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The 16th Annual National Institute on

ERISA Litigation

November 9-10, 2006

Conrad Chicago

521 North Rush Street, Chicago, IL 60611

Early Bird Registration October 11th

Hotel Registration October 11th

Register On-line: www.abanet.org/jceb/
(202) 662-8640

ERISA LITIGATION AGENDA

THURSDAY • NOVEMBER 9, 2006

7:30 Registration and Networking Continental Breakfast

8:30 Welcoming Remarks and Overview from Co-Chairs

Elizabeth R. Lishner, *Law Office of Elizabeth R. Lishner*
Joyce A. Mader, *O'Donoghue & O'Donoghue LLP*
Martha Jo Wagner, *Venable LLP*

8:45 ERISA Preemption

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, in particular, the latest Supreme Court preemption case of *Aetna Health Inc. v. Davila*.

For the Plaintiff

Mary Ellen Signorille
AARP Foundation Litigation

For the Defendant

Howard Shapiro
Proskauer Rose LLP

10:00 Questions and Answers

10:10 Morning Break

10:25 Subrogation, Reimbursement and Other Remedies

This session will focus on plans' efforts to collect money owed to plans by participants who seek money from third-party tortfeasors. The discussion will include whether a participant must honor a plan's subrogation provision, how much of the award the plan can collect, how the participant's lawyer gets paid, and the current state of the law in light of *Great West Life & Annuity Ins. Co. v. Knudson* and *Sereboff v. Mid-Atlantic Services, Inc.*

For the Plaintiff

Thomas G. Moukawsher
Moukawsher & Walsh, LLC

For the Defendant

Thomas H. Lawrence
Lawrence & Russell, LLP

11:15 Questions and Answers

11:25 Benefit Claims Litigation: Claim 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.

For the Plaintiff

Elizabeth R. Lishner
Law Office of Elizabeth R. Lishner

For the Defendant

Denise M. Clark
H.E.R.E.I.U. Welfare – Pension Funds

ERISA LITIGATION AGENDA

12:15 Questions and Answers

12:25 Lunch (on your own)

2:00 **Benefit Claims Litigation: Claim Standard of Review and Evidence**

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.

For the Plaintiff

Elizabeth R. Lishner
Law Office of Elizabeth R. Lishner

For the Defendant

Martha Jo Wagner
Venable LLP

2:50 Questions and Answers

3:00 Afternoon Break

3:10 **Cash Balance Litigation**

The appeal in *Cooper v. IBM Personal Pension Plan*, 2003 U.S. Dist. LEXIS 13223, West Law 2003 WO 21767853 (S.D. Ill. July 31, 2003), was fully briefed and argued to the United States Court of Appeals for the Seventh Circuit in February 2006. Since that time there have been more than a half dozen new class action cases filed challenging the conversion of standard defined benefit plans into cash balance plans. This panel will discuss the various theories being brought in these cases, including age discrimination claims under ADEA, and cut-back claims under ERISA section 204(b)(1)(H) and 204(g), as well as legal claims involving the so-called "whipsaw" effect and back loading (ERISA section 204(b)(1)(B)). The various defenses that have been raised to these claims also will be discussed, as well as the various legislative proposals currently pending in connection with cash balance plans.

For the Plaintiff

Thomas G. Moukawsher
Moukawsher & Walsh, LLC

For the Defendant

Howard Shapiro
Proskauer Rose LLP

3:50 Questions and Answers

4:00 **Agency Practice and Litigation**

This session reviews recent enforcement initiatives by DOL and as well as a discussion of issues involved in handling both the investigative and enforcement phase of agency action. This session will focus primarily on DOL enforcement but will also include investigation and litigation issues involving other agencies.

Amy J. Turner, *Senior Health Law Specialist, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration (EBSA), U.S. Department of Labor*

Timothy D. Hauser, *Associate Solicitor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor*

David R. Levin, *Gardner Carton & Douglas LLP*

Joyce A. Mader, *O'Donoghue & O'Donoghue LLP*

4:50 Questions and Answers

5 - 6:15 **Cocktail Reception**

UNABLE TO ATTEND? CAN'T DECIDE WHICH SESSIONS TO ATTEND?

Audiotapes and CDs will be available approximately 3 weeks after the program. To order complete tape sets or CD sets, see the Registration and Order Form panel of this brochure.

Order forms for individual tapes will be available on site.

For more information, visit www.abanet.org/jceb/ or call 202.662.8640.

ERISA LITIGATION AGENDA

FRIDAY • NOVEMBER 10, 2006

7:30 Registration and Networking Continental Breakfast

8:30 Service Provider Litigation

This session reviews litigation between plans/plan sponsors and service providers, including cases concerning the fiduciary status of providers. This session will also address litigation involving fiduciary duties in selection and monitoring service providers.

Joyce A. Mader, O'Donoghue & O'Donoghue LLP
Martha Jo Wagner, Venable LLP

9:20 Questions and Answers

9:30 Fiduciary Litigation

Probably the most financially significant and complicated area of ERISA litigation involves claims against fiduciaries for alleged breach of duty. ERISA fiduciary litigation is particularly challenging because the case law is still developing, and little precedent is available to guide courts when they decide the legal questions at the heart of many fiduciary cases. This panel 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, ignoring participant directions, duties of disclosure, and investment education/investment advice. All of the panelists are litigating these types of cases, including *Enron*, *WorldCom* and *Rite-Aid*, and will discuss the litigation strategies in these lawsuits.

For the Plaintiff

Teresa S. Renaker
Lewis, Feinberg, Renaker & Jackson, PC

For the Defendant

Mark Casciari
Seyfarth Shaw LLP

10:20 Morning Break

10:35 Fiduciary Litigation – Continued

11:00 Questions and Answers

11:10 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 litigation.

For the Plan

Lisa M. Gomez
Cohen, Weiss and Simon LLP

For the Employer

Charles B. Wolf
Vedder, Price, Kaufman &
Kammholz, PC

12:00 Questions and Answers

12:10 Lunch (on your own)

ERISA LITIGATION AGENDA

- 1:30 **Plan Termination Litigation**
The recent and significant bear market, combined with bankruptcies in the steel, airline, and textile industries, have created a surge in single employer plan terminations and litigation involving the PBGC. The panelists will discuss the current key PBGC cases, including pending litigation and recent regulatory developments involving setting the plan termination dates, the scope of the PBGC guarantee, and creditors' rights and provide perspective from the PBGC and plan sponsors, creditors, and purchasers of plan sponsor assets.
- For the Plaintiff**
Jeffrey B. Cohen, *Chief Counsel*
Pension Benefit Guaranty Corporation (PBGC)
- For the Defendant**
David R. Levin
Gardner Carton & Douglas LLP
- 2:20 **Questions and Answers**
- 2:30 **Severance and Early Retirement Litigation**
Despite the recent improvement in the economy, many for-profit and not-for-profit companies, as well as educational institutions, are considering or undertaking RIFs. The panelist will explore in depth a hypothetical involving a company RIF. The hypothetical will have many elements, including retiree health and a supplemental early retirement pension, as well as special "top hat" benefits. The defense-side panelist will discuss how to avoid litigation in the context of severance and early retirement programs, and both sides will discuss litigation strategies, including how to ensure ERISA status for severance arrangements, and class status.
- For the Plaintiff**
Mark DeBofsky
Daley, DeBofsky & Bryant
- For the Defendant**
Lissa J. Paris
Murtha Cullina LLP
- 3:20 **Questions and Answers**
- 3:30 **Afternoon Break**
- 3:45 **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, whether the advice requested or given in particular situations is privileged, and the impact of the Sarbanes-Oxley Act on employee benefits lawyers.
- Moderator:** Gabriel J. Minc, *Law Office of Gabriel J. Minc*
- Panelists:** Lisa M. Gomez, *Cohen, Weiss and Simon LLP*
Lissa J. Paris, *Murtha Cullina LLP*
Teresa S. Renaker, *Lewis, Feinberg, Renaker & Jackson, PC*
- 4:45 **Questions and Answers**
- 5:00 **Adjourn**

HIGHLIGHTS OF ERISA LITIGATION

Who Should Attend?

- *Litigators* who handle ERISA cases and want to enhance their substantive ERISA knowledge
- *Benefits practitioners* who wish to further their knowledge of the substantive law and most recent case law
- *Litigators* who find themselves confronting ERISA preemption issues on an increasing basis
- *ERISA specialists* who draft plan language and render advice about plan administration, trying to minimize the risk of litigation
- *Litigators* seeking to develop expertise in this growing field of practice

What Past Participants Have Said...

"Excellent up-to-date materials and program. A good coverage of issues from the simple to very complex by an excellent group of well prepared faculty."

Christopher Morris, Ryan, Jamison, Morris, Ryan & Smith

"Definitely the best conference I have been to yet! The topics covered were cutting-edge issues that litigators are faced with on a daily basis."

Kristi B. Gauthier, Miller, Shpiece & Tischler, PC

"Having one plaintiff-side and one defendant-side speaker during every session has at least two benefits missing from most seminars: First, it gives the audience the perspective of two experienced lawyers at once. But, second and more importantly, it brings the advantages of the adversarial system to the seminar, especially because these speakers are not shy about calling each other out."

David Tetrick, King & Spalding LLP

"The seminar was extremely well-organized and provided thorough discussion of all of the hottest areas in the field. This a must for any ERISA litigator."

Gardiner B. Davis, Spencer Fane Britt & Browne LLP

National Institute Faculty

Mark Casciari

Seyfarth Shaw LLP
Chicago, IL

Denise M. Clark

*H.E.R.E.I.U. Welfare—
Pension Funds*
Aurora, IL

Jeffrey B. Cohen

*Pension Benefit Guaranty
Corporation (PBGC)*
Washington, DC

Mark D. DeBofsky

Daley, DeBofsky & Bryant
Chicago, IL

Lisa M. Gomez

Cohen, Weiss and Simon LLP
New York, NY

Timothy D. Hauser

*Associate Solicitor
Plan Benefits Security Division
Office of the Solicitor
U.S. Department of Labor*
Washington, DC

Thomas H. Lawrence

Lawrence & Russell, LLP
Memphis, TN

David R. Levin

Gardner Carton & Douglas LLP
Washington, DC

Elizabeth R. Lishner

*Program Co-Chair
Law Office of
Elizabeth R. Lishner*
Santa Monica, CA

Joyce A. Mader

*Program Co-Chair
O'Donoghue &
O'Donoghue LLP*
Washington, DC

Gabriel J. Minc

Law Office of Gabriel J. Minc
Chicago, IL

Thomas G. Moukawsher

Moukawsher & Walsh, LLC
Groton, CT

Lissa J. Paris

Murtha Cullina LLP
Hartford, CT

Teresa S. Renaker

*Lewis, Feinberg, Renaker
& Jackson, PC*
Oakland, CA

Howard Shapiro

Proskauer Rose LLP
New Orleans, LA

Mary Ellen Signorille

AARP Foundation Litigation
Washington, DC

Amy J. Turner

*Senior Health Law Specialist
Office of Health Plan Standards
and Compliance Assistance
Employee Benefits Security
Administration (EBSA)
U.S. Department of Labor*
Washington, DC

Martha Jo Wagner

*Program Co-Chair
Venable LLP*
Washington, DC

Charles B. Wolf

*Vedder, Price, Kaufman &
Kammholz, PC*
Chicago, IL

ERISA LITIGATION INFORMATION

TUITION

Attend the entire two-day program, each breakfast, and the reception, and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by **Wednesday, October 11** to receive the discount.

Early Bird Registration - Before October 11

\$945 General Public

\$845 ABA Member (\$100 Savings - *join a Section, and save even more!*)

\$745 Sponsoring Section Member (\$200 Savings)

Full Tuition - After October 11

\$995 General Public

\$895 ABA Member (\$100 Savings - *join a Section, and save even more!*)

\$795 Sponsoring Section Member (\$200 Savings)

On-Site Tuition

\$1045 General Public

\$945 ABA Member (\$100 Savings - *join a Section, and save even more!*)

\$845 Sponsoring Section Member (\$200 Savings)

ADDITIONAL SAVINGS

If three or more register from the same firm, one registrant will receive a \$50 reduction in program tuition! Every registrant will receive a copy of the informative course materials book that can be used as a comprehensive resource long after the program is held. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

SCHOLARSHIPS

A limited number of scholarships to defray tuition expenses are available for this program. To request an application or receive additional information, contact Nancy Matthews at 202.662.8640. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation. Preference will be given to full-time LL.B. candidates.

MCLE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for lawyers. 11 hours of credit, including 1 hour of ethics credit, have been requested from states that recognize a 60-minute credit hour. 13.2 hours of credit, including 1 hour of ethics credit, have been requested from those states granting credit hours on a 50-minute basis (13 hours from NY State). Lawyers seeking credit in Pennsylvania must pay a fee of \$1.50 per credit hour directly to the PA CLE Board. The ABA pays applicable fees in other states where the sponsor is required to do so. In states where a late fee may become applicable, the ABA pays this fee as well. Please be aware that each state has its own rules and regulations including its definition of CLE as well as "Ethics." Therefore, certain programs may not receive credit in some states. Please check with your state agency for confirmation of general as well as ethics approval for any program. You may contact the ABA Service Center at 800.285.2221 or Nancy Matthews at 202.662.8640 for confirmation of the number of credits approved by any particular state. This transitional CLE program has been approved for all New York licensed attorneys in accordance with the requirements of the New York CLE Board for NY MCLE.

QUESTIONS?

If you have a specific question that you want answered, you can fax it up to the day before the program to Nancy Matthews (FAX 202.662.8682), or ask the speakers directly during the program presentation.

ERISA LITIGATION INFORMATION

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Nancy Matthews at 202.662.8640. Reasonable advance notice is requested.

CANCELLATIONS

Refunds will be made only if requests are received by **Wednesday, October 11**, and a \$50 administrative fee will be charged. **No refunds will be made for requests received after Wednesday, October 11.** Substitute registrants for the National Institute are welcome.

PROGRAM CONFIRMATION

Written confirmation of your registration will be e-mailed to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the program, call the ABA (202.662.8640) to confirm that your registration was received and the program is being held as scheduled.

HOTEL INFORMATION

DEADLINE FOR HOTEL RESERVATIONS:

Wednesday, October 11

You may make hotel reservations at the Conrad Chicago, 521 North Rush Street, Chicago, IL 60611. A limited number of rooms have been set aside for National Institute registrants at \$289 single or double occupancy. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released **Wednesday, October 11**, after which the hotel will accept reservations on a space-available basis only. All reservations must be guaranteed with a major credit card. **To register at the hotel, call the hotel directly at (312) 645-1500, and be sure to mention the ABA National Institute–ERISA Litigation–to receive the special discounted rate.**

AIRLINE INFORMATION

Airfare discounts are available through ABA Online Travel, Travelocity Business or directly from the airline. To access ABA Online Travel, go to www.abanet.org/travel and click on the Online Travel link at the top of the page. The 24/7 toll-free number for Travelocity Business is 1-866-321-8403. American Airlines can be reached at 1-800-433-1790. Reference discount code 18395.

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November 2-3, 2006

17th Annual National Institute on
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Washington, DC

November 13-14, 2006

21st Annual National Institute on
**Compensation for
Executives and Directors**
New York, NY

SPRING 2007

21st Annual National Institute on
ERISA Basics
Chicago, IL

SPRING 2007

21st Annual National Institute on
**Employee Benefits in
Mergers and Acquisitions**
New York, NY

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ON-SITE TUITION

- \$1045 General Public
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- Send me the **ERISA Litigation Audiotape Package, PC5470661**, (tapes and course materials) available three weeks following the presentation, at the special price of \$649.95 including postage and handling*.
- Send me the **ERISA Litigation CD Package, PC5470662**, (CDs and course materials) available three weeks following the presentation, at the special price of \$649.95 including postage and handling*.
- Send me the **ERISA Litigation Course Materials, PC5470660** at the special prepublication price of \$267.95 including postage and handling*.
- Send me the JCEB calendar for upcoming Employee Benefits Membership Events

TO REGISTER

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Mail: American Bar Association

JCEB Registrar

740 15th Street, NW, 10th Floor

Washington, DC 20005-1022

Fax: 202.662.8682 (credit card only)

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- American Express

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Join one of these dynamic Sections, and become active in one of their employee benefits committees. Join the ABA and one or more of the Sections when registering for this program, and save up to \$200 on this program tuition.

- I am interested in becoming a member of the American Bar Association. Please send me information and membership forms.
- I am an ABA member but want a further reduction on my tuition for this program. Please enroll me into the Section listed below; I've enclosed a separate check made payable to the ABA.
 - Section of Business Law, \$55
 - Section of Health Law, \$50
 - Section of Labor and Employment Law, \$40
 - Section of Real Property, Probate and Trust Law, \$50
 - Section of Taxation, \$60
 - Section of Tort Trial and Insurance Practice, \$50

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Chicago, IL

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