

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

Dated: March 28, 2003

Clerk

