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- Mercer
- Lockton Financial Advisors
- Crawford & Company
- Blue Prairie Group
- Hartford Financial

View from the Bench:
- Hon. Ruben Castillo
  Chief Judge
  U.S. Dist. Ct., N.D. Ill.
- Hon. Donetta W. Ambrose
  Senior District Judge
  U.S. Dist. Ct., W.D. Pa
- Hon. Richard S. Schmidt
  Bankruptcy Judge
- Hon. Roslyn O. Silver
  Senior District Judge
- Hon. Wiley Y. Daniel
  Chief Judge
  U.S. Dist. Ct., D. Colo.
- Hon. Eric F. Melgren
  District Judge
- Hon. Richard A. Kramer
  Complex Litigation Judge
  Super. Ct. of Calif., San Francisco

Benefit from key updates and strategies on:
- Employer stock and *Fifth Third v. Dudenhoeffer*
- Equitable remedies under ERISA §502(a)(3), *Cigna v. Amara* and *U.S. Airways v. McCutchen*
- Class action developments with regard to excessive fees, stock drop, defined benefit and welfare plan class claims
- Emerging trends with the Affordable Care Act and Church Plan Litigation
- And the latest issues in
  - ERISA fiduciary litigation
  - ESOP Litigation
  - plan investment litigation
  - 401(k) fee cases
  - withdrawal liability
- Enforcement of plan document limitations period for benefit claims post-*Heimeshoff*

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- **ERISA Fiduciary Litigation**: Minimizing Exposure to Fiduciary Liability Through Procedural Prudence and Documentation, New and Emerging Theories of Liability and Defenses, Arguments that Start Claim Accruals Early and Support 413(1)(a) Fiduciary Breach Claim Statute of Repose, the Application of Releases to Claims

- **Litigation Regarding Plan Investments**: The Latest on Employer Stock - *Fifth Third v. Dudenhoeffer* and Beyond; New Theories of Liability; Defenses such as Standing, Statute of Limitations, and 404(c); Alternative Investments; Issues in De-Risking

- **Withdrawal Liability**: What You Need to Know and How to Avoid and/or Challenge It

- **ESOP Litigation**: Defending Against New and Emerging Claims and Assessing Recent Developments, With a Focus on DOL Investigations and Settlements


- **Affordable Care Act Issues**: The Intersection Between ACA Retaliation and ERISA 510 Cases, Decisions Affecting Full/Part-Time, Workforce Re-Structuring and Alternative Workforces, and Beyond

- **Fiduciary Liability Insurance**: Assessing Current Coverage and Future Needs and Strategic Litigation and Settlement Considerations

- **Benefit Claims Litigation**: The Scope and Limitations of Discovery, Addressing Requests for Evidence Outside of the Record in ‘Conflict’ Situations, Judicial Review of Claims Decisions and the Battle Over Discretion, Attorney Fees *Post-Hardt*, the Enforceability of ERISA Plan Limitation of Actions Clauses, and More

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7:30 Registration and Continental Breakfast

8:00 Chairs’ Welcoming Remarks

H. Douglas Hinson
Partner
Alston & Bird LLP

Amanda S. Amert
Partner
Jenner & Block LLP

Michael J. Prame
Principal
Groom Law Group, Chartered


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- Implications of the ACA for in-house counsel
- Due diligence in the selection of service providers
- Managing the blurring of lines (and liabilities) among different service providers
- Liability arising from alternative investments, such as hedge funds and private equity
- Minimizing the potential for litigation arising from DOL disclosure requirements
- Overlap of independent contractor misclassification claims with ERISA fiduciary liability claims
- Managing relationships with plan sponsors and best practices for overcoming conflicts

10:40 Morning Coffee Break

- Litigation arising between service providers and plan sponsors
- Assessing the potential liability of a plan sponsor for actions of the plan record keepers
- Making the decision to de-risk
- Ensuring that the language in plan documents adequately protects the plan sponsor and minimizes exposure to litigation
- Claims handling considerations
- Directors and officers liability exposure in ERISA and securities piggyback lawsuits
10:50 Equitable Remedies Under ERISA §502(a)(3), Ci
gna v. Am
dra and U.S. Airways v. McCutchen: The Ongoing Fallout From These Cases and Their Progeny

Reena R. Bajowala
Partner
Jenner & Block LLP

Lori A. Meaders
Senior Attorney
Southern California Edison Company

Andrew L. Oringer
Partner
Dechert LLP

John J. Myers
Partner
Eckert Seamans Cherin & Mellott, LLC

• Assessing the ongoing impact of Amara and its progeny on ERISA litigation
• The new remedies and 502(a)(3) landscape
• Impact of U.S. Airways v. McCutchen on remedies
• Best strategies for arguing against monetary damages as a form of ‘equitable relief’
• Minimizing damages in the wake of Amara
• How have Amara and its progeny changed the remedies landscape from the plaintiff’s viewpoint
• How have the courts interpreted ‘plan terms’?
• Assessing whether Amara only applies to cases involving intentional misrepresentations or if it is also applicable to cases involving negligent misrepresentations
• Lessons learned from Amara and its progeny regarding disclosure issues

11:55 Networking Lunch for Speakers and Delegates

12:55 Litigation Regarding Plan Investments: The Latest on Employer Stock - Fifth Third v. Dudenhoeffer and Beyond; New Theories of Liability; Defenses Such as Standing, Statute of Limitations, and 404(c); Alternative Investments; Issues in De-Risking

Mark Casciari
Partner
Seyfarth Shaw LLP

Denise Sisk
Managing Director
State Street Global Advisors

Mary Jo Anderson
Corporate Counsel
Dupont

H. Douglas Hinson
Partner
Alston & Bird LLP

Lewis R. Clayton
Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP

• Fifth Third v. Dudenhoeffer and the Moench presumption of prudence in employer stock drop cases
• Article III standing v. ERISA standing

• Standard of Prudence in Employer Stock Cases: how to combat forum shopping by litigants seeking to challenge employer stock holdings by plans
• Alternative investments (e.g. hedge funds, private equity, derivatives), funds allocation, and breaches of fiduciary duty
• Issues in De-risking: What constitutes de-risking? Factors to consider when looking to de-risk; cost-benefit analysis; Due diligence; Litigation arising from de-risking; Questions relating to the who the fiduciaries are in these situations; Levels of care
• Disclosure Claims in ERISA Stock Drop Litigation
• Stock drop cases in the wake of recent case law
• ERISA’s “Safe Harbor” Defense under Section 404(c): How have the courts interpreted the 404(c) requirements?
• Statute of Limitations issues
• Can the document dictate when the SOL begins to run?
• Forum shopping

2:10 Withdrawal Liability: What You Need to Know and How to Avoid and/or Challenge It

Michael J. Prame
Principal
Groom Law Group, Chartered

Evan Miller
Partner
Jones Day

James P McElligott Jr.
Partner
McGuireWoods LLP

• Redetermination liability and alter ego/control group issues
• Applicable exemptions
• The intent to evade or avoid
• Change in form
• Restructuring of a company
• Reallocation and mass withdrawal
• Auto-claw back v. presumption clawback
• The Sun Capital decision and the impact on private company plan sponsors with private equity fund financing

3:05 Afternoon Break

3:15 ESOP Litigation: New and Emerging Claims and Recent Developments, With a Focus on DOL Investigations and Settlements

Christine Dart
Vice President
Chubb & Son

Eric G. Serron
Partner
Steptoe & Johnson LLP

Scott J. Stitt
Partner
James E. Arnold & Associates, LPA

ESOP litigation is on the rise, in large part due to the DOL’s enhanced scrutiny of these plans. This panel will focus on recent litigation trends, including related legal and fiduciary issues, as well as the DOL’s increased attention to these plans.

• Enforceability of ESOP indemnity agreements
• Recent trends in ESOP private litigation and DOL enforcement priorities
DOL audits and investigations
• “Hot button” issues that can come up in DOL audits and private litigation and recent decisions in ESOP cases that have addressed some of these issues
• Looking to the Future: DOL’s Proposed Regulation on the Definition of “Fiduciary”
• Whether, when and how courts may factor in the value of the ESOP notes acquired by seller
• Whether and when courts will allow ESOP-owned companies to indemnify ESOP fiduciaries


Michele Varnhagen
AARP

Mark B. Blocker
Partner
Sidley Austin LLP

David Tetrick Jr.
Partner
King & Spalding

Gregory Y. Porter
Partner
Bailey & Glasser LLP

• Current litigation landscape from Tussey and Tibble
• Extension of the arbitrary and capricious standard of review in fiduciary actions by Tibble
• New statute of limitation issues
• Impact on service providers
• DOL enforcement activity and initiatives
• Service provider and procedural process activities
• Class actions challenging fiduciaries and record keepers for failure to comply with DOL regulations
• The use of proprietary funds as investment choices

Affordable Care Act Issues: The Intersection Between ACA Retaliation and ERISA 510 Cases, Decisions Affecting Full/Part-Time, Workforce Re-Structuring and Alternative Workforces, and Beyond

Brian S. Cousin
Partner
Dentons US LLP

Elise D. Klein
Partner
Lewis Brisbois Bisgaard & Smith LLP

• Assessing the likelihood of a surge of ACA litigation in the coming year
• The types of ERISA claims and new theories of liability that can be expected from ACA litigation
• Evaluating the various provisions of the new healthcare law and anticipating the types of ERISA litigation that will result from them
• Developing effective defense strategies and minimizing exposure to such claims
• ACA Retaliation and ERISA 510: 2014 decisions coming down pike and decisions affecting the full-time/part-time mix

• The ACA and Workforce Structuring Issues and Risks in Alternative Workforces
• Impact of the ACA on preemption issues

New Trends in Church Plan Litigation

William Patton
Shareholder
Lane Powell PC

• Assessing recent actions brought against church plans
• Exclusion of such plans from ERISA requirements
• What are successes or failures of church plan litigation? Where does it go from here?
• What are the implications of this litigation in broader context?
• PBGC responsibility for the plans
• Nuances regarding same sex marriage, contraception, and social conscious investment decision-making
• Congressional action on the ERISA’s church plan exemption?
• Is it sufficient for participant notice?
• What steps should church plan sponsors take to protect their plans from a successful challenge?

DAY TWO – TUESDAY, APRIL 29, 2014

7:30 Continental Breakfast

8:00 A Focus on Class Actions (E.g., Excessive Fees, Stock Drop, Defined Benefit and Welfare Plan Claims): New and Emerging Cases and Theories; the Continuing Impact of Dukes and Progeny on Certification; New Settlement Considerations; Nuances on Rule 23 (A), (B) and (F); Subclasses and Bifurcation; Interlocutory Appeals; and More

Charles F. Seemann III
Partner
Jackson Lewis P.C.

Brian Boyle
Partner
O’Melveny & Myers LLP

Jason J. Mendro
Partner
Gibson, Dunn & Crutcher LLP

Matt Gnabasik
Managing Director
Blue Prairie Group

Matthew Shors
Deputy General Counsel
United Health Group

• Assessing the impact of recent case law on ERISA class actions
• Class actions and certification in the wake of Comcast v. Behrend
• The continuing fallout from Wal-Mart v. Dukes and AT&T Mobility v. Concepcion and American Express Co. v. Italians Colors Restaurant on ERISA class actions
• Defeating class certification
• Stock Drop Certification and Class Action Issues in Stock Drop
• Class Cert in Defined Benefit and Welfare Plan Litigation
• Determining whether and when a purported class of ERISA plaintiffs will be certified

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• How the plaintiffs’ bar has adapted to the new class action landscape: New and emerging strategies
• Defense strategies for defeating class certification in the new environment
• Unique issues pertaining to damages in an ERISA class action
• Circumstances in which class certification can be desirable for the defense
• Settlement nuances, including class settlements in excessive fee cases
• New developments on Rule 23(a), (b) and (f), subclasses and bifurcation, and interlocutory appeals
• The role of the United States Supreme Court in ERISA litigation

9:05  The View From the Bench

Hon. Ruben Castillo
Chief Judge
U.S. Dist. Ct., N.D. Ill.

Hon. Wiley Y. Daniel
Chief Judge
U.S. Dist. Ct., D. Colo.

Hon. Donetta W. Ambrose
Senior District Judge
U.S. Dist. Ct., W.D. Pa

Hon. Eric F. Melgren
District Judge

Hon. Richard S. Schmidt
Bankruptcy Judge
U.S. Dist. Ct., S.D. Texas

Hon. Richard A. Kramer
Complex Litigation Judge
Super. Ct. Calif

Moderator:
Caroline English
Partner
Arent Fox LLP

10:35  Morning Coffee Break

10:45  Expert Coordination: Working With Financial and Fiduciary Experts

Susan Mangiero
Managing Director
Fiduciary Leadership, LLC

Ronald S. Kravitz
Partner
Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor, LLP

Joseph M. Callow, Jr.
Partner
Keating Muething & Klekamp PLL

Many ERISA litigators will admit that the quality and communication skills of an economic expert can greatly impact the outcome of a case. Getting the right expert(s) in place sooner than later can be a distinct advantage. When that does not occur, important items may be excluded from discovery or pre-motion analysis. This panel will focus on the challenges associated with tight client budgets, working with multiple experts, knowing when to bring an expert(s) on board and evaluating how much information to share.

11:35  ERISA Fiduciary Litigation: Minimizing Exposure to Fiduciary Liability Through Procedural Prudence and Documentation, New and Emerging Theories of Liability and Defenses, Strategies for Statute of Limitations and Statute of Repose Defenses, and More

Amanda S. Amert
Partner
Jenner & Block LLP

Mark Spencer
Partner
McAfee & Taft, PC

Denise M. Clark
Partner
Clark Law Group, PLLC

Jeanne L. Bakker
Partner
Montgomery McCracken Walker & Rhoads LLP

• Best practices for limiting fiduciary liability
• “Procedural” prudence and documentation of process
• Expected litigation should a broadening of the DOL fiduciary standard occur
• Fiduciary status of service providers
• When is a service provider a fiduciary?
• Assessing claims of breach of fiduciary duty relating to proprietary funds
• Determining who the ERISA plan fiduciaries are and defeating plaintiffs’ attempts to delineate the plan fiduciaries
• Countering the efforts of plaintiffs’ counsel to expand ERISA fiduciary duties
• Winning dismissal of improperly-named defendants
• Assessing new and emerging theories of liability from the plaintiffs’ bar
• Developing effective defense strategies against new plaintiffs’ theories
• Arguments that start claim accruals early and support 413(1)(a) fiduciary breach claim statute of repose
• Whether the “actual harm” element of a fiduciary breach turns on individual reliance
• What to do when a fiduciary finds out that a plan trustee has made an investment that has suffered a loss
• Assessing the available remedies and damages when fiduciary liability is determined
• Defending against a DOL, DOJ or SEC investigation
• The “continuing violation” theory and the statute of limitations
• Releases: extension of general releases; release application
• Can a “properly” worded release preclude plaintiff from initiating, taking part in, or benefitting from a breach of fiduciary duty class action?

12:45  Fiduciary Liability Insurance: Assessing Current Coverage & Future Needs & Strategic Litigation and Settlement Considerations

Barbara Gubitose
Senior Vice President
Wells Fargo Insurance

- Strategic Litigation Considerations When Fiduciary Insurance Is Involved
- Settlement Considerations When Fiduciary Insurance is Involved
- Assessing your needs and ensuring proper coverage: Key terms and conditions and common coverage disputes; Key exclusions; Insurance issues that arise when service providers (TPAs, record keepers, etc.) are involved
- Typical policy provisions and the issues they raise, and strategic considerations that arise as a result
- Coverage issues under ERISA fiduciary liability insurance
- What’s currently being covered and not covered in fiduciary liability policies? Coverage extensions?
- Indemnification and liability insurance coverage options for ERISA fiduciaries
- Lessons to learn from recent ERISA fiduciary liability insurance coverage cases
- ERISA fiduciary liability insurance negotiation, placement and underwriting issues

New Trends in Executive Compensation Litigation

- The relationship between ERISA and executive compensation claims
- Challenges under the clawback division of Dodd Frank
- Issues related to mergers and acquisitions
- What you need to know to prepare for these types of claims

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