



CYPEN & CYPEN
NEWSLETTER
for
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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. U.S. SUPREME COURT AGAIN REVERSES NINTH CIRCUIT RULING IN *AMGEN*: The Supreme Court of the United States considers for the second time the Ninth Circuit's determination that respondent stockholders' complaint states a claim against petitioner fiduciaries for breach of the duty of prudence. The first time, the Court

vacated and remanded in light of *Fifth Third Bancorp v. Dudenhoeffer*, 573 U. S. ____ (2014), a case that set forth the standards for stating a claim for breach of the duty of prudence against fiduciaries who manage employee stock ownership plans. On remand, the Ninth Circuit reiterated its conclusion that the complaint states such a claim. The Court now reverses and remands. In the matter now once again before the Court, following the issuance of *Fifth Third* the Court granted the fiduciaries first petition for writ of certiorari, vacated the judgment and remanded for further proceedings. On remand, the Ninth Circuit reversed again the dismissal of the complaint and denied the fiduciaries' petition for rehearing *en banc*. The fiduciaries once more sought certiorari. The Court now holds that the Ninth Circuit failed properly to evaluate the complaint. That court explained that its previous opinion (that is, the one it issued before *Fifth Third* was decided) "had already assumed" the standards for ERISA fiduciary liability laid out by this Court in *Fifth Third*. And it reasoned that the complaint at issue here satisfied those standards because when the federal securities law required disclosure of material information, it is quite plausible that removing the Amgen Common Stock Fund from the list of investment options would not cause undue harm to plan participants. The Ninth Circuit, however, failed to assess whether the complaint in its current form has plausibly alleged that a prudent fiduciary in the same position could not have concluded that the alternative action would do more harm than good. The Ninth Circuit's proposition that removing the Amgen Common Stock Fund from the list of investment options was an alternative action that could plausibly

have satisfied *Fifth Third's* standards may be true. If so, the facts and allegations supporting that proposition should appear in the stockholders' complaint. Having examined the complaint, the Court has not found sufficient facts and allegations to state a claim for breach of the duty of prudence. Although the Ninth Circuit did not correctly apply *Fifth Third*, the stockholders are the masters of their complaint. The Court leaves to the District Court in the first instance whether the stockholders may amend it in order adequately to plead a claim for breach of the duty of prudence guided by the standards provided in *Fifth Third*. The petition for certiorari is granted. *Amgen, Inc. v. Harris*, Case No. 15-278 (U.S. January 26, 2016). (*Per Curiam*).

2. FLORIDA HOUSE BILL WOULD DEFAULT NEW EMPLOYEES TO MEMBERSHIP IN INVESTMENT (DEFINED CONTRIBUTION)

PLAN: The Florida House of Representatives has passed CS/HB 7107, amending the Florida Retirement System. The following is from the summary analysis prepared by house staff.

The Florida Retirement System is a multiple-employer, contributory plan that provides retirement income benefits to 622,089 active members, 363,034 retired members/beneficiaries and 38,058 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, state colleges, and universities. FRS also serves as the retirement plan for participating employees of the

189 cities and 273 independent hospitals and special districts that have elected to join the system. Members of the FRS have two plan options available for participation: the pension plan, which is a defined benefit plan, and the investment plan, which is a defined contribution plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program, the State Community College System Optional Retirement Program, and the State University System Optional Retirement Program. Effective July 1, 2016, the bill authorizes renewed membership in the investment plan for retirees of the investment plan, the SMSOAP, the SUSORP, or the SCCSORP. Such renewed member will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the applicable optional retirement program. Effective July 1, 2016, the bill establishes new survivor benefits for members of the investment plan who are killed in the line of duty. It provides the same survivor benefits to the spouse and children of such member as those currently provided for pension plan members who are killed in the line of duty. The bill also provides the survivor benefits for any member of the investment plan who has been killed in the line of duty since 2002, when members were first allowed to participate in the investment plan. It also provides a process for calculating the retroactive benefit. Effective July 1, 2017, the bill changes the default from the pension plan to the investment

plan for members who do not affirmatively choose a plan. [Apparently some folks are unhappy that the investment plan has remained virtually static at around \$8 million, while the pension plan has grown to over \$150 million.] The bill also extends the plan election period to the last business day of the eighth month after the month of hire. It also provides allocations for the survivor benefits authorized by the act and provides for adjustments to employer contribution rates in order to fund the proposed changes. For the 2016-17 fiscal year, the bill appropriates a recurring sum of \$4.2 million from the General Revenue Fund and a recurring sum of \$900,000 from trust funds to Administered Funds in order to fund the increased employer contribution rates to be paid by state agencies, state universities, state colleges, and school districts. For FY 2016-17, the bill has a projected \$3.6 million fiscal impact on counties and municipalities. We will see what the Senate has to say about this situation.

3. ERISA PREEMPTS STATE STATUTE REQUIRING

DISCLOSURE, AS APPLIED TO ERISA PLANS: Vermont law requires certain entities, including health insurers, to report payments relating to health care claims and other information relating to health care services to a state agency for compilation in an all-inclusive health care database. Respondent Liberty Mutual Insurance Company's health plan, which provides benefits in all 50 states, is an "employee welfare benefit plan" under the Employee Retirement Income Security Act of 1974. The plan's third-party administrator, Blue Cross Blue Shield of Massachusetts, Inc., which is subject to

Vermont's disclosure statute, was ordered to transmit its files on eligibility, medical claims, and pharmacy claims for the plan's Vermont members. Respondent, concerned that the disclosure of such confidential information might violate its fiduciary duties, instructed Blue Cross not to comply, and filed suit, seeking a declaration that ERISA preempts application of Vermont's statute and regulation to the plan, and an injunction prohibiting Vermont from trying to acquire data about the plan or its members. The District Court granted summary judgment to Vermont, but the Second Circuit reversed, concluding that Vermont's reporting scheme is preempted by ERISA. The U.S. Supreme Court held that ERISA does preempt Vermont's statute as applied to ERISA plans. ERISA expressly preempts any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. As relevant here, the clause preempts a state law that has an impermissible "connection with" ERISA plans; that is, a law that governs, or interferes with the uniformity of, plan administration. ERISA's preexisting reporting, disclosure, and recordkeeping provisions maintain their preemptive force, regardless of whether the new Patient Protection and Affordable Care Act's reporting obligations also preempt state law. *Gobeille v. Liberty Mutual Insurance Company*, Case No. 14-181 (U.S. March 1, 2016).

4. U.S. TOP COURT REJECTS UNION CHALLENGE TO NEW JERSEY PENSION REFORMS: The U.S. Supreme Court recently rejected a bid by unions representing public employees, including teachers and state troopers, to force the state of New Jersey to pay

the full share of its annual public pension contribution according to reuters.com. The court declined to hear the unions' appeal, leaving in place a July 2015 ruling by the New Jersey Supreme Court that allowed Republican Governor Chris Christie's administration to make only partial contributions to public pension funds. "We are heartened by the U.S. Supreme Court's decision," said Christie spokeswoman Joelle Farrell, who said that all parties need to come back to the table and find a solution "that is fair for all taxpayers." Over several administrations, New Jersey has short changed its public pensions, leaving them poorly funded. Under bipartisan 2011 reforms, the state promised to step up contributions over seven years until reaching the full amount that actuaries say is necessary to keep the funds healthy. In exchange, New Jersey teachers, state troopers and other government workers agreed to pay more. In 2014, Christie slashed the state's contribution for two years, citing a severe revenue shortfall, and ultimately paid less than 30% of what was required under the reforms, according to the unions' petition asking the U.S. Supreme Court to hear the case. New Jersey's 2011 law made state contributions a contractual obligation. Despite having championed the reforms and abided by them for two years, Christie said the state's fiscal emergency allowed him to cut contributions and that lawmakers cannot bind future legislatures to billions of dollars in spending. Many U.S. states have slowly recovered from the recession, and most have tried to bolster their public pensions by moving new employees into 401(k)-style plans, reducing future benefits or raising retirement ages. Even so, a few states with big pension problems stand out, including

New Jersey. It has under-funded its pensions more than any other U.S. state for more than a decade, on average just 38% of what it was supposed to have paid annually. On February 16, 2016, Christie proposed a fiscal 2017 budget that called for a \$1.86 billion contribution, or 40% of its required contribution. Since Christie took office in 2010, his administration has made \$6.3 billion of contributions, more than any previous governor. Democrats who lead the state legislature are now pushing for a November ballot measure that would ask voters to approve quarterly state pension contributions.

5. FREE HELP PREPARING TAX RETURNS IS AVAILABLE

NATIONWIDE: Internal Revenue Service reminded taxpayers that they may be eligible to receive free tax help at more than 12,000 preparation sites available nationwide. The sites, generally located at community and neighborhood centers, provide tax assistance to taxpayers with low- and moderate-incomes and the elderly. IRS's Volunteer Income Tax Assistance (VITA) program offers free tax help to individuals who generally make \$54,000 or less, persons with disabilities, the elderly and individuals with limited English proficiency who need assistance in preparing their taxes. The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 and older. VITA and TCE volunteers are trained and certified by the IRS to help with many tax questions.

Check out IR-2016-35 at <https://www.irs.gov/Filing>.

6. 401(K) PLANS A BUST: We have all seen proud parents and

frustrated parents. Imagine the feeling of having a 35-year old that has not yet matured or started working. Imagine being the father of the 401(k). In fairness, Ted Benna (widely seen as the father of the 401(k)) notes that 401(k) plans are failing, and that the do it yourself plans were never meant to replace pensions. He has said that it was simply a financial product that “took off.” Well, bna.com says the 401(k) is no closer to working today than it was all those years ago, despite 35 years of tweaking. The system remains inefficient, and financial advisors still cannot tell people how much they can safely withdraw per year in retirement. The 4% rule of thumb (meaning a half-million dollars in retirement savings would produce only \$20,000 in annual retirement income before tax) could take out too much money from the retirement nest egg in a poor stock market. The inefficiency of 401(k)s has been proven repeatedly by researchers and even corporate consulting firms. Each study shows that traditional pension funds outperform 401(k) type plans, meaning you get more benefit per dollar invested. During the years these studies covered (1988-2012), 401(k) plans had a structural advantage over pensions with a less mature demographic profile. However, in the next 35 years, those who are retired or nearing retirement, will have to invest more conservatively. These near-retirement individuals tend to have the accounts with the largest balances, too. For individuals in or approaching retirement today, the fundamentals they face are brutal: historically low bond yields and a loss of principal (in “safe” bond investments) if interest rates rise. Meanwhile, retail investment advisors continue to fight a requirement that they work in their clients’

interests -- what most of us see as a basic professional responsibility. Another issue is the trend of IRAs performing even worse than 401(k) plans on investment returns. In fact, during 2000-2012, the average returns on IRAs were only 2.2%. Defined benefit plans managed returns were 4.7% over the same period. Knowing that the level of investment returns is a major driver of costs for retirement planning, relying upon IRAs that are falling short by 2.5% of assets each and every year means the cost of a secure retirement will skyrocket. Moving forward, we should expect more 401(k) assets to move into the retiree column (further lowering yields), and a lot of assets to be moved into IRAs. The inherent financial advantage enjoyed by retirement plans with pooled investments should not be understated. Sure, 401(k)s make some sense as a supplemental savings vehicle, but 401(k) plans simply do not function well as a primary retirement plan. Spot-on.

7. DB PLANS LESS COSTLY, IF GOAL IS TO HAVE DECENT RETIREMENT BENEFITS: Many cities and states are worried about the cost of defined benefit retirement plans, where employees are guaranteed a specific monthly benefit in retirement, according to the Lincoln (Nebraska) *Journal Star*. But the reality is that the traditional alternative -- a defined contribution plan/401(k) -- is actually more expensive to fund if your goal is to provide the same retirement benefit, a national retirement expert told the city of Lincoln's Pension Review Committee. Though many people assume a defined benefit plan is more expensive, such is not the case based on research by

the National Institute on Retirement Security. The caveat is the goal of providing the same benefit at retirement. Using a target retirement of \$2,670 a month, with a cost-of-living adjustment and an end-of-career salary of \$60,000, an employee and employer would have to contribute 16.3% of the person's payroll during a 30-year career, under a defined benefit plan. To reach the same retirement benefit with a defined contribution plan, the employee and employer would have to contribute 31.3% of the person's payroll. Those cities and states that have switched from defined benefit to defined contribution plans have not really saved money, unless they reduced the benefits. There are three reasons for the higher costs of a defined contribution plan. Since defined benefit plans involve large pools of employees, they can consistently be investing more aggressively and only have to accumulate enough funds to provide benefits for the average life expectancy of the group. But with defined contribution plans, funds in the individual accounts must be invested more cautiously, as the employee nears retirement age. They must also save more to protect against an employee living a very long time. Internal costs for the individual defined contributions plans, including fees, are also higher. In addition, individuals generally do not make the best investment decisions, while defined benefit plans are managed by experts, so their earnings are greater. Trustee advisor committee also heard from another expert who said he had been shocked by investment decisions made by individuals in defined contribution plans he has monitored. Like clockwork, they would buy high and sell low. And, of course, it takes a tremendous amount out of your return. When asked

why some corporations have switched from defined benefit to defined contribution plans, the expert said “corporations sometimes find themselves at risk to make sure the money is there for retirees, they do not have the luxury of the purse that governments have.” Lincoln police and firefighters, who have a defined benefit retirement plan that pays about 64% of the person’s end-of-career salary, do not participate in Social Security. Firefighters and police who have earned Social Security benefits in other jobs will see those benefits reduced because of federal rules (remember the GPO and WEP?) Although the cost of benefits rose from 2009 to 2015, the city was reminded that it had contributed less than the actuarial recommended amount in 19 of the last 26 years. What a surprise.

8. “MODERNIZED” MILITARY PENSIONS MAY BE 18% LOWER FOR NEW RECRUITS:

In what would seem to be rather counterintuitive (considering what is going on around the world), thinkadvisor.com says that service members who enter the military after January 1, 2018, may receive retirement payouts that are as much as 18% lower than current service members. The decline is due to the new retirement system that will affect future service members. Troops who join before 2018 may opt in to the modernized plan, or be automatically covered under the current system. In December 2015, First Command Financial Behaviors Index found about 30% of troops who plan to serve to full retirement want to opt in to the modernized plan. The 2016 National Defense Authorization Act adopted several of the recommended changes to the military retirement system that were

put forth in the Military Compensation and Retirement Modernization Commission in January 2015. One of the biggest changes is a switch from a cliff vesting system where participants are eligible for retirement benefits after 20 years of service -- and nothing before -- to a system that combines participation in the Thrift Savings Plan and lump sum payouts. First Command compared the switch to the modernized plan from the cliff vesting plan to private industry's move to defined contribution plans rather than defined benefits. For a good portion of American workers, this trade is has not worked out very well. Center for Retirement Research at Boston College found that defined benefit plans out performed defined contribution plans by 0.7%, regardless of plan size and allocation ([see C & C Newsletter for January 21, 2016, Item 1](#)). The modernized retirement plan will benefit service members who do not serve 20 years; with the cliff vesting plan, they would leave the service with no retirement benefits at all. However, as noted, those who serve out a 20-year career will see smaller pensions and be required to make up the difference through a greater reliance on their own savings and investment behaviors. A report from First Command found that financial literacy was falling among military families. Read the report at http://www.thinkadvisor.com/2016/02/25/modernized-military-pensions-could-be-18-lower-for?page_all=1. The modernized plan is based on four components. One is a reduced multiplier to calculate retirement pay from 2.5% per year of service to 2%, which reduces pensions by 20% right off the bat. However, one of the biggest changes is the focus on participation in the 401(k)-style Thrift Savings

Plan available to federal employees. Service members have only been eligible to participate in this plan since 2001; until now, there has been no automatic deduction or matching contribution to encourage enrollment. Even among military families who work with a financial advisor, just 53% participate in TSP. The modernized retirement plan introduces a minimum 1% automatic contribution to TSP. In the private sector, the average default contribution rate is 2.8%, according to the Bureau of Labor Statistics. Troops can also earn a 100% matching contribution from the Department of Defense on the first 3% and a 50% match on the next 2%, for a total 4% match. Total contributions are maxed out at 5% of basic pay.

9. REPEAL OF GPO AND WEP NOT WITHOUT SOCIAL SECURITY

COSTS AND CONSEQUENCES: Every so often the issue of elimination of the Government Pension Offset and the Windfall Elimination Provision comes up for discussion ([see C & C Newsletter for September 6, 2012, Item 1](#)). On February 24, 2016, the Social Security Administration's Chief Actuary responded to a senatorial request for an estimation of such financial consequences. Assuming enactment of the elimination proposals effective for all benefits payable for entitlement in January 2017 and later (without regard for when the beneficiary became initially entitled), the Chief Actuary estimated the increase in benefit obligations for the Old Age, Survivor Disability Insurance program would reduce the OASDI long range actuarial balance by 0.13% of taxable payroll, and would change the projected year of reserve depletion for the combined OASI and DI

Trust Funds from 2034 under current law to 2033 under the proposal. These estimates are based on the intermediate assumptions of the 2015 Trustees Report. By way of refreshing memories, GPO and WEP provisions reduce OASI and DI benefits for most workers who receive a pension based on earnings in employment that was not covered under the Social Security program. About one fourth of state and local government employees are currently not covered under Social Security. Most federal government employees who were hired before 1984 were not covered. Workers not covered incur no OASDI payroll tax liability and also earn no credit toward benefits under the program from the non-covered earnings. In addition, employers of workers not covered also pay no OASDI payroll tax based on their earnings. We think it is about time for GPO and WEP to bid farewell.

10. U.S. GOVERNMENT'S ANNUAL FINANCIAL REPORT FLUNKS

GAO AUDIT!: U.S. Government Accountability Office did not render an opinion on the federal government's consolidated financial statements for FY2015 because of persistent problems with the Department of Defense's finances, the federal government's inability to account for and reconcile certain transactions, an ineffective process for preparing the consolidated financial statements, and significant uncertainties. These limitations hamper the federal government's ability reliably to report a significant portion of its financial information. The federal government needs to be able to track all revenues and expenses, as well as its assets and liabilities, and that is particularly important in a tight budget environment. The

report on the government's consolidated financial statements underscores the fact that much more work needs to be done to ensure policymakers receive the accurate financial information needed to make difficult short term and long term spending decisions. For 2014, nearly all of the 24 Chief Financial Officers Act agencies received unmodified or "clean" opinions on their respective entities' fiscal year 2014 financial statements. But for 2015, DOD, as well as the Department of Housing and Urban Development and the Department of Agriculture, failed to get clean opinions. DOD's goal is to have audit-ready financial statements department wide by September 30, 2017. GAO could not render an opinion on the sustainability financial statements due to significant uncertainties about achieving projected reductions in Medicare cost growth and a material weakness in internal control over financial reporting. These sustainability financial statements consist of 2015 Statement of Long-Term Fiscal Projections, an effort to provide information on federal government's long-term fiscal condition, which was audited for the first time this year, 2015, 2014, 2013, 2012, and 2011 Statements of Social Insurance; and the 2015 and 2014 Statements of Changes in Social Insurance Amounts. GAO is concerned about the continued rise in improper payments. The weaknesses involving upwards of \$136 billion in improper payments reported for fiscal 2015. This number compares to more than \$124 billion in improper payments reported for fiscal year 2014, and more than \$105 billion for fiscal year 2013. Other reported material weakness this year involved information security across government and tax collection activities. GAO remains

concerned that the federal government's long term fiscal path remains unsustainable without further policy changes. GAO has prepared long term fiscal simulations that project federal deficits and debt under different sets of policy assumptions. Growing debt held by the public, which now comes to 74% percent of GDP, could limit the federal government's flexibility to address new or unforeseen challenges, such as another economic downturn or a large scale disaster. The delays in raising the debt limit can create uncertainty in the Treasury market. To avoid disruptions to the Treasury market, minimize unnecessary costs, and help inform fiscal policy debate in a timely way, GAO has suggested that Congress consider better linking decisions about the debt limit with decisions about spending and revenue at the time those decisions are made. GAO's audit report on the U.S. government's consolidated financial statements is included in the 2015 Financial Report of the United States Government, which is prepared by the Department of the Treasury. GAO has not been able to render an opinion on the accrual-based consolidated financial statements since they were first prepared in 1997. (You read that right.) A short tutorial on U.S. Government Accountability Office:

The Government Accountability Office, known as the investigative arm of Congress, is an independent, nonpartisan agency that exists to support Congress in meeting its constitutional responsibilities. GAO also works to improve the performance of the federal government and ensure its accountability to the American people. The agency examines the use of public funds, evaluates federal programs and

policies and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO provides Congress with timely information that is objective, fact-based, nonideological, fair, and balanced. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

It sounds so simple.

11. THE 2016 IRS DIRTY DOZEN: Offshore cons, creepy phone calls and dishonest preparers. These are just a few of the doozies that appeared on the IRS's annual list of 12 tax scams, which it dubs the Dirty Dozen, brought to us by onwallstreet.com. "We are working hard to protect taxpayers from identity theft and other scams this filing season," says IRS Commissioner John Koskinen. "We urge taxpayers to help protect themselves from scams, old and new." To help clients tell the old from the new and the clever from the mundane, here are the dozen, in reverse order.

- **"I do not owe taxes because... ."** Promoters of frivolous schemes encourage taxpayers to make unreasonable and outlandish claims even though they are wrong and have been repeatedly thrown out of court," says the IRS. True, clients can take their case to the legal system, but don't try hiding behind many of the whimsical arguments that taxes are too high, wrongly levied or unconstitutional. The penalty for filing a "frivolous" return losing one of these spats: \$5,000.

- **Gimme shelter.** The IRS is committed to stopping complex tax avoidance schemes and the people who create and sell them: “everyone should be on the lookout for people peddling tax shelters that sound too good to be true,” from those involving foreign banks or companies, to dream-come-true beachfront property in some sunny, faraway land. Increasingly, the wrong overseas LLC or LLP can land you right in jail.
- **Faking a living.** Do not invent income to erroneously qualify for tax credits, such as the Earned Income Tax Credit, the IRS warns. Taxpayers are sometimes talked into doing this by scam artists. Sometimes by their own sense of adventure and derring-do, too, along with the nagging little idea that nobody in the government is truly watching.
- **No credit, big problem.** Clients often stop listening when they hear the monetary benefit of something like the fuel tax credit and never hear how it’s a benefit generally not available to most. Taxpayers should also avoid misuse of the research credit, the IRS notes in this entry. Improper claims generally involve failures to participate in or substantiate qualified research activities and/or satisfy the requirements related to qualified research expenses.
- **Inflationary issues.** This entry on the Dirty Dozen must be one of the oldest dodges in return prep: “taxpayers should avoid the temptation of falsely inflating deductions or expenses on their returns to underpay what they owe or possibly receive larger refunds,” says the IRS.

- **Uncharitable charities.** Ever have a client who wrote a check to UNICHEF? How about one who eagerly clicked a donation to the American Human Society? “Be on guard against groups masquerading as charitable organizations,” the IRS says. “Contributors should take a few extra minutes to ensure their hard-earned money goes to legitimate and currently eligible charities.”
- **Casting abroad net.** The recent string of successful enforcement actions against offshore tax cheats – and the financial organizations that help them – prove it’s a bad bet to hide money and income offshore. Taxpayers are best served by coming in voluntarily and getting caught up on their tax-filing responsibilities, according to the IRS. The service offers the Offshore Voluntary Disclosure Program to enable people to catch up on their filing and tax obligations – since starting in 2009, it has netted more than \$8 billion in otherwise-lost revenue.
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revenue.

- **Rotten apples.** The vast majority of tax professionals provide honest, high-quality service, the IRS concedes in this entry. But there are some dishonest preparers who set up shop each filing season to perpetrate refund fraud, identity theft and other scams.
- **Gone phishing.** Say your client enters the last numerals of their checking account number into an official-looking tax document and hits SEND, and only then realizes the email came from “IRS.com” and that the official seal of the IRS does not feature the face of Krusty the Clown. Sadly, your client has just been hooked by phishing, fake e-mails or Web sites looking to steal personal information. The IRS never sends taxpayers an email about a bill or refund out of the blue; tell your clients never to click on one!
- **One ringy-dingy.** Phone calls from criminals impersonating IRS agents remain an ongoing threat to taxpayers and surged recently as scam artists threaten taxpayers with police arrest, deportation and license revocation, among other things. (Not that these thieves are always the brightest: last season they even called the home of the commissioner of the Connecticut Department of Revenue Services.)
- **What is in a name?** Identity thieves not only top the IRS Dirty Dozen but they also continue to aggressively file fraudulent returns using someone else’s info. In fiscal year 2015, the IRS initiated 776 ID-theft related investigations, which resulted in

774 sentencings. One thief got more than 27 years (roughly three years for each digit in a phony Social Security number.)

12. LET'S PLAY "ANSWER MAN": An article in *The Atlantic* provided us with the opportunity for a little fun. Here is the answer: "Ms. Eisenstein, one question. Can you give me another area where a misdemeanor suspends a constitutional right?" Now, what is the question? The question is what is the first question asked by U.S. Supreme Court Justice Clarence Thomas, since February 22, 2006? The case involved the right of a citizen previously accused of a reckless act of domestic abuse to own a gun. Court watchers suggest that Justice Thomas's engagement in the oral argument process may have something to do with the loss of Justice Antonin Scalia, who died in February. Scalia, a frequent questioner during arguments before the Court, also shared many of Thomas's conservative legal interpretations. The question was asked during oral argument on February 29, 2016 in *Voisine v. United States*, Docket No. 14-10154.

13. COUNTY SUES WIDOW AND CHILDREN OF FALLEN

DEPUTY: Leoaffairs.com reports that the government of Fort Bend County, Texas, is suing the widow and children of a Fort Bend County Deputy who died in the line of duty. Deputy J.D. Norsworthy was critically injured after swerving to avoid traffic on his way to assist a fellow officer He died two days later. Since his death, the county has never tried to recover reimbursement for his medical bills or lost wages. Only now, after Norsworthy's daughter Kaitlyn has settled with

the party deemed responsible for the wreck, has the county filed suit against Kaitlyn, her brother and her mother. Kaitlyn says she still has trouble with PTSD because she and her mother happened to drive up upon the wreck moments after it occurred. The images still haunt her. The county alleges it has been deprived and is entitled to the first monies paid by any third party, seeking the amount of \$300,000. The county alleges that it has a statutory obligation to file suit in the circumstances. Assuming that there is an absolute statutory obligation to seek recovery, it should not apply unless and until the county can show conclusively that the injured parties have been completely compensated for all losses and injuries.

14. SO YOU THINK YOU KNOW EVERYTHING: "Dreamt" is the only English word that ends in the letters "mt".

15. TODAY IN HISTORY: In 1855, Congress approves \$30,000 to test camels for military use.

16. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

17. PLEASE SHARE OUR NEWSLETTER: Our newsletter

readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

18. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.