



PRACTICE AREAS

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- Employee Benefits
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UNITED REFINING WORKERS WIN BACK PENSION CREDITS

For years, United Refining Company (located in Warren, Pennsylvania) informed its employees in writing that they would receive an unreduced early retirement benefit if their pension benefits were vested at the time they left the company. Plaintiff John Cotillion received an unreduced benefit for more than ten years, only to receive notification, not only that his benefit would stop, but that he also had to pay back more than \$14,000.

The participants filed suit in federal court, represented by FDPK attorneys Tybe Brett and Joel Hurt. On April 8, 2013, the Court found that from 1995 to 2002 the administrator of the pension plan consistently interpreted the relevant plan language to provide unreduced early retirement benefits to terminated vested participants. The Judge rejected the Defendants' argument that the payment of unreduced benefits had been a mistake. He ruled that the company's new re-interpretation of the plan language was unreasonable and made key language of the plan meaningless.

FDPK is now seeking to extend this victory to more than 200 other terminated vested participants by having the lawsuit certified as a class action. The plaintiffs' motion for class certification and motion for final remedy on behalf of the class have been fully briefed and are pending before the Court.

HELPING VICTIMS KEEP THEIR RECOVERIES

Last fall, FDPK Attorney Tybe Brett filed a Brief of *Amici Curiae* with United Policyholders and several trial lawyers associations in the United States Supreme Court. (US Airways, Inc. v. McCutchen, No. 11-1285 (2013)).

Mr. McCutchen was in a motor vehicle accident and suffered serious injuries. The other driver had limited insurance and Mr. McCutchen settled with that driver for \$10,000 and received another \$100,000 in underinsured-motorist

coverage (before attorneys' fees).

Mr. McCutchen's health benefit plan, sponsored by his employer (US Airways), demanded reimbursement for the entire \$66,866 it claimed it had paid for his medical bills.

The Supreme Court upheld that the reimbursement provision of the health plan was enforceable but also held that the Plan was required to share in the costs of the third party recovery, including attorneys' fees, and sent

the case back to the trial court.

The case is now pending before the federal court in Pittsburgh where Ms. Brett has joined forces with Mr. McCutchen's personal injury attorneys. They will work together to resist overreaching efforts by Plans to seek reimbursement from victims' third party recoveries which deter attorneys from representing clients.



We are... progressive in outlook and aggressive in our pursuit of clients' rights. Whether representing individuals or classes, we work hard, using our heads and our hearts to get the best results.

Contact us to discuss your legal questions.

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Labor Day 2013



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Dear Friends:

Our firm has a new name — Feinstein Doyle Payne & Kravec — but our offices are in the same place (17th Floor of the Allegheny Building) in downtown Pittsburgh where we have been for many years. We are in the midst of renovations, but welcome you to visit any time after mid-September when the work is done.

Despite an increasingly challenging legal environment, we continue to practice in the same areas we always have, including employment, labor, employee benefits, and consumer class actions. We have become more selective in the cases we bring and remain committed to working with you to pursue lawsuits that vindicate the rights of regular people.

Sometimes our best successes are in cases where we do not have to go to

court: when we help a prospective employee after the employer learns about their juvenile record; when a letter we send to the long term disability plan administrator results in benefits being paid; or when a company revises its advertising based on a demand we send showing why the ad is misleading.

This Labor Day we celebrate with all of you the improvements in the economy and the national reduction in unemployment. We remain very aware that law too often serves only the wealthiest and most powerful while failing to protect those most in need. Let us know how we can work with you and for you.

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FREIGHTCAR SUES 700 RETIREES

FreightCar America recently sued 700 of its retirees, attempting to limit their post-retirement medical benefits. Although most of the retirees live near Johnstown, Pennsylvania, the company sued them individually in Chicago federal court and threatened to take default judgments against them unless they personally attended hearings in Chicago. As one retiree put it: "I am 76 years old, not in good health, and have never been to Chicago."

FDPK and the United Steelworkers ("USW") have challenged FreightCar's lawsuit and filed their own class action suit in federal court in Johnstown. The lawsuit asks for an injunction to prevent FreightCar from eliminating the retirees' medical coverage. The retirees claim that they earned their right to receive medical and life insurance benefits through USW collective bargaining agreements and decades of work for FreightCar manufacturing train freight cars.

This is not the first dispute between FreightCar and its retirees. In 2002, FreightCar initiated a plan to discontinue the collectively bargained employees' benefits, with no consideration of its retirees. FDPK filed a class action lawsuit against FreightCar at that time, which was settled in 2005 and extended the retirees' benefits.

FDPK partners Bill Payne and Pamina Ewing lead the firm's team challenging FreightCar's new efforts to cut back retiree benefits. Bill has successfully handled dozens of retiree benefits cases for collectively bargained workers.



Bill Payne

VICTORY FOR HOURLY FRACKING INDUSTRY WORKER

In a victory for an hourly worker in Western PA's fracking industry, FDPK attorneys obtained a \$164,208 judgment (inclusive of attorneys' fees) in a lawsuit that challenged the pay practices of Red Oak Water Transfer NE LLC.

Red Oak had classified its pump and pipe crew supervisors as exempt from the overtime pay requirements of the Federal Labor Standards Act and the Pennsylvania Minimum Wage Act. Red Oak paid these employees a fixed salary even though it regularly required them to work more than 50 hours per week.

FDPK filed suit, asserting that Red Oak had misclassified these employees who were not exempt when it should have paid them overtime under our federal and state law. FDPK asked for back pay, liquidated damages, and attorneys' fees for our client.

FDPK's client accepted Red Oak's offer of judgment at the end of July. The resolution included overtime pay for all of our client's overtime hours, liquidated damages equal to the amount of the pay he was owed for his overtime hours, and his attorneys' fees.

For more details, see [Casella v. Red Oak Water Transfer NE, LLC et al., 2:12-cv-01825-JFC](#).

FDPK attorneys Ed Feinstein, Pamina Ewing and Ellen Doyle have joined the American Civil Liberties Union (ACLU) in bringing claims of race discrimination in the hiring of police officers by the City of Pittsburgh.

For more information, contact Pamina Ewing (pewing@fdpklaw.com)

CASE FOR MILLIONS OF UNDERPAID WORKERS MOVES FORWARD

On August 27, a San Francisco Judge ruled that online workers in the US are entitled to receive email notice of their right to join a lawsuit against high-tech company CrowdFlower. The collective action, filed by FDPK and two other firms, accuses CrowdFlower of paying online workers substantially less than minimum wage.

The complaint alleges that CrowdFlower's CEO has publicly stated that it pays workers \$1-3 per hour (when it actually pays compensation because some of CrowdFlower's work is embedded in games where online workers earn only virtual goods).

Crowd-sourced labor is a recent and rapidly growing industry in the US. "Crowdsourcing" is the outsourcing of small, repetitive tasks which computers are not able to complete to individuals over the internet. Common crowd-sourced tasks include reviewing photos, verifying business listings, and labeling data. Crowdsourcing providers boast that they represent the "future" of labor, but workers' advocates are concerned that current crowdsourcing practices have the potential to undermine American workers' traditional labor law protections. Currently, these workers are often paid extraordinarily low wages on a per piece basis, and often only if the work is completed to the satisfaction of the company.

FDPK believes that this may be the first federal lawsuit filed regarding the status of this multi-million person workforce. In this litigation, filed by FDPK and two other law firms, the U.S. workers contend that they are employees for purposes of coverage under the Fair Labor Standards Act ("FLSA"), and that FLSA's minimum wage requirements apply to their online work.

Judge Tigar's recent conditional certification opinion requires that online workers be identified and notified of their right to participate in the lawsuit by filing an opt-in form with the court.

FDPK is proud to be in the forefront of the legal battle for protection of the rights of crowd-sourced U.S. workers. Contact FDPK Partner Ellen Doyle at edoyle@fdpklaw.com for more information.



Ellen Doyle



Have a safe and happy Labor Day