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on Employee Benefits

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American College of  
Employee Benefits Counsel

The 13th Annual National Institute on

# ERISA Litigation

November 13-15, 2003

The Westin Michigan Avenue

Chicago, IL

*Early Bird Registration October 15th*

*Hotel Registration October 15th*

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15.67 CLE Credit Hours have been requested from 60-minute states and  
18.8 CLE Credit Hours have been requested from 50-minute states

# ERISA LITIGATION AGENDA

## THURSDAY • NOVEMBER 13, 2003

7:30 Registration and Networking Continental Breakfast

### 8:30 Welcoming Remarks and Overview

#### Program Co-Chairs

Evan Miller, *Hogan & Hartson LLP*

Jani K. Rachelson, *Cohen, Weiss and Simon LLP*

Mary Ellen Signorille, *AARP Foundation Litigation*

### 8:50 ERISA Civil Procedure and Remedies

The panelists will review the procedural aspects of litigating ERISA claims, including the elements of a claim, the proper parties, jurisdiction, venue, and statutes of limitations. Both plaintiffs' and defendants' counsel will focus on new developments, regarding when a cause of action arises, who can sue, who can be sued and the remedies that can be sought.

#### For the Plaintiff

Ronald G. Dean

*Ronald Dean, A Law Corporation*

#### For the Defendant

Nancy G. Ross

*McDermott, Will & Emery*

### 10:30 Morning Break

*Sponsored by AARP*

### 10:45 ERISA Civil Procedure II: Removal and Attorneys' Fees

This program segment focuses on two major Civil Procedure areas critical to ERISA litigation: removal and attorneys' fees. Failure to consider these critical opening and closing issues during the development of a comprehensive litigation strategy can be costly. The issue of whether a case may be removed from state court drives many important strategic initial considerations for plaintiffs and defendants. ERISA removal jurisprudence has evolved significantly as the courts examine the distinction between complete preemption versus conflict preemption under ERISA. Understanding whether a prevailing party will receive an award of attorneys' fees may affect how the respective parties approach the case. Whether fees are awarded also emerges as a subject in settlement negotiations. Because the ERISA standards for attorneys' fee awards vary to some degree in each circuit, understanding the standards applied in your jurisdiction is critical to formulating your end game strategy in litigation.

#### For the Plaintiff

Ronald S. Kravitz

*Liner Yankelevitz Sunshine & Regenstreif LLP*

#### For the Defendant

Martha Jo Wagner

*Venable LLP*

### 11:35 ERISA Preemption

ERISA preemption is a dominant issue in employee benefits litigation. Plaintiffs counsel run from ERISA preemption as they attempt to salvage common law claims, preserve a right to a jury trial and obtain meaningful remedies for their clients. Defendants embrace ERISA preemption because it provides a choice of forum, eliminates common law damage claims, and results in a bench trial. This program segment will focus on the latest developments in ERISA preemption, with particular emphasis on health-related claims and litigation trends.

#### For the Plaintiff

Mary Ellen Signorille

*AARP Foundation Litigation*

#### For the Defendant

Howard Shapiro

*Shook, Hardy & Bacon LLP*

### 12:25 Lunch (on your own)

### 1:45 ERISA Preemption (Continued)

#### For the Plaintiff

Mary Ellen Signorille

*AARP Foundation Litigation*

#### For the Defendant

Howard Shapiro

*Shook, Hardy & Bacon LLP*

### 2:35 Questions and Answers

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

# ERISA LITIGATION AGENDA

2:45 **Afternoon Break**

3:00 **Subrogation and Collection**

This session will focus on plan efforts to collect money owed to plans by participants who have collected money from third-party tortfeasors. The discussion will include whether a participant must honor a plan's subrogation provision, how much of the award can the plan collect, and how the participant's lawyer gets paid.

**For the Plaintiff**

**Ronald G. Dean**

*Ronald Dean, A Law Corporation*

**For the Defendant**

**Thomas H. Lawrence**

*Lawrence & Russell, LLP*

3:30 **Benefit Claims Litigation: Claim 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 claims review procedure. This segment of the program focuses upon the important prelude to benefit claims litigation: the claims review procedure. The speakers will address the revised 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**

**Elizabeth R. Lishner**

*Law Offices of Elizabeth R. Lishner*

**For the Defendant**

**Howard Shapiro**

*Shook, Hardy & Bacon LLP*

4:20 **Benefit Claims Litigation: Standard of Review and Evidence**

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**

**Martha Jo Wagner**

*Venable LLP*

5:10 **Questions and Answers**

5:30 **Reception**

## FRIDAY • NOVEMBER 14, 2003

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

8:45 **LTD Benefit Claims**

The panelists will address litigation arising from long-term disability plans. The focus on long-term disability claims will include a discussion of the standards of review where the insurer is conflicted by its dual roles as fiduciary and payor, "own occupation" disability plans, and burdens of proof, including life after the U.S. Supreme Court's decision in *Black & Decker Disability Plan v. Nord*.

**For the Plaintiff**

**Mark D. DeBofsky**

*Daley, DeBofsky & Bryant*

**For the Defendant**

**Lissa J. Paris**

*Murtha Cullina LLP*

9:35 **Spousal and Beneficiary Rights: Selected Litigation Topics**

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

**For the Plaintiff**

**Elizabeth R. Lishner**

*Law Offices of Elizabeth R. Lishner*

**For the Defendant**

**Jani K. Rachelson**

*Cohen, Weiss and Simon LLP*

# ERISA LITIGATION AGENDA

10:25 Morning Break

## 10:40 Discrimination in Employment and Employee Benefits

Although ERISA generally provides employers with substantial flexibility in the design of employee benefit plans to meet their needs and those of their employees, other federal laws, particularly the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA), may restrict employer plan design choices. In addition, in 1996 through the Health Insurance Portability and Accountability Act (HIPAA), Congress added a new prohibition under ERISA against discrimination in group health plans on the basis of health status factors. Whether providing certain employee benefits violates age discrimination laws has become controversial. The speakers will focus on the newest regulations and jurisprudence involving claims under the ADA, ADEA and ERISA.

### For the Plaintiff

**Phyllis C. Borzi**

*O'Donoghue & O'Donoghue*

### For the Defendant

**Lissa J. Paris**

*Murtha Cullina LLP*

11:30 Questions and Answers

11:45 Lunch (on your own)

## 1:00 Fiduciary Litigation: An Overview

Plaintiffs' counsel will discuss theories and strategies in shaping cases, including how to expand the potential group of defendants considering the claims against non-fiduciaries (including service providers to pension and welfare plans) under *Harris Trust v. Salomon, Smith Barney* and the status of fiduciary misrepresentation claims. Counsel for defendants will rebut, focusing on defense strategies, including limitations on fiduciary status and fiduciary responsibility, causation issues, potential availability of indemnification and contribution claims, and practical tips on plan procedures and methods of fiduciary decision-making to minimize the risk of litigation and/or put plan fiduciaries in a stronger defensive position if they are sued.

### For the Plaintiff

**William T. Payne**

*Schwartz, Steinsapir,*

*Dohrmann & Sommers LLP*

### For the Plan

**Martha Jo Wagner**

*Venable LLP*

### For the Service Providers

**Karen Wahle**

*O'Melveny & Myers LLP*

## 1:50 Litigation Involving Employer Securities

With many companies offering plans that permit participant-directed investments, as the market proves once again that what goes up can also come down, and with newspaper accounts revealing more corporate scandals, participant frustrations are developing faster than gains on their accounts. This panel will discuss recent litigation concerning employer securities, such as the Enron, WorldCom and Rite-Aid litigation. Among the topics included will be: the impact of participant direction under ERISA Section 404(c), claims of liability for the use of proprietary funds by financial institutions in their own plans, directed trustees, ignoring participant directions, duties of disclosure, and investment education/investment advice.

**Moderator:** **David R. Levin**, *Wiley Rein & Fielding LLP*

**Panelists:** **Ronald S. Kravitz**, *Liner Yankelevitz Sunshine & Regenstreif LLP*

**Jeffrey Lewis**, *Lewis & Feinberg PC*

**Evan Miller**, *Hogan & Hartson LLP*

**Nancy G. Ross**, *McDermott, Will & Emery*

3:30 Afternoon Break

# ERISA LITIGATION AGENDA

## 3:45 Ethical Considerations in ERISA Litigation

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 may 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 of such as 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:** David R. Levin, *Wiley Rein & Fielding LLP*

**Panelists:** Mary Ellen Signorille, *AARP Foundation Litigation*

Karen Wahle, *O'Melveny & Myers LLP*

Charles B. Wolf, *Vedder, Price, Kaufman & Kammholz*

## 4:45 Questions and Answers

## 5:00 Adjourn

# SATURDAY • NOVEMBER 15, 2003

## 8:30 Registration and Networking Continental Breakfast

## 9:00 Class Actions

Plaintiffs' and defendants' counsel will present their perspectives on the desirability and appropriateness of class actions in cases where plaintiffs seek relief for the plan under ERISA Section 409, and in cases (such as "serious consideration" cases) where plaintiffs seek individual relief under ERISA Section 502(a)(3).

### For the Plaintiff

Jeffrey Lewis

*Lewis & Feinberg, PC*

### For the Defendant

Evan Miller

*Hogan & Hartson LLP*

## 9:50 Statutory Violations Affecting Pension Benefits

Recent cases concerning underutilized but potentially effective statutory provisions to remedy pension benefit reductions will be discussed.

### For the Plaintiff

William T. Payne

*Schwartz, Steinsapir,*

*Dohrmann & Sommers LLP*

### For the Defendant

Phyllis C. Borzi

*O'Donoghue & O'Donoghue*

## 10:15 Morning Break

## 10:25 Roundtable

What goes into the development of a comprehensive litigation strategy if you're counsel for a participant pursuing an individual claim for medical benefits or long-term disability benefits? If you're counsel for the plan, how do you defend these claims? Plaintiffs' and defendants' counsel will present their perspectives on preparing complaints and selecting courses of action; motions to dismiss and for judgment on the pleadings; the discovery process; summary judgment; and use of experts.

**Moderator:** Mary Ellen Signorille, *AARP Foundation Litigation*

**Panelists:** Denise M. Clark, *HEREIU Welfare - Pension Funds*

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

Thomas H. Lawrence, *Lawrence & Russell, LLP*

Elizabeth R. Lishner, *Law Offices of Elizabeth R. Lishner*

Lissa J. Paris, *Murtha Cullina LLP*

## 12:30 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 Unique Features Does This National Institute Offer?

- An approach to ERISA from a purely litigation perspective, emphasizing the practical, not the theoretical
- Comprehensive course materials that will give you a resource for future study after you have been alerted to the key issues discussed during the program itself
- The opportunity to learn how to improve your client's chances with prelitigation strategies, including plan design features and practices
- Tips, techniques and advice you can use immediately from successful, experienced plaintiff and defense ERISA litigators

## What Past Participants Have Said ...

"I have intended to attend this seminar for years and only this year was able to do so. My advice: Make the time to attend this annual session if you are serious about ERISA Litigation."

- **Ross E. Chapman**, *Deming, Hughey, Chapman, Richardson, PC*

"The speakers were first class. They know the subject and somehow manage to be consistently clear and even charming!"

- **Gary Stone**, *Legal Services for the Elderly*

"Excellent course materials, written by experienced practitioners, which can be used for one's day-to-day practice."

- **Martell J. Hilderbrand**, *Intermountain Administrators*

"The speakers are 'the' experts in the field."

- **Michael D. Fitzgerald**, *Van Osdol, Magruder, Frickson and Redmond, PC*

## National Institute Faculty

### **Phyllis C. Borzi**

*O'Donoghue & O'Donoghue*  
Washington, DC

### **Denise M. Clark**

*HEREIU Welfare -  
Pension Funds*  
Aurora, IL

### **Ronald G. Dean**

*Ronald Dean, A Law Corporation*  
Pacific Palisades, CA

### **Mark D. DeBofsky**

*Daley, DeBofsky & Bryant*  
Chicago, IL

### **Ronald S. Kravitz**

*Liner Yankelevitz Sunshine &  
Regenstreif LLP*  
San Francisco, CA

### **Thomas H. Lawrence**

*Lawrence & Russell, LLP*  
Memphis, TN

### **David R. Levin**

*Wiley Rein & Fielding LLP*  
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### **Elizabeth R. Lishner**

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### **Evan Miller**

**Program Co-Chair**  
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Washington, DC

### **Lissa J. Paris**

*Murtha Cullina LLP*  
Hartford, CT

### **William T. Payne**

*Schwartz, Steinsapir, Dohrmann  
& Sommers LLP*  
Pittsburgh, PA

### **Jani K. Rachelson**

**Program Co-Chair**  
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New York, NY

### **Nancy G. Ross**

*McDermott, Will & Emery*  
Chicago, IL

### **Howard Shapiro**

*Shook, Hardy & Bacon LLP*  
New Orleans, LA

### **Mary Ellen Signorille**

**Program Co-Chair**  
*AARP Foundation Litigation*  
Washington, DC

### **Martha Jo Wagner**

*Venable LLP*  
Washington, DC

### **Karen Wahle**

*O'Melveny & Myers LLP*  
Washington, DC

### **Charles B. Wolf**

*Vedder, Price, Kaufman &  
Kammholz*  
Chicago, IL

# ERISA LITIGATION INFORMATION

## TUITION

Attend the entire two and a half day program, each breakfast, and the reception, and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by **Wednesday, October 15** to receive the discount.

### Early Bird Registration - October 15

\$945 General Public

\$845 ABA Member (*\$100 Savings - join a Section, and save even more!*)

\$745 Sponsoring Section Member (*\$200 Savings*)

### Full Tuition - After October 15

\$995 General Public

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

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

### On-Site Tuition

\$1045 General Public

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

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

## ADDITIONAL SAVINGS

Register three or more people and receive an additional \$50 reduction in your program tuition! Every registrant will receive a copy of the informative course materials book which can be used as a comprehensive resource long after the program is held. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

## MCLE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for lawyers. 15.67 hours of credit, including 1 hour of ethics credit, have been requested from states that recognize a 60-minute credit hour. 18.8 hours of credit, including 1 hour of ethics credit, have been requested from those states granting credit hours on a 50-minute basis (18.5 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 the Center for CLE at (312) 988-6217 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 NYMCLE.

## QUESTIONS?

If you have a specific question that you want answered, you can fax it until November 12 to Karen Case (FAX 202.662.8682), or ask the speakers directly during the program presentation.

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Karen Case at 202.662.8641. Reasonable advance notice is requested.

# ERISA LITIGATION INFORMATION

## CANCELLATIONS

Refunds will be made only if requests are received by **Wednesday, October 15**, and a \$50 administrative fee will be charged. **No refunds will be made for requests received after Wednesday, October 15.** Substitute registrants for National Institutes are welcome.

## PROGRAM CONFIRMATION

Written confirmation of your registration will be sent 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 presentation, please call the ABA (202.662.8641) at least 24 hours in advance to confirm that your registration was received and the program is being held as scheduled.

## HOTEL INFORMATION

### DEADLINE FOR HOTEL RESERVATIONS:

**Wednesday, October 15**

You may make hotel reservations at The Westin Michigan Avenue Hotel, 909 North Michigan Avenue, Chicago, IL 60611. A limited number of rooms have been set aside for National Institute registrants at \$189 for a single or double room. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released **Wednesday, October 15**, after which the hotel will accept reservations on a space-available basis only. All reservations must be guaranteed with a major credit card. A one night's deposit is required to hold a reservation. The deposit is refundable if the reservation is cancelled 72 hours prior to arrival. **To register at the hotel, call the hotel directly at 312.943.7200, and be sure to mention the ABA National Institute - ERISA Litigation - to receive the special discounted rate.**

## AIRLINE INFORMATION

The American Bar Association has secured discounted rates with American, Delta, and US Air for all National Institute participants. To make reservations, or for more information call:

**American Airlines** 800.433.1790

ABA Account 15794

**Delta Airlines** 800.241.6760

ABA Account 189408A

**US Air** 877.874.7687

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**October 2-3, 2003**

14th Annual National Institute on  
**Health and Welfare Benefit Plans**  
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**November 6-7, 2003**

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**Compensation for Executives and Directors**  
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**Coming in Spring 2004**

18th Annual National Institute on  
**ERISA Basics**  
Chicago, IL

18th Annual National Institute on  
**Employee Benefits in  
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New York, NY

# REGISTRATION AND ORDER FORM

## ERISA Litigation

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### EARLY BIRD REGISTRATION - Before October 15

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### FULL TUITION - After October 15

- \$995** General Public
- \$895** ABA Member  
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- \$795** Sponsoring Section Member *(\$200 Savings)*  
ABA # \_\_\_\_\_

### ON-SITE TUITION

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- \$845** Sponsoring Section Member *(\$200 Savings)*  
ABA # \_\_\_\_\_
- Three 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, PC5480017**, (tapes and course materials) available three weeks following the presentation, at the special price of \$649.95 including postage and handling\*.

Send me the **ERISA Litigation Course Materials, PC5480016** at the special prepublication price of \$267.95 including postage and handling\*.

Send me the JCEB calendar for upcoming Employee Benefits Membership Events

### TO REGISTER

**Mail:** American Bar Association  
JCEB Registrar  
740 15th Street, NW, 10th Floor  
Washington, DC 20005-1022

**Fax:** 202.662.8682 *(credit card only)*

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\*District of Columbia residents add 6% use tax, Illinois residents add 8.75% sales tax, and Maryland residents add 5% sales tax, before including domestic postage and handling charges. Price is subject to change after 11/17/03.

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- 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.
  - Section of Business Law, \$45
  - Section of Health Law, \$40
  - Section of Labor and Employment Law, \$40
  - Section of Real Property, Probate and Trust Law, \$40
  - Section of Taxation, \$50
  - Section of Tort Trial and Insurance Practice, \$50