppel has to do with avoiding decisions that might affect the actuarial soundness of a benefit plan, the court refused to create two standards, declining the district court’s invitation to not require “extraordinary circumstances” if actuarial soundness is not at issue.

Moreover, in contrast to other circuits, the Second Circuit has analyzed estoppel claims under the promissory estoppel theory. That theory requires plaintiffs to show a promise, reliance on the promise, injury, and injustice if the promise is not enforced. In *Schonholz v. Long Island Jewish Medical Ctr.*, 87 F.2d 72 (2d Cir. 1996), a hospital president wrote a memo describing a severance plan for senior employees. When Schonholz, the chief operating officer, agreed to resign after a dispute, the president confirmed in a letter that Schonholz would receive severance benefits as described in the memo. Schonholz resigned promptly after receiving the confirmation letter. Unfortunately, the hospital board had never known of or approved the severance plan. The board disavowed the benefits promised to Schonholz, who sued the hospital. *Id.* at 74. Although the district court dismissed the claim on a motion for summary judgment, the Second Circuit reversed. It held that Schonholz had shown genuine issues of material fact existed, particularly with respect to reliance and injury. *Id.* at 78-80.

Like the Second Circuit, the Third Circuit also requires an ERISA plaintiff to demonstrate that “extraordinary circumstances” exist when pursuing an estoppel claim. Extraordinary circumstances are determined on a case by case basis. See, e.g., *Unisys*, 58 F.3d at 907; *Amatuzio v. Gandalf Sys. Corp.*, 994 F. Supp. 253 (D.N.J. 1998). However, the courts in the Third Circuit have held that extraordinary circumstances exist when the plaintiff can show “fraud or similarly inequitable conduct by an employer,” or “a network of misrepresentations that arise over an extended course of dealing,” or show special vulnerability (e.g., employer misrepresentations to a widow shortly after the accidental death of her husband). *Pugh v. Metropolitan Life Ins. Co.*, 968 F. Supp. 178, 184-85 (D. Del. 1997) (citing *Kurz v. Philadelphia Elec. Co.*, 96 F.3d 1544 (3d Cir. 1996)).

In contrast, the Fifth Circuit has explicitly stated that promissory estoppel is not a cognizable cause of action under ERISA if a participant seeks to recover based on an oral promise that future benefits will not change. See, e.g., *Borst v. Chevron Corp.*, 36 F.3d 1308, 1323 (5th Cir. 1994); *Degan v. Ford Motor Co.*, 869 F.2d 889, 895 (5th Cir. 1989). However, at least one district court in the Fifth Circuit has applied equitable estoppel (which seeks to enforce a misrepresentation against the party who made it) in a welfare benefit case. *Taylor v. Bank One, Texas, N.A.*, 14 Employee Benefits Cas. 2723, 2737 (S.D. Tx. 1992) (employer estopped from denying that it is a participating employer in a welfare plan) *but see Weir v. Federal Asset Deposit Ass’n.*, 123 F.3d 281, 290 (5th Cir. 1997) (asserting that the Fifth Circuit has not determined whether a cause of action for estoppel exists).

C. Estoppel Claims Doubtful or Not Recognized

Like the Fifth Circuit, the First Circuit appears hostile to estoppel claims. *Law v. Ernst & Young*, 956 F.2d 364, 370 (1st Cir. 1992) (stating that elements of *Kane* not met in the case before it but strongly disapproving of estoppel claims in dicta). The Tenth Circuit has explicitly stated that ERISA does not permit estoppel claims. *Averhart v. U.S. West Management Pension Plan*, 46 F.3d 1480, 1486-87 (10th Cir. 1994).

Estoppel claims may or may not be available in the Fourth Circuit. Compare *Elmore v. Cone Mills Corp.*, 23 F.3d 855 (4th Cir. 1994) (equally divided en banc panel suggesting that estoppel claims are viable) with *Healthsouth Rehabilitation Hosp. v. National Red Cross*, 101 F.3d 1005 (4th Cir. 1996) (stating that *Elmore* has no precedential value and that promissory estoppel claim based on representations that a dependent was a covered participant were not viable); see also *Villers v. Board of Trustees, Sheet Metal Workers Nat’l Pension Fund*, 901 F. Supp. 1111, 1119 (S.D.W. Va. 1995) (assuming viability of estoppel claim in general but noting that assumption may not be accurate and holding that, on the facts, estoppel could not be shown). Given the Fourth Circuit’s hostility to estoppel and other “extra statutory” claims, plaintiffs should be prepared to demonstrate ambiguity in plan terms and

compelling reasons to permit the estoppel claim to go forward. *Elmore* was recently revisited by the Fourth Circuit (187 F.3d 442 (4th Cir. 1999), which reaffirmed that the absence of reliance defeated the plaintiffs' claim for estoppel.

D. Issues Regarding Estoppel Claims

1. Proof of Reliance

Even in Circuits which recognize estoppel claims, most claims fail due to the plaintiffs' inability to demonstrate reasonable reliance on the alleged misrepresentations. This is particularly true if the SPD contains relevant and accurate information regarding the benefit sought. See, e.g., see *Weir v. Federal Asset Deposit Ass'n.*, 123 F.3d 281, 290 (5th Cir. 1997) ("Where, as here, a plan participant is in possession of a written document notifying her of the conditional nature of benefits, her reliance on employer representations regarding benefits may never be reasonable. Likewise, in *Hein v. FDIC*, 88 F.3d 210, 221-222 (3d Cir. 1996), the court rejected an estoppel claim when the SPD provisions were clear and contrary to plaintiff's claim for benefits even where a letter from the plan could be read to suggest otherwise.

Perhaps the best known recent estoppel case is *Sprague v. General Motors*, 133 F.3d 388 (6th Cir.) (en banc), cert. denied, 118 U.S. 2312 (1998). In late 1987 GM announced adverse modifications affecting health benefits provided to both active and retired employees. The changes included the establishment of an annual deductible, an annual co-pay, deletion of vision and hearing aid coverage, and other cost-sharing, but also some benefit improvements. Plaintiffs, more than 100 named individuals purporting to represent a class of 50,000 early retirees and 34,000 "general" retirees, sued. Among other things, the plaintiffs alleged that GM was estopped from imposing the adverse modifications. They claimed that, shortly before they retired, GM told them that their benefits would not change. *Sprague*, 133 F.3d at 393-96.

The Sixth Circuit held that neither the early nor the general retirees had a valid claim for estoppel. As to the general retirees, the court held that GM made no misleading misrepresentations. As to the early retirees, the court held that the plan was not ambiguous because the plan and most SPDs provided to the retirees clearly reserved GM's right to modify the plan, thus defeating any claim of reliance on the putative misrepresentations. *Sprague*, 133 F.3d at 403-04. That ruling was also the basis for the Sixth's Circuit refusal to order payment of retiree health benefits in *Voyk v. Brotherhood of Locomotive Engineers*, 1999 WL 1076603 (6th Cir. 1999), which held that a reservation of rights in the benefit plan defeated the reliance requirement for estoppel.

In *Frahm v. Equitable Life Assur. Soc'y*, 137 F.3d 955 (7th Cir.), cert. denied, 119 S. Ct. 55 (1998), the Seventh Circuit reached the same conclusion, finding that retirees could show neither reliance nor detriment where the SPD and other documents contained reservations of rights and where the benefit changes identically affected both active employees and retirees. *Frahm*, 137 F.3d at 960-62. In *Unisys*, 58 F.3d at 907, the Third Circuit held that participants could recover under an equitable estoppel theory if they showed material misrepresentation, reasonable and detrimental reliance on the representation, and extraordinary circumstances. However, the court found that any reliance on a misrepresentation was inherently unreasonable where a plan contained an unambiguous reservation of rights. *Id.*

2. Does Funding Status Matter?

There are at least two views about the effect of a plan's funding status (*i.e.*, whether the plan is (1) unfunded or self-funded or (2) funded in part by employee contributions or (3) funded on an actuarial basis by the employer). At least one court has held that estoppel is permitted if the plan is unfunded or funded on a non-actuarial basis (such as most welfare plans) but not if the plan is funded on an actuarial basis (as is the case with all defined benefit plans). The reasoning is that permitting an estoppel claim against a funded plan would effectively modify the actuarial assumptions that are reflected in the plan's terms. *Easa v. Florists' Transworld Delivery Ass'n.*, 5 F. Supp. 2d 522, 526 (E.D. Mich. 1998) (citing *Armistead v. Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991)).

In contrast, the Department of Labor argued (in one of its *amicus* briefs to the Sixth Circuit in *Sprague*) that the plan's funding status determines whether the plaintiff must show that the plan is ambiguous. The DOL reasoned that estoppel threatens the actuarial integrity of funded plans but has no such effect on unfunded plans. Thus, according to the Department, the sponsor of a welfare plan funded by the employer's general assets may be estopped from denying a benefits claim even in the absence of ambiguity. Although the Sixth Circuit rejected this view, *Sprague*, 133 F.3d at 404 (without addressing the DOL's contentions but stating that retirees could not show

reasonable reliance), one court has entertained the validity of this idea in dicta. *Miller v. Taylor Insulation Co.*, 39 F.3d 755 (7th Cir. 1994) (suggesting that oral modifications that did not implicate the actuarial soundness of the plan—i.e., oral modifications to self-funded welfare plans—might be permissible).

3. Estoppel and Multi-Employer Plans

In addition to issues regarding funded or unfunded plans, the courts have also been uncertain about whether to apply estoppel to multi-employer plans. The most recent discussion of this issue was in *Shields v. Local 705*, 188 F.3d 895 (7th Cir. 1999), where the court rejected the plaintiffs' claim that promises to Teamster's Local 705 to credit service with a prior employer toward pension benefits were enforceable under an estoppel theory. Reviewing its own precedent, the Seventh Circuit found that estoppel was only a cognizable theory when it involved a single-employer unfunded welfare benefit plan since recovery under that theory would pose no threat to a plan's actuarial soundness. In revisiting the question in *Shields* as to whether estoppel could be asserted against a multi-employer pension plan, the court chose to defer an answer after finding that the plaintiffs failed to prove the elements of estoppel. Like many estoppel claims, the plaintiffs failed to meet the reliance requirement because there was no showing that more attractive job opportunities were abandoned in reliance on the defendant's alleged promise.

What makes *Shields* more interesting, though, is that Chief Judge Richard Posner wrote a concurrence in which he agreed with the result but was in favor of a bright-line rule holding that estoppel could never be used to alter the terms of a defined-benefit plan, especially if the plan is a multi-employer plan. Judge Posner's position was based on a concern over actuarial soundness of such plans and the potential disruption that could result from allowing estoppel claims.

4. Estoppel and Class Actions

Because the elements of estoppel, particularly reasonable and detrimental reliance, are almost always specific to particular individuals, equitable estoppel has generally been rejected in class actions. See, e.g., *Frahm*, 137 F.3d at 957 (class action inappropriate where claims depend on statements made to each retiree); *Hudson*, 90 F.3d at 457 (individualized nature of estoppel claims make it difficult to meet class requirements); *Jensen v. Sipco*, 38 F.3d 945, 953 (8th Cir. 1994) (without deciding whether equitable estoppel might apply in a suit by an individual participant).

The Sixth Circuit offered a comprehensive analysis of class certification in the estoppel context in *Sprague*. Although the district court had certified a class of early retirees (divided into four subclasses), the Sixth Circuit held that the class action requirements of commonality and typicality were not satisfied in light of the claims at issue, specifically including estoppel. In the Sixth Circuit's view, the estoppel claim was too highly individualized, amounting to a claim that each named plaintiff and class member had a unique side deal with GM expressed in the relied-upon representations supporting the estoppel claim. Because there was a wide variety of representations, the representations were not sufficiently uniform, and the class lacked the commonality required by Fed. R. Civ. Pro. 23. (For similar reasons, the named plaintiffs' claims were not typical of the class). *Sprague*, 133 F.3d at 397-99.

II Recent Circuit Court Cases

A. First Circuit

Law v. Ernst & Young, 956 F.2d 364 (1st Cir. 1992). Very disapproving dicta at 370.

B. Second Circuit

Devlin v. Transport Comm. Union, 173 F.3d 94 (2nd Cir. 1999). "No extraordinary circumstances."

Bonovich v. Knights of Columbus, 146 F.3d 57 (2nd Cir. 1998). No "extraordinary circumstances."

C. Third Circuit

International Union, United Auto v. Skinner Engine Co., 188 F.3d 130 (3rd Cir. 1999). No reasonable reliance because of reservation of rights clause.

D. Fourth Circuit

Healthsouth v. National Red Cross, 101 F.3d 1005 (4th Cir. 1996). Estoppel claims not viable.

Elmore v. Cone Mills Corp., 187 F.3d 442 (4th Cir. 1999). Addressed estoppel, but very disapproving.

E. Fifth Circuit

Borst v. Chevron, 36 F.3d 1308 (5th Cir. 1994). Estoppel based on oral misrepresentation is not viable.

Weir v. Fed. Asset Deposit Ass'n, 123 F.3d 281 (5th Cir. 1997). Estoppel may still be an open, if disfavored, issue in the Fifth Circuit.

F. Sixth Circuit

Volk v. Brotherhood of Locomotive Engineers, 198 F.3d 599 (6th Cir. 1999). Reservation of rights clause again defeated reasonable reliance.

G. Seventh Circuit

Coker v. TWA, 165 F.3d 579 (7th Cir. 1999). Paying claims beyond termination of eligibility does not constitute *mens rea*.

H. Eighth Circuit

Palmisano v. Allina Health Sys., 190 F.3d 881 (8th Cir. 1999). Misrepresentation of benefits in a brochure was not sufficient to be treated as SPD modification.

I. Ninth Circuit

Bolton v. Construction Laborers, 56 F.3d 1055 (9th Cir.). A “latent ambiguity” in Plan Document allowed estoppel claim to prevail.

J. Tenth Circuit

Averhart v. U.S. West, 46 F.3d 1480 (10th Cir. 1994). No estoppel. Softened recently by *Kaferly v. U.S. West*.

Kaferly v. U.S. West, 1999 U.S. App. Lexis 20904; 1999 WL 679682 (10th Cir. 1999). No “intent to deceive.”

K. Eleventh Circuit

Katz v. Alltel, 197 F.3d 1084 (11th Cir. 1999). Erroneous withholding of health plan premiums does not give rise to reasonable reliance. *Faye v. Randall's*.