



ABA Joint Committee
on Employee Benefits

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Business Law

Health Law

Labor and

Employment Law

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Practice

and the

American College of
Employee Benefits Counsel

The 14th Annual National Institute on

ERISA Litigation

November 11-12, 2004

The Westin Michigan Avenue

Chicago, IL

Early Bird Registration October 13th

Hotel Registration October 13th

www.abanet.org/jceb



12.08 CLE Credit Hours have been requested from 60-minute states and
14.50 CLE Credit Hours have been requested from 50-minute states

ERISA LITIGATION AGENDA

THURSDAY • NOVEMBER 11, 2004

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

8:30 **Welcoming Remarks and Overview**

Program Co-Chairs

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

Evan Miller, *Hogan & Hartson LLP*

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

8:45 **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, the remedies that can be sought and attorneys' fees awards.

For the Plaintiff

Ronald S. Kravitz

Liner Yankelevitz Sunshine & Regenstreif LLP

For the Defendant

Nancy G. Ross

McDermott, Will & Emery

9:35 **Subrogation and Reimbursement**

This session will focus on plans' 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 the plan can collect, how the participant's lawyer gets paid, and the current state of the law in light of *Great West Life v. Knudson*.

For the Plaintiff

Mark D. DeBofsky

Daley, DeBofsky & Bryant

For the Defendant

Lisa M. Gomez

Cohen, Weiss and Simon LLP

10:05 **Questions and Answers**

10:15 **Morning Break**

10:30 **ERISA Preemption and Removal**

ERISA preemption—procedurally and substantively—is a dominant issue in employee benefits litigation, particularly in connection with the regulation of health benefits. 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, in particular the year's latest Supreme Court preemption case of *Aetna Health Inc. v. Davila*.

For the Plaintiff

Mary Ellen Signorille

AARP Foundation Litigation

For the Defendant

Evan Miller

Hogan & Hartson LLP

11:45 **Questions and Answers**

11:55 **Lunch (on your own)**

ERISA LITIGATION AGENDA

1:15 **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 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 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

Mark D. DeBofsky

Daley, DeBofsky & Bryant

For the Defendant

Lisa M. Gomez

Cohen, Weiss and Simon LLP

2:05 **Benefit Claims Litigation: Claim 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

Elizabeth R. Lishner

Law Offices of Elizabeth R. Lishner

For the Defendant

Martha Jo Wagner

Venable LLP

2:55 **Questions and Answers**

3:15 **Afternoon Break**

3:30 **Fiduciary Litigation Including Employer Securities**

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. This panel 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, ignoring participant directions, duties of disclosure, and investment education/investment advice. All of the panelists are litigating these types of cases, including Enron, WorldCom and Rite-Aid, and will discuss the litigation strategies in these lawsuits.

For the Plaintiff

Jeffrey Lewis

Lewis & Feinberg, PC

Ronald S. Kravitz

*Liner Yankelevitz Sunshine &
Regenstreif LLP*

For the Defendant

Mark Casciari

Seyfarth Shaw LLP

Myron D. Rumeld

Proskauer Rose LLP

4:45 **Questions and Answers**

5:00 **Reception**

ERISA LITIGATION AGENDA

FRIDAY • NOVEMBER 12, 2004

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

8:30 **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, the 1996 Health Insurance Portability and Accountability Act (HIPAA), added a new prohibition under ERISA against discrimination in group health plans on the basis of health status factors. The panelists will focus on the newest regulations and jurisprudence involving claims under the ADA, ADEA, and ERISA, including cash balance litigation, and the recent controversy over whether providing certain employee benefits violates age discrimination laws.

For the Plaintiff

Phyllis C. Borzi

O'Donoghue & O'Donoghue LLP

For the Defendant

Lissa J. Paris

Murtha Cullina LLP

9:20 **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

Elizabeth R. Lishner

Law Offices of Elizabeth R. Lishner

For the Defendant

Martha Jo Wagner

Venable LLP

10:10 **Questions and Answers**

10:15 **Morning Break**

10:30 **Spousal and Beneficiary Rights: Selected Litigation Topics**

Jani K. Rachelson

Cohen, Weiss and Simon LLP

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.

11:20 **Benefit and Cutback Litigation**

The panel will explore recent case law and regulatory developments when companies endeavor to eliminate or cut back on benefits, or reduce benefit costs in a manner perceived to be a cutback. Topics will include recent litigation developments, accrued benefit litigation including the Supreme Court's recent decision in *Central Laborers' Pension Fund v. Heinz*, and retiree health litigation.

For the Plaintiff

Mary Ellen Signorille

AARP Foundation Litigation

For the Defendant

Phyllis C. Borzi

O'Donoghue & O'Donoghue LLP

12:10 **Questions and Answers**

ERISA LITIGATION AGENDA

12:15 **Lunch (on your own)**

1:30 **Plan Termination Litigation**

The recent and significant bear market, combined with bankruptcies in the steel, airline, and textile industries, have created a surge in single employer plan terminations and litigation involving the PBGC. The panelists will discuss the current key PBGC cases, including pending litigation and recent regulatory developments involving setting the plan termination dates, the scope of the PBGC guarantee, and creditors' rights and provide perspective from the PBGC and plan sponsors, creditors, and purchasers of plan sponsor assets.

For the Plaintiff

James J. Keightley
PBGC

For the Defendant

David R. Levin
Wiley Rein & Fielding LLP

2:20 **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 panelists 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

Jeffrey Lewis
Lewis & Feinberg, PC
Mark D. DeBofsky
Daley, DeBofsky & Bryant

For the Defendant

Evan Miller
Hogan & Hartson LLP
Lissa J. Paris
Murtha Cullina LLP

3:45 **Afternoon Break**

4:00 **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 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.

Panelists:

David R. Levin, *Wiley Rein & Fielding LLP*
Denise Clark, *H.E.R.E.I.U. Welfare – Pension Funds*
Charles C. Jackson, *Seyfarth Shaw LLP*
Charles B. Wolf, *Vedder, Price, Kaufman & Kammholz PC*

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 ...

Probably the best program I've ever attended. Great materials and knowledgeable effective speakers. Remarkable.

William Walker, *Walker & Van Heijenoort, PC*

As a solo practitioner, this course serves as my theoretical associate. I receive all my research and updates in one complete format.

Ned Foley, *Law Office of Edward J. Foley, Jr.*

Having one plaintiff-side and one defendant-side speaker during every session has at least two benefits missing from most seminars: First, it gives the audience the perspective of two experienced lawyers at once. But, second and more importantly, it brings the advantages of the adversarial system to the seminar, especially because these speakers are not shy about calling each other out.

David Tetrick, *King & Spalding LLP*

The program was current leading edge in ERISA issues. The program moved well and covered a broad area in a confined schedule.

Michael Grabhorn, *Capital Resources Corporation*

National Institute Faculty

Phyllis C. Borzi
*O'Donoghue &
O'Donoghue LLP*
Washington, DC

Ronald S. Kravitz
*Liner Yankelevitz Sunshine &
Regenstreif LLP*
San Francisco, CA

Jani K. Rachelson
Program Co-Chair
Cohen, Weiss and Simon LLP
New York, NY

Denise M. Clark
*H.E.R.E.I.U. Welfare - Pension
Funds*
Aurora, IL

David R. Levin
Wiley Rein & Fielding LLP
Washington, DC

Nancy G. Ross
McDermott, Will & Emery
Chicago, IL

Mark Casciari
Seyfarth Shaw LLP
Chicago, IL

Jeffrey Lewis
Lewis & Feinberg, PC
Oakland, CA

Myron D. Rumeld
Prosakauer Rose LLP
New York, NY

Mark D. DeBofsky
Daley, DeBofsky & Bryant
Chicago, IL

Elizabeth R. Lishner
Program Co-Chair
*Law Offices of Elizabeth R.
Lishner*
Santa Monica, CA

Mary Ellen Signorille
AARP Foundation Litigation
Washington, DC

Lisa M. Gomez
Cohen, Weiss and Simon LLP
New York, NY

Evan Miller
Program Co-Chair
Hogan & Hartson LLP
Washington, DC

Martha Jo Wagner
Venable LLP
Washington, DC

Charles C. Jackson
Seyfarth Shaw LLP
Chicago, IL

Lissa J. Paris
Murtha Cullina LLP
Hartford, CT

Charles B. Wolf
*Vedder, Price, Kaufman &
Kammholz, PC*
Chicago, IL

James J. Keightley
PGBC
Washington, DC

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 **Wednesday, October 13** to receive the discount.

Early Bird Registration - October 13

\$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 13

\$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. 12.08 hours of credit, including 1 hour of ethics credit, have been requested from states that recognize a 60-minute credit hour. 14.50 hours of credit, including 1 hour of ethics credit, have been requested from those states granting credit hours on a 50-minute basis (14 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 NY MCLE.

QUESTIONS?

If you have a specific question that you want answered, you can fax it prior to November 10 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 13**, and a \$50 administrative fee will be charged. **No refunds will be made for requests received after Wednesday, October 13.** 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 13

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 \$199 for a single or \$209 double deluxe room. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released **Wednesday, October 13**, 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.** For information on how to make your hotel reservations on-line, please see our web site: www.abanet.org/jceb.

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 16666

Delta Airlines 800.241.6760

ABA Account 189419A

US Air 877.874.7687

ABA Account 36632473

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www.abanet.org/jceb

October 21-22, 2004

15th Annual National Institute on
Health and Welfare Benefit Plans
Washington, DC

November 4-5, 2004

19th Annual National Institute on
Compensation for Executives
and Directors
New York, NY

COMING IN SPRING 2005

19th Annual National Institute on
ERISA Basics
Chicago, IL

19th Annual National Institute on
Employee Benefits in
Mergers and Acquisitions
New York, NY

REGISTRATION AND ORDER FORM

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EARLY BIRD REGISTRATION - Before October 13

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FULL TUITION - After October 13

- \$995** General Public
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ABA # _____
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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, PC5470564P**, (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, PC5470563** 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)*

PAYMENT *(must include one of the following)*

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American Bar Association - JCEB
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- American Express

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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 11/15/04.

ABA SPONSORING SECTIONS

Join one of these dynamic Sections, and become active in one of their employee benefits committees. Join one or more 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.
 - Section of Business Law, \$55
 - Section of Health Law, \$50
 - Section of Labor and Employment Law, \$40
 - Section of Real Property, Probate and Trust Law, \$50
 - Section of Taxation, \$50
 - Section of Tort Trial and Insurance Practice, \$50

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Chicago, IL

**19th Annual National Institute on
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Mergers and Acquisitions**
New York, NY

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American Bar Association
Joint Committee on Employee Benefits
740 15th Street, NW, 10th Floor
Washington, DC 20005-1022

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