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## Victory on Appeal in “Landmark” ERISA Decision by Fifth Circuit Court

OCTOBER 19TH, 2012



*Stephen Novack*

The United States Court of Appeals for the Fifth Circuit, sitting *en banc*, has voted unanimously to reinstate a decision of a three-judge panel of the Fifth Circuit that was highly favorable to Novack and Macey LLP’s client, a health care provider.



*Stephen J. Siegel*

All judges of the Fifth Circuit ruled on October 5, 2012 that the three-judge panel’s November 8, 2011 decision was correct in all respects and ordered that it be reinstated. Sitting *en banc*, the Fifth Circuit overruled three of its own earlier decisions insofar as they are inconsistent with the 2011 panel decision. As a result, the panel decision is now the law of the Fifth Circuit on preemption of state law claims by the Employee Retirement Income Security Act (ERISA).



*Christopher S. Moore*

The panel decision favored the health care provider by reversing a lower court ruling that ERISA preempted the provider’s state law claims against a national insurance company for negligent misrepresentation, statutory misrepresentation and promissory estoppel.



*Christopher N. Stanton*

The Fifth Circuit ruling already has been called a “landmark” ERISA decision. Novack and Macey attorneys Stephen Novack, Stephen J. Siegel, Christopher S. Moore, and Christopher N. Stanton led the briefing before the panel for the health care provider. D. Brian Hufford, of Pomerantz Haudek Grossman & Gross LLP of New York, New York, as well as attorneys from Nathan Sommers Jacobs of Houston, Texas, also provided substantial input and assistance on the briefing before the Fifth Circuit panel. Mr. Hufford argued the case before the panel and also to the Fifth Circuit sitting *en banc*.

For more information about this decision or Novack and Macey, please contact Mr. Novack, Mr. Siegel or Mr. Moore at (312) 419-6900 or

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