

## ERISA AND ESOP

### OVERVIEW

Our ERISA and ESOP Litigation Team represents employers, plan fiduciaries, professional trustees, plan sponsors and administrators, investments advisors and managers, and other service providers throughout the United States in matters arising under the Employee Retirement Income Security Act of 1974 (ERISA). Our litigators have decades of experience in the defense of ERISA class actions and similar “representative” claims putatively filed by plan participants or the U.S. Department of Labor on behalf of employee benefit plans.

Our litigation experience includes successful client representations in a wide variety of ERISA and employee benefit matters:

- Alleged breaches of fiduciary duty and prohibited transactions;
- “Excessive fee” claims related to 401(k) investment options or recordkeeping fees;
- Stock-drop lawsuits and other cases challenging plan investment options;
- ESOP disputes and cases challenging ESOP stock valuations;
- Government investigations and related lawsuits by the U.S. Department of Labor and U.S. Department of Justice;
- Health and welfare plan disputes, including challenges to an employer’s termination of health benefits;
- Challenges to plan denial of benefit claims;
- Withdrawal liability matters under multiemployer plans;
- Executive compensation claims under non-qualified SEPs, SERPs and deferred compensation agreements;
- Plan subrogation and reimbursement claims;
- Pension Benefit Guaranty Corporation proceedings.

We offer a unique multidisciplinary approach to problem solving. The ERISA and ESOP Litigation Team regularly works closely with BCLP's deep roster of ERISA compliance specialists and transactional lawyers to drive desired results for clients in a cost-effective manner.

## MEET THE TEAM



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## EXPERIENCE

**"Excessive Fee" Litigation**

- Represented American Century Companies, affiliated companies and individual members of their Retirement Committee when plaintiffs, former American Century employees, alleged a class action and a class was certified. Plaintiffs alleged that the Retirement Committee had breached its fiduciary duties by allegedly mishandling the assets of the retirement funds. Plaintiffs sought over \$30 million in damages. We tried the case for three weeks before Judge Kays of the United States District Court for the Western District of Missouri and obtained a defense judgment in all respects.
- Representing ABB Corporation in the appeal of a lower court's opinion finding various breaches of fiduciary duty in connection with fees and disclosures associated with the company's 401(k) plan. The decision on appeal overturned \$21.8 million of the judgment and the attorneys' fees award and remanded for further proceedings. On remand, the district court entered judgment for defendants and plaintiffs have filed an appeal.
- Obtained a dismissal at the pleadings stage for a large public company on class action fiduciary claims related to the expense ratios in its 401(k) mutual funds options and to the plan's recordkeeping fees.
- Successfully represented a Fortune 100 company against threatened claims related to the fees charged by the mutual funds in its 401(k) investment lineup. We coordinated a comprehensive response at the pre-suit administrative claims stage, which caused the plaintiff's counsel to abandon its threatened lawsuit.
- Negotiated a favorable class action settlement of an "excessive fee" claim against 401(k) plan sponsor and investment committee.
- Current counsel to a plan sponsor and its 401(k) committee on putative class claims for fiduciary breach with respect to mutual fund and recordkeeping fees.

### **ESOP and ESOP Stock Valuation Litigation**

- Obtained a dismissal at the pleadings stage for a professional trustee that had been sued in a private-plaintiff lawsuit in connection with the trustee's purchase of company stock on behalf of a newly formed ESOP.
- Obtained an early dismissal for a professional ESOP trustee that had been sued by a bankruptcy trustee in connection with a proposed sale of the company that the trustee had declined to approve.
- Obtained summary judgment for a company-sponsored ESOP and its trustees on claims for violation of ERISA's Anti-Cutback and Significant Detriment Rules.

- Obtained a dismissal for an institutional ESOP trustee and its employees in connection with a litigation trustee's claims for fiduciary breach related to the ESOP trustee's annual valuation of ESOP stock for a company that ultimately declared bankruptcy.
- Multiple representations of an institutional ESOP trustee on separate claims asserted by the U.S. Department of Labor in connection with the trustee's purchase of private company stock.
- Multiple representations of two of the country's largest institutional ESOP trustees on various claims filed by private plaintiffs in connection with the trustees' purchase of private company stock.
- Represented an institutional ESOP trustee on private plaintiff claims for fiduciary breach in connection with the trustee's sale of company stock and related termination of the ESOP.
- Current counsel to company directors on private plaintiff claims that the directors had breached the duty to monitor the professional ESOP trustee they had appointed to consider a proposed ESOP sales transaction.
- Represented a bank on claims for fiduciary breach in connection with the bank's inability to honor ESOP redemption requests due to enforcement restrictions imposed by bank regulators during the Great Recession.
- Represented professional fiduciaries, plan sponsors, employers and company directors in dozens of separate ESOP investigations pursued by the U.S. Department of Labor.

### **"Stock Drop" and Other Plan Investment Litigation**

- Obtained a dismissal for a professional fiduciary that had been sued for fiduciary breach in connection with the plan sponsor's company stock fund in its 401(k) investment lineup.

### **Health and Welfare Plan Litigation**

- Successfully defended a NYSE company after it eliminated retiree medical benefits and the retirees filed claims.
- Counsel for public utility in ERISA class action regarding retiree health care benefits. Class certification defeated, summary judgment granted and affirmed by Seventh Circuit.
- Counsel for defense contractor in four ERISA class actions involving retiree health care benefits, resulting in settlement without payment by company after summary judgment.
- Obtained a summary judgment in a class action by 7,000 retirees alleging that our client violated ERISA by ending company funding for retiree health care benefits.

### **Other ERISA and Employee Benefits Litigation**

- Obtained summary judgment (and an award of attorneys' fees) for an independent trust company on claims for fiduciary breach in connection with the "mapped" transfer of 401(k) plan accounts from one record keeper to a successor record keeper.
- Defended client in a lawsuit under ERISA to enforce benefits from the plan administrator according to the terms of the plan. Plaintiffs allege breach of fiduciary duty and seek an award of benefits according to the plan terms, as well as other relief.
- Successfully prosecuted a defendant class action for a Fortune 100 client as trustee of pension funds subject to competing claims of its unionized workers.
- Successfully represented steel manufacturer in ERISA class action regarding plant closing, resulting in summary judgment granted and affirmed on appeal.
- Successfully defended a claim for partial termination of a defined benefit plan and unlawful retaliation arising out of a client hospital's decision to terminate affiliate relationships with New York City's public hospitals.
- Obtained reversal and remand of the lower court's decision regarding the interest crediting rate that must be applied to an early lump sum distribution from a cash balance plan governed by ERISA as such claims were barred by ERISA's statute of limitations.
- Successfully defended client in class action lawsuit alleging that the formula contained in its cash balance plan violated ERISA's backloading rules.
- Successfully defended class action lawsuit against aviation company alleging that acquisition triggered a promise to immediately pay pension benefits.
- Obtained summary judgment of defendant affirmed in class action by retirees for increased payments under a plant closing trust.
- Defeated class certification in action seeking pension benefits following plant closing.
- Successfully defended a claim for change of control benefits under a "top hat" plan arising out of a second transfer of ownership of the plan sponsor.
- 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.
- Counsel for agricultural products company in ERISA class actions regarding vesting of pension benefits. Class certification was denied and individual judgment reversed on appeal to Eleventh Circuit.

- Obtained a substantial subrogation recovery for a company-sponsored medical plan in connection with a medical malpractice suit brought by a plan beneficiary.