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

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10-3-2016

# John Morrison v. Liberty Life Assurance Co of B

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 15-2095

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JOHN MORRISON

v.

LIBERTY LIFE ASSURANCE COMPANY OF BOSTON;  
THE PNC FINANCIAL SERVICES GROUP AND AFFILIATES  
LONG TERM DISABILITY PLAN

THE PNC FINANCIAL SERVICES GROUP AND AFFILIATES  
LONG TERM DISABILITY PLAN,  
Appellant

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.N.J. Civil Action No. 1-13-cv-00804)  
District Judge: Honorable Joseph E. Irenas

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
September 13, 2016

Before: CHAGARES, GREENAWAY, JR., and RESTREPO, Circuit Judges

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JUDGMENT ORDER

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The motion to dismiss is granted since the District Court's order remanding this matter is not a final order. As we have stated in *Stevens v. Santander Holdings, Inc.*, 799 F.3d 290, 300 (3d Cir. 2015), "this Court generally will consider remands to ERISA plan administrators nonfinal because, in the ordinary case, they contemplate that the plan administrator will engage in further proceedings." Further, a remand order generally "include[es] a reservation of the court's jurisdiction over the case so that, after a determination by the administrator on remand, either party may seek to reopen the district court proceedings and obtain a final judgment." *Id.* Nothing in the District Court's order

remanding this matter and directing the plan administrator to reevaluate whether Morrison is disabled provides any reason to vary from our general practice.

The request for attorney's fees is denied, since we do not find that, by filing the notice of appeal, Appellant's counsel "multiplie[d] the proceeding in [this] case unreasonably or vexatiously." 28 U.S.C. § 1927. We note that the notice of appeal was filed before our decision in *Stevens* was issued, and Appellant's opposition to the motion to dismiss falls within the bounds of zealous advocacy expected of counsel. Nonetheless, costs shall be taxed against Appellant.

By the Court,

s/Joseph A. Greenaway, Jr.  
Circuit Judge

Attest:

s/ Marcia M. Waldron  
Clerk

Dated: October 3, 2016