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- Defined Benefit Plan Litigation, *Spokeo* Impact & New Class Cert Issues
- The ERISA Preemption Clause and *Gobeille*
- **REMEDIES:** Appropriate Equitable Relief Under ERISA After *Montanile*
- **Fiduciary Investment Litigation:** Employer Stock, 401(k) Fee Cases, Stable Value Cases, and Settlement Practices
- DOL, IRS/Treasury, EEOC and PBGC Developments
- The Battle Over **Discretionary Clauses**
- Church Plan Litigation and the *Kaplan* and *Stapleton* Decisions
- **Claims Against Service Providers**
- Medical Provider Claims: **Assignment, Standing and Penalties**

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The latest round of ERISA claims and class actions are more complex than ever and the stakes involved for all parties are exceptionally high. There are huge variations in the types of cases that are arising, as well as substantive differences involved in defending against and managing the various claims. In addition, the best plaintiff attorneys are involved in the cases. Throw in the current ERISA "environment" (including growing ranks of retirement-age demographic) and it's entirely evident that *in defending and managing these complex claims, counsel for companies, plan fiduciaries, sponsors, administrators, advisors and insurers face a distinct uphill battle.*

Now, more than ever, there is simply no room for error in litigating these claims. In response, American Conference Institute is proud to introduce ***the 13th installment of the only ERISA Litigation conference that goes the extra mile and brings you the highest level judicial insights and maximum networking opportunities with in-house industry experts.***

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- Defined Benefit Plan Litigation **and the Impact of Spokeo**
- The ERISA Preemption Clause and **Gobeille**
- **REMEDIES:** Appropriate Equitable Relief Under ERISA After **Montanile**
- **Fiduciary Investment Litigation:** Employer Stock, 401(k) Fee Cases, Stable Value Cases, and Settlement Practices
- **Working With Independent Fiduciaries** to Protect Participants and Reduce Risk
- **Regulatory Roundtable:** DOL, IRS/Treasury, EEOC and PBGC Developments
- The Battle Over **Discretionary Clauses**
- Church Plan Litigation and **the Kaplan Decision**
- **Claims Against Service Providers**
- Medical Provider Claims: **Assignment, Standing and Penalties**
- **Fiduciary Liability Insurance**
- **Ethics and The Fiduciary Exception to Attorney-Client Privilege**

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WHO YOU WILL MEET

Attorneys handling litigation for:

- ERISA fiduciaries
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- Employee benefit plans

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- Plan sponsors
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Employee pension and benefit attorneys

Fiduciary liability insurance brokers



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Our new brand look and language will be fully revealed soon. Stay tuned for more exciting changes.

DAY ONE

Thursday, October 27, 2016

7:30 Registration and Continental Breakfast

7:55 Chairs' Welcoming Remarks



Amanda S. Amert
Partner
Jenner & Block LLP



Michael J. Prame
Principal
Groom Law Group Chartered



H. Douglas Hinson
Partner
Alston & Bird LLP

8:00 Judicial Forum on Litigating ERISA and Employee Benefit Claims and Class Actions: Focus on Class Certification, the Motions to Dismiss, Reconciling Differing Pleading Standards and Plausibility

Panel 1: 8:00 – 9:40 (break 9:40 – 9:45)



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U.S. Dist. Ct., W.D. Pa.



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U.S. Dist. Ct., E.D. Pa.

Moderator:



Mark Casciari
Partner
Seyfarth Shaw LLP

Panel 2: 9:45 – 11:10



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U.S. Dist. Ct., D. Neb.



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Moderator:



Nancy G. Ross
Partner
Mayer Brown

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11:10 Defined Benefit Plan Litigation, the Impact of *Spokeo*, and the Latest on Defenses that Defeat Class Certification



Steven L. Severson
Partner
Faegre Baker Daniels

Robert M. Carmen
Senior Complex Claims Director
AIG



Michael Collins
Partner
Gibson, Dunn & Crutcher



Nicole Y. Blohm
Partner
Meserve, Mumper & Hughes LLP

- Article III standing, statutory standing, and the future of ERISA litigation
- Alleging concrete injury v. violation
- The impact on class certification
- Defenses that defeat certification: releases, arbitration agreements, typicality, exhaustion of administrative remedies, statute of limitations, plan Injuries v. individual Injuries

12:15 Networking Lunch for Attendees & Speakers

1:10 The ERISA Preemption Clause and *Gobeille*



Joseph R. Jeffery
Member
Chittenden, Murday & Novotny



Robert M. Goldich
Shareholder
Greenberg Traurig LLP



Anthony F. Shelley
Member
Miller & Chevalier Chartered

- Whether ERISA preempts and voids state law as applied to TPA for self-insured employee health plan
- Conflicton and reporting requirements
- The implications for states' ability to monitor healthcare markets

2:05 REMEDIES: Appropriate Equitable Relief Under ERISA After *Montanile*



R. Joseph Barton
Partner
Cohen Milstein Sellers & Toll PLLC



Eric G. Serron
Partner
Steptoe & Johnson LLP



Stephen Rosenberg
Partner
The Wagner Law Group

- The Supreme Court Decision and further clarification on equitable relief remedies available under ERISA
- Post-*Amara* Look At The Remedial Scheme Under 502(a)(3)
- The *Sereboff* test
- Traceability and the comingling of assets
- What this means for the future

3:00 Break

3:05 Fiduciary Investment Litigation: Employer Stock, 401(k) Fee Cases, Stable Value Cases, and Settlement Practices



D. Lee Heavner, Ph.D.
Managing Principal
Analysis Group



Theresa (Tess) S. Gee
Member
Miller & Chevalier Chartered



Michael A. Wolff
Counsel
Schlichter Bogard & Denton, LLP



Todd D. Wozniak
Shareholder
Greenberg Traurig LLP

- Latest allegations against fiduciaries for breach of duty regarding retirement plans and recoupment of losses
- Post-*Dudenhoeffer* stock drop case law update and latest cases involving declines in value of employer stock (public and private company context)
- Lower court interpretations of *Dudenhoeffer*
- The pleading standards for determining whether a complaint in a stock-drop case alleges sufficient facts to state a claim for breach of fiduciary duty under ERISA
- Disclosure claims in ERISA stock drop litigation
- Expansion of claims over plan investments in defined contribution plans, including 401(k) investment selection cases, suits involving how fees are monitored in a 401(k), reducing fees, excessive plan fees, and more
- Excessive fee cases coming out of the lower courts post-*Tibble*
- Statute of limitations issues in litigation regarding plan investments
- Latest litigation by plan fiduciaries against plan investment/service providers
- Recommendations for how ERISA professionals can benchmark their strategies in response to these recent trends and new developments

4:20 Working With Independent Fiduciaries to Protect Participants and Reduce Risk



J. Stephen Caflisch
Senior Vice President and General Counsel
Fiduciary Counselors Inc.



H. Douglas Hinson
Partner
Alston & Bird LLP

- ERISA litigator perspectives on situations that necessitate the use of experts, including independent fiduciaries, and evaluating how much information to share
- Hiring an independent fiduciary; when you should retain their services
- Roles and responsibilities when engaged: Employer stock funds — appointment of “independent” fiduciaries without access to nonpublic information; Annuity purchases; Prohibited transactions; QPAM and INHAM audits; Reviewing litigation settlement

DAY TWO

Friday, October 28, 2016

7:30 Continental Breakfast

8:00 Regulatory Roundup: DOL, IRS/Treasury, EEOC and PBGC Developments



Gregory L. Ash
Partner
Spencer Fane LLP



Michael J. Prame
Principal
Groom Law
Group Chartered

The DOL's rule defining fiduciary status, investment advice and the potential implications:

- Update on the implementation and impact
- Plan sponsors and health savings accounts
- Best interest contract exception
- IRAs and rollovers
- The delineation of categories of advice that could be considered fiduciary conduct
- Carve-outs from the definition of investment advice
- New and amended prohibited transaction exemption

IRS

- The Determination Letter Program: the coming scale-back and its implications
- Revisions to the Employee Plan Compliance Resolution System
- The Voluntary Closing Agreement Program (VCAP): Income Tax Relief for Participants

EEOC

- The EEOC's wellness regulations:
 - The ADA's exception for voluntary programs that involve disability-related inquiries or medical exams
 - Incentives and rewards under wellness programs
 - Requirements for a wellness program to be considered voluntary

PBGC

- The PBGC: What's new for practitioners?
- Benefit restrictions and the present value of the maximum guarantee
- The effect of HAFTA on Section 4010 filings
- Information gathering with respect to de-risking activity
- Standard and Distress Termination Forms and Missing Participants Forms and Instructions

8:45 The Battle Over Discretionary Clauses



Elizabeth J. Bondurant
Partner
Womble Carlyle
Sandridge & Rice, LLP



Elise D. Klein
Partner
Lewis Brisbois
Bisgaard & Smith LLP



Andrew Davis
Attorney
Pierce Atwood LLP



Stephanie Camp Denton
Shareholder
Lane Powell PC

- State Discretionary Bans
- The Latest Case Law Developments Stemming from These Bans
- Examining the Ultimate Impact of a Discretionary Clause/Ban on a Disability Case

5:10 In-House Perspectives on Defending ERISA Claims and Class Actions in Today's Landscape



Vicki Blanton
Executive Director – Senior Legal Counsel, Tax & Benefits
AT&T Management Services, LP



Kimberly Evans
Counsel
The Hartford Financial Services Group, Inc.



Bradley Schlichting
Senior Counsel
Wells Fargo & Co.



Philip Weis
Director, Senior Employment Counsel
Boehringer Ingelheim



Rhonda Prussack
Head of Fiduciary and Employment Practices Liability
Berkshire Hathaway Specialty Insurance

Victoria L. Gorokhovich
Senior Counsel
Cigna Legal



Brian L. Smith
Chief Operating Office
Segal Select Insurance Services, Inc.



Jennifer J. Ting
Senior Benefits Counsel
Campbell Soup Company



Peter M. Kelly
Deputy General Counsel and Chief Employee Benefits Counsel
Blue Cross and Blue Shield Association

John Forgach
Assistant General Counsel, Employment & Benefits
W.R. Grace & Co.

Moderator:



Anne Pachciarek
Partner
DLA Piper LLP

6:30 Conference Adjourns

9:45

Church Plan Litigation and the *Kaplan* and *Stapleton* Decisions: Clarifying Uncertainty Concerning Church Plans and Obligations of Plan Fiduciaries, Outside Investment Managers, M&A of Plan Sponsors, and More



Michelle Thurber Czapski
Member
Bodman PLC



Ron Kilgard
Attorney
Keller Rohrback L.L.P.

- The status of church plans after *Kaplan* and *Stapleton*
- Assessing recent actions brought against church plans
- Exclusion of such plans from ERISA requirements
- What are successes or failures of church plan litigation? Where does it go from here?
- What are the implications of this litigation in broader contexts?
- PBGC responsibility for the plans
- Nuances regarding same sex marriage, contraception, and social conscious investment decision-making
- Congressional action on the ERISA's church plan exemption
- What steps should church plan sponsors take to protect their plans from a successful challenge?

10:30 Break

10:35

Claims Against Service Providers



Sharon Goldzweig
Associate Counsel
Consolidated Edison



Ronald S. Kravitz
Attorney
Shepherd, Finkelman, Miller & Shah, LLP



Amanda S. Amert
Partner
Jenner & Block, LLP

- Preemption of state law theories
- Fiduciary status of service providers
- Health and Welfare Plans:
 - TPA liability
 - External claims reviewers and ACA required external reviews
 - Broker/consultant fees
- Retirement plans:
 - Rollovers
 - Conflicts of interest
 - Prohibited transactions

11:25

Medical Provider Claims: Assignment, Standing and Penalties



Dana Berkowitz
Partner
Stris & Maher LLP



Joe Yonadi
Partner, Executive Compensation & Benefits Practice Group
Benesch, Friedlander, Coplan & Aronoff LLP

- Influx of cases where medical providers sue medical plans and insurers
- Assignment of patient claims to medical providers
- Standing under ERISA

- Claims of fraud and discrimination
- State law and preemption concerns

12:15

Fiduciary Liability Insurance



Alison Martin
Vice President, North America Financial Lines Claims
Chubb



Wendy Katherine Von Wald
Fiduciary Product Manager
Travelers



Barbara Gubitose
Senior Vice President
Professional Risk Practice – Risk Management Clients
Wells Fargo Insurance



Larry Fine
Global Head, Professional Liability Claims
AIG Property Casualty

- Insurance percentage caps and actuarial discounts
- Language challenges and claim considerations
- Dissecting claims
- Strategic litigation considerations when fiduciary insurance is involved
- Settlement considerations when fiduciary insurance is involved
- Assessing your needs and ensuring proper coverage disputes; key exclusions; issues that arise when service providers (TPAs, record keepers, etc.) are involved
- Typical policy provisions and the issues they raise
- Indemnification and liability insurance coverage options for ERISA fiduciaries
- Lessons to learn from recent ERISA fiduciary liability insurance coverage cases
- ERISA fiduciary liability insurance negotiation, placement and underwriting issues
- Coverage issues under ERISA fiduciary liability insurance
- What the current coverage landscape looks like

1:05

Ethics: The Fiduciary Exception to Attorney-Client Privilege in ERISA Cases and Other Ethical Considerations (featuring .5 CLE-Ethics credit)



Joseph M. Hamilton
Partner
Mirick, O'Connell, DeMallie & Lougee, LLP



Patrick W. Begos
Founding Member
Begos Brown & Green LLP



Daniel W. Maguire
Partner
Burke, Williams & Sorensen, LLP

- Legal framework for the Fiduciary Exception to the AC Privilege
- Advice from outside counsel on a claim for benefits
- Privileged legal advice concerning a fiduciary's own liability
- Engagement letters
- Advice pitfalls to avoid; other ethical considerations

2:05 Conference Ends

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