



## **W. BARD BROCKMAN**

**Partner**

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## **BIOGRAPHY**

Bard is a partner in the Atlanta office and is the leader of the firm's ERISA Litigation Practice. He serves as co-leader of the firm's ERISA and ESOP Class Action Team. He typically represents employers, plan sponsors, plan administrators, individual fiduciaries, and independent trust companies. He has broad experience in handling class actions, fiduciary claims, excessive fee claims, prohibited transaction claims, benefits claims, ESOP and stock valuation disputes, subrogation claims, and government investigations.

## **AREAS OF FOCUS**

- ERISA & ESOP

## **CIVIC INVOLVEMENT & HONORS**

- Georgia Super Lawyer (2007)
- Super Lawyer (Corporate Counsel Edition, 2008)
- Who's Who Legal (ERISA, 2007)
- Leadership DeKalb – Class of 2005
- University of Florida College of Law Alumni Council
- Florida Blue Key
- Board Member, The Wesley Foundation at Georgia Tech
- Board Member, Foundation for Clinical Pastoral Education

## **PROFESSIONAL AFFILIATIONS**

- American Bar Association – Litigation and Labor and Employment Sections
- State Bar of Georgia – General Practice/Trial and Employee Benefits Sections
- The Florida Bar – Out-of-State Practitioners Division, Former President (2 terms)
- Atlanta Bar Association – Litigation Section, and Employee Benefits & Executive Compensation Committee
- Logan E. Bleckley American Inn of Court – Barrister
- Worldwide Employee Benefits Network (WEB)
- Atlanta Benefits Council (ASPPA)
- Southern Employee Benefits Conference (SEBC)
- The ESOP Association

## **ADMISSIONS**

- Florida, 1990
- Georgia, 1989
- United States Supreme Court  
United States Court of Appeals for the Eleventh Circuit  
United States District Courts for the Middle, Northern and Southern Districts of Florida, the Middle, Northern and Southern Districts of Georgia, the Northern District of Illinois, and the District of Colorado

## **EDUCATION**

University of Florida, J.D., with honors, 1989

University of Florida, B.A., 1985

## **RELATED CAPABILITIES**

- Class Actions & Mass Torts
- Antitrust Class Actions
- Shareholder Securities and Mergers & Acquisitions
- Food, Ag & Nutrition (Class Actions)
- Enforcement
- Litigation
- Regulation
- Cross-border Employment Issues
- ERISA & ESOP
- Plan Design & Implementation
- Plan Administration & Fiduciary Issues
- Welfare Plans
- Interdisciplinary Privacy/HIPAA Practice
- Practice Before Government Agencies
- ERISA & Employee Benefits Litigation
- International Pensions & Benefits Practice
- Executive & Deferred Compensation
- Workouts & Financial Restructuring
- Wealth Management
- Subchapter S
- Going Private
- Community Banking Litigation
- De Novo Banking

- Employment Class & Collective Actions
- Sports (Class Actions)
- Data Privacy, Telecommunications & Collections
- Pensions
- Share Plans & Incentives
- Financial Institutions
- Financial Services
- Consumer Fraud
- Insurance (Class Actions)
- Pharmaceutical & Medical Devices (Class Actions)
- Class Actions
- Business & Commercial Disputes
- Employee Benefits & Executive Compensation
- Employment & Labor
- Financial Services Corporate & Regulatory Team
- Fiduciary Disputes
- Consumer Finance Disputes
- Banking & Finance Disputes
- Corporate
- Finance
- Investigations
- Litigation & Dispute Resolution
- Regulation, Compliance & Advisory
- ESOP

## EXPERIENCE

Bard's recent representations include:

- Obtained summary judgment (and an award of attorneys' fees) for an independent trust company on claims for breach of fiduciary duty and violations of ERISA
- Obtained summary judgment for a company-sponsored ESOP and its trustees on claims for violation of ERISA's Anti-Cutback and Significant Detriment Rules, and successfully defended ruling on appeal
- Obtained dismissal of professional negligence claim against independent trust company

- Negotiated a favorable settlement for a professional ESOP trustee that had been sued for breach of fiduciary duty and prohibited transaction under ERISA
- Prosecuted a defendant class action for a Fortune 100 client as trustee of pension funds subject to competing claims of its unionized workers
- Negotiated a favorable class action settlement for a large public university that had been sued by former employees in a suit to recover early retirement benefits
- Obtained dismissal of ERISA "stock drop" claims against independent trust company
- Negotiated a substantial subrogation recovery for a company-sponsored medical plan in connection with a medical malpractice suit brought by a plan beneficiary
- Negotiated favorable settlement of ERISA 401(k) "excessive fee" class action against plan sponsor and investment committee
- Successfully tried a factually complex garnishment case involving claims of corporate "alter ego" and "piercing the corporate veil"
- Successfully defended a major insurance company in an arbitration matter on severance and change-in-control claims brought by a former executive
- Successfully defended a computer services company in a lengthy arbitration involving a purchase price adjustment based on a complicated earn-out formula
- Obtained summary judgment for a major telecommunications corporation in three separate actions in which former contractors asserted claims for fraud and racial discrimination
- Successfully defended a major home building company in arbitration claims for extra-contractual damages
- Successfully prosecuted an action to quiet title to a parcel of real property at the heart of a mall development project in metro Atlanta
- Negotiated a complex settlement of an action for equitable partitioning of a 300-acre parcel of prime real property in the mountains of north Georgia
- Tried a claim for prescriptive easement concerning the historical use of a right-of-way to gain access to a landlocked parcel of land in Atlanta's Buckhead business district
- Successfully negotiated several substantial settlements in preference actions in connection with the Chapter 11 bankruptcy of a major consumer products retailer

# RESOURCES

## PUBLICATIONS

- “Follow the Money! Traceability Key to Recovering Overpayments, Says Sixth Circuit,” *Journal of Pension Benefits*, Vol. 28, No. 3, Spring 2021
- “Fifth Circuit Suggests Everything’s Bigger in Texas—including the Coast of Defending an ERISA Benefit Dispute,” *Journal of Pension Benefits*, Vol. 28, No. 2, Winter 2021
- “Dot the Is and Cross the Ts: Consequences of Failing to Describe Internal Claims Appeal Procedures,” *Journal of Pension Benefits*, Vol. 28, No. 1, Autumn 2020
- “ERISA’S Statute of Limitations Defense Based on Claimant’s ‘Actual Knowledge,’” *Journal of Pension Benefits*, Vol. 27, No. 1, Autumn 2019
- “Cross-Plan Offsetting: What Is It and What Does It Mean for Your Health Insurance Plan?,” *Journal of Pension Benefits*, Vol. 26, No. 4, Summer 2019
- “Arbitration Clauses Enforceable for ERISA Claims-As Long as Clauses Cover the Underlying Action,” *Journal of Pension Benefits*, Vol. 26, No. 2, Winter 2019
- “Benefits for a Murdered Participant: The Intersection of ERISA and State ‘Slayer’ Statutes,” *Journal of Pension Benefits*, Vol. 26, No. 1, Autumn 2018 (publication pending)
- “Appellate Court Upholds Enforceability of Plan Venue Provision,” *Journal of Pension of Benefits*, Vol. 25, No. 4, Summer 2018
- “Eleventh Circuit Upholds Enforceability of DOL Tolling Agreements,” *Journal of Pension Benefits*, Vol. 25, No. 2, Winter 2018
- “The Exhaustion of Administrative Remedies Under ERISA, and the Federal Courts’ Split on Whether ‘Exhaustion’ Applies to Statutory Claims,” *Journal of Pension Benefits*, Vol. 24, No. 4, Summer 2017
- “Seventh Circuit Recognizes Right of Contribution and Indemnification Among Co-Fiduciaries, Intensifies Split Among Federal Circuits,” *Journal of Pension Benefits*, Vol. 24, No. 2, Winter 2017
- “Recovery on Plan Reimbursement Provisions: A New Challenge After the Supreme Court’s Opinion in *Montanile*,” *Journal of Pension Benefits*, Vol. 23, No. 4, Summer 2016
- “*Tibble v. Edison International*: The Supreme Court’s Recognition of a Fiduciary Duty to Monitor Plan Investments and its Impact on ERISA’s Statute of Limitations,” *Journal of*

- "ESOP Litigation On The Rise: What Do Business Valuations Have To Do With It?" *National Litigation Consultants' Review* (Vol. 1, 2014)
- "Revisiting *Hardt*: The Developing Law on the Recovery of Attorneys' Fees Under ERISA Section 502(g)(1);" *Journal of Pension Benefits* (Vol. 20, No. 2, Winter 2013)
- Litigation Editor for the *Journal of Pension Benefits*
- BNA Treatise, *Employee Benefits Law* (3<sup>rd</sup> ed. 2012) – contributing editor to Chapter 12 – Civil Practice and Procedure.
- Contributing editor to BNA's *Employee Benefits Law* treatise (2nd ed. 2000) (annual supplements)

## SPEAKING ENGAGEMENTS

- "Navigating the Aftermath of *Cigna v. Amara*: The Ongoing Fallout From this Landmark Case and Its Progeny and the Impact on Remedies in ERISA Cases," ACI 6th National Forum on ERISA Litigation, October 2013
- "'Appropriate Equitable Relief' Post-*McCutchen*," ALI CLE webinar, May 2013
- "Advising Bank Board Directors on Regulatory Relations and Legal Risk Minimization," Georgia ICLE Banking and Finance Law seminar, February 2013
- "ERISA Litigation: An Update on Recent Cases and Activity," Southern Employee Benefits Conference (SEBC), April 2012
- "Attorneys Fees Under ERISA After *Hardt v. Reliance Standard*," American Bar Association Employee Benefits Committee 2011 Midwinter Meeting
- "ERISA Preemption: Countering Plaintiffs' Attempts to Overcome the Procedural and Substantive Aspects of the Defense," ACI Conference on ERISA Litigation, October 2010
- "Analyzing Plan Remedies and the Scope of Equitable Remedies," ACI Conference on ERISA Litigation, October 2009
- "Responding to Benefit Claims and Avoiding ERISA Litigation," Worldwide Employee Benefits (WEB), Atlanta Chapter, June 2009
- "Supreme Court Developments in ERISA," Bryan Cave Labor & Employment Conference, May 2009

- "Fiduciary Roles in the Era of Change," Southern Employee Benefits Conference (SEBC), May 2009
- "Implications of the Supreme Court's Decision in LaRue," Fiduciary Risk Management webinar, April 2008
- "Keep It Short: Brevity in Legal Writing," Georgia Legal Services live seminar and webinar, July 2007
- "ADR in Corporate Transactions: A Critical Analysis," Georgia Business Law Institute, October 2001

## RELATED INSIGHTS

Insights

Aug 08, 2024

### **No Consensus in Sight: Enforceability of ERISA Plan Arbitration Provisions at the Close of 2023**

This column, published in the Journal of Pension Benefits, discusses the need for the Supreme Court to deliberate the issue of the enforceability of arbitration provisions in ERISA Plans.