

Emily Catherine Hootkins

Senior Associate

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Emily's track record of prevailing in ERISA litigation cases is why clients rely on her for counsel on regulatory compliance issues, dispute resolution, and insight to avoid future litigation. Her clients include employers, plan sponsors, and fiduciaries. She dedicates her time to pro bono services with the same tenacity.



Emily Hootkins is a senior associate in the Atlanta office, where she focuses her practice on the defense of employee benefits disputes and counseling plan sponsors and fiduciaries on regulatory compliance issues and litigation avoidance strategies. Emily has extensive experience defending ERISA lawsuits, including class actions involving employer stock, service provider fees, plan investments, benefit terminations, retiree health and welfare benefits, private ESOP transactions, and severance matters. Emily also regularly advises clients on individual benefit claims, both during the administrative review process and litigation. She also frequently represents clients in government investigations for civil and criminal violations of ERISA.

In addition to her ERISA practice, Emily is committed to providing pro bono legal services. She is a VA accredited attorney and performs pro bono work through referrals from Alston & Bird's Wills Program and the Atlanta Volunteer Lawyers Foundation.

Emily is the vice chair of publications for the American Bar Association's TIPS Employee Benefits Committee. She is also on the leadership committee of the Atlanta chapter of the Women in Pensions Network. Emily was named a Super Lawyers Rising Star for Employee Benefits in Georgia 2016–2019. She graduated in 2011, cum laude, from Harvard Law School, where she was awarded Dean's Scholar Prizes in bankruptcy and corporate reorganization, evidence, and trusts and estates. She received her B.A. from Emory University in 2008.

Representative Experience

- Obtained dismissal of all claims in a putative class action challenging a service provider's fee-sharing arrangement with Financial Engines. The plaintiffs alleged fiduciary breach and prohibited transaction claims related to the service provider's receipt of fees from Financial Engines, claiming that such fees were impermissible kickbacks for including Financial Engines as an investment adviser available through the recordkeeping platform. Our motion to dismiss was granted in its entirety, and the plaintiffs were denied further leave to amend. *Chendes v. Xerox HR Solutions LLC*, No. 2:16-cv-13980 (E.D. Mich.).
- Obtained dismissal of all claims in a putative class action alleging that the 401(k) plan at issue included investments that were both more expensive and more poorly performing than comparable investment options. The court found that the plaintiffs did not have standing because they failed to allege that they invested in the criticized investment funds or paid the fees that they claimed were excessive. The plaintiffs did not file an appeal. *Johnson v. Delta Air Lines Inc., et al.*, No. 1:17-cv-02608 (N.D. Ga.).
- Prevailed on a motion to compel arbitration in an action seeking damages in connection with the distribution of money from a joint account. *Modares v. Fidelity Brokerage Services LLC*, No. 14-A-1178 (State Ct. Cobb Co., Ga.).

- Prevailed on a motion for summary judgment in a dispute brought by a former American Basketball Association player regarding claims for pension benefits under the American Basketball Association Players' Retirement Plan. The court determined that the committee's benefit decision was both de novo correct and not arbitrary and capricious. The court also found that there was no breach of fiduciary duty and no basis to award statutory penalties based on the alleged failure to provide an earlier version of the plan document. *Gilmore v. American Basketball Association Players' Retirement Plan*, No. 3:15-cv-00337 (M.D. Fla.).
- Prevailed on a motion for final judgment on the administrative record on behalf of The Prudential Insurance Company of America in a case involving accidental death benefits. The court granted judgment in Prudential's favor on the breach of fiduciary duty claim because Prudential did not have a duty to inform the plaintiff of changes to the plan. The court also granted judgment in Prudential's favor on the benefits claim, supporting Prudential's application of a legal intoxication exclusion. *Winburn v. Progress Energy Carolinas Inc., et al.*, No. 4:11-cv-03527 (D.S.C.).
- Prevailed on a motion to dismiss for an insurance company in a dispute involving the tax reporting of short-term disability benefits. This decision was affirmed on appeal. *Stansel v. City of Atlanta, et al.*, No. 14-11232 (11th Cir.).
- Obtained dismissal with prejudice of all claims against a mortgage processing company in a putative class action alleging that the fiduciaries of the plan breached their fiduciary duties under ERISA by failing to withdraw company stock as an investment option once it became an imprudent investment and by misrepresenting and failing to disclose the true risks associated with investing in the company stock. *Zimlich v. Lender Processing Services Inc., et al.*, No. 3:13-cv-00205 (M.D. Fla.).
- Prevailed at trial while representing a pro bono client in an action for return of a security deposit, winning an award for the full security deposit plus attorneys' fees and costs.

Publications & Presentations

Publications

- "Recent Developments in Employee Benefit Law," *Tort Trial & Insurance Practice Law Journal*, Spring 2019.
- "Recent Developments in Employee Benefits Law," *Tort Trial & Insurance Practice Law Journal*, Vol. 54, No. 2, Spring 2019.
- "How Are the Fiduciary Duties Under the DOL's New Fiduciary Advice Rule Different from the Securities Laws?" *Benefits Law Journal*, Vol. 30, No. 3, Autumn 2017.
- "Recent Developments in Employee Benefits Law," *Tort Trial & Insurance Practice Law Journal*, Vol. 52, No. 2, Winter 2017.
- "Recent Developments in Employee Benefits Law," *Tort Trial & Insurance Practice Law Journal*, Vol. 51, No. 2, Winter 2016.
- "Illinois Supreme Court Affirms Constitutional Protection of Public Pensions," *Benefits Law Journal*, Vol. 28, No. 3, Autumn 2015.
- "6th Circ. Rejection of Disgorgement Brings ERISA Relief," *Law360*, April 8, 2015.
- "Recent Developments in Employee Benefits Law," *Tort Trial & Insurance Practice Law Journal*, Vol. 50, No. 2, Winter 2015.
- "Costs to Pension Withdrawal Liability May Change," *Law360*, August 28, 2014.
- "Living on a Prayer? Recent Challenges to the Church Plan Exemption," *Benefits Law Journal*, Vol. 27, No. 2, Summer 2014.

- “Labor Department Disclosure Compliance Is Key to Turning Off Plan Litigation,” *Bloomberg BNA*, February 14, 2014.
- “Recent Developments in Employee Benefits Law,” *Tort Trial & Insurance Practice Law Journal*, Vol. 49, No. 1, Fall 2013.
- “Cigna v. Amara’s Influence So Far,” *Law360*, July 8, 2013.
- “Recent Developments in Employee Benefits Law,” *Tort Trial & Insurance Practice Law Journal*, Vol. 48, No. 1, Fall 2012.
- “Clearing the Way for ERISA Trust Suits in 3rd Circuit,” *Law360*, May 8, 2012.
- “401(k) Plan Fee Litigation,” *West Securities Litigation: Forms and Analysis* (treatise update), July 2012 and 2013.
- “Recent Developments in Employee Benefits Law,” *Tort Trial & Insurance Practice Law Journal*, Vol. 47, No. 1, Fall 2011.

Presentations

- “Emerging Trends in Employee Benefit Plan Design and Administration,” 44th Annual TIPS Midwinter Symposium on Insurance and Employee Benefits, Coral Gables, FL, January 11-13, 2018.

Education

- Harvard University (J.D., 2011)
- Emory University (B.A., 2008)

Admitted to Practice

- Georgia

Related Services

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