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2007 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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12-21-2007

## Leckey v. Stefano

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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Nos. 06-2483, 06-3161 & 06-3162

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JANICE B. LECKEY; JANICE B. LECKEY,  
Executrix of the Estate of Evelyn O. Knapp,  
a/k/a Evelyn Olliffe Knapp, Deceased also  
known as JANICE BURGER LECKEY

Appellant

v.

PAUL W. STEFANO; FRANK W. JONES,  
Administrators of the Estate of William  
E. Knapp, Deceased, and Trustees of the  
Insurance Trust of William Knapp, deceased

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Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Civil Action No. 95-cv-00108)  
District Judge: Honorable David S. Cercone

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Argued April 24, 2007

Before: McKEE and AMBRO, Circuit Judges  
ACKERMAN, \* District Judge

(Opinion filed August 31, 2007)

William R. Caroselli, Esquire  
Caroselli, Beachler, McTiernan & Conboy  
312 Boulevard of the Allies

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\*Honorable Harold A. Ackerman, United States District Judge for the District of New Jersey, sitting by designation.

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**ORDER AMENDING PRECEDENTIAL OPINION**

AMBRO, *Circuit Judge*

It is now ordered that the published Opinion in the above case filed August 31, 2007, be amended as follows:

On page 10, in the first sentence of footnote 7, insert “claim” between “§ 1132(a)(1)(B)” and “because” so that the sentence reads:

In her brief, Leckey appears to abandon her § 1132(a)(1)(B) claim because it would be futile to sue a plan that no longer has any assets.

On page 25, in the sixth line of footnote 10, change “Jun. 6, 2007” to “June 6, 2005” so that the citation reads:

*Leckey v. Stefano (Leckey II)*, No. 95-108 (W.D. Pa. June 6, 2005), at 4.

On page 26, in the tenth line of the footnote, change “Par. 26” to “Apr. 26” so that the citation reads:

*Leckey v. Stefano (Leckey I)*, No. 95-108 (W.D. Pa. Apr. 26, 2004), at 21 (granting in part and denying in part cross-motions for summary judgment).

On page 33, in line 10, change the comma after “*Mass*” to a period so that the citation reads:

*Mass. Mut. Life Ins. Co.*, 473 U.S. at 147.

On page 33, in the third line from the bottom of the page, delete “(8th Cir.1995)” so that the citation reads:

*Roth*, 61 F.3d at 603.

On page 38, in the seventh line from the bottom of the page, change “If the plan contain” to “If the plan contained” so that the sentence reads:

If the plan contained a qualified annuity requirement, William died after illegally removing assets from the Trust, and so the proper remedy for this 29 U.S.C. § 1132(a)(2) violation is to restore those assets.

On page 39, line 8, change “1113(a)” to “1113” so that the citation reads:

29 U.S.C. § 1113.

On page 39, lines 11–12, change “29 U.S.C. § 1113(c)” to “*Id.*”

On page 44, lines 1–2, change “the William’s estate” to “William’s estate” so that the sentence reads:

Here, Leckey alleges that the funds wrongfully withdrawn from the Pension

Trust were deposited in a Charles Schwab brokerage account that is currently an asset of William's estate (and thus under the control of the nominal defendants).

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: December 21, 2007

CRG/cc: William R. Caroselli, Esq.  
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