

A “market-leading ERISA litigation team that thinks steps ahead and is creative and incredibly smart.”

US Legal 500

“Acclaimed stalwarts of the ERISA litigation landscape, routinely retained to tackle bet-the-company, cutting edge cases for a broad spectrum of clients.”

Chambers USA

Matters We Handle

401(k) and 403(b) Plan Fee and Investment cases
Cash Balance Pension Plan Litigation
Church Plan Litigation
Claims for Benefits
Company Stock Fund Cases
Delinquent Contributions
ERISA § 510 Claims
ERISA Statutory Claims
ESOP Litigation
Executive Compensation Claims
Fiduciary Duty & Prohibited Transaction Claims
Government Investigations
Independent Contractor Claims
Independent Fiduciary Representation
Multiemployer Fund Litigation
PBGC Proceedings
Plan Service Provider Claims
Recoupment of Plan Overpayments
Retiree Benefits Claims
Severance Plan Claims
Withdrawal Liability

ERISA Litigation

A Premier Practice

We are recognized as one of the premier firms defending all types of employee benefits litigation, including complex and class action lawsuits. Our dedicated ERISA Litigation Group is a significant component of the firm's ERISA Practice Center and globally renowned Labor and Employment Law Department with a bench strength of more than 150 lawyers.

Our zealotry in representing plan sponsors, plans, fiduciaries, trustees, directed trustees and plan service providers is matched only by our creativity in resolving claims against them. We have a long record of success trying cases in court and arbitration and often prevail before the start of trial through dispositive motions or favorable settlements.

What We Do

Litigation & Counseling. Our nationwide practice handles the full range of litigation matters involving all types of plans, including single-employer plans, executive compensation plans, Taft-Hartley plans, and multiple employer plans. We represent our clients' interests in all forums against complex class actions, individual claims and administrative proceedings. We have addressed virtually every significant ERISA litigation issue that has arisen since the statute was enacted and are ready to address whatever new issues the future may hold for our clients in this challenging and ever-changing area of law.

Our success has led to our representation of clients for ongoing employee benefit matters long after the litigation has ended. We frequently work with clients before lawsuits arise, to help them avert litigation altogether or to develop a more defensible position should litigation commence. We also advise clients on policy issues as well as day-to-day ERISA-related questions, providing superior advice and compliance support on a wide range of issues.

Government Proceedings. We are adept at handling audits, investigations and proceedings before the U.S. Department of Labor, Internal Revenue Service, Pension Benefit Guaranty Corporation, the U.S. Department of Justice, as well as Equal Employment Opportunity Commission investigations and lawsuits.

Alternative Dispute Resolution. Although our lawyers take pride in their success litigating ERISA cases, we also are strong proponents of using alternative dispute resolution to achieve our clients' goals. We have played a leading role in developing the law favoring the enforcement of individual arbitration agreements. We also have fashioned innovative and practical settlements to resolve complex employee benefits cases on very favorable terms while averting unnecessary litigation costs. Settlements we have negotiated include some that have yielded multimillion dollar recoveries for our plan and fund clients.

Partnering With Our Clients

Our first-class litigation services are competitive and cost-effective. We engage in regular dialogue throughout the representation to keep matters on track and on budget with our Legal Project Management (LPM) Team. Our LPM Team uses project management and process improvement techniques and tools to support our lawyers and legal teams and to achieve optimum efficiency in our client service delivery.

Representative Clients

American Benefits Council, The ERISA Industry Committee, American Retirement Association, and The Committee on Investment of Employee Benefit Assets as amici in supporting numerous plan sponsors and fiduciaries seeking dismissal of claims challenging the 401(k) plans' investment in the BlackRock LifePath Target Date Index Funds.

American Federation of Musician and Employers' Pension Fund in a class action alleging that the trustees breached their fiduciary duties by engaging in risky, international emerging markets investments. The case presented significant, novel questions regarding the responsibilities of multiemployer fund trustees in devising appropriate asset allocation models and reviewing the performance of investment managers.

Baystate Health, Inc. in a putative class action brought by participants in the Baystate Health, Inc. 403(b) Retirement Plan alleging that defendants failed to negotiate reasonable recordkeeping fees.

Bessemer Trust Company in a putative class action brought by 401(k) plan participants alleging that certain affiliated mutual funds were too expensive and underperformed other investments.

Charles Schwab Corp. in a putative class action brought by 401(k) plan participants alleging that certain affiliated funds were too expensive and underperformed other investments. In a ground-breaking decision the Ninth Circuit held that ERISA 401(k) plan participants are required to arbitrate individual ERISA claims and cannot pursue any claims on behalf of a putative class, in a representative capacity, and in this case 25,000 plan participants.

Intel in the defense of a purported class action alleging hundreds of millions of dollars in losses stemming from decisions to have a large concentration of alternative investments in target date funds.

MetLife in a putative class action complaint alleging that its retirement plan uses outdated mortality tables to convert plan participants' accrued benefits to alternative forms of benefits.

National Basketball Association in the dismissal of a putative class action brought by a former Seattle Supersonics player who alleged that the NBA Players' Pension Plan short-changed his pension benefit. The Second Circuit upheld the dismissal of the suit on the ground that it was brought after ERISA's statute of limitations had expired.

Neuberger Berman, an investment manager with \$246 billion in assets under management, in a purported class action brought by a participant in the company's 401(k) plan who alleged that defendants breached their fiduciary duties and engaged in prohibited self-dealing, by offering a Neuberger-managed product that allegedly underperformed and charged excessive fees.

The New York Times in obtaining the dismissal of claims alleging plaintiff was improperly deprived of benefits because he was allegedly misclassified as an independent contractor. The plaintiff was a consultant for the New York Times and sought benefits from two multiemployer pension plans, both administered by The New York Times and the Newspaper Guild of New York.

Key Contacts



Myron D. Rumeld
Partner & Co-Chair
+1.212.969.3021
mrumeld@proskauer.com



Russell L. Hirschhorn
Partner & Co-Chair
+1.212.969.3286
rhirschhorn@proskauer.com

RELX in obtaining the dismissal of an action brought by a former executive seeking severance benefits.

The SAG-AFTRA Health Fund in a class action alleging that the trustees breached their fiduciary duties by approving the merger of two health plans to form the Fund, failing to subsequently disclose the Fund's financial condition and then implementing benefit changes that adversely impacted certain participants. During discovery, we reached a favorable settlement to resolve the matter.

Sanofi in a company stock fund action alleging that the Sanofi US Savings Plan fiduciaries breached their fiduciary duties by allowing participants to invest in shares of Sanofi. The district court dismissed the action, and we reached a favorable settlement for Sanofi while the appeal was pending in the Second Circuit.

Wells Fargo & Company in a precedent-setting order from the Eighth Circuit affirming the dismissal of an ERISA class action that alleged that the bank padded its \$35 billion 401(k) plan with over-priced and under-performing target-date funds affiliated with the bank.

Xerox in a class action alleging contractual vesting and fiduciary breach claims arising from the Company's decision to charge premiums to retirees receiving company-paid health insurance. The parties cross-moved for summary judgment, and the district court denied plaintiffs' motion and granted Xerox's motion in part, concluding that the fiduciary breach claims were time-barred. The lawsuit is ongoing.