

## Douglas Hinson

Partner

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***Doug defends complicated, big-stakes ERISA litigation. He is adept at resolving cases early and efficiently, including before a complaint is filed. He has defended Fortune 500 companies, government, private, and nonprofit clients in various ERISA class actions. His ability to identify and articulate complex arguments in simple and compelling terms helps clients put difficult disputes behind them.***

Doug Hinson leads Alston & Bird's ERISA Litigation Team. He has led the defense of numerous Fortune 500, government, private, and nonprofit clients in all types of ERISA class actions, including 401(k) fee and employer stock matters, welfare benefit disputes, defined benefit calculation and anti-cutback actions, and severance/top hat plan matters. Doug is an experienced mediator and arbitrator of employee benefit/ERISA disputes. In addition, he has substantial experience in securities, complex commercial, and insurance class action litigation. His practice is national in scope. He has been recognized in ERISA litigation by *Chambers USA: America's Leading Lawyers for Business*, *The Best Lawyers in America*® (including Lawyer of the Year for 2020), and *The Legal 500*; is listed in *Who's Who in American Law*; and has been selected to the *Super Lawyers* list since 2009 in both Atlanta and Washington, D.C. Doug is the past co-leader of the Compensation, Benefits & ERISA Litigation Practice Group and served as the past chair of the Employee Benefits Committee of the Tort, Trial and Insurance Practice Section, and chair of the CLE Committee of the Joint Committee on Employee Benefits, of the American Bar Association.

### ***Representative Experience***

- Led the defense of one of the largest actuarial consulting firms in the U.S. The city contended that Buck committed actuarial malpractice in estimating the savings from its 2012 pension reforms. The district court granted our motion for summary judgment on all counts, which the city did not appeal. *Providence v. Buck Consultants* (District of Rhode Island).
- Represented Dell and various individual fiduciaries of the Dell defined contribution plan in a matter involving Dell stock in the plan. The court granted the defendants' motion to dismiss and affirmed its decision after the plaintiff filed an amended complaint. *Camera v. Dell Inc., et al.* (Western District of Texas).
- Defended Nokia and related individuals in an employer stock-drop case against Nokia based on publicly reported difficulties with Nokia's transition to new products and a resulting drop in its stock price. The defendants prevailed on a motion to dismiss, and the plaintiff was persuaded not to appeal. *Romero v. Nokia Inc., et al.* (Northern District of California).
- Won a motion to dismiss all claims brought by participants in the Nokia Retirement Savings and Investment Plan. The plaintiffs alleged that Nokia Inc. and other Nokia Inc. directors and officials engaged in breaches of the fiduciary duties of prudence and loyalty, the duty to communicate complete and accurate information to plan participants and beneficiaries, the duty to monitor, and cofiduciary liability. *In re Nokia Inc. ERISA Litigation* (Southern District of New York, affirmed by the Second Circuit).
- Obtained a complete dismissal with prejudice of all claims in an employer stock class action and convinced the plaintiffs not to appeal. *Zimlich v. Lender Processing Services Inc.* (Middle District of Florida).

- Represented the governor, attorney general, chief financial officer, and the state, both at trial and the appeal to the Supreme Court of Florida, in a case in which the plaintiffs challenged the constitutionality of Florida's 2011 pension reform legislation. The supreme court found for our clients that the legislation is constitutional. This case impacted the pensions of more than 500,000 state and municipal employees and saves billions of dollars in the state budget over many years. *Scott, et al. v. Williams, et al.* (Supreme Court of Florida).
- Represented the National Association of Counties (NACo) in a putative nationwide class action alleging that NACo breached fiduciary duties arising under ERISA and/or state law based on its endorsement of products and services offered by its codefendant, Nationwide Retirement Solutions Inc. The court granted the defendants' motion to dismiss. *McCullough, et al. v. National Association of Counties, et al.* (Middle District of Florida).

## Employer Stock-Drop Cases

- Obtained a dismissal of all claims against Avaya and several individual defendants in a putative 401(k) employer stock-drop class action. Dismissal was affirmed on appeal by the Third Circuit. This case paved the way for numerous early dismissals of employer stock-drop cases around the country. *Edgar v. Avaya Inc., et al.* (District of New Jersey; affirmed by the Third Circuit).
- Obtained a complete dismissal of the Coca-Cola Company and various defendants in this and two identical 401(k) employer stock class actions. *Pedraza v. The Coca-Cola Company, et al.* (Northern District of Georgia).
- Represented various officers and directors of Colonial BancGroup in an employer stock-drop putative class action filed in the wake of Colonial's bankruptcy. The matter settled while a motion to dismiss was pending. *In re Colonial BancGroup Inc. ERISA Litigation* (Middle District of Alabama).
- Defended Allegheny Energy and various individual defendants in a putative class action related to employer securities in a 401(k) plan. The claims were settled on very favorable terms while our motion to dismiss was pending. *Allegheny Energy Inc. ERISA Litigation* (District of Maryland).
- Obtained a dismissal of all claims against Avaya and several individual defendants in a putative 401(k) employer stock class action. Dismissal was affirmed on appeal by the Third Circuit. *Ward v. Avaya, et al.* (District of New Jersey; affirmed by the Third Circuit).
- Defended BellSouth and various individuals in this and two other class actions arising from investments in BellSouth stock through a 401(k) plan. After we defeated class certification, the matter settled on very favorable terms, with no cash payment to the class. *Hill v. BellSouth Corporation, et al.* (Northern District of Georgia).
- Defended Scientific Atlanta and various individuals in a class action alleging breach of fiduciary duty in connection with employer securities in a 401(k) plan. The plaintiffs abandoned all ERISA claims in the face of our motion to dismiss. *Schaubs v. Scientific Atlanta Inc., et al.* (Northern District of Georgia).
- Represented the defendants, who were alleged to be fiduciaries in a putative class action alleging breach of various fiduciary duties related to employer securities in a 401(k) plan. It settled on very favorable terms while our motion to dismiss was pending. *Martin v. AAI Pharma, et al.* (Eastern District of North Carolina).
- Resolved claims against Mirant and related individuals in a class action alleging breach of fiduciary duty in connection with employer securities in a 401(k) plan while our motion to dismiss was pending. *Brown v. Mirant Corporation, et al.* (Northern District of Georgia).

- Defended Louisiana-Pacific and various individuals in this and another similar class action based on a decline in the value of employer securities in a 401(k) plan. This case was among the first in the country to have been brought without a companion securities class action. It settled on very favorable terms after we defeated the plaintiffs' class certification motion. *Darlington v. Louisiana-Pacific Corporation, et al.* (District of Oregon).
- Represented Healthways Inc. and related individuals in an employer stock putative class action. After defeating the first of two cases, the second case settled while our opposition to class certification was pending. *Healthways Inc. ERISA Litigation* (Middle District of Tennessee).

## ESOPs

- Represented the chairman and another member of the board of directors of United States Sugar in a putative class action involving claims of breach of fiduciary duties in connection with a private company ESOP and the company's rejection of an unsolicited transaction proposal. After defeating many of the claims on a motion to dismiss, it settled on favorable terms while motions for summary judgment on the remaining claims were pending. *United States Sugar ERISA Litigation* (Southern District of Florida).
- Defended the ESOP trustee in a lawsuit by the U.S. Department of Labor alleging breach of fiduciary duty in connection with participant-directed voting on the Polaroid/Diamond Shamrock tender offer. The case was settled on favorable terms. *Herman v. NationsBank Trust Co. (the "Polaroid ESOP Litigation")* (Northern District of Georgia, Eleventh Circuit).
- Defended an ESOP trustee in a class action lawsuit by Burlington employees alleging numerous breaches of fiduciary duty arising from the Burlington Industries LBO. *Atwood, et al. v. Burlington Industries Equity Inc., et al.* (District of North Carolina).
- Defended Highwoods (a REIT) and a prominent Kansas City developer (J.C. Nichols Company), as well as individual fiduciaries and directors, on both securities and ERISA class action claims based on disclosures related to Highwoods's merger with J.C. Nichols. We obtained dismissal of certain ERISA claims and summary judgment against all others. *Flake, et al. v. Highwoods, et al.* (District of Kansas).

## Defined Benefit / Cash Balance Plans

- Defended Delta in a multidistrict class action lawsuit challenging the calculation of lump sum and annuity benefits under The Delta Pilots Retirement Plan. This matter settled on favorable terms while our motion for summary judgment was pending. *Delta Air Lines Pension Plan Litigation* (Northern District of Georgia).
- Defended Cingular in a multiparty class action asserting a variety of claims under Cingular's defined benefit cash balance plan. *Parry, et al. v. SBC/Cingular Wireless, et al.* (District of Connecticut).
- Represented Delta in a challenge to the freezing of a defined benefit plan. The district court dismissed the case, finding no improper cutback of benefits. The dismissal was affirmed on appeal by the Eleventh Circuit. *Cinotto v. Delta Air Lines Inc.* (Northern District of Georgia, affirmed by the Eleventh Circuit).

## Retiree Welfare Benefits Termination

- Defended Washington Group and related individuals and entities in a challenge to the termination of retiree health and welfare benefits, obtaining summary judgment on all claims. The matter is currently on appeal before the Fourth Circuit. *Savani v. Washington Group International Inc., et al.* (District of South Carolina, Fourth Circuit).

## Investment/Fee-Based Fiduciary Duty Claims

- Representing Norton Healthcare in a putative class action alleging that the defendants breached ERISA fiduciary duties by not choosing the lowest-cost share classes for mutual funds available in Norton's retirement savings plan by choosing a stable-value fund as an investment option and by paying asset-based fees for administrative services. The plaintiffs filed an amended complaint in response to our motion to dismiss. Our renewed motion to dismiss the amended complaint was granted in part, and the matter is still pending. *Disselkamp, et al. v. Norton Healthcare, et al.* (Western District of Kentucky).
- Represented Brown University in a putative class action alleging excessive recordkeeping fees and imprudent investment options in two 403(b) plans offered to faculty and staff of the university. The settlement terms in this matter are the most favorable to defendants in any similar matter thus far. *Short v. Brown University.* (District of Rhode Island).
- Representing Insperity Inc., a professional employer organization, in a putative class action alleging excessive recordkeeping fees and imprudent investment options in a 401(k) plan offered to its client-employers. We won partial dismissal and partial summary judgment on most of the counts in the amended complaint, and we are currently preparing for trial on the remaining claims. *Pledger v. Insperity, et al.* (Northern District of Georgia).
- Represented Xerox HR Solutions LLC (now known as Conduent HR Services LLC) in a putative class action challenging Xerox's fee-sharing arrangement with Financial Engines. The plaintiffs alleged fiduciary breach and prohibited transaction claims related to Xerox's receipt of fees from Financial Engines, claiming that such fees are impermissible kickbacks for including Financial Engines as an investment adviser available through Xerox's recordkeeping platform. We prevailed on a motion to dismiss the complaint and the amended complaint. *Chendes v. Xerox HR Solutions LLC.* (Eastern District of Michigan).
- Represented Delta Air Lines and Delta plan fiduciaries in a putative class action alleging excessive fees in the Delta Family-Care Savings Plan. The plaintiffs challenged this 401(k) plan's recordkeeping fees as excessive and alleged that Delta should have held a competitive bidding process to seek lower fees. The plaintiffs also alleged that the investment lineup was imprudent before 2011 because it included duplicative and poor-performing investment options. We prevailed on a motion to transfer to the Northern District of Georgia and subsequently prevailed on a motion to dismiss the amended complaint. *Johnson v. Delta Air Lines Inc.* (Northern District of Georgia).
- Represented American International Group (AIG), FSC Securities Corporation, Financial Services Corporation, SunAmerica Asset Management Corporation, SunAmerica Capital Services Inc., SunAmerica Fund Services Inc., and Wharton Business Group in a putative class action alleging various breaches of fiduciary duty under ERISA for a trustee-directed defined contribution plan, including excessive fees. We prevailed on partial summary judgment, defeating the plaintiffs' prohibited transaction claims. The case settled during expert discovery. *Goldenberg v. Indel Inc.* (District of New Jersey).
- Defended two class action lawsuits alleging breaches of fiduciary duty in the selection of investment options under a self-directed 401(k) plan and the sale by First Union's 401(k) plan of spin-off stock. We won partial summary judgment on the first of the two lawsuits and settled all remaining claims. *Franklin, et al. v. First Union Corporation, et al.* (Eastern District of Virginia).

## Publications & Presentations

### Publications

- "Can You Keep a Secret? Attorney-Client Privilege and the Work-Product Doctrine in the ERISA/Fiduciary Context," *Bloomberg BNA Benefits Practitioners' Guide*, October 27, 2016.

- “Determining ERISA Duties Post-*Dudenhoeffer*,” *Law360*, March 26, 2015.
- “What SCOTUS' Stock Drop Decision Means for ERISA,” *Workforce.com*, August 19, 2014.
- “'Presumption of Prudence' in ERISA Cases at Risk?,” *Law360*, December 4, 2013.
- “H. Douglas Hinson Says ERISA Litigation Will Continue to Grow for the Foreseeable Future,” *Bloomberg BNA ERISA Litigation Tracker Litigator Q&A*, November 22, 2013.

## ***Education***

- Georgetown University (J.D., 1986)
- Emory University (B.A., 1982)

## ***Admitted to Practice***

- Georgia
- District of Columbia

## ***Related Services***

ERISA Litigation | Litigation | Employee Benefits & Executive Compensation | Insurance | Retail | Tax | Employee Stock Ownership Plan (ESOP) Transactions and Litigation