

ERISA & Employee Benefits Litigation

Demographic changes, market turmoil, global competition, and changes in accounting rules are applying dramatic pressures on employee benefits. As the population ages, it places a higher value on employee benefits, increasing the risk of confrontation and litigation. Complex, high-stakes employee benefits litigation involving not just the plan, but its sponsor and senior management, are now the norm. Defending these cases effectively and efficiently takes a team of lawyers who are not just skilled litigators and trial attorneys. It takes a team experienced in litigating employee benefits cases that can draw upon the substantive expertise of one of the nation's largest and best Labor and Employment and Employee Benefits practices. Seyfarth Shaw LLP's ERISA & Employee Benefits Litigation Practice Group is that team.

Seyfarth's Breadth and Depth

Seyfarth's ERISA & Employee Benefits Litigation Practice Group has consistently been ranked as a national leader by *Chambers USA: America's Leading Lawyers for Business*. The 2010 edition of *Chambers USA* reported that the group provides clients with "broad geographic coverage" and handles a "high volume of cases and has particular expertise in representing clients in 401(k) expenses litigation." A client reported that the firm is "playing an increasingly prominent role in major matters and winning a lot of work. This is definitely a firm to keep an eye on." In addition, the 2010 *Legal 500 US* guide recognized the group, stating, "it has an impressive ERISA litigation practice." In it, clients comment: "It offers consistently sound and pragmatic advice" and "continues to make the investment in understanding our business."

The group consists of approximately 30 attorneys in the firm's offices nationwide. Our ERISA and Employee Benefits litigators represent plans, plan sponsors, administrators, fiduciaries, independent fiduciaries, plan trustees, and participating employers in cases and investigations throughout the country. We litigate both private sector and public sector employee benefits matters. Many of the cases litigated by the group, which number in the hundreds in state and federal forums, including the U.S. Supreme Court, are regarded as leading cases in the area.

Seyfarth's ERISA & Employee Benefits Litigation Practice Group has significant in-depth experience in all aspects of employee benefits litigation, including both class action and single-plaintiff claims regarding:

- Breach of fiduciary duty
- Retiree benefits
- Cash balance plan design and administration
- "Stock drops"
- Excessive plan fees
- Imprudent investments
- Welfare benefits (such as severance, medical, and disability)
- Early retirement design flaws and violations
- COBRA and WARN violations
- Prohibited transactions
- Securities violations
- Multi-employer plan withdrawal liability
- Federal discrimination statutes
- State employee benefits laws

Our attorneys are active in and hold prominent positions within the employee benefits litigation community, across a number of committees and associations. Group members serve as editors and contributors to a number of highly regarded publications that lead the field in identifying and interpreting legal trends. We also contribute to the ongoing discourse by presenting on benefits litigation matters in CLE programs.

In addition, few firms have the ability to match the breadth, depth, and focus we bring to every ERISA and employee benefits litigation matter, including:

- In-depth knowledge of ERISA, the NLRA, and other challenging labor and employment issues that are often involved in employee benefits litigation matters;
- Extensive employee benefit plan design and compliance experience, as well as practical experience in litigation-avoidance strategies;
- Experience in litigation of complex securities regulation and other financial matters;
- Practical, cost-effective eDiscovery strategies and solutions, including a dedicated team of eDiscovery attorneys.

Seyfarth Shaw: Lean and Focused

As a firm, we understand that to create value for our clients, success is not defined by us, but by our clients. Our aim is to work closely with our clients to control and manage legal costs, provide efficient and proactive legal services, and build a partnership that assures our solutions fit the client's needs.

Seyfarth's vast and varied experience in ERISA and employee benefits litigation enables the group to leanly staff and efficiently litigate cases. This in turn allows the group to provide clients with more meaningful and reliable litigation budgets and realistic and practical exposure analyses.

Seyfarth Shaw: Solutions Based – Results Oriented

We understand that clients facing difficult employee benefits litigation want results and solutions and we deliver. In addition to our litigation achievements in this area, we frequently advise clients on avoiding problems and minimizing their legal exposure.

A few examples of the results achieved by the group's attorneys include:

- Advising an employer on how best to eliminate retiree healthcare benefits for employees of an acquired company, and obtaining summary judgment (affirmed on appeal) on class action claims by former employees who claimed they had been promised lifetime benefits. The decision is one of the leading decisions on retiree benefits vesting and fiduciary breach claims premised on oral representations. *Vallone v. CNA Financial Corp.*, 375 F.3d 623 (7th Cir. 2004).
- Defeating class certification and obtaining summary judgment on claims of breach of fiduciary duty, ERISA Section 510 violations, and related state law claims based upon allegedly fraudulent statements regarding the permanence of a reduction in force. *Fletcher v. ZLB Behring LLC*, 41 Empl. Ben. Cases 2769 (N.D. Ill. 2007). Two subsequent lawsuits filed by the rejected class members were dismissed by the courts.
- Successful trial representation of an ESOP independent fiduciary who was hired to represent the interests of ESOP participants when the employer — an automotive parts supplier — filed for bankruptcy. Our litigation and trial strategies avoided all liability (asserted to exceed \$25 million).

- Obtaining judgment on the pleadings, before any discovery, on claims for enhanced retirement benefits due to a corporate transition. We moved for judgment on the pleadings and convinced the court to defer to the plan administrators' interpretation of the plan, requiring dismissal of the claims. *Crowe v. Avaya Inc. Pension Plan and Lucent Technologies Inc. Pension Plan*, 41 Empl. Ben. Cases (BNA) 1289 and 20 Empl. Ben. Cases (BNA) 2734 (W.D. Okla. 2007).
- Defeating on appeal class action allegations claiming violations of ERISA based on the use of a pre-retirement mortality discount in determining cash balance retirement plan lump sum distributions. We successfully argued—taking advantage of recent Supreme Court precedent—that the plaintiffs were entitled to no monetary relief for their claim. *Crosby v. Bowater Inc. Retirement Plan for Salaried Employees of Great Northern Paper Inc.*, 382 F3d 587 (6th Cir. 2004).
- Obtaining a dismissal with prejudice of a nationwide class action alleging improper reduction of accrued benefits and breach of fiduciary duty based upon allegedly inadequate explanation of an estimated Social Security offset to plan participants. Before any discovery was taken, we used a motion for summary judgment supported by expert affidavits to convince the plaintiffs to abandon the case.
- Successful representation of the named fiduciaries of one of the world's largest multiple employer pension plans (the "Plan") and the Plan in connection with the U.S. Department of Labor's investigation concerning allegations that the Plan's former Plan Administrator and others had engaged in prohibited transactions and charged the Plan excessive and illegal fees in violation of ERISA.
- Convincing plaintiffs' counsel to withdraw claims by 11 former employees seeking additional pension-service credit based on their earlier service as contingent workers provided through staffing companies. We assessed the claims as frivolous and pressed vigorously for depositions until all plaintiffs voluntarily dismissed the claims.
- Resolving a class action at an early stage and on favorable terms for the employer involving claims of breach of fiduciary duty by retired employees who elected to participate in a voluntary early retirement program shortly before a facility was closing and alleged that the plant-closure benefit was under serious consideration when the early retirement program was offered.
- Successful defense of one of the largest health insurers in the United States in three separate cases brought by Fortune 500 companies all involving claims under ERISA and the civil RICO statute, as well as numerous state common law claims, that the insurer had conspired together with a number of other health insurers throughout the country in failing to pass on allegedly promised hospital discounts to the companies' health benefit plans and their beneficiaries.
- Defeating on a motion to dismiss a claim for supplemental pension benefits for highly compensated executives, an ERISA Section 510 claim, and a claim for statutory penalties for failing to provide plan documents.
- Achieving a significant arbitration victory for an employer that challenged a withdrawal liability assessment under the MPPAA. After discovery and extensive briefing, the arbitrator found that our client was covered by ERISA Section 4204, and ordered the pension fund to return all money paid, on an interim basis, on an approximate \$5 million withdrawal liability assessment. The win is significant because it adjudicated a novel theory of withdrawal liability, creating an important defense weapon for employers in a complex statutory area of law, and in a dynamic litigation climate.
- Winning an ERISA preemption case before the U.S. Supreme Court, invalidating a statute that would have required either the continuation of health benefits for those on workers' compensation or an equivalent payment to them.

A Key Differentiator: Seyfarth's Related Practices

Lawyers in the ERISA & Employee Benefits Litigation Practice Group work closely with attorneys in the following practices of the firm to deliver results and value to our clients:

Labor & Employment. Seyfarth Shaw has been recognized as one of the go-to labor and employment firms for business by providing extraordinary, cost-effective results. Our national presence, with approximately 350 employment attorneys at all levels of experience, ensures seamless, consistent representation across jurisdictions. What truly distinguishes our approach is a focus on expertise within the broad field of employment law and litigation.

Employee Benefits & Executive Compensation. With a national team of approximately 60 benefits and executive compensation lawyers, Seyfarth has one of the largest and most experienced Employee Benefits & Executive Compensation departments in the country. Consistent with the Seyfarth heritage, the Employee Benefits & Executive Compensation Department is relationship-driven, assisting our clients with every aspect of their employee benefits needs — from designing, drafting, and implementing plans and agreements to counseling on compliance and fiduciary duties.

Securities Litigation. Our Securities & Financial Litigation Practice Group attorneys help companies and individuals faced with claims involving complex liability, damages and disclosure issues in securities and financial disputes. Attorneys in the group have represented companies and their officers and directors in private class actions alleging violations of state and federal securities laws, defended accounting and securities firms charged with securities fraud, represented individuals in connection with allegations of insider trading, and defended officers and directors in derivative and class actions alleging breaches of fiduciary duty.

eDiscovery. Seyfarth's eDiscovery attorneys have training, technical knowledge, and experience in a wide range of IT related areas, including computer software engineering, network administration, and data storage. In addition to technical knowledge, our eDiscovery attorneys stay on

top of the existing and emerging technologies available for the preservation, collection, review, and production of electronically stored information in order to recommend the most reliable, practical, efficient, and cost-effective solutions to our clients. By drawing on experience representing clients of varying size across the country, our attorneys are able to deliver tremendous value in handling eDiscovery matters as they arise in individual and class action litigation and regulatory inquiries, as well as providing eDiscovery advisory services to organizations that face litigation on a more regular basis.

About Seyfarth Shaw LLP

Seyfarth Shaw has over 800 attorneys located in ten offices throughout the United States including Atlanta, Boston, Chicago, Houston, Los Angeles, New York, Sacramento, San Francisco, and Washington D.C., as well as international offices in London, Melbourne, Shanghai and Sydney. Seyfarth Shaw provides a broad range of legal services in the areas of labor and employment, employee benefits, litigation and business services. The firm's practice reflects virtually every industry and segment of the country's business and social fabric. Clients include over 300 of the *Fortune* 500 companies, financial institutions, newspapers and other media, hotels, healthcare organizations, airlines and railroads. The firm also represents a number of federal, state, and local governmental and educational entities. For more information, please visit www.seyfarth.com.



Atlanta

Boston

Chicago

Houston

London

Los Angeles

Melbourne

New York

Sacramento

San Francisco

Shanghai

Sydney

Washington, D.C.

www.seyfarth.com

"Seyfarth Shaw" refers to Seyfarth Shaw LLP. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with registered number 55692. Our Australian practice operates as Seyfarth Shaw Australia, an Australian multidisciplinary partnership affiliated with Seyfarth Shaw LLP, a limited liability partnership established in Illinois, USA. Legal services provided by Seyfarth Shaw Australia are provided only by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia.