The Court found that "Congress did not intend to extend Section 1962(c) liability beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity."

The dissent, written by Justice Souter and joined by Justice White, opined, "The evidence petitioners presented in opposing the motion for summary judgment demonstrated Arthur Young's participation ... by assuming the authority to make key decisions in stating the Co-op's own valuation of its major fixed asset, and by creating financial statements that were the responsibility of the Co-op's management, Arthur Young crossed the line separating 'outside' auditors from 'inside' financial managers." The dissent indicated that the majority misapplied the operation or management test.

This case is significant because it demonstrates the Court will read the statute in a narrow fashion where it deems appropriate. The Court did not hold that outsiders are immune from liability, however, their liability is contingent upon participating in the operation or management of the enterprise itself.

Employee Retirement Income Security Act—Benefits/Cap on AIDS-Related Claims *Owens v. Storehouse, Inc.*, et al., 11 Circuit Case No. 91-8696, February 25, 1993

The defendant Storehouse, Inc. modified its employee health benefit plan to include a lifetime benefit cap of $25,000 for AIDS-related claims. Owens, a former employee, sued, alleging that the cap for AIDS-related claims violated Section 510 of the Employee Retirement Income Security Act of 1974 (ERISA). The District Court granted a summary judgment in favor of the defendant Storehouse, and Owens appealed.

Storehouse owned a chain of furniture stores and sponsored an ERISA plan which provided group hospital and medical benefits up to a lifetime maximum of $1,000,000 per employee. Storehouse's insurer notified Storehouse that it was going to cancel the policy because of the high incidence of AIDS in the industry and among Storehouse's employees in particular. The insurer subsequently renewed the policy with less coverage. While seeking another insurance carrier, Storehouse was advised that it could insure its plan "only by placing the maximum life-time limit on the coverage of AIDS and AIDS-related illnesses." Storehouse subsequently modified its plan to include a $25,000 cap on all AIDS-related medical claims.

Owens filed suit claiming that the modification violated Section 510 of ERISA, which provides that "it shall be unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan." The District Court granted summary judgment in favor of Storehouse. In the appeal, the United States Court of Appeals for the eleventh Circuit affirmed. The eleventh Circuit found that in order to prevail under Section 510 the plaintiff must show that the alleged discrimination was designed either to retaliate for exercise of the right to which plaintiff was entitled under the provisions of the employee benefit plan or to interfere with the attainment of an entitled right. The evidence established that the employer enacted the reduced plan to reduce costs at a time of financial hardship. Evidence also showed that the employee who had filed the AIDS-related claim was not discharged nor harassed, and that the employer had paid a substantial amount in claims beyond the $25,000 cap, thus supporting the conclusion that the employee was not singled out for injurious treatment. In conclusion, the court wrote, "We conclude that no statutory or contractual obligation prevented Storehouse from amending its employee welfare benefit plan to include a cap for AIDS-related claims. Accordingly, we affirm the District Court's order granting summary judgment on behalf of Storehouse."

Workers' Compensation Ex Parte Communication With a Physician—*Adelman Steel Corporation v. Winter* 610 Southern 2nd 494 Florida 1st DCA 1992

This case involves the right of an employer carrier or its counsel to have ex parte communications with an authorized physician providing care to an injured employee. The injured employee filed a petition for protective order to prohibit the employer from communicating ex parte with any of the authorized treating physicians regarding his medical care. The court found that the ability to engage in ex parte communications with the physician depends upon whether a claim has been filed or not. The court wrote that a licensed health care practitioner who has been authorized by an employer carrier, has been accepted by the employee, and has provided medical treatment to the employee is authorized to provide medical records and reports on an employee's medical condition that relate to the injury upon request of the employer carrier's attorney or representative, and also that the health care practitioner may hold ex parte discussions with the employer carrier's attorney or representative. However, once the employee has filed a formal claim for workers' compensation benefits, then an "adversarial relationship exists" and discussions of the claimant's medical condition are permissible only upon consent of the claimant or claimant's attorney or after claimant or claimant's attorney has been provided with notice and an opportunity to be present at such discussion.

The employer/carrier argued that such a procedure inhibits the self-executing provisions of the workers' compensation law. However, the court wrote, "any undue interference with the employers or servicing agent's ability to carry out their self-executing function under the workers' compensation law is amply avoided by allowing them to request and obtain the written medical reports. Of course, the claimant and his attorney should be furnished copies of any such reports sent to petitioners."

The case raises questions about impairing the self-executing features of workers' compensation.