

*DE NOVO* REVIEW OF ERISA PLAN ADMINISTRATORS' FACTUAL  
DETERMINATIONS

*Luby v. Teamsters Health, Welfare, & Pension Trust Funds*, 944 F.2d  
1176 (3d Cir. 1991)

In *Luby v. Teamsters Health, Welfare, & Pension Trust Funds*,<sup>1</sup> the United States Court of Appeals for the Third Circuit concluded that district courts should review *de novo* a plan administrator's decision to deny benefits based solely on factual determinations when the plan does not grant the administrator discretion to make factual determinations.<sup>2</sup>

After Francis Luby's death, the Teamsters Health and Welfare Fund of Philadelphia and Vicinity ("the Fund") paid his death benefit to his girlfriend, Patricia Golosky.<sup>3</sup> Luby's estranged wife, Diane Luby, filed suit in Pennsylvania state court against Golosky, the Fund, and its administrator alleging wrongful denial of death benefits.<sup>4</sup> The Fund removed the case to federal district court under section 502(a)(1)(B) of the

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1. 944 F.2d 1176 (3d Cir. 1991).

2. *Id.* at 1183. The Third Circuit agreed with the district court's conclusion that the plan did not grant the administrator discretionary authority to resolve factual disputes. *Id.* at 1181. See *infra* note 16.

The scope of this Case Comment is limited to the question of the appropriate standard of review for actions brought under § 502(a)(1)(B) of ERISA (codified at 29 U.S.C. § 1132(a)(1)(B) (1988)). For a broader discussion of current developments in employee benefits' case law, see Roger C. Siske & Joni L. Andrioff, *What's New in Deferred Compensation A Summary of Current Case and Other Developments*, in PENSION, PROFIT SHARING, AND OTHER DEFERRED COMPENSATION PLANS 1 (ALI-ABA Course Study Materials, 1992).

3. *Luby*, 944 F.2d at 1179. Patricia Golosky lived with Francis Luby for eleven years, until just before his death. *Id.*

As a participant in the Fund, the plan entitled Luby to designate a beneficiary for a \$20,000 lump sum death benefit. Under the terms of the plan, the death benefit was payable by the Fund to the person named on a beneficiary card. *Id.* When Francis Luby died, two beneficiary cards were on file with the Fund. The first card, filed in 1968, designated Diane Luby as beneficiary. The second card, filed in 1987, designated Golosky. *Id.* Fund policy required the administrator to pay benefits to the beneficiary on the most recent valid card. Furthermore, the Fund guidelines required that a beneficiary apply to the Fund for the death benefits. *Id.* The Fund paid the death benefit to Golosky. *Id.* Diane Luby filed a claim for the death benefit shortly after Luby died. Golosky had not filed a claim when the Fund paid the death benefit to her. *Id.*

4. Francis and Diane Luby separated in 1974, but never divorced. *Id.* Diane Luby alleged that the second beneficiary card was not valid because Francis Luby never signed the card. *Id.* Golosky admitted that she had signed Luby's name to the card, but asserted that she had power of attorney to do so. *Id.* at 1179 n.1.

ERISA allows concurrent state and federal court jurisdiction for civil actions only if brought under § 502(a)(1)(B). Otherwise, federal courts exercise exclusive jurisdiction. 29 U.S.C. § 1132(e)(1) (1988).

Employee Retirement Income Security Act ("ERISA").<sup>5</sup> Reviewing *de novo* the administrator's decision, the district court awarded the death benefit to Diane Luby.<sup>6</sup> On appeal, the Third Circuit affirmed the district court's decision and held that a district court may exercise *de novo* review of an ERISA plan administrator's denial of benefits when the administrator based the denial only on factual determinations.<sup>7</sup>

Congress enacted ERISA<sup>8</sup> to promote the interests of employees and their beneficiaries in pension benefits following retirement.<sup>9</sup> Section

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5. *Luby*, 944 F.2d at 1179. Section 502(a) provides that "[a] civil action may be brought (1) by a participant or beneficiary . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B) (1988). See also 28 U.S.C. § 1441(a) (1988) ("[A]ny civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.").

The Fund and the administrator cross-claimed against Golosky for restitution if Luby prevailed. *Luby*, 944 F.2d at 1179. Golosky then cross-claimed against the Fund alleging that if Luby prevailed, Golosky was entitled to damages because the Fund negligently provided Francis Luby with ambiguous and improper beneficiary designation forms. *Id.*

6. The district court compared the signatures on the two beneficiary cards with authenticated signatures of Francis Luby on other documents. Based on this comparison, the district court found that the 1968 card was valid, and that the 1987 card was invalid because Francis Luby never signed it. *Id.* at 1184.

In addressing the validity of the cards, the district court weighed evidence (the authenticated signatures) that the administrator never had opportunity to consider. The Third Circuit held that a district court exercising *de novo* review is not limited to the evidence that the administrator considered. *Id.* at 1184-85. See *Moon v. American Home Assurance Co.*, 888 F.2d 86, 89 (11th Cir. 1989); *Doe v. United States*, 821 F.2d 694, 697-98 (D.C. Cir. 1987) (en banc). *But see Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 986 (6th Cir. 1991); *Perry v. Simplicity Eng'g*, 900 F.2d 963, 966 (6th Cir. 1990); *McMahan v. New England Mut. Life Ins. Co.*, 88 F.2d 426, 431 n.1 (6th Cir. 1989). The district court also found that the Fund was entitled to restitution from Golosky and that Golosky's cross-claim against the Fund lacked merit. *Luby*, 944 F.2d at 1179.

7. The Third Circuit first held that the plan neither expressly nor impliedly granted the administrator discretion to decide between beneficiary claimants. *Id.* at 1180-81.

8. ERISA, Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified as amended at 29 U.S.C. §§ 1001-1461 (1988 & Supp. II 1990)).

9. 29 U.S.C. § 1001 (1988). This section provides in pertinent part:

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest . . . that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans . . . that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing

502(a) of ERISA, allows plan participants and their beneficiaries to challenge the benefit determinations of plan authorities by filing a civil suit to recover benefits, enforce their rights under the terms of the plan, and clarify their rights to future benefits under the plan.<sup>10</sup> Most plans delegate the responsibility of making benefit determinations to the plan "administrator."<sup>11</sup> Yet, Congress did not specify a standard of review for district courts to apply when reviewing a plan administrator's benefit determinations.<sup>12</sup> Consequently, federal courts formulated an "arbitrary and capricious" standard for reviewing ERISA cases.<sup>13</sup>

In *Firestone Tire & Rubber Co. v. Bruch*,<sup>14</sup> the Supreme Court addressed the standard of review for an ERISA administrator's resolution of a benefit dispute.<sup>15</sup> The Court held that a district court should exer-

to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

29 U.S.C. § 1001 (1988).

10. 29 U.S.C. § 1132(a)(1)(B) (1988). See *supra* note 5. See also Michael S. Beaver, *The Standard of Review in ERISA Benefits Denial Cases After Firestone Tire & Rubber Co. v. Bruch: Revolution of Déjà Vu?*, 26 TORT & INS. L.J. 1, 2 (1990).

11. Beaver, *supra* note 10, at 2. See 29 U.S.C. § 1002(16)(A) (1988) which provides that:

The term "administrator" means-

- (i) The person specifically so designated by the terms of the instrument under which the plan is operated;
- (ii) if an administrator is not so designated, the plan sponsor; or
- (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

12. Beaver, *supra* note 10, at 2.

13. *Id.* Federal courts adopted the arbitrary and capricious standard developed under 29 U.S.C. § 1867(c) (1988), a provision of the Labor Management Relations Act ("LMRA"). *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 109 (1989). The LMRA first provided for joint management-labor employee benefits trusts. Beaver, *supra* note 10, at 2. Federal courts adopted the LMRA's arbitrary and capricious standard for ERISA by analogy. *Id.* See 29 U.S.C. § 1132(e)(1) (1988) (federal courts have exclusive jurisdiction over all ERISA actions, except civil actions under § 1132(a)(1)(B)); see also *supra* note 4. The arbitrary and capricious standard was developed under the LMRA largely as a means of asserting jurisdiction over suits under § 186(e) of the LMRA by plan beneficiaries who were denied benefits by trustees. *Firestone*, 489 U.S. at 109. Unlike the LMRA, ERISA explicitly authorizes civil suits in 29 U.S.C. § 1132(a). *Id.* at 110. See also Beaver, *supra* note 10 and accompanying text.

14. 489 U.S. 101 (1989).

15. *Id.* In 1980, the Firestone Tire & Rubber Company sold its Plastics Division to Occidental Petroleum Company. Occidental rehired most of the Firestone employees in their same jobs and at their same rates of pay without interruption. Firestone's "termination pay plan" provided: "If your service is discontinued prior to the time you are eligible for pension benefits, you will be given termi-

cise *de novo* review of a denial of benefits challenged under section 1132(a)(1)(B) unless the benefit plan provides the administrator with discretionary authority to determine eligibility for benefits or to construe the terms of the plan.<sup>16</sup> The Court rejected the arbitrary and capricious standard adopted by the lower courts.<sup>17</sup> Instead, the Court followed trust law principles,<sup>18</sup> which apply a deferential standard of review only when a trustee exercises discretionary powers.<sup>19</sup> Therefore, unless a benefit plan grants discretion to the plan administrator, a court will review the administrator's benefit determinations *de novo*.<sup>20</sup>

Yet, the scope of the Court's holding in *Firestone* is ambiguous. The

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nation pay if released because of a *reduction in work force . . .*" *Id.* at 105-06 (emphasis added). Six former Firestone employees who were rehired by Occidental claimed severance benefits under Firestone's termination pay plan. *Id.* at 105. Firestone, the administrator of the plan, denied the benefits, contending that the sale of the division did not constitute a "reduction in work force" within the scope of the plan. *Id.* at 106.

The employees filed a class action on behalf of "former, salaried, non-union employees" of the Firestone Plastics Division. The employees based their suit on ERISA § 502(a)(1), 29 U.S.C. § 1132(a)(1). *Id.* at 106. *See supra* note 5. The district court granted summary judgment for Firestone, holding that Firestone's determination that the sale of the division did not constitute a "reduction in work force" was not arbitrary or capricious. *Firestone*, 489 U.S. at 106-07. The Third Circuit reversed, holding that when the employer is the administrator of an unfunded benefit plan, a district court should review a decision to deny benefits *de novo*. *Id.* at 107.

16. *Id.* at 115.

17. *Id.* at 108-10. Noting that the "raison d'être" for the arbitrary and capricious standard in LMRA cases is a need for a jurisdictional basis in suits against trustees, *see supra* note 13, the Court asserted that LMRA principles offered no support because ERISA expressly provides for jurisdiction of suits against plan administrators. *Firestone*, 489 U.S. at 109-110.

18. *Id.* at 110. "ERISA abounds with the language and terminology of trust law." *Id.* ERISA's legislative history indicates an intent to subject ERISA fiduciaries to principles of trust law. *Id.* (citing H.R. REP. NO. 533, 93d Cong., 2d Sess. 11 (1973)).

19. 489 U.S. at 111. The Court cited the RESTATEMENT (SECOND) OF TRUSTS § 187 (1959). The Restatement provides that "[w]here discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion."

20. *Firestone*, 489 U.S. at 115. The Court rejected Firestone's several arguments for adopting the arbitrary and capricious standard. First, Firestone argued that the interpretation of the terms of a plan is an inherently discretionary function. However, the Court concluded that trust principles required district courts to interpret plan terms "in light of all the circumstances" without deferring to either party. *Id.* at 112 (citing RESTATEMENT (SECOND) OF TRUSTS § 4 cmt. d (1959)). In addition, the arbitrary and capricious standard of review would afford less protection to employees and their beneficiaries than the protection that existed before Congress enacted ERISA. This is contrary to ERISA's purpose "to promote the interests of employees and their beneficiaries in employee benefit plans." *Id.* at 113-14 (quoting *Shaw v. Delta Airlines*, 463 U.S. 85, 90 (1983)). Furthermore, the Court rejected as inconclusive Firestone's argument that *de novo* review would increase litigation and administrative costs and thereby discourage employers from creating benefit plans. *Id.* at 114-15.

court did not specify whether *de novo* review applies to all determinations by the plan administrator, or just those regarding interpretation of the plans terms.<sup>21</sup> The Court's trust rationale suggests that district courts should broadly apply *de novo* review.<sup>22</sup> Although the Court specifically stated that its holding applied to benefit denials based upon eligibility determinations, the language of the opinion did not limit the holding to such benefit denials founded upon plan interpretations and subsequently challenged under section 1132(a)(1)(B).<sup>23</sup>

The Court's opinion also contained language which restricted the holding in other respects. First, the Court initially limited the scope of its discussion to addressing the appropriate standard of review in section 1132(a)(1)(B) actions challenging denials of benefits based on plan interpretations.<sup>24</sup> Second, the Court emphasized that the decision did not concern the appropriate standard of review for actions under other remedial provisions of ERISA.<sup>25</sup> Finally, the Court observed that the validity of many benefit claims depends upon the interpretation of plan terms.<sup>26</sup> The Court's ambiguity has led various appellate courts to develop different standards of review for factual determinations by plan administrators.<sup>27</sup>

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21. In *Luby*, for example, the administrator determined that Golosky was the proper beneficiary based solely on the facts rather than on an interpretation of the plan terms involved. *Luby*, 944 F.2d at 1179. See also *Beaver*, *supra* note 10, at 19.

22. See *Beaver*, *supra* note 10, at 19 (nothing in the body of general trust law differentiates administrator's decisions of fact from those of plan interpretations).

23. The Court provided that:

Consistent with established principles of trust law, we hold that a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.

*Firestone*, 489 U.S. at 115.

24. *Id.* at 108. The facts of *Firestone* involved only an interpretation of plan terms. The litigants did not dispute the facts of the case. *Id.* at 106.

25. *Id.*

26. "As this case aptly demonstrates, the validity of a claim to benefits under an ERISA plan is likely to turn on the interpretation of terms in the plan of issue." *Id.* at 115.

27. See *Reinking v. Philadelphia Am. Life Ins. Co.*, 910 F.2d 1210 (4th Cir. 1990) (*de novo* review); *Luby v. Teamsters Health, Welfare, & Pension Trust Funds*, 944 F.2d 1176 (3d Cir. 1991) (same); *Petrilli v. Drechsel*, 910 F.2d 1441 (7th Cir. 1990) (dictum) (same). *But see Pierre v. Connecticut Gen. Life Ins. Co.*, 932 F.2d 1552 (5th Cir.) (abuse of discretion review), *cert. denied*, 112 S. Ct. 453 (1991).

In *Petrilli v. Drechsel*, 910 F.2d 1441 (7th Cir. 1990), the Seventh Circuit considered in dictum the scope of *Firestone's* holding. In *Petrilli*, the denial of benefits turned upon a plan interpretation. *Id.* at 1446. Yet, the Seventh Circuit outlined two possible interpretations of *Firestone*. The narrow reading focused on the phrase appearing early in the *Firestone* opinion which limited a court's dis-

In *Reinking v. Philadelphia American Life Insurance Co.*<sup>28</sup> the Fourth Circuit held that a district court could properly exercise *de novo* review of an administrator's factual determinations.<sup>29</sup> The court held that *de novo* review applied both to interpretations of plan terms and to factual determinations necessary to determine benefit eligibility.<sup>30</sup> The court reasoned that deferring to the plan administrator's decision when the plan did not grant the administrator discretionary authority would unnecessarily undermine the protection afforded the employee by ERISA.<sup>31</sup>

In *Pierre v. Connecticut General Life Insurance Co.*,<sup>32</sup> the Fifth Circuit held that a district court should apply an "abuse of discretion" standard

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cretion to "actions challenging denials of benefits based on plan interpretations." *Id.* (citing *Firestone*, 489 U.S. at 108). See also *supra* note 24 and accompanying text. The court asserted that under this reading, the holding and the limitation together mandate *de novo* review of only certain benefit denials—denials based upon plan interpretations by administrators who lack discretionary authority to construe plan terms. Thus, *de novo* review is not proper if the denial of benefits is based on any factor other than an interpretation of plan terms. *Petrilli*, 910 F.2d at 1446.

The Seventh Circuit also considered a broader reading of *Firestone*. Despite the earlier limiting language, *Firestone's* holding provided for *de novo* review "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Id.* (citing *Firestone*, 489 U.S. at 115). See *supra* note 23 and accompanying text. This broader interpretation followed from the absence of certain limiting language. The Seventh Circuit contended that if the plan did not confer discretion upon the administrator, the Supreme Court's holding mandates *de novo* review of the denial of benefits regardless of whether the administrator based the denial of benefits upon plan interpretations. *Petrilli*, 910 F.2d at 1446. Otherwise, the court asserted that the Supreme Court could have omitted the phrase "to determine eligibility for benefits" from the "unless" clause. The omission would have restricted the "unless" clause to "unless the benefit plan gives the administrator or fiduciary discretionary authority to construe the terms of the plan." The Seventh Circuit concluded that the Supreme Court's inclusion of the phrase "to determine eligibility for benefits" implied a broader applicability of *de novo* review. *Id.*

The Seventh Circuit further found support for this broader reading in the Supreme Court's analogy to trust law. The Court's rationale in *Firestone* focused on whether the plan granted the administrator discretionary authority, not whether the decision was interpretive or factual. *Id.* See also *Foster McGaw Hosp. v. Building Material Chauffeurs, Teamsters & Helpers Welfare Fund*, 925 F.2d 1023, 1025 (7th Cir. 1991) (leaving open the issue of standard of review for factual determinations).

28. 910 F.2d 1210 (4th Cir. 1990).

29. In *Reinking*, the plaintiff, suffering major depression, attempted to commit suicide by repeatedly stabbing herself with a knife. *Id.* at 1212. The plan administrator denied her request for medical benefits because the policy excluded coverage for "intentionally self-inflicted injuries." *Id.* The dispute arose because the plaintiff contended that she could not have "intentionally" wounded herself because of her mental condition. *Id.*

30. *Id.* at 1213-14.

31. *Id.* at 1214. See also *DeNobel v. Vitro Corp.*, 885 F.2d 1180, 1184-86 (4th Cir. 1989) (more detailed discussion of *Firestone* by Fourth Circuit; applying abuse of discretion standard because administrator granted discretionary power).

32. 932 F.2d 1552 (5th Cir.), *cert. denied*, 112 S. Ct. 453 (1991).

of review when reviewing a plan administrator's factual determinations.<sup>33</sup> The court emphasized that a plan administrator must make two separate determinations before deciding benefit eligibility.<sup>34</sup> First, the plan administrator must determine the facts underlying the benefit claim.<sup>35</sup> Second, the plan administrator must decide whether those underlying facts constitute a claim payable under the plan's terms.<sup>36</sup> The court found that *Firestone* only mandated *de novo* review for the plan administrator's second determination.<sup>37</sup> Consequently, the court applied an "abuse of discretion" standard of review to the plan administrator's factual determinations.<sup>38</sup>

The Fifth Circuit noted that courts generally review factual determinations under a deferential standard.<sup>39</sup> Because the ERISA plan administrator acted as the trier of fact, the court reasoned that a reviewing court should defer to the administrator's factual determinations.<sup>40</sup> Next, the court contended that the exercise of a *de novo* standard review would increase litigation and decrease the efficiency of plan administration.<sup>41</sup>

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33. In *Pierre*, the dispute concerned whether the deceased was killed by "accident." The deceased's mistress shot him to death, and then claimed that she acted in self-defense. The deceased's wife filed a claim for benefits under a group accident insurance policy. The plan administrator determined that his mistress acted in self-defense. Because the deceased's actions precipitated the fatal shooting, the plan administrator determined that the death was not an "accident" within the meaning of the policy and denied the benefits. *Id.* at 1560-62. For a more comprehensive discussion of the Fifth Circuit's analysis in *Pierre*, see J. R. Cox, Recent Development, *Pierre v. Connecticut General Life Insurance Co.: Piecing Together ERISA-Plan Administrator Fact-Finding Discretion After Bruch*, 66 TUL. L. REV. 1532 (1992).

34. *Pierre*, 932 F.2d at 1557.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 1562. The Fifth Circuit, like the Supreme Court in *Firestone*, also considered principles of trust law. *Id.* at 1557. The court recognized that trustees can exercise implied discretionary powers that are necessary or appropriate to fulfill express trust purposes. *Id.* at 1558 (citing RESTATEMENT (SECOND) OF TRUSTS § 186(b) (1959)) (trustees can properly exercise such powers as are necessary or appropriate to carry out the purposes of the trust and are not forbidden by the terms of the trust). The court also recognized that ERISA granted plan administrators some inherent discretionary authority. *Id.* (citing 29 U.S.C. § 1102(a)(1) (1988)) (granting plan administrators "authority to control and manage the operation and administration of the plan"). The court contended that plan administrators have inherent discretionary authority to make factual decisions that determine eligibility for benefits because the decisions to pay benefits necessitate such authority in order to administer the plan. *Id.*

39. The court stated that although deferring to an administrator's interpretation of plan terms may result in the loss of pre-ERISA rights, such a loss does not occur when a court exercises deferential review with respect to factual determinations. *Id.*

40. *Id.* at 1559.

41. *Id.* "The courts simply cannot supplant plan administrators, through *de novo* review, as

Finally, the court concluded that *Firestone* did not apply to the facts at issue in *Pierre* because, in *Firestone*, the Supreme Court did not define the proper standard of review for factual determinations.<sup>42</sup>

In *Luby v. Teamsters Health, Welfare, & Pension Trust Funds*,<sup>43</sup> the Third Circuit decided that a district court could properly exercise *de novo* review of an administrator's factual determinations when the plan did not grant the administrator discretion to make factual determinations.<sup>44</sup> Initially, the court found that the plan in *Luby* did not expressly or impliedly grant the administrator discretion to make factual determinations.<sup>45</sup> The court recognized that the two possible readings of the scope of *Firestone*'s holding caused the split among the circuit courts.<sup>46</sup> The court stated that the Supreme Court's language not only failed to limit the holding to interpretation of plan terms, but also expressly applied the holding to determinations of benefit eligibility.<sup>47</sup> The court reasoned that a court should not construe the language of a Supreme Court opinion as superfluous.<sup>48</sup> Consequently, the court considered *Firestone*'s express reference to eligibility for benefits as indicative of the holding's applicability to all eligibility determinations rather than merely those determinations that plan administrators base upon interpretations of plan terms.<sup>49</sup>

The Third Circuit also considered the language in *Firestone* that limited the scope of the court's holding. The court reasoned that this language<sup>50</sup> distinguished actions brought under section 1132(a)(1)(B) from

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resolvers of mundane and routine fact disputes." *Id.* But see *supra* note 20 (discussing the Supreme Court's rejection of a similar "expediency argument" in *Firestone*).

42. *Pierre*, 932 F.2d at 1561-62. See *supra* note 24.

43. 944 F.2d 1176 (3d Cir. 1991).

44. *Luby*, 944 F.2d at 1183.

45. *Id.* at 1180-81. The court reasoned that a plan's grant of general administrative power should not be construed as a general grant of discretionary power. Otherwise, courts would be forced to exercise deferential review of plan interpretations, contrary to the mandate of *Firestone*. *Id.*

46. *Id.* at 1182.

47. *Id.* at 1183. The court agreed with the Seventh Circuit's analysis in *Petrilli*. See *supra* note 27.

48. The *Luby* court noted that it "is a truism that language in the Supreme Court's opinions should not readily be assumed to be superfluous, and . . . the explicit reference to 'eligibility' in the holding is more telling than the lack of any such reference in other passages." *Luby*, 944 F.2d at 1183 (quoting *Barish v. United Mine Workers of America Health & Retirement Fund*, 753 F. Supp. 165, 168-69 (W.D. Pa. 1990)).

49. *Id.*

50. See *supra* notes 24-25 and accompanying text. Specifically, the *Firestone* court stated: "The discussion which follows is limited to the appropriate standard of review in § 1132(a)(1)(B)



actions brought under ERISA's other remedial provisions.<sup>51</sup> Yet, the court emphasized that the language did not distinguish section 1132(a)(1)(B) actions challenging interpretations of plan terms from section 1132(a)(1)(B) actions contesting factual determinations.<sup>52</sup>

The Third Circuit also declined to extend the deference generally accorded triers of fact to ERISA plan administrators. Unlike judges or governmental agencies, ERISA plan administrators may lack the requisite education or training to prepare them to exercise administrative responsibilities.<sup>53</sup> Finally, the court concluded that a *de novo* standard of review furthers the policy underlying *Firestone* and ERISA: protecting the interests that plan participants and their beneficiaries have in pension benefits following retirement.<sup>54</sup>

The Third Circuit persuasively concluded that *de novo* review constitutes the appropriate standard of review for an ERISA plan administrator's factual determinations. The court properly recognized that the *Firestone* decision only defined the standard of review for actions brought under section 1132(a)(1)(B).<sup>55</sup> The court's analysis reflected the importance that the Supreme Court placed on both determining whether the plan grants the administrator discretion and on recognizing ERISA's objective of protecting plan members and their beneficiaries. Consequently, when reconciling the limiting language of *Firestone* with the broad scope of the Supreme Court's holding,<sup>56</sup> the Third Circuit correctly focused on whether the plan granted the administrator discretionary authority, rather than the basis on which the administrator denied the benefits.

The court in *Luby* provided a simple method for determining the applicable standard of review of an ERISA plan administrator's denial of

actions challenging denials of benefits based on plan interpretations. We express no view as to the appropriate standard of review for actions under other remedial provisions of ERISA." *Firestone*, 489 U.S. at 108.

51. *Luby*, 944 F.2d at 1183.

52. *Id.* The court argued that reading the two sentences of the Court's limiting language in conjunction, see *Firestone*, 489 U.S. at 108, downplayed the significance of the "based upon plan interpretations" clause of the first sentence, and instead accentuated the "intended distinction between actions based on 29 U.S.C. § 1132(a)(1)(B) and those based on other ERISA provisions." *Luby*, 944 F.2d at 1183.

53. *Luby*, 944 F.2d at 1183. The court suggested that the case adequately illustrated the need for *de novo* review. The plan administrator's factual determination reflected little knowledge of evidentiary rules or legal procedure. *Id.*

54. *Id.* at 1183-84. See *supra* notes 8, 20 and accompanying text.

55. See *supra* notes 51-52 and accompanying text.

56. See *supra* notes 45-52 and accompanying text.

benefits. First, a court should determine whether the litigant challenged the denial of benefits under section 1132(a)(1)(B). If so, a court should then determine whether the plan granted the administrator discretionary authority. If the plan provided the administrator with such authority, a court should exercise a deferential standard of review. If not, a court should exercise *de novo* review.<sup>57</sup> The court's suggested method not only significantly reduces the confusion present in the federal common law<sup>58</sup> concerning the appropriate standard of review for ERISA plan administrators' determinations, but also provides suitable guidelines for district courts. As a result, the Third Circuit's holding in *Luby* promotes Congress' goal in enacting ERISA: protecting the interests that plan members and their beneficiaries have in pension benefits following retirement.<sup>59</sup>

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57. See *supra* notes 16, 44-45 and accompanying text.

58. See *Firestone*, 489 U.S. at 110 ("Given this language and history, we have held that courts are to develop a 'federal common law of rights and obligations under ERISA-regulated plans.'" (quoting *Pilot Life Ins. v. Dedeaux*, 481 U.S. 41, 56 (1987))).

59. See *supra* note 9.