

**ERISA LITIGATION  
NATIONAL INSTITUTE AGENDA**

**MONDAY • NOVEMBER 14, 2011**

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

8:30 **Welcoming Remarks and Overview from Co-Chairs**

Lisa M. Gomez, *Cohen, Weiss and Simon LLP*  
Thomas G. Moukawsher, *Moukawsher & Walsh, LLC*  
Robert Rachal, *Proskauer Rose LLP*

8:45 **Amara and Other Hot Cases of 2011**

The program will preview the Supreme Court's latest ERISA ruling in *Amara v. Cigna* and address the potential impact of the Court's *Dukes v. Wal-Mart* and *AT&T Mobility v. Concepcion* rulings on ERISA class actions. In addition we will address key circuit court rulings, including *Cyr v. Reliance Standard Life Ins. Co.* and the issue of who may be sued in a claim for benefits, and preview recent significant fiduciary rulings in fee litigation and other areas.

**For the Plaintiff**

Thomas G. Moukawsher  
*Moukawsher & Walsh, LLC*

**For the Defendant**

Robert Rachal  
*Proskauer Rose LLP*

9:45 **Civil Litigation Practice Pointers**

In this section experienced litigation counsel will provide practice pointers and tactics on key aspects of litigating ERISA claims, including:

- Drafting ERISA Complaints
- Discovery Issues
- Class Certification

**For the Plaintiff**

Thomas G. Moukawsher  
*Moukawsher & Walsh, LLC*

**For the Defendant**

Mark Casciari  
*Seyfarth Shaw*

10:45 **Morning Break**

11:00 **Fiduciary Duties and Disclosure Litigation**

One of the most financially significant and complicated areas of ERISA litigation involves claims against fiduciaries for alleged breach of duty. These presenters 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 and general fiduciary duties of disclosure and remedies for fiduciary misrepresentations.

**For the Plaintiff**

Gregory Y. Porter  
*Bailey & Glasser LLP*

**For the Defendant**

Deborah S. Davidson  
*Morgan, Lewis & Bockius*

12:00 **Lunch (on your own)**

1:30 **Fee Case Litigation**

The past several years have seen an explosion of litigation challenging the selection of investments, and the monitoring of fees in individual account (401(k)) plans. This session examines litigation against plans/plan sponsors and service providers, including cases concerning the fiduciary status of providers. This session will also address litigation involving fiduciary duties in selecting and monitoring service providers and the potential impact of the Seventh Circuit's recent *George v. Kraft* ruling.

**For the Plaintiff**

Gregory Y. Porter  
*Bailey & Glasser LLP*

**For the Defendant**

Nancy G. Ross  
*McDermott Will & Emery*

2:30 **Afternoon Break**

- 2:45 **Benefit Claims Litigation: Claims 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 benefit claims regulation and new case law developments and show how this preliminary phase sets up and controls the subsequent benefit claims litigation.
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|-----------------------------------|--------------------------|
| <b>For the Plaintiff</b>          | <b>For the Defendant</b> |
| Lisa M. Gomez                     | Martha J. Wagner         |
| <i>Cohen, Weiss and Simon LLP</i> | <i>Venable LLP</i>       |
- 3:45 **Benefit Claims Litigation: Claims Standard of Review and Discovery and Dispositive Motions**  
 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.
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|-------------------------------------|---------------------------|
| <b>For the Plaintiff</b>            | <b>For the Defendant</b>  |
| Mark D. DeBofsky                    | Lissa J. Paris            |
| <i>Daley, DeBofsky &amp; Bryant</i> | <i>Murtha Cullina LLP</i> |
- 4:45 **Adjourn followed by reception**

## TUESDAY • NOVEMBER 15, 2011

- 7:30 **Registration and Networking Continental Breakfast**
- 8:30 **Remedies**  
 Remedies, especially in fiduciary breach cases, have become a hotly contested battle ground in which the Supreme Court has, in its recent rulings in *LaRue v. DeWolff, Boberg & Assoc., Inc.* and *Amara v. Cigna*, reinvigorated the debate over the scope of monetary and equitable remedies for such breaches. This segment will focus on how courts have analyzed Plan remedies under 502(a)(2) post *LaRue*, the scope of equitable remedies under 502(a)(3) post-*Amara*, and the impact of *Amara* on remedies under 502(a)(1)(B).
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|------------------------------------|---------------------------|
| <b>For the Plaintiff</b>           | <b>For the Defendant</b>  |
| Thomas G. Moukawsher               | Lissa J. Paris            |
| <i>Moukawsher &amp; Walsh, LLC</i> | <i>Murtha Cullina LLP</i> |
- 9:30 **Long-Term Disability Claims**  
 The majority of cases litigated under ERISA involve claims for long-term disability benefits. This program will address some of the unique substantive and procedural issues that arise in this area such as discovery, dispositive motions, and remedies.
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|-------------------------------------|---|
| <b>For the Plaintiff</b>            | <b>For the Defendant</b>                    |
| Mark D. DeBofsky                    | Elizabeth G. Doolin                         |
| <i>Daley, DeBofsky &amp; Bryant</i> | <i>Chittenden, Murday &amp; Novotny LLC</i> |
- 10:30 **Morning Break**
- 10:45 **Employer Stock & Other Investment Related Fiduciary Cases**  
 Declines in the value of employer stock held by ERISA plans continue to trigger breach of fiduciary claims by plan participants seeking to recoup their losses. The impact of the financial crisis of 2008 also led to ERISA fiduciary breach claims seeking to recoup losses in other plan investments, including in particular bond funds. This session will examine cutting-edge issues in employer stock and investment litigation, including the class certification issues, the Section 404(c) defense, loss causation and remedies, and ESOP Litigation.
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|--|---------------------------|
| <b>For the Plaintiff</b>                               | <b>For the Defendant</b>  |
| Teresa S. Renaker                                      | Robert Rachal             |
| <i>Lewis, Feinberg, Lee, Renaker &amp; Jackson, PC</i> | <i>Proskauer Rose LLP</i> |

- 11:45 **Withdrawal Liability and Collections**  
 Fiduciaries of multiemployer plans have an obligation to collect contributions owing to the plans including both delinquent contributions and withdrawal liability payments. In the aftermath of the market downturn, withdrawal liability has again become a significant issue for multiemployer defined benefit pension plans and withdrawing employers. This session examines current issues in collection litigation and withdrawal liability assessment, procedure and litigation.  
**For the Plan** Lisa M. Gomez  
*Cohen, Weiss and Simon LLP*  
**For the Employer** Charles B. Wolf  
*Vedder Price PC*
- 12:45 **Lunch (on your own)**
- 2:00 **Employment Discrimination and ERISA Section 510 Claims -**  
 Federal laws involving employment discrimination often have significant impact on employee benefits. This program will discuss the impact of significant recent court rulings relating to gender/pregnancy and pensions, age discrimination and pension/early retirement benefits and medical benefits. We will also address the effect of the recently amended Americans with Disabilities Act on the content of benefit plans, and the limitations that Courts have set on ERISA Section 510 to obtain redress for employment decisions that interfere with employees' attainment of benefits and which retaliate against employees who utilize benefits.  
**For the Plaintiff** Denise M. Clark  
*The Law Office of Denise M. Clark, PLLC*  
**For the Defendant** Ian H. Morrison  
*Sevfarth Shaw LLP*
- 2:50 **ERISA Preemption – Cutting Edge Issues**  
 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.  
**For the Plaintiff** Teresa S. Renaker  
*Lewis, Feinberg, Lee, Renaker & Jackson, PC*  
**For the Defendant** Charles C. Jackson  
*Morgan, Lewis & Bockius LLP*
- 3:50 **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 and whether the advice requested is given in particular situations is privileged.  
**Panelists:** Denise M. Clark, *Law Office of Denise M. Clark, PLLC*  
 Gabriel J. Minc, Tax law Specialist, *Tax Exempt & Government Entities Division, U.S. Internal Revenue Service, Chicago, IL*  
 Martha J. Wagner, *Venable LLP*
- 5:00 **Adjourn**