

ERISA LITIGATION

Expert defense strategies for leading outside counsel and in-house counsel on litigating today's key issues involving fiduciaries, plan fees and benefit claims

October 20-21, 2011 | New York Marriott Downtown | New York City

Judges deliberate in our first ever
ERISA Moot Court
featuring:



Fernando J. Gaitan, Jr.
U.S. Dist. Ct., W.D. Mo.



Hon. Daniel E. Knowles, III
U.S. Dist. Ct., E.D. La.



Hon. Morton Denlow
U.S. Dist. Ct., N.D. Ill.



Hon. William S. Duffey, Jr.
U.S. Dist. Ct., N.D. Ga.



Hon. Matthew Kennelly
U.S. Dist. Ct., N.D. Ill.



Hon. Timothy C. Batten, Sr.
U.S. Dist. Ct., N.D. Ga.



Hon. Viktor Pohorelsky
U.S. Dist. Ct., S.D.N.Y.



Hon. Robert Jonker
U.S. Dist. Ct., W.D. Mo.



Hon. John Coughenour
U.S. Dist. Ct., W.D. Wash.



Hon. Richard G. Stearns
U.S. Dist. Ct., D. Mass.



Hon. Robert B. Collings
U.S. Dist. Ct., D. Mass.

Our unparalleled faculty includes in-house counsel from 21 leading companies, including:

Aon Risk Solutions
AT&T
Blue Cross/Blue Shield
Blue Prairie Group
Chubb
Chartis
Cigna

CNA
Crawford & Co.
Del Monte Foods
Fidelity
Honeywell
Kraft Foods
Lockheed Martin

Lockton
Marsh & McLennan
Prudential
Segal
United Retirement Plan Consultants
United Technologies
Willis

Benefits of attending include practical information on:

- Analyzing plan remedies and participant disclosure requirements after *Cigna v. Amara* and practical tips to minimize the fallout
- Addressing evidence outside the administrative record, standards of review, conflicts of interest and attorney's fees
- Service provider relationships: defending and managing litigation that arises between plan sponsors and service providers
- Risky behaviors that can lead to litigation, heard straight from leading plaintiffs' attorneys
- Understanding fiduciary liability insurance, how it can affect settlement and what other policies companies can have in place to ensure complete coverage
- Defending against stock drops, 401(k) fee cases and companion security cases
- Solving the special problems that arise in dealing with closely held corporations, retirees and defined benefit plans

Earn
CLE
Credits

Plus, be sure to register for our exclusive benchmarking sessions:

- A | Exploring *Cigna v. Amara*: An In-Depth Guide to the Most Important ERISA Case of the Year - Led by Cigna's Co-Counsel
- B | Breaking Up Is Hard to Do: A Focus on Severance Plan Litigation including Triggering Events, COBRA Hang-Ups, and the Other Litigation Issues that Arise in Separation Situations
- C | Administering Changes Brought by the PPACA, Anticipating New & Emerging Theories of Liability and a Status Update on the Constitutionality Cases

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The premier ERISA litigation conference devoted entirely to managing and defending complex, ERISA-related claims returns for its fourth installment, led by an unparalleled faculty of 21 leading in-house counsel, top law firms, and 11 renowned federal judges.

Ever complex theories of liability, mounting requests for attorneys' fees, continuing scrutiny of investment decisions, DBA's with funding shortfalls and litigious retirees, PPACA compliance, difficulties managing emerging regulatory reforms on fees and fiduciaries, a sophisticated plaintiffs' bar and now, potential new areas for relief under *Cigna v. Amara* – *these are just some of the issues facing plan sponsors, consultants and defense lawyers today.* With new regulations emerging and several game changing cases still pending, right now is a critical time for ERISA litigators to shape the state of the law going forward.

In response to the complexities surrounding pension and benefit litigation under ERISA, ACI is proud to bring you our **4th National Forum on Defending and Managing ERISA Litigation.** This advanced forum is designed to bring winning litigation strategies to even the most seasoned ERISA litigators. Our expert faculty, led by **21 in-house counsel, 11 renowned federal judges, and top defense counsel,** will provide you with proven effective strategies to assert a complete and formidable defense in this high-stakes arena. Conference highlights include:

- **Three Specialized In-House Panels led by 21 In-House Attorneys:** The benefits of this conference are realized immediately as day one leads off with three highly focused in-house sessions. With roundtables focusing on 1) issues specific to plan sponsors and in-house counsel who manage litigation; 2) service provider liability; and 3) participant disclosure requirements post-*Cigna*, all attendees will walk away with a bevy of useful client insights to integrate into their practice.
- **An ERISA Moot Court:** Featuring top defense attorneys arguing some of the hottest and most common issues facing ERISA practitioners today, panels of renowned ERISA jurists will critique arguments, question our litigators and help all attendees understand how to successfully convey their positions to the court.
- **A Plaintiffs' Counsel Roundtable:** For the first time, top ERISA plaintiffs' attorneys in the country are joining the event. Don't miss the opportunity to hear directly from plaintiffs' counsel the key actions (or inaction) that could lead your client into litigation.
- **Narrowly-Tailored Panel Sessions:** This year's event will go into the major ERISA issues more in-depth than ever. We've isolated the issues to create narrowly-tailored, comprehensive panels on all of the major procedural and substantive issues.
- **Focused and In-Depth Benchmarking Workshops:** Having identified some of the hottest and most troublesome areas surrounding ERISA litigation, this year's conference will provide attendees with the opportunity to attend three highly specialized and detailed sessions on these issues. This year's exclusive benchmarking sessions will focus on understanding and minimizing the damage after *Cigna v. Amara*, PPACA compliance and implementation, and defending against severance plan litigation.

Now more than ever, it is imperative that companies and their counsel be armed with latest strategies and tactics for defending and managing these claims, whether they are a plan sponsor, consultant or insurer. Through an unparalleled faculty and program, this conference will provide even the most seasoned ERISA litigators with innovative strategies and tactics that are crucial in mounting a rigorous defense.

Register now by calling 888-224-2480, faxing your registration to 877-927-1563 or registering online at www.AmericanConference.com/ERISA

Plus, be sure to register for our exclusive benchmarking sessions:

- A | Exploring *Cigna v. Amara*: An In-Depth Look Into the Most Important ERISA case of the Year - Led by Cigna's Co-Counsel
- B | Breaking Up Is Hard to Do: A Focus on Severance Plan Litigation including Triggering Events, COBRA Hang-Ups, and Other Litigation Issues that Arise in Separation Situations
- C | Administering Changes Brought by the PPACA, Anticipating New & Emerging Theories of Liability and a Status Update on the Constitutionality Cases

WHO YOU WILL MEET:

- Attorneys handling litigation for
 - ERISA fiduciaries
 - ERISA service providers
 - Benefit plan sponsors
 - Employee benefit plans
- In-house counsel for
 - Plan sponsors
 - Service providers
 - Fiduciary liability insurance policy writers
- Service providers for benefit & pension plans
- Federal District Court judges
- Employee pension & benefit attorneys
- Fiduciary liability insurance brokers & attorneys for insurers who write policies for ERISA related risks

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7:15 Registration & Continental Breakfast

8:00 **Co-Chairs' Welcoming Remarks**



Lawrence Fine
SVP and Chief Technical Officer – Financial Lines
Chartis Claims, Inc. (New York, NY)



H. Douglas Hinson
Alston & Bird LLP (Atlanta, GA)

8:05 **In-House Roundtable on Plan Sponsor Liability Issues: Managing Litigation, Limiting Fiduciary Liability and Having Your Administrative House In Order**

Stephanie A. Edwards
General Attorney
AT&T Services, Inc (Dallas, TX)

Robert C. Varnell
Vice President & General Counsel
Lockheed Martin Investment Management Co. (Bethesda, MD)

R. Eric Powers, III
Corporate Counsel
Crawford & Company (Atlanta, GA)

Zachary R. Osborne
Assistant General Counsel
United Technologies Corp. (Hartford, CT)

Derek Windham
Associate General Counsel
Del Monte Foods Company (San Francisco, CA)

Kevin M. Covert
Vice President and Deputy General Counsel—
Human Resources
Honeywell International, Inc. (Morristown, NJ)

Moderator



Marianne W. Culver
Ungaretti & Harris LLP (Chicago, IL)

- Due diligence & prudence in selection of service providers
- Managing PPACA compliance
 - Cost-effective ways to implement change
 - Finding independent third-party reviewers
- Recouping pension/disability overpayments
- Retained Asset Accounts
 - Recent litigation concerns
 - Understanding the DOL's position
 - Using your SPD to effectively describe the practice
- Overcoming impediments to settling claims for long-term disability benefits
- Streamlining the increasing amount of permissible discovery courts will allow in conflict situations

9:15 **In-House Roundtable on Service Provider Liability Issues: Inside Views from TPAs, Consultants, Actuaries and Record Keepers on Problems Inherent in the Administration of Employee Benefit Plans**

Margery Sinder Friedman
Senior Vice-President & General Counsel
SEGAL (Washington, D.C.)

Matthew Gnabasiak
Managing Director
Blue Prairie Group (Chicago, IL)

Kevin E. Crowley
Mercer Chief Litigation Counsel - Americas
Marsh & McLennan Companies, Inc. (New York, NY)



Russell Dempsey
Vice President & Chief Legal Officer
United Retirement Plan Consultants (Dublin, OH)

Moderator



Michael J. Prame
Groom Law Group Chartered (Washington, D.C.)

- Handling the blurring of lines (and liability) between the roles of different service providers
- Responding to increased fee disclosure requirements
- Actuarial malpractice cases: What to do when benefits have been miscalculated?
- Establishing the role of investment committees v. role of the board
- Liabilities for failure to hedge/diversify and concerns about the precedent *Weyerhaeuser* could set
- Managing relationships with plan sponsors and best practices for dealing with conflicts
- Understanding the division of responsibilities and whether discretion has been granted to a service provider
- Suing service providers for systemic breaches of fiduciary duty
 - An overview in the uptick of cases
 - Will the courts allow one plan to sue on behalf of all plans serviced by a particular provider?

10:10 Morning Coffee Break

Sponsored By: **WilsonElser**
Wilson Elser Moskowitz Edelman & Dicker LLP

10:20 **In-House Roundtable on New and Emerging Participant Disclosure Requirements, Compliance Concerns & Trouble Spots After *Cigna v. Amara***

Renata Pompa
VP & Corporate Counsel (ERISA/Benefits)
Prudential (Newark, NJ)

Peter M. Kelly
Chief Employee Benefits Counsel
Blue Cross Blue Shield Association (Chicago, IL)

Kelli Christenson
Senior Counsel, Benefits
Kraft Foods Global, Inc. (Northfield, IL)

Moderator



Nancy G. Ross
McDermott Will & Emery LLP (Chicago, IL)

- The new remedy landscape under §502(a)(3) after *Cigna*: how might courts interpret equitable relief now?
- The future of SPDs and the effect on §502(a)(1)(b)
- What the ruling on detrimental reliance means for plan sponsors
- What new controversies are likely to result from this ruling?
- Participant disclosure issues: Best in-house practices for complying with requests for documents under §104(b)(4)

11:15 **View from the Plaintiff's Bar: Tailoring Your Strategies to the New Waves of Claims Being Asserted**



Edward G. ("Woody") Connette
Essex Richards, P.A. (Charlotte, NC)



Lynn Lincoln Sarko
Keller Rohrback (New York, NY)



Jeffrey Lewis
Lewis, Feinberg, Lee, Renaker & Jackson, P.C. (Oakland, CA)



Michael A. Wolff
Schlichter, Bogard & Denton, LLP (St. Louis, MO)

Moderator



Adrienne C. Publicover
Wilson Elser Moskowitz Edelman & Dicker LLP (San Francisco, CA)

- How plan sponsors should be responding to requests for information, benefits questions and conflicts with plan participants
- How the financial crisis of 2008 is shaping ERISA case law and what harms are still left to be "swept up"
- The strengths and weaknesses of defense positions in fee cases, stock drops, selection of service providers and more

- How *Cigna v. Amara* will change the remedies landscape
- Has Kraft changed the course of fee litigation and breathed new life into plaintiffs' cases?

12:15 Networking Luncheon for Speakers & Delegates

1:15 **Gaining Ground on Procedural Issues Once a Suit is Filed: Winning Battles over the Statute of Limitations, Removal, Preemption, Estoppel & Standing**



Miriam "Dusty" M. Burke
Vinson & Elkins LLP (Austin, TX)



Nicholas J. Pappas
Weil, Gotshal & Manges LLP (New York, NY)



Steven L. Severson
Faegre & Benson LLP (Minneapolis, MN)

Statute of Limitations, Standing and Proper Parties

- When does a claim accrue in order to assess the statute of limitations?
- Best strategies and case law to rely on for getting older claims dismissed
- Standing after *CYR v. Reliance Standard*
 - The future of insurers as de facto plan administrators and defendants
- Class standing under Article III & ERISA

Estoppel

- How will *Cigna v. Amara* reform estoppel and equitable reformation?
- What types of misrepresentations are actionable?
- Miscommunication and non-disclosure trouble spots
- ERISA estoppel claims after *Bloemker*

Preemption & Removal Updates

- Current case law updates on express, implied and complete preemption issues
- Preemption of actions by medical providers and state pay-or-play laws
- State regulation of discretionary clauses
- What preemption issues are raised in regard to the PPACA?

2:15 Afternoon Refreshment Break

2:20 **Benefits Litigation: Addressing post-*MetLife* Requests for Evidence Outside the Record in "Conflict" Situations, the Viability of the Arbitrary and Capricious Standard of Review, Exhaustion Requirements & Attorneys' Fees After *Hardt***

Christina McNally
Senior Counsel
CIGNA Corporation (Philadelphia, PA)



René E. Thorne
Jackson Lewis LLP (New Orleans, LA)



Anthony F. Shelley
Miller & Chevalier Chartered (Washington, D.C.)

Discovery & Properly Responding to Requests for Documents after *MetLife*

- The evolution of permissible discovery
 - What kinds of discovery are courts allowing today?
 - How to reply to demands for statistical information
 - Who are plaintiffs deposing?
 - Preparing non-attorney company witnesses for depositions
- Preparing claims file and your client for increased discovery
- Responding effectively to burdensome conflict discovery
- Avoiding ERISA penalties in responding to document requests
- Understanding the plan administrator's obligations under §104(b)
- Knowing the elements of a proper request
- §502(c) penalties for failure to comply

The Standard of Review, the Exhaustion Requirements and the Level of Deference post-*Conkwright*

- Judicial review of claims decisions after *MetLife*– how is the new case law interpreting these decisions?
- What deference should a court give a plan administrator's decision denying a claim for benefits?
- Establishing express discretionary authority and an arbitrary and capricious standard of review, thereby limiting discovery and evidence to the administrative record
 - A look into continuing evolution of the ban on discretionary language
- The arbitrary and capricious standard – is it still the benefit it once was?
- Remand or judgment: what is proper after *Conkwright*? Where are the courts coming down on this?
- How does the PPACA affect exhaustion?

Attorneys' Fees After *Hardt*

- The continuing evolution of fee awards after *Hardt*
- Can the industry expect more fees like that awarded in *Verizon*?
- Will courts grant plaintiffs' counsel's fees when they achieve only interim success?

3:35 Conference Adjourns
Registration for Benchmarking Session A

Exploring *Cigna v. Amara*: An In-Depth Guide to the Most Important ERISA Case of the Year
- Led by Cigna's Co-Counsel

A 3:45 – 5:45 p.m.
(separate registration required)

The Supreme Court's decision in *Cigna v. Amara* has set the ERISA bar abuzz. With many calling this the most important ERISA decision from the high court in a decade, both in-house counsel and outside litigators must master the implications and ensure their internal policies do not leave them with potential exposure...and who better to benchmark with than Cigna's co-lead counsel.

The *Cigna* decision has the potential to change the landscape of ERISA litigation like few other cases have. Attend ACI's 2 hour master class to gain the **inside perspective on the ins and outs of this pivotal case** - and learn how to avoid the potentially costly fallout!



Amir Cameron Tayrani
Gibson, Dunn & Crutcher LLP
(Washington, D.C.)

- A deep dive into the holding of *Cigna* and what the court was really saying
 - Understanding the politics behind the court's holding
- Will the lower courts follow *Cigna's* guidance on damages and remedies or is it just "blatant dictum?"
 - If so, how will *Cigna* affect the remedy landscape?
- A specific look at the future of
 - Equitable relief
 - Plan reformation
 - Detrimental reliance
- What cases are pending in the circuit and district courts that *Cigna* will likely effect? How will *Cigna* shape ERISA case law
- Best strategies for arguing against monetary damages as a form of "equitable relief"
- Exploiting the "actual harm/detrimental reliance" requirement and effectively using it as a tool to minimize damages
- Determining when a violation of the law can lead to reformation
- Understanding the equitable remedy of "surcharge" and limiting fiduciary exposure to same
- In the absence of a bright line requirement, when will courts require participants to show detrimental reliance for mistakes made in SPDs?
- Minimizing sponsor liability by clearly separating the sponsor and administrator role so sponsors can effectively remaining an "innocent third-party" in misrepresentation cases

7:15 Continental Breakfast

8:00 **ERISA Moot Court: Judicial Perspectives on Hot Topics in ERISA**

In this session, attorneys will square off against each other in front of a judicial panel to debate some of the hottest issues in ERISA litigation. Prior to this session, conference participants will be provided with a short fact pattern and briefs from the attorneys arguing the issues. After presenting their case to the distinguished panel of federal judges, each panel will have the opportunity to question the attorneys and then the panelists will deliberate the 'case' for the benefit of the audience. Don't miss this exciting session where attendees will get to: watch top litigators argue over some of the hottest ERISA issues, listen in as federal judges decide the issues that you face everyday, and ask questions of the judges to find out what arguments turned a case for – or against – our 'litigators.'

Panel 1 8:00-9:05 Motion Requesting Discovery Beyond the Administrative Record	Panel 2 9:05-10:10 Motion for Class Certification (Stock Drop Case)	Panel 3 10:15-11:20 Motion to Dismiss a Case Alleging Excessive Fees Paid by Plan Participants
<p><u>Motion being heard by</u></p>  <i>Hon. Daniel E. Knowles, III</i> U.S. Dist. Ct., E.D. La.  <i>Hon. Morton Denlow</i> U.S. Dist. Ct., N.D. Ill.  <i>Fernando J. Gaitan, Jr.</i> U.S. Dist. Ct., W.D. Mo.  <i>Hon. Timothy C. Batten, Sr.</i> U.S. Dist. Ct., N.D. Ga. <p><u>Motion being argued by</u></p>  <i>Elizabeth J. Bondurant</i> Smith Moore Leatherwood LLP (Atlanta, GA)  <i>Michael H. Bernstein</i> Sedgwick LLP (New York, NY) <p><u>Moderator</u></p>  <i>Anthony F. Shelley</i> Miller & Chevalier Chartered (Washington, D.C.)	<p><u>Motion being heard by</u></p>  <i>Hon. Matthew Kennelly</i> U.S. Dist. Ct., N.D. Ill.  <i>Hon. William S. Duffey, Jr.</i> U.S. Dist. Ct., N.D. Ga.  <i>Hon. Viktor Pohorelsky</i> U.S. Dist. Ct., E.D.N.Y. <p><u>Motion being argued by</u></p>  <i>Amanda S. Amert</i> Jenner & Block (Washington, D.C.)  <i>Paul J. Ondrasik, Jr.</i> Steptoe & Johnson (Washington, D.C.) <p><u>Moderator</u></p>  <i>Lawrence Fine</i> SVP and Chief Technical Officer – Financial Lines Chartis Claims, Inc. (New York, NY) <p>10:10 Morning Coffee Break</p>	<p><u>Motion being heard by</u></p>  <i>Hon. Robert Jonker</i> U.S. Dist. Ct., W.D. Mo.  <i>Hon. Richard G. Stearns</i> U.S. Dist. Ct., D. Mass.  <i>Hon. John Coughenour</i> U.S. Dist. Ct., W.D. Wash.  <i>Hon. Robert B. Collings</i> U.S. Dist. Ct., D. Mass. <p><u>Motion being argued by</u></p>  <i>Gary S. Tell</i> O'Melveny & Myers LLP (Washington, D.C.)  <i>James O. Fleckner</i> Goodwin Procter LLP (Boston, M.A.) <p><u>Moderator</u></p>  <i>H. Douglas Hinson</i> Alston & Bird LLP (Atlanta, GA)


11:20 **A Deeper Dive Into Fiduciary Liability Insurance Coverage: Understanding Your Coverage Needs, the Details of Your Policy and Other Insurance Products That Should Be In Place to Guarantee Proper Coverage**

Ann Longmore
Executive Vice President
Willis of New York, Inc. (New York, NY)


Hilda M. Batlle
Vice President, Financial Services Group
Aon Risk Solutions (New York, NY)

Mary Anne Mullin
Assistant Vice President, Strategic Claims
CNA Open Brokerage Claim (New York, NY)

Rhonda Prussack
Executive Vice President & Product Manager
Chartis Claims (New York, NY)

 *Christine A. Dart*
Vice President, Global Fiduciary Liability Product Manager
Chubb & Son (Simsbury, CT)

Moderator

 *Kimberly M. Melvin*
Wiley Rein LLP (Washington, D.C.)

- Top concerns for underwriters in placing and underwriting fiduciary liability insurance
- Understanding fiduciary acts & conduct exclusions

- Negligent acts
- Settlor functions
- Wrongful acts
- Complying with the requirements of claims made policies
 - When must a claim be reported?
- Where problems could arise with duty to defend agreements
- Exposure in outsourcing
 - Getting plan sponsors to understand exposure when administration and other functions are completely outsourced
 - What products does each party (plan sponsor, tpa, record keeper, actuary, etc) need in place to cover exposure and who should have what?
 - Use of professional services policies (D&O, etc) in conjunction with fiduciary liability policies
 - Proper use of indemnification agreements between parties to mitigate risk and where there may be exposure even with an indemnification in place
 - What exposure is a sponsor taking on if they sign an indemnification agreement and a service provider is negligent or breaches their fiduciary duty?
 - What can plan sponsors demand from service providers in terms of insurance policies?
- Understanding exposure in M&A situations
 - What factors should deal attorneys be assessing?
 - Where are the most common spots for risk?
 - Securing coverage for past events that may be exposed post-acquisition and what insurance products acquiring companies should put in place to mitigate future risk

12:30 Networking Luncheon for Speakers & Delegates

1:25 **ESOPS: Dealing with the Unique ERISA Issues That Arise in Closely Held Corporations**



Samuel A. Henson, J.D.
Senior ERISA Counsel
Lockton Retirement Services (Kansas City, MO)



Lawrence Fine
SVP and Chief Technical Officer – Financial Lines
Chartis Claims, Inc. (New York, NY)



Christopher J. Rillo
Schiff Hardin LLP (San Francisco, CA)

- Emerging theories of liability against fiduciaries of closely held corporations
- Assessing liability of fiduciaries for failure to divest stock when there is no public market
- Crafting favorable repurchase agreements
- Indemnification of company executives as fiduciaries
- Issues in proper valuation of company stock
- Installment buybacks

2:15 **401(k) Fees: An In-Depth Analysis of the Current Litigation Trends and Continuing DOL Regulatory Scheme**



Amy R. Covert
Proskauer Rose, LLP (Newark, NJ)



Brian T. Ortelere
Morgan, Lewis & Bockius LLP (Philadelphia, PA)



Jonathan L. Sulds
Greenberg Traurig, LLP (New York, NY)

The Current Overview & Hot Issues

- Plaintiffs' evolving theories of liability and recent decisions
- A look at the uptick in prohibited transaction claims with respect to fees
- Status update on the *Kraft* case and a look at the importance of using competitive bidding to select
- Defending the procedural process record and the fiduciary's decision in choosing service providers
- Defending the service provider in fee litigation cases
- Recent successes in 404(c) and *Iqbal/Twombly* defenses in fee cases
- Updates on issues surrounding
 - Actively managed funds
 - Mutual funds
 - Revenue sharing arrangements

Spotlight on the DOL's Disclosure Rules

- The DOL's Proposed 408(b)(2) Regulation: Impact of the mandated disclosures on plan fiduciaries and service providers
- What disclosure is required?
- What will DOL enforcement initiatives look like?
- Establishing transparency in fees
- What constitutes a "reasonable" fee? Benchmarking your clients' plan fees against industry standards

3:10 **Afternoon Refreshment Break**

3:15 **An Update on Stock Drops, the §404(c) Safe Harbor Provision, New Theories Surrounding Investment Decisions and Emerging Issues in Securities Litigation**



Kenneth P. Held
Vinson & Elkins LLP (Houston, TX)



Thomas L. Cabbage
Covington & Burling LLP (Washington, D.C.)



H. Douglas Hinson
Alston & Bird LLP (Atlanta, GA)



David Terrick, Jr.
King & Spalding (Atlanta, GA)

Stock Drop & §404(c) Safe Harbor Defense Updates

- How the courts are currently interpreting the requirements of 404(c)
- Liability protection and 404(c) indemnification
- Status update on major cases

- Recent cases establishing fiduciary functions for which does §404(c) not provide a defense
- The status of the Second Circuit: A look at the status of the Citigroup cases, McGraw-Hill, Bear Stearns

Emerging issues in investment decisions

- Liability surrounding selection of mutual funds and group annuity products
 - What cases are out there and where are they headed?
 - Liability for failure to get rid of poorly performing funds
 - Liability when financial institutions have their own mutual funds in the plan: a look at the *Wells Fargo* and *Suntrust* cases
 - Understanding group annuities, the pricing and revenue models, and how they are giving rise to claims
 - How do collective investment trusts compare with mutual funds for liability purposes?
- Issues arising from IRA rollovers
 - Investment advisors as ERISA fiduciaries
 - Will fiduciaries be sued under ERISA or securities laws? What will the standards be?
- A look at the *Weyerhaeuser* case and the implications of 'over-diversification'
 - An overview of the merits of the case and where it is headed
 - What will the defense look like?
 - The debate over Article III standing
 - Other possible "risky" investment strategies

Stock Drop Cases & the Intersection with Securities Litigation

- The impact of Dodd-Frank on shareholder votes on executive compensation
- Will new theories of liability develop when compensation committees make decisions contrary to shareholder votes?
- Will compensation consultants have liability for aiding and abetting breaches of fiduciary duty

4:20 **Avoiding the Pitfalls in Retiree Welfare Benefits Litigation: Alternative Strategies for Funding Retiree Healthcare, Bargaining with the Retired Workforce, and Strategies Once a Case is Filed**



Steven J. Sacher
Jones Day (Washington, D.C.)



Charles S. Mishkind
Miller Canfield Paddock & Stone, P.L.C. (Grand Rapids, MI)



Eric P. Mathisen
Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Chicago, IL)

Liability & Litigation Strategies

- An analysis of the issues in funding retiree medical
- How does health care reform affect costs going forward now? After 2014?
- Preventing union effort to get involved in retiree medical litigation
- Forum shopping:
 - Strategies for preventing plaintiff forum shopping
 - Taking proactive steps to be in a favorable district/circuit
 - An overview of where multi-state employers want to litigate
- The intersection of ERISA and Taft-Hartley §301

VEBAs

- Update on new VEBAs
- The pros and cons of establishing a VEBAs
- When a company with large amounts of OPEB liability should consider a VEBA
- The procedural issues paramount in class action litigation and binding the class

5:10 **A Focus on Defined Benefit Plan Litigation: Dealing With Multiemployer Plans in the Red Zone, Assessing and Minimizing Withdrawal and Successor Liability, and Defending Technical Challenges to Single Employer Defined Benefit Plans**



Keith R. McMurdy
Fox Rothschild LLP (New York, NY)



Carol Conner Cohen
Arent Fox LLP (Washington, D.C.)



Susan K. Hoffman
Littler Mendelson P.C. (Philadelphia, PA)

Multiemployer Plan Litigation & Withdrawal Liability

- What to do when a fund is in trouble
 - Making and recording requests for verifiable actuarial statements
 - What constitutes good cause for delay in an administrator's response to a request for liability calculations
 - Balancing increased contribution requirements against an assessment of withdrawal liability
- Withdrawal and successor liability issues
 - Defenses to withdrawal liability
 - Controlled group liability
 - Recovering from non-controlled group entities

Litigation Involving Single Employer Pension Plans

- Anti-cutback claims: determining what constitutes an "accrued benefit" and when cutbacks are permitted under §204(g)
- Disclosure claims arising under 204(h) and summary plan descriptions (Cigna Corp. v. Amara)
- Cash balance plan update
- Examining age discrimination claims regarding pension plans
- Litigation involving plant shutdown benefits (*Shaver v. Siemens Corp.*)
- Dissecting other theories of liability

6:00 Conference Concludes

Exclusive In-Depth Sessions on Critical Issues Surrounding ERISA | Wednesday, October 19, 2011

B 2:00 – 4:00 p.m.

Breaking Up Is Hard to Do: Defending Against Severance Plan Litigation and Surrounding Issues including Triggering Events, COBRA Hang-Ups, and the Other Litigation Issues that Arise in Separation Situations

Derek Windham
Associate General Counsel
Del Monte Foods Company (San Francisco, CA)

Zachary R. Osborne
Assistant General Counsel
United Technologies Corp. (Hartford, CT)



Steven L. Severson
Faegre & Benson LLP (Minneapolis, MN)



Eric P. Mathisen
Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Chicago, IL)

Nobody likes a messy break up – especially when there are millions of dollars, stock options, medical coverage and deferred compensation involved. In this session, leading litigators and in-house counsel will provide participants with practical tips on structuring deferred compensation agreements and severance plans, complying with ERISA requirements, managing top-hat plans and proven effective strategies to employ once litigation commences. Join this interactive session to gain a clearer understanding of how to manage severing with top executive and rank and file.

Severance Payments & Deferred Compensation

- Understanding non-qualified v. qualified deferred compensation
- The expanded definition of deferred compensation under 409A
 - Understanding times and form of distribution
- Top Hat & Cadillac Plans
 - Understanding the regulations and requirement for top hat plans
 - How Cadillac plans will be affected by the PPACA
 - Dealing with underfunded top hat plans
 - Reporting requirements for top hat plans
 - What, fiduciary duties are owed to these plans?
- Avoiding Trouble Spots in M&A Situations
 - Defining "termination of employment" and other "event triggers" in plan documents and purchase and sale agreements
 - How to handle
 - Change in control payments and double triggers
 - Unvested stock options: acceleration of unvested awards and the tax consequences
- The implications of bankruptcy on a non-qualified plan
- Vested v. Unvested stock options: What to do when there are accusations of interference with vesting

The Impact of Dodd-Frank on Severance Packages & Executive Compensation

- Will new theories of liability develop when comp committees make decisions contrary to shareholder votes?
- Will compensation consultants have liability for aiding and abetting breaches of fiduciary duty
- Issues with claw backs, gross ups and parachute payments

C 4:30 – 6:30 p.m.

Administering Changes Brought by the PPACA, Anticipating New & Emerging Theories of Liability and a Status Update on the Constitutionality Cases



Marianne W. Culver
Ungaretti & Harris LLP (Chicago, IL)



Michael J. Prame
Groom Law Group Chartered (Washington, D.C.)

PPACA compliance has been a topic at the forefront of everyone's mind since it was enacted. With some changes already having take affect and more to come, employers have barely begun to scratch the surface of changes that the law requires. Our PPACA experts have been following the law's developments and requirements and developing best practices in advising their clients – and they're prepared to share these tips with you. Join leading PPACA attorneys for this in-depth session on PPACA compliance that will leave the most seasoned professionals with detailed information and a practical framework for complying with these on-going mandates.

- Where plan sponsors and administrators can expect upticks in litigation
- Compliance enforcement
 - Is there a private right of action?
 - What regulatory agency will take the lead?
 - What are the non-compliance penalties plans should be concerned with?
- Understanding the evolving appeals landscape and external reviews:
 - Complying with the appeals process and exhaustion
 - How will independent reviews affect the standard of review?
 - What claims can be brought against the IROs?
 - Can a plan sue an IRO for not following the terms of the plan?
- Implementing the newest reforms in plan design
 - Coverage of adult children and other eligibility requirements
 - Pre-existing condition exclusions
 - Lifetime limits
 - Coverage of preventative procedures
 - Automatic enrollment
 - Medical loss ratio requirements
 - Ban on retroactive rescissions
 - What changes to the SPD must be made?
 - Elimination of life-time dollar limits on essential benefits
- Management carve-outs and non-discrimination testing
- Understanding and complying with IRS reporting requirements
- Retaining grandfathered status
 - How to do it
 - The administrative and financial implications of remaining grandfathered
- Looking ahead to 2014 and 2018 mandates
- Can employees be converted to independent contractors without triggering an IRS audit? What about Microsoft issues?
- Update on the PPACA constitutionality cases

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