

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2097

ABRAHAM FOTTA, individually and
on behalf of all other persons
similarly situated,
Appellant

v.

TRUSTEES OF THE UNITED MINE WORKERS
OF AMERICA, HEALTH AND RETIREMENT FUND
OF 1974; MICHAEL HOLLAND; DONALD
PIERCE; ELLIOT SEGAL;
JOSEPH STAHL, II

O R D E R

In order to correct a typographic error in a citation made in the fourth paragraph of Section III. A. 1 of the Court's opinion filed February 11, 2003, it is hereby O R D E R E D that the following text is substituted for that paragraph:

In fact, Fotta I did not even address the issue of liability. It determined who has a cause of action under § 502(a)(3)(B). Before Fotta I, only an ERISA beneficiary who had brought a legal action to recover wrongfully withheld benefits could sue for interest under § 502(a)(3)(B). See, e.g., Anthuis, 971 F.2d at 1010. In Fotta I, we were asked to decide whether a beneficiary who recovered wrongfully withheld benefits without resorting to litigation could sue under § 502(a)(3)(B). Fotta I, 165 F.3d at 211. ("This appeal raises an issue of first impression for this court: whether a beneficiary who has been

able to receive his her benefits due under an ERISA plan only after considerable delay, but without resorting to litigation to recover that payment, has a cause of action [under § 502(a)(3)(B)].”) We determined that § 502(a)(3)(B) did provide a cause of action for such plaintiffs. We did not, however, address the standard of liability that would trigger an obligation to pay interest.

For the Court,

/s/ Marcia M. Waldron
Clerk

Dated: March 28, 2003