



ABA Joint Committee
on Employee Benefits

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Business Law
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and the
American College of
Employee Benefits Counsel

The 18th Annual National Institute on

ERISA Litigation

November 6-7, 2008

Conrad Chicago

521 North Rush Street, Chicago, IL 60611

Early Bird Registration October 9th

Hotel Registration October 9th

Register On-line: www.abanet.org/jceb/
(202) 662-8640



12.83 CLE Credit Hours have been requested from 60-minute states and
15.40 CLE Credit Hours have been requested from 50-minute states

ERISA LITIGATION AGENDA

THURSDAY • NOVEMBER 6, 2008

7:30 **Registration and Networking Continental Breakfast**

8:30 **Welcoming Remarks and Overview from Co-Chairs**

Mark D. DeBofsky, *Daley, DeBofsky & Bryant*

Lissa J. Paris, *Murtha Cullina LLP*

Douglas M. Selwyn, *Sessions Lambert Selwyn, LLP*

8:45 **Hot Topics in ERISA Preemption**

ERISA preemption—procedurally and substantively—is a dominant issue in employee benefits litigation, particularly in connection with the regulation of health benefits. States and cities attempt to construct health insurance programs which avoid preemption. Plaintiffs' counsel run from ERISA preemption as they attempt to salvage common law claims, preserve a right to a jury trial and obtain broad remedies for their clients. Defendants embrace ERISA preemption because it provides a choice of forum, eliminates common law and extra-contractual damage claims, and results in a bench trial. This program segment will focus on the latest developments in ERISA preemption, including emphasis on health-related claims and litigation trends.

For the Plaintiff

Mary Ellen Signorille

AARP Foundation Litigation

For the Defendant

Charles B. Wolf

Vedder Price PC

9:45 **Fiduciary Insurance Coverage Issues**

Fiduciary insurance provides important coverage to fiduciaries of employee benefit plans. The provisions of these policies vary, and what is covered (and excluded) can be an important consideration in litigation against fiduciaries in a variety of contexts. Also, there are numerous tactical and strategy decisions that have to be made when fiduciary insurance is involved, in litigating and settling a case. This session will examine typical policy provisions and the issues they raise and strategic considerations that arise as a result of these policies, for example, notification of potential and actual claims, retention of counsel, what defense costs are covered, and conflicts of interest.

Panelists:

Greg Smith, *Chubb*

Brian Smith, *The Segal Company*

Barry S. Slevin, *Slevin & Hart, PC*

10:45 **Morning Break**

11:00 **Benefit Claims Litigation: Claims Review and Exhaustion**

The meat and potatoes of ERISA litigation are claims for benefits under an ERISA plan. However, before filing a suit for an ERISA benefit, critical strategy considerations should guide both parties, as claimants pursue administrative review of their claims pursuant to the plan's review procedure. This segment of the program focuses upon this important prelude to benefit claims litigation: the claims review procedure. The panelists will address the benefit claims regulation and new case law developments and show how this preliminary phase sets up and controls the subsequent benefit claims litigation.

For the Plaintiff

Denise M. Clark

The Law Office of Denise M. Clark

For the Defendant

Mark E. Schmidtke

*Ogletree, Deakins, Nash, Smoak
& Stewart, PC*

(Program Subject to Revisions on Late Breaking Legislative or Regulatory Developments)

ERISA LITIGATION AGENDA

12:00 **Lunch (on your own)**

1:30 **Benefit Claims Litigation: Claims Standards of Review and Discovery and Dispositive Motions**

This program segment features a discussion of the most recent jurisprudence dealing with what occurs when suit is filed for benefits under an ERISA plan, including evidence the district court may consider, the judicial standards of review applied in benefit claims litigation, the doctrine of conflict of interest, and emerging theories of benefit claims law.

For the Plaintiff

Mark D. DeBofsky
Daley, DeBofsky & Bryant

For the Defendant

Lissa Paris
Murtha Cullina LLP

2:30 **Afternoon Break**

2:45 **Other Remedies**

Remedies, especially in fiduciary breach cases, have become a hotly contested battle ground as evidenced by the decisions in *Amschward v. Spherion Corp.* and *LaRue v. DeWolff, Boberg & Assoc., Inc.* This segment will focus on how courts have analyzed plan remedies under 502(a)(2) and the scope of equitable remedies under 502(a)(3).

For the Plaintiff

Thomas G. Moukawsher
Moukawsher & Walsh, LLC

For the Defendant

Lissa J. Paris
Murtha Cullina LLP

3:45 **Spousal Rights**

One of the key issues facing all plans is how to deal with spousal rights. This session will focus on lessons learned from the cases about pivotal issues such as QDROs, beneficiary designations, and disputes among potential claimants (including multiple spouses) over survivor benefits.

Speaker:

Sally Doubet King, *McGuire Woods LLP*

4:45- **Reception**

5:45

UNABLE TO ATTEND? CAN'T DECIDE WHICH SESSIONS TO ATTEND?

Audiotapes and CDs will be available approximately 4 weeks after the program.

To order complete tape sets or CD sets,
see the Registration and Order Form panel of this brochure.

Order forms for individual tapes will be available on site.

For more information, visit www.abanet.org/jceb/ or call 202.662.8640.

ERISA LITIGATION AGENDA

FRIDAY • NOVEMBER 7, 2008

7:30 Registration and Networking Continental Breakfast

8:30 Fee Case Litigation

The past two years have seen an explosion of litigation challenging the selection of investments, and the monitoring of fees in individual account (401(k)) plans. This session examines litigation between plans/plan sponsors and service providers, including cases concerning the fiduciary status of providers. This session will also address litigation involving fiduciary duties in selection and monitoring service providers.

For the Plaintiff

Gregory Y. Porter

McTigue Porter, LLP

For the Defendant

Nancy G. Ross

McDermott Will & Emery LLP

9:30 Special Topics in Welfare Litigation

This session will cover a potpourri of topics that frequently arise in welfare benefit litigation; particular problems that arise in relation to mental health claims (health and disability); experimental and investigational treatment; proving disability claims involving so-called subjective impairments such as chronic fatigue syndrome and fibromyalgia; the uses and abuses of functional capacity evaluations and surveillance; and suggestions for practitioners in the wake of the *MetLife v. Glenn* Supreme Court ruling.

For the Plaintiff

Mark D. DeBofsky

Daley, DeBofsky & Bryant

For the Defendant

Douglas M. Selwyn

Sessions Lambert Selwyn, LLP

10:30 Morning Break

10:45 Fiduciary Breach Litigation

Probably the most financially significant and complicated area of ERISA litigation involves claims against fiduciaries for alleged breach of duty. ERISA fiduciary litigation is particularly challenging because the case law is still developing, and little precedent is available to guide courts when they decide the legal questions at the heart of many fiduciary cases. These presenters will discuss recent trends in fiduciary litigation including developing case law on the core question of what constitutes fiduciary activity, the impact of participant direction under ERISA Section 404(c), potential liability of directed trustees and general fiduciary duties of disclosure and remedies for fiduciary misrepresentations.

For the Plaintiff

Thomas G. Moukawsher

Moukawsher & Walsh, LLC

For the Defendant

Ian H. Morrison

Seyfarth Shaw LLP

11:45 Withdrawal Liability and Collections

Fiduciaries of multiemployer plans have an obligation to collect contributions owing to the plans including both delinquent contributions and withdrawal liability payments. In the aftermath of the market downturn, withdrawal liability has again become a significant issue for multiemployer defined benefit pensions plans and withdrawing employers. This session examines current issues in collection litigation and withdrawal liability litigation.

For the Plan

Douglas M. Selwyn

Sessions Lambert Selwyn, LLP

For the Employer

Charles B. Wolf

Vedder Price PC

ERISA LITIGATION AGENDA

12:45 **Lunch (on your own)**

2:00 **Service Provider Litigation**

One of the most important fiduciary obligations involves the retention, monitoring, and termination of providers of service to employee benefit plans. As a result, there have been numerous litigated cases involving these issues. In addition, unique issues arise in connection with the provision of services to employee benefit plans, which often are the focus of the litigation that arises in connection with these types of contractual relationships. This session will focus on the substantive provisions of ERISA that are implicated by service provider relationships and the legal issues that arise in litigation between plans and service providers

Panelists: Gregory Y. Porter, *McTigue Porter, LLP*
Deborah S. Davidson, *Morgan, Lewis & Bockius LLP*
Barry S. Slevin, *Slevin & Hart, PC*

2:50 **Severance and Early Retirement Litigation**

Despite the recent improvement in the economy, many for-profit and not-for-profit companies, as well as educational institutions, are considering or undertaking RIFs. The panelists will explore in depth a hypothetical involving a company RIF. The hypothetical will have many elements, including retiree health and a supplemental early retirement pension, as well as special “top hat” benefits. The defense-side panelist will discuss how to avoid litigation in the context of severance and early retirement programs, and both sides will discuss litigation strategies, including how to ensure ERISA status for severance arrangements and class status.

For the Plaintiff
Mary Ellen Signorille
AARP Foundation Litigation

For the Defendant
Thomas G. Hancuch
Vedder Price PC

3:50 **Afternoon Break**

4:00 **Ethical Considerations in ERISA Litigation/Multi-jurisdictional Practice/Scope of Attorney-Client Privilege**

Plan sponsors (employers and boards of trustees) can have multiple roles in connection with the employee benefit plans they have established. Employee benefits attorneys often face many vexing ethical issues that arise from conflicting loyalties when dealing with plan-related issues. This session will focus on key ethical rules and principles that should be considered by ERISA practitioners, including a discussion regarding how multiple representation is possible, how to determine who the client is and what role the client has when advice is sought, whether the advice requested or given in particular situations is privileged, and the impact of the Sarbanes-Oxley Act on employee benefits lawyers.

Moderator: Gabriel J. Minc, *Law Office of Gabriel J. Minc*
Panelist: Denise M. Clark, *The Law Office of Denise M. Clark*

5:00 **Adjourn**

HIGHLIGHTS OF ERISA LITIGATION

Who Should Attend?

- *Litigators* who handle ERISA cases and want to enhance their substantive ERISA knowledge
- *Benefits practitioners* who wish to further their knowledge of the substantive law and most recent case law
- *Litigators* who find themselves confronting ERISA preemption issues on an increasing basis
- *ERISA specialists* who draft plan language and render advice about plan administration, trying to minimize the risk of litigation
- *Litigators* seeking to develop expertise in this growing field of practice

What Past Participants Have Said...

"I enjoyed getting both sides of all the arguments. Having an attorney from each side on each topic was wonderful. I also like that each topic is covered from a basic beginning to a more advanced analysis so that you can follow the thought process all the way through."

Jody M. Smitherman, Jackson Lewis LLP

"The interplay between speakers gave the program a 'real-life' feel. I was able to see the arguments on each side of the issue - the case law, its application and the public policy considerations a court will take into account. This was very, very helpful."

Geoffrey A. Belzer, Wilson Elser Moskowitz Edelman & Dicker LLP

"Excellent balance of presenting plaintiff and defendant perspectives. Good at sticking to topic and schedule. Provided invaluable information on current issues, case law updates and pending litigation."

Aislinn McGuire, Kauff McClain & McGuire LLP

"Great way to get updated on current developments; covered a lot of material in two days but didn't feel rushed; important cases in key areas were identified and discussed."

Miriam López, Bush Gottlieb Singer López Kohanski Adelstein Dickinson

National Institute Faculty

Denise M. Clark
The Law Office of Denise M. Clark
Washington, DC

Deborah S. Davidson
Morgan Lewis & Bockius LLP
Chicago, IL

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Program Co-Chair
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Ian H. Morrison
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Washington, DC

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Program Co-Chair
Sessions Lambert Selwyn LLP
Houston, TX

Mary Ellen Signorille
AARP Foundation Litigation
Washington, DC

Barry S. Slevin
Slevin & Hart, PC
Washington, DC

Brian Smith
The Segal Company
Washington, DC

Greg Smith
Chubb
Chicago, IL

Charles B. Wolf
Vedder Price PC
Chicago, IL

ERISA LITIGATION INFORMATION

TUITION

Attend the entire two-day program, each breakfast, and the reception, and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by **Thursday, October 9** to receive the discount.

Early Bird Registration—Before October 9

\$995 General Public

\$895 ABA Member (\$100 Savings—*join a Section, and save even more!*)

\$795 Sponsoring Section Member (\$200 Savings)

Full Tuition—After October 9

\$1045 General Public

\$945 ABA Member (\$100 Savings—*join a Section, and save even more!*)

\$845 Sponsoring Section Member (\$200 Savings)

On-Site Tuition

\$1095 General Public

\$995 ABA Member (\$100 Savings—*join a Section, and save even more!*)

\$895 Sponsoring Section Member (\$200 Savings)

ADDITIONAL SAVINGS

If three or more register from the same firm, one registrant will receive a \$50 reduction in program tuition! Every registrant will receive a copy of the informative course materials binder that can be used as a comprehensive resource long after the program is held. Registrants will also have access to a web site where they can download materials prior to the conference and access any additional materials handed out on site. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

SCHOLARSHIPS

A limited number of scholarships to defray tuition expenses are available for this program. To request an application or receive additional information, contact Nancy Matthews at 202.662.8640. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation. Preference will be given to full-time LL.B. candidates.

MCLE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for lawyers. 12.83 hours of credit, including 1 hour of ethics credit, have been requested from states that recognize a 60-minute credit hour. 15.4 hours of credit, including 1 hour of ethics credit, have been requested from those states granting credit hours on a 50-minute basis (13 hours from NY State). Lawyers seeking credit in Pennsylvania must pay a fee of \$1.50 per credit hour directly to the PA CLE Board. The ABA pays applicable fees in other states where the sponsor is required to do so. In states where a late fee may become applicable, the ABA pays this fee as well. Please be aware that each state has its own rules and regulations including its definition of CLE as well as "Ethics." Therefore, certain programs may not receive credit in some states. Please check with your state agency for confirmation of general as well as ethics approval for any program. You may contact the ABA Service Center at 800.285.2221 or Nancy Matthews at 202.662.8640 for confirmation of the number of credits approved by any particular state. This transitional CLE program has been approved for all New York licensed attorneys in accordance with the requirements of the New York CLE Board for NY MCLE.

QUESTIONS?

If you have a specific question that you want answered, you can email it up to the day before the program to matthewn@staff.abanet.org, or ask the speakers directly during the program presentation.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Nancy Matthews at 202.662.8640. Reasonable advance notice is requested.

ERISA LITIGATION INFORMATION

CANCELLATIONS AND REFUND INFORMATION

Please contact Nancy Matthews at 202-662-8640 with the ABA's Joint Committee on Employee Benefits. Presentations will be honored on the following basis:

- 80 business days or more100% Refund
- 79–21 business days100% Refund MINUS \$50 ADMINISTRATIVE FEE
- **20 business days or lessNo Refund

**“Day of Cancellation” is the day the cancellation is received, by telephone or in writing, by the ABA. It is calculated based on ABA business days remaining before the National Institute presentation for which registered.

**No refund will be made for cancellations received after this time (October 9th); written confirmation of refund requests must be received within 14 days following the National Institute presentation. Substitute registrants are welcome.

COMPLAINT RESOLUTIONS

Please contact Nancy Matthews at 202-662-8640

PROGRAM CONFIRMATION

Written confirmation of your registration will be e-mailed to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the program, call the ABA at 202.662.8640 to confirm that your registration was received and the program is being held as scheduled.

HOTEL INFORMATION

DEADLINE FOR HOTEL RESERVATIONS:

Thursday, October 9

You may make hotel reservations at the Conrad Chicago, 521 North Rush Street, Chicago, IL 60611. A limited number of rooms have been set aside for National Institute registrants at \$268 single or double occupancy. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released Thursday, October 9, after which the hotel will accept reservations on a space-available basis only. All reservations must be guaranteed with a major credit card. To register at the hotel, call the hotel directly at 800.705.7129 or 312.645.1500, and be sure to mention the group code AMB (for the ABA Joint Committee on Employee Benefits—ERISA Litigation)—to receive the special discounted rate.

AIRLINE INFORMATION

Discounted airfares are available from ABA Orbitz For Business including ABA negotiated discounts on American and United Airlines. To book online, go to www.abanet.org/travel and click under the Orbitz For Business logo at the top of the page, then click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 1-877-222-4185. American Airlines can be reached at 800-433-1790; reference code #19838. United Airlines can be reached at 800-521-4041; reference code #5781G.

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October 27-28, 2008

19th Annual National Institute on
Health and Welfare Benefit Plans
Washington, DC

November 10-11, 2008

23rd Annual National Institute on
**Compensation for
Executives and Directors**
New York, NY

SPRING 2009

23rd Annual National Institute on
ERISA Basics
Chicago, IL

SPRING 2009

23rd Annual National Institute on
**Employee Benefits in
Mergers and Acquisitions**
New York, NY

REGISTRATION AND ORDER FORM

ERISA Litigation

November 6-7, 2008 • Conrad Chicago • Chicago, IL
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EARLY BIRD REGISTRATION—On or Before October 9

- \$995 General Public
- \$895 ABA Member
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FULL TUITION—After October 9

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ABA # _____
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ON-SITE TUITION

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- \$995 ABA Member
(\$100 Savings—join a Section, and save even more!)
ABA # _____
- \$895 Sponsoring Section Member (\$200 Savings)
ABA # _____
- Two or more people have registered with me; please apply the \$50 tuition reduction to the tuition rate indicated above.

- Send me the **ERISA Litigation Audiotape Package, PC 5470710**, (tapes and course materials) available four weeks following the presentation, at the special price of \$632.95 (postage and handling*included).
- Send me the **ERISA Litigation CD Package, PC 5470711 CD**, (CDs and course materials) available four weeks following the presentation, at the special price of \$632.95 (postage and handling*included).
- Send me the **ERISA Litigation Course Materials, PC 5470709** at the special prepublication price of \$262.95 (postage and handling*included).
- Send me the JCEB calendar for upcoming Employee Benefits Membership Events

TO REGISTER

On-line: <http://www.abanet.org/jceb/>

Mail: American Bar Association

JCEB Registrar
740 15th Street, NW, 3rd Floor
Washington, DC 20005-1022

Fax: 202.662.1012 (credit card only)

PAYMENT (must include one of the following)

- Check made payable to
American Bar Association - JCEB
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- VISA
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*District of Columbia residents add 5.75% use tax, Illinois residents add 10.25% sales tax, before including domestic postage and handling charges. Price is subject to change after 11/07/2008.

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Join one of these dynamic Sections, and become active in one of their employee benefits committees. Join the ABA and one or more of the Sections when registering for this program, and save up to \$200 on this program tuition.

- I am interested in becoming a member of the American Bar Association. Please send me information and membership forms.
- I am an ABA member but want a further reduction on my tuition for this program. Please enroll me into the Section listed below; I've enclosed a separate check made payable to the ABA.
 - Section of Business Law, \$55
 - Section of Health Law, \$50
 - Section of Labor and Employment Law, \$40
 - Section of Real Property, Trust and Estate Law, \$55
 - Section of Taxation, \$60
 - Section of Tort Trial and Insurance Practice, \$50