

ERISA Employee Benefit Plan Litigation

Overview

We have been litigating ERISA fiduciary issues for the past 30 years and were directly involved in many of the most significant ERISA fiduciary liability cases decided by the U.S. Supreme Court. We represented amicus curiae American Council of Life Insurers (ACLI) in two seminal ERISA fiduciary cases before the U.S. Supreme Court: *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 510 U.S. 86 (1993), *aff'g*, 970 F.2d 1138 (2d Cir. 1992); and *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), *aff'g*, 948 F.2d 607 (9th Cir. 1991). In *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002), we acted as lead counsel for an insurer in a case clarifying the relief available under ERISA for breach of fiduciary duty claims, and argued the case before the U.S. Supreme Court. We also represented amici curiae America's Health Insurance Plans, the American Benefits Council, and the National Association of Manufacturers before the U.S. Supreme Court in *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006), involving the scope of relief available for fiduciary breaches.

Carlton Fields also has served as ERISA counsel to ACLI and a number of other major insurance trade associations, such as America's Health Insurance Plans and the National Organization of Life and Health Insurance Guaranty Associations. In recent years, we have authored or collaborated on numerous amicus efforts in which fiduciary issues dominated the litigation, including *McCaffree Financial Corp. v. Principal Life Insurance Co.*, 811 F.3d 998 (8th Cir. 2016); *Merrimon v. Unum Life Insurance Company of America*, 758 F.3d 46 (1st Cir. 2014), *cert. denied*, 135 S. Ct. 1182 (2015), amicus curiae brief found at 2013 WL 6910034; and *Edmonson v. Lincoln National Life Insurance Co.*, 725 F.3d 406 (3d Cir. 2013), *cert. denied*, 572 U.S. 1114 (2014), amicus curiae brief found at 2012 WL 3144171.

Aside from litigation, Carlton Fields' labor and employment and tax practices also regularly provide advice and counsel with respect to ERISA regulatory issues, tax issues, and state fiduciary and trust law issues, and have substantial experience representing clients in proceedings initiated by the Department of Labor, the Pension Benefit Guaranty Corp., and the Internal Revenue Service, and in obtaining prohibited transaction exemptions under ERISA.

Experience

- *Beary v. ING Life Ins. & Annuity Co.*, 520 F. Supp. 2d 356 (D. Conn. 2007). Dismissal of putative class action seeking nationwide class of all Section 457 plan sponsors, alleging breach of fiduciary duty and unjust enrichment claims based on receipt of "revenue sharing" payments from mutual funds and mutual fund advisers.
- *Bodnar v. John Hancock Funds, Inc.*, No. 2:06-cv-00087, 2008 WL 155019 (N.D. Ind. Jan. 15, 2008). Obtained partial summary judgment and successful settlement on ERISA claims of putative class representative alleging breach of fiduciary duty involving imposition of transfer adjustment factor upon stable value fund offered to 401(k) plan participants.
- *Coleman Clinic, Ltd. v. Mass. Mut. Life Ins. Co.*, 698 F. Supp. 740 (C.D. Ill. 1988). Represented insurer in ERISA action in which the court held that an employer who has delegated his administrative duties cannot rely on its status as a plan administrator as a basis for standing to sue.
- *Cramer v. John Alden Life Ins. Co.*, 763 F. Supp. 2d 1196 (D. Mont. 2011). Motion to dismiss a putative class action granted, holding that the speculative possibility of future harm is insufficient to confer standing, the insurer was not the plan administrator, and the assertion that a subrogation claim exists is not equivalent to enforcement of a right of subrogation.
- *Doe v. Hartford Life & Accident Ins. Co.*, No. 2:05-cv-02512, 2008 WL 5400984 (D.N.J. Dec. 23, 2008). Summary judgment granted to insurer in putative ERISA class action asserting breach of fiduciary duty in connection with 24-month mental illness limitation on benefits.
- *In re Dynegy, Inc. ERISA Litig.*, 309 F. Supp. 2d 861 (S.D. Tex. 2004). Successful motion to dismiss for a 401(k) plan directed trustee in ERISA litigation similar to the *Enron* litigation in which numerous 401(k) plan participants sued for damages caused by losses in the value of Dynegy stock held in their accounts.
- *Fechter v. Conn. Gen. Life Ins. Co.*, 800 F. Supp. 182 (E.D. Pa. 1992). ERISA class action brought by employee participants seeking damages arising from the reversion of excess assets in the termination of employer's defined benefit retirement plan; judgment entered after nonjury trial in favor of insurer, holding insurer was not a fiduciary under ERISA.
- *Fenton v. John Hancock Mut. Life Ins. Co.*, 400 F.3d 83 (1st Cir. 2005). Decision from the First Circuit reversing the

district court's grant of summary judgment in favor of former employees who sought enhanced early retirement benefits under company's ERISA-qualified pension plan.

- *Harper-Wyman Co. v. Conn. Gen. Life Ins. Co.*, No. 1:86-cv-09595, 1991 WL 18467 (N.D. Ill. Feb. 8, 1991). Denying certification of class of more than 1,000 defined benefit pension plan group annuity contract owners alleging ERISA, RICO, securities, and common law fraud claims.
- *Harper-Wyman Co. v. Conn. Gen. Life Ins. Co.*, No. 1:86-cv-09595, 1991 WL 285746 (N.D. Ill. Dec. 23, 1991). Granting partial summary judgment for defendant in putative class action and dismissing claims for breach of fiduciary duty under ERISA brought by pension plan sponsor and administrators, holding issuer of guaranteed investment contracts was not a fiduciary under ERISA.
- *Montoya v. ING Life Ins. & Annuity Co.*, 653 F. Supp. 2d 344 (S.D.N.Y. 2009). ERISA class action by current and former teachers and members of New York State teachers union against union and issuer of group annuity contract for alleged breach of fiduciary duties in connection with Section 403(b) retirement plan. Successful motion to dismiss filed on grounds that school district's retirement plan was a "governmental plan" exempt from ERISA.
- *Montoya v. N.Y. State United Teachers*, 754 F. Supp. 2d 466 (E.D.N.Y. 2010). Class action by members of New York State teachers union and participants in Section 403(b) retirement plan for alleged breach of fiduciary duty under New York common law based on endorsement fees and revenue sharing payments. Successful removal to federal court and motion to dismiss based on preemption under the Securities Litigation Uniform Standards Act (SLUSA).
- *Phones Plus, Inc. v. Hartford Fin. Servs. Grp., Inc.*, No. 3:06-cv-01835 (D. Conn. 2011). Co-counsel in defense of retirement plan service provider in putative nationwide class action of 401(k) plan sponsors, alleging breach of fiduciary duty and prohibited transaction claims under ERISA based on receipt of "revenue sharing" payments from mutual funds offered on the service provider's investment platform. The plaintiff also sought certification of a sub-class of plan sponsors, which retained a co-defendant investment adviser that provided recommendations regarding investment options. Case settled while defendant's motion for summary judgment and plaintiff's motion for class certification were pending.
- *Rochester Radiology Assoc., P.C. v. Aetna Life Ins. Co.*, 616 F. Supp. 985 (W.D.N.Y. 1985). Claims brought by retirement plan and trustees for breach of contract, breach of fiduciary duty, and violations of ERISA arising out of market value adjustment under group annuity contract dismissed with prejudice.
- *Sadeh v. Aetna Life Ins. Co.*, No. 2:95-cv-03674 (C.D. Cal. 1996). Summary judgment obtained dismissing lawsuit brought by participants in 401(k) plan alleging breach of fiduciary duties under ERISA.
- *Turner v. Talbert*, No. 3:04-cv-00450, 2009 WL 1683297 (M.D. La. June 15, 2009), *reconsideration denied*, 2009 WL 2356662 (M.D. La. July 30, 2009). Certification denied in putative class action alleging breach of fiduciary duty in connection with failure on the part of the trustee to transmit employee contributions to the plan.
- *Ziegler v. Conn. Gen. Life Ins. Co.*, 916 F.2d 548 (9th Cir. 1990). Affirming district court's judgment on the pleadings and dismissal of lawsuit brought by pension plan administrators claiming breach of ERISA fiduciary duties in connection with transfer of assets upon termination of plan, where ERISA preempted state law claims and ERISA claims were barred by the statute of limitations.

Recent ERISA Trade Association Representation

- *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406 (3d Cir. 2013), *cert. denied*, 572 U.S. 1114 (2014), amicus curiae brief found at 2012 WL 3144171. Represented ACLI as amicus curiae in support of group life insurer's successful effort to obtain affirmance of district court's grant of summary judgment in putative ERISA class action alleging fiduciary breach for insurer's use of retained asset accounts (RAAs), where plan terms were silent regarding method of payment of life insurance benefits.
- *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No. 12-4092 (2d Cir. 2012). Represented ACLI as amicus curiae in support of 401(k) retirement plan service provider's petition for interlocutory appellate review, pursuant to Federal Rule of Civil Procedure 23(f), of district court's order certifying a nationwide plan administrator class under Rule 23(b)(3) in ERISA litigation involving alleged mutual fund "revenue sharing" fees received by service provider.
- *Leimkuehler v. Am. United Life Ins. Co.*, 713 F.3d 905 (7th Cir. 2013). Represented ACLI as amicus curiae in support of 401(k) retirement plan service provider's successful effort to obtain affirmance of district court's grant of summary judgment in putative ERISA class action asserting fiduciary claims arising from service provider's receipt of "revenue sharing" fees from mutual fund investment advisers and/or distributors. The U.S. Department of Labor filed an amicus brief in support of the plaintiff plan trustee, to which ACLI's brief responded.

- *McCaffree Fin. Corp. v. Principal Life Ins. Co.*, 811 F.3d 998 (2016). Represented ACLI as amicus curiae in support of district court's grant of defendant 401(k) retirement plan service provider's motion to dismiss plaintiff plan administrator's complaint in putative ERISA class action involving allegedly excessive asset-based fees charged by service provider. District court held that complaint did not plausibly allege fiduciary responsibility with respect to service provider's receipt of fees at issue. The U.S. Department of Labor filed an amicus brief in support of plaintiff, to which ACLI's brief responded in part.
- *Merrimon v. Unum Life Ins. Co. of Am.*, 758 F.3d 46 (1st Cir. 2014), amicus curiae brief found at 2013 WL 6910034. Represented ACLI as amicus curiae in support of group life insurer's successful appeal overturning district court's fiduciary liability ruling and classwide monetary award in ERISA litigation involving insurer's use of RAAs to pay life insurance benefits. First Circuit held that insurer's general account funds backing the RAAs were not plan assets and that insurer did not breach any fiduciary duty under ERISA by paying benefits through RAAs, where this method of payment is called for under plan terms.
- *Nationwide Life Ins. Co. v. Haddock*, 460 F. App'x 26 (2d Cir. 2012), amicus curiae brief found at 2011 WL 956088. Represented ACLI as amicus curiae in support of 401(k) retirement plan service provider's successful appeal of district court's class certification order in ERISA litigation involving alleged mutual fund "revenue sharing" fees received by service provider. Second Circuit vacated the district court's class certification order in light of U.S. Supreme Court's opinion in *Wal-Mart Stores, Inc. v. Dukes*, holding that the plan-specific allocation of any disgorged funds "would require the type of non-incident, individualized proceedings for monetary awards that *Wal-Mart* rejected under Rule 23(b)(2)."
- *Otte v. Life Ins. Co. of N. Am.*, No. 11-1973 (1st Cir. 2011), *appeal voluntarily dismissed*. Represented ACLI as amicus curiae in support of group life insurer's appeal seeking to overturn district court's class certification order in ERISA litigation involving insurer's use of RAAs to pay life insurance benefits. Case settled following oral argument but prior to appellate disposition.
- *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364 (6th Cir. 2015). Represented ACLI and other industry, business, and employer groups as amici curiae in support of successful appeal before Sixth Circuit, sitting en banc, relating to district court's profit disgorgement award against claim administrator/group insurer in ERISA disability benefits litigation. Sixth Circuit held that plaintiff could not obtain an additional monetary remedy as "appropriate equitable relief" under ERISA Section 502(a)(3), where plaintiff had already obtained an adequate "make whole" award for defendant's wrongful denial of benefits under ERISA Section 502(a)(1)(B). This decision followed the firm's representation of ACLI as amicus curiae in support of insurer's successful petition for en banc review of Sixth Circuit panel's decision affirming disgorgement award.
- *United States ex rel. Loughren v. UNUM Grp.*, 613 F.3d 300 (1st Cir. 2010). Represented America's Health Insurance Plans and the American Benefits Council as amici curiae in support of insurer's appeal in which First Circuit vacated district court judgment in favor of plaintiff qui tam relator in federal civil False Claims Act litigation involving private long-term disability insurance industry practices relating to insureds' applications for Social Security Disability Insurance (SSDI) benefits.

Other Selected ERISA Litigation

- *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955 (9th Cir. 2006) (en banc). Decision from the Ninth Circuit clarifying the standard of review courts should adopt when reviewing a denial of benefits under an ERISA employee welfare benefit plan by an insurer operating under a structural conflict of interest.
- *Adelstein v. Unicare Life & Health Ins. Co.*, 135 F. Supp. 2d 1240 (M.D. Fla. 2001), *aff'd*, 31 F. App'x 935 (11th Cir. 2002). Obtained summary judgment in the district court and affirmance before the Eleventh Circuit, holding that the "make whole" doctrine should not apply, and insurer had a right to subrogation against ERISA welfare plan participant, who breached terms of plan by failing to provide notice of settlement with third party.
- *Gilbert v. Alta Life & Health Ins. Co.*, 276 F.3d 1292 (11th Cir. 2001). Ruling by Eleventh Circuit directing the district court to dismiss plaintiff's state law claims as preempted by ERISA.
- *Halbach v. Great-West Life & Annuity Ins. Co.*, 561 F.3d 872 (8th Cir. 2009). Holding that the district court erred in finding that amendments to a welfare benefit plan were invalid and in granting summary judgment that the welfare benefits had vested, but also affirming that the relief sought by plaintiffs was compensatory in nature and not available under ERISA.
- *Hamilton v. AIG Life Ins. Co.*, 182 F. Supp. 2d 39 (D.D.C. 2002). Motion for summary judgment granted where the terms of insurer's benefit plan satisfied ERISA requirements for deferential review, and where insured's denial of benefits was not an abuse of discretion.

- *Xerox Corp. v. Cal. Life & Health Ins. Guar. Assoc.*, No. 2:94 cv 02074 (C.D. Cal. 1994). Claims brought by Xerox pension plan against 16 state life and health guaranty associations dismissed with prejudice for lack of subject-matter jurisdiction and failure to state a claim under ERISA.

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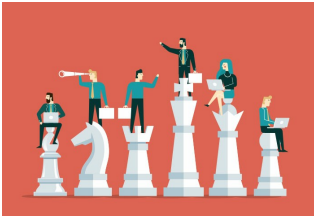
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