

LEGAL EMPLOYMENT

November 2016 to present – Member, Holifield · Janich · Rachal · Ferrera in its New Orleans office, practicing in ERISA Litigation, Fiduciary Advices and Labor & Employment.

2004 to October 2016 – Senior Counsel, Proskauer Rose’s New Orleans office, practicing in ERISA Litigation, Fiduciary Advices and Labor & Employment.

2002 to 2004 – Partner, Shook, Hardy & Bacon’s New Orleans office, practicing in ERISA Litigation and Labor & Employment.

1994 to 2002 – Partner, McCalla, Thompson, Pyburn & Shapiro, New Orleans, Louisiana, a boutique firm practicing in Labor, Employment and ERISA Litigation.

Judicial Clerk (1993-1994) Law Clerk for the Honorable Jacques L. Wiener, United States Court of Appeals, Fifth Circuit (1993-94).

EDUCATION

Tulane Law School, New Orleans, Louisiana (1990 – 1993) Juris Doctor *summa cum laude*. (3.9 GPA) Graduated: 1/307. Member Senior Board, Senior Articles Editor *Tulane Law Review*. Order of the Coif; Faculty Medal; Federal Bar Ass’n Award.

University of New Orleans, New Orleans, Louisiana (1977 – 1981) College of Business, B.S., Accounting (3.5 GPA).

PROFESSIONAL ASSOCIATIONS AND AWARDS

*Fellow, American College of Employee Benefits Counsel (2013-) and member Board of Governors (2016-)

*Member, Editorial Advisory Board, *Benefits Law Journal*, Wolters Kluwer (2017-)

*Listed in *Best Lawyers*® 2017 Lawyer of the Year, Litigation – ERISA, New Orleans

*US Legal 500 – Mention for Labor & Employment, ERISA Litigation, 2008, 2012 & 2014-2016 (Tier 1 – recommended lawyer who is “creative and thorough”)

*Chambers – Louisiana Employee Benefits & Executive Compensation 2013-2017 (Band 2, “encyclopedic knowledge of ERISA litigation and very good at the economics of a case” and “knows his craft really well”)

*Named Louisiana “Super Lawyer” 2007-2010, 2013-2018

*Named “Top Lawyer” New Orleans Magazine 2012

Admitted to the Bar of the State of Louisiana, 1993. ABA Labor & Employment Law Section: Management Co-Chair Employee Benefits Committee 2011 -2013.

References: Available upon request.

My career in private practice has focused exclusively on labor and employment law, with more than 20 years of experience defending complex ERISA litigation, including DOL investigations. My work also includes advising and training fiduciaries on their duties under ERISA. Since joining Holifield · Janich · Rachal · Ferrera in 2016, I have also begun providing expert witness assistance, which has included in cases challenging claims handling of executive benefits, and allocation of liability for class settlement in complex ERISA pension litigation.

PLAN INVESTMENTS & FIDUCIARY DUTIES: One of the most hotly contested areas in ERISA is ERISA fiduciary duties and plan investments, including employer stock investments in publicly traded companies, valuing and acquiring privately held ESOPs, and fee and expense litigation in 401(k) and other plans. My work in this area includes:

Significant Cases & Advice:

- **Litigation on closely held ESOP investments** – *Hans v. Tharaldson*, 2011 WL 7179644 (Oct. 31, 2011) (defending seller/ESOP trustee; summary judgment rulings on claim ESOP paid too much for \$1 billion hotel company); 2011 WL 6937598 (Dec. 23, 2011) (*Daubert* rulings); 2010 WL 1856267 (D.N.D. May 7, 2010) (class rulings) (successful summary judgment and *Daubert* rulings led to amicable settlement).
- **Litigation on fees paid for retirement and health plans** – *Chavez v. Plan Benefit Services*, Case no.: 1:17-cv-00659-SS (W.D. TX) (defend plan provider against claims paid excessive fees).
- **Litigation on plan investments in employer stock** – *Brown v. Owens Corning*, 622 F.3d 564 (6th Cir. 2010) (defending trustee against class action claims breached duties re 401(k) plan investments in employer stock) (Sixth Circuit affirmed dismissal based on adoption of broad rule on accrual of statute of limitation defense).
- **Litigation on plan investments in employer stock** – *Langbecker v. EDS*, 476 F.3d 299 (5th Cir. Jan. 18, 2007); *Electronic Data Systems, Inc. ERISA Litigation*, 305 F. Supp. 2d 658 (E.D. Tex. 2004) & 224 F.R.D. 613 (E.D. Tex. 2004) (defending company, CEO, CFO, and plan committees) (successful strategy attacking class led to amicable settlement below amount previously rejected by the district court).

- **Litigation on plan investments in employer stock** –*Hastings v. Wilson*, 516 F.3d 1055 (8th Cir. 2008) (defending ALPA-appointed committee members) (successfully asserted standing and Railway Labor Act defenses that led to case dismissal).
- **Litigation on plan investments in employer stock** –*DiFelice v. US Airways, Inc.*, 397 F. Supp. 2d 735 (E.D. Va. 2005) (defending plan trustee) (successfully established law and standards limiting duties of directed trustees).
- **Litigation on plan investments in employer stock** –*In re Williams Companies ERISA Litigation*, 271 F. Supp. 2d 1328 (N.D. Okl. 2003) & 31 EB Cas. 1870 (N.D. Okl. Oct. 27 2003) (defending company and directors) (successfully argued company and directors had limited or no fiduciary duties).
- **Defend DOL investigations** – Defend Fortune 500 company and senior executives in investigation regarding 401(k) investments in the employer’s stock; defend selling fiduciaries in investigations whether ESOPs paid more than fair market value for stock of closely held corporation.
- **Defend DOL litigation** – Defend owner of small company in resolution of lawsuit that owner had mismanaged 401(k) plan.
- **Advise on fiduciary duties of directors & officers** – Advise and present to boards and officers of Fortune 500 companies on minimizing fiduciary risks and exposures, including in merger and acquisitions, and on employer stock investments.
- **Advise on limiting fee and expense exposures in 401(k) plans** – Advise companies and financial institutions on best practices and ways to limit exposures on fees and expenses for 401(k) plans.

Books & Articles:

Chapter Co-Author, ERISA LITIGATION (BNA 5th ed. 2014) Chpt. 41 “*Fiduciary Duties Regarding 401(k) & ESOP Investments in Employer Stock*”; and Chpt. 34 “*Fees and Expenses Litigation in Defined Contribution Plans.*”

Co-Author Article, “*ERISA Fee Litigation: Recent Developments and*

Developing Best Practices to Limit Exposure,” in Bloomberg BNA, Benefits Practice Resource Center (July 7, 2017).

Co-Author Article, “*Fee Litigation 2016 Round-Up: Mitigating Risk in the Face of Expanding Targets and Theories of Fiduciary Liability,*” in 30, No. 1 Benefits Law Journal 21 (Spring 2017).

Author Chapter “*Fiduciary Liability, DOL Audit, Fiduciary Insurance and Bonding,*” in T. Rowe Price Fiduciary Source Guide (Dec. 2016).

Author Article, “*Disney and Chevron: Court Skepticism Can Provide Some Important Limits to Fee Litigation,*” in Bloomberg BNA, Pension & Benefits Daily (Nov. 30, 2016).

Co-Author Article, “*View From Proskauer: ERISA Fee Litigation Continues to Expand with New Claims Seeking to Impose Heightened Fiduciary Standards for 401(k) Plans,*” in Bloomberg BNA, Pension & Benefits Daily (July 29, 2016).

Co-Author Article, “*View From Proskauer: 401(k) Fee Litigation – Practices to Mitigate Fiduciary Risk,*” in Bloomberg BNA, Pension & Benefits Daily (January 7, 2016).

Co-Author Article, “*401(k) Fee Litigation: Recent Case Teachings on Exposures and Practices to Mitigate That Risk,*” in 28 No. 4 Benefits Law Journal 14 (Winter 2015).

Author Article, “*Debate Continues Over Fiduciary Status of 401(k) Plan Service Providers,*” in Thompson, 401(k) Handbook (July 2014)

Author Article, “*Proof of Imprudence, Causation, and Damages in Fiduciary Breach Claims Involving Plan Investments,*” in Bloomberg Law Reports, Labor & Employment (February 2012).

Co-Author Article, “*2010 Employer Stock Cases: The Good and the Better – The Defense Perspective,*” in Bloomberg BNA, Pension & Benefits Daily (February 17, 2011).

Author Article, “*Fee Litigation: Has a Tipping Point Been Reached?*” guest

article in Employment Law 360 (April 15, 2008).

Co-Author Article, *“Plan and Corporate Governance: Protecting Your Directors and Officers From Personal Liability Under ERISA,”* HR Advisor (July/August 2005).

Author Article, *“Director & Officers: Limiting Personal Liability Under ERISA In a Post-Enron World,”* HR Advisor (Nov/Dec 2002).

Co-Author Article, *“Director & Officers ERISA Liability Post-Enron,”* BNA Benefits Practice Center, Journal Reports: Law and Policy (November 2003).

Speeches:

Co-presenter at JCEB Government Joint Invitational on DOL Fiduciary Rule (March, 2017, Baltimore, MD).

Panel presenter at American College of Employee Benefits Counsel on Recent Developments in Fee Litigation (September 2016, Philadelphia, PA).

Speaker at Employee Benefits Update Seminar on ERISA Litigation Update and Retirement Industry Update and Trends (September 2016, Nashville, TE).

Panel presenter at National Center for Employee Ownership 2016 National Conference on ESOP Fiduciary Duties & Corporate Governance: Compliance & Litigation Perspectives (April 2016, Minneapolis, MN).

Panel presenter at American Conference Institute 11th and 12th National Forum on ERISA Litigation on Working with Independent Fiduciaries to Protect Participants and Reduce Risk (March & June 2016, Chicago, IL & San Francisco CA).

Speaker at Employee Benefits Update Seminar on Fiduciary Issues & Trends (September 2015, Knoxville & Nashville, TE).

Moderator of ABA JCEB Webinar on It’s a New World for ESOPS: The DOL/Great Banc Fiduciary Process Agreement and Recent Court Decisions (Oct. 2014).

Speaker at ABA JCEB National Institute program on Employee Benefits in Mergers & Acquisitions on Ethical Complexities in Deals (June 2014, New York, NY).

Panel presenter at ABA Employee Benefits Committee mid-winter meeting on ESOP Litigation Update (February, 2014, New Orleans, LA).

Speaker at ABA JCEB Webinar on Ethics for Compensation and Benefits Lawyers (December 2013).

Panel presenter at ABA JCEB National Institute program on ERISA Basics on Remedies and on Ethics (October 2013, Chicago, IL).

Speaker at ABA JCEB Teleconference on Employee Stock Ownership Plan (“ESOP”) Litigation Trends and Hot Button Issues (June 2013).

Co-Chair of ABA JCEB National Institute program on ERISA Litigation, and panel presenter on Employer Stock Litigation, and Fee Litigation (November 2011, Chicago, IL).

Panel presenter at ABA JCEB National Institute ERISA Litigation on Employer Stock Litigation (November 2010, Chicago, IL).

Panel presenter at BNA 401(k) Fiduciary Compliance Conference on Compliance Reviews and Corrections – What the *LaRue* decision means for plan fiduciaries (April 2008, Washington, D.C.).

Panel presenter at ABA Employee Benefits Committee mid-winter meeting on “ERISA Plan Fee Disclosures: Legislative Proposals, DOL Regulatory Developments, and Litigation” (February 2008, New Orleans, LA).

Panel presenter at ABA Annual Meeting, JCEB program on Ethics and Employer Securities (August 2007, San Francisco, CA).

Speaker at JCEB Teleconference on “ERISA 401(k) Litigation and Settlements” (June 2006).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Prudent Investments in 401(k) and Other Plans (New York, NY and San Francisco, CA)

(June 2006).

Speaker at ASPPA Conference, The DOL Speaks, on Employer Securities: Do's and Dont's" (Washington, D.C.) (April 2006).

Panel presenter ABA Employee Benefits Committee mid-winter meeting ERISA § 404(c) Defense (January 2006 Key Biscayne, FL).

Speaker at ABA Annual Meeting, Business Law Program on "More Enron/WorldCom Fallout: Corporate Officers on the Fiduciary Hook, Directed Trustees Off" (August 2005, Chicago, IL).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program Managing and Investing Plan Assets; Plan and Corporate Governance (June 2005, San Francisco; April 2005, New York City).

Speaker at JCEB Teleconference on "Plan and Corporate Governance: Rethinking the Roles of Officers and Directors" (May 2005).

Presented at DOL Southwest Benefits Practitioners Group on 401(k) Litigation Issues (January 2005, Dallas, TX).

Speaker ABA Joint Fall (Tax and Real Property, Probate & Trust) CLE Meeting on Prohibited Transaction and Fiduciary Issues in Settlement Plan and ERISA Claims (October 2004, Boston, MA).

Speaker ABA Annual Meeting, Business Law and JCEB Presentation on Director and Officer Liability Under ERISA (August 2004, Atlanta, GA).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Managing and Investing Plan Assets (May 2004, New York, NY).

Speaker ABA JCEB teleconference on "Enron Part Two: Directed Trustees and Employer Stock" (January 2004).

Speaker ABA Annual Meeting, Business Law and JCEB Presentation on Director and Officer Liability Under ERISA (August 2003, San Francisco, CA).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on The Current 401(k) and Company Stock Cases; Risk Post-Enron: Where the Litigation Is Going (June 2003, Chicago, IL).

Speaker Georgetown University Law Center 21st Annual Employment Law and Litigation Institute on “Prosecuting and Defending ERISA Claims After Enron: The Changing Landscape ” (April 2003, Washington, D.C.).

Speaker ABA JCEB teleconference on “DOL Positions in the Enron Litigation: What Do They Mean for Plans and Plan Fiduciaries” (March 2003).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Managing and Investing Plan Assets (New York, NY) (March 2003).

Presented at Lorman 401(k) Nuts & Bolts Seminar on ERISA § 404(c) Defenses, and Managing Director & Officer Risk (January 2003).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on When Are You a Fiduciary; Disclosing Employee Benefits; Managing Plan Assets; Managing Fiduciary Risk (June 2002, New York, NY & San Francisco, CA).

FIDUCIARY DUTIES GENERALLY AND ON DISCLOSURES: Most complex ERISA litigation includes fiduciary breach claims on plan administration and disclosure, and much of ERISA litigation is focused on claims fiduciaries mislead or failed to adequately inform of benefits. The scope of ERISA remedies is often critical in defending and limiting fiduciary exposure. Whether a plan is exempt from ERISA may also be at issue. My work in this area includes:

Significant Cases:

- **Litigation challenging church plan exemption to ERISA** – *Overall v. Ascension Health*, *Overall v. Ascension Health*, 23 F. Supp. 3d 816 (E.D. Mich. 2014) (defending against claim pension plan does not qualify for the church plan exemption to ERISA); *Lann v. Trinity Health Corp.*, Civil No.: PJM 14-2237, 2015 WL 6468197 (D. Mary. Feb. 24, 2015) (same); *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) (same – amicus brief for Church Defendant Amici).

- **Litigation on governmental plan exemption to ERISA** – *Smith v. Regional Transit Authority*, 2015 WL 6442337 (E.D. La. Oct. 23, 2015) (defending retiree health claim based on governmental plan exemption to ERISA), *aff'd* 827 F.3d 412 (5th Cir. 2016).
- **Fiduciary breach claim on disclosures** – *Osberg v. Foot Locker*, 909 F. Supp. 2d 527 (S.D.N.Y. 2012) (claim that misled class of approximately 16,000 participants about conversion to cash balance plan) (summary judgment dismissal), *rev'd in part*, 2014 WL 552784 (2d Cir. Feb. 13, 2014).
- **Fiduciary breach claim on disclosures** – *Mathews v. Chevron Corp.*, 2002 WL 826804 (N.D. Cal. April 23, 2002, *aff'd in part, rev'd in part*, 362 F.3d 1172 (9th Cir. 2004) (defending company as fiduciary against claims breached fiduciary duties to inform groups of employees on window plan) (after trial and appeal won on 16 of 19 claims).
- **Fiduciary breach claim on disclosures** – *Electronic Data Systems, Inc. ERISA Litigation*, 224 F.R.D. 613 (E.D. Tex. 2004) (defending company, CEO, CFO, and plan committees against claim misled on investments in employer stock) (successfully defended by defeating class certification of the claim).
- **Fiduciary breach claim on disclosures** – *Gearlds v. Entergy Services*, 709 F.3d 448 (5th Cir. 2013)(defending company against claim misled on entitlement to retiree health benefits) (appeal reversed on remedy issue).
- **Fiduciary breach claim on plan funding** – *Board of Trustees ILA v. Gabriel, Roeder, Smith & Co.*, (Civil Action No. 05-1221) (E.D. La.) (defending joint board of trustees against claim breached fiduciary duties on plan funding) (case dismissed).
- **Defend DOL investigations** – Defend Fortune 500 company and senior executives in investigation whether they made proper disclosures regarding 401(k) investments in the employer's stock.

Books & Articles:

Chapter Co-Author, ERISA LITIGATION (BNA 5th ed. 2014) Chpt. 39
“*Violation of Fiduciary Duty by Misrepresentation and Nondisclosure.*”

Co-Author Article, “*Gobeille v. Liberty Mutual – The Supreme Court Construes ERISA Preemption Expansively in the Reporting and Disclosure Context*” in ABA Employee Benefits Committee Newsletter Spring 2016.

Co-Author Article, “*CIGNA Corp. v. Amara and ERISA’s Equitable Remedies: Revolutionary Overthrow or Doctrinal Clarification?*” 25 Benefits Law Journal 37 (Spring 2012).

Co-Author Article, “*The Duty to Inform and Fiduciary Breaches: The “New Frontier” in ERISA Litigation,*” 14 *The Labor Lawyer* 503 (Winter/Spring 1999).

Author Article, “*View From Proskauer: Pension Plan Administration and Court Deference to the IRS—The ‘Church Plan’ Cases as a Case Study on the Significance of Agency Deference to Plan Administration*” in Bloomberg BNA, Pension & Benefits Daily (April 13, 2015).

Author Article, “*Challenging ERISA’s Church Plan Exemption Is Not Easy,*” in Law 360’s Employment Newsletter (September 2013).

Speeches:

Speaker at Employee Benefits Update Seminar on ERISA Litigation Update and Retirement Industry Update and Trends (September 2016, Nashville, TE).

Panel presenter at American Conference Institute 9th National Forum on ERISA Litigation on New Developments in Church Plan Litigation (April 2015, Chicago, IL).

Speaker at Employee Benefits Update Seminar on Fiduciary Update & Best Practices (August 2014, Knoxville, TE & November 2014, Bristol VA).

Co-Chair of ABA JCEB National Institute program on ERISA Basics, and panel presenter on Remedies (October 2012, Washington, D.C.).

Panel presenter at ABA Employee Benefits Committee mid-winter meeting on ERISA fiduciary developments (February 2010 San Antonio, TX).

Speaker at ABA API 2009 Annual Conference on Fiduciary Litigation:

Preventative Maintenance (May 2009, New Orleans, LA).

Panel presenter at ABA Employee Benefits Committee mid-winter meeting on ERISA fiduciary developments (February 2009, Charleston, SC.).

Panel presenter at BNA's program on Fiduciary Litigation Preventative Maintenance (November 2007, Washington, D.C.).

Panel presenter at JCEB National Institute ERISA Litigation on Fiduciary Breach Litigation (November 2007, Chicago, IL).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Limiting Fiduciary Exposure in Managing Complex Plans, Defined Benefit Plan Trends, Litigation Developments Affecting Fiduciary Conduct, and Managing the Risks: What's Next? (June 2007, New York, NY).

Panel presenter ABA Employee Benefits Committee mid-winter meeting on ERISA fiduciary developments in 2006 (February 2007, Rancho Mirage, CA).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Dealing with Complex ERISA Disclosure Issues (June 2006).

Panel presenter ABA Tax Section Joint Fall CLE Meeting on "Current Fiduciary and Litigation Issues" (September 2005, San Francisco, CA)

Speaker at ABA Annual Meeting, JCEB Program on "Current ERISA Remedies: What Have the Courts Wrought" (August 2005, Chicago, IL).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Dealing with Complex ERISA Disclosure Issues (June 2005, San Francisco; April 2005 New York, NY).

Speaker ABA Tort & Insurance Practice Mid-Winter Meeting on "Fiduciary Liability in the Age of Corporate Downsizing: ERISA Fiduciary Duties and the Separation Incentive (January 2005, Phoenix, AZ).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Dealing with Disclosure Issues (May 2004, New York, NY).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Dealing

with Disclosure Issues (June 2003, Chicago, IL).

Speaker Mealey's ERISA Litigation: A Practitioner's Guide on "Severance Litigation: Parting Is Not Such Sweet Sorrow" (May 2003, Washington, D.C.).

Presented at Lorman 401(k) Nuts & Bolts Seminar on ERISA Fiduciary Communications (January 2003).

Co-Chair and presented at Glasser LegalWorks Fiduciary Program on Disclosing Employee Benefits (June 2002, New York, NY & San Francisco, CA)

Organized program and presented at Glasser LegalWorks Fiduciary Program on Communicating With Employees and Managing Fiduciary Risk (October 2001, New York, NY).

"Limiting Liability When Discussing Employee Benefits With Employees" – 2000 Winter Conference, Western Pension & Benefits Conference (March 2000, Denver, CO).

Moderator of Employee Benefits Program and speaker on ERISA Litigation Update; Law Education Institute & BNA Books, 2000 National CLE Conference (January 2000, Vail, CO).

Contingent Worker Litigation" – Glasser/Fordham University 12th Annual ERISA Litigation Conference (September 1999, New York, NY).

Independent Contractor Litigation – Southwest Benefits Association/IRS: 8th Annual Employee Benefits Conference (November 1997).

COMPLEX PENSION CLAIMS AND AGE DISCRIMINATION IN BENEFITS:

ERISA imposes complex statutory obligations on pension benefits, and disputes often arise as to whether the pension accruals or benefits are violating ERISA complex requirements or ADEA's age discrimination rules. My work in this area includes:

Significant Cases:

- **ERISA exemption litigation** – *Overall v. Ascension Health*, 23 F. Supp. 3d

- 816 (E.D. Mich. 2014) (defending against claim pension plan does not qualify for the church plan exemption to ERISA); *Lann v. Trinity Health Corp.*, Civil No.: PJM 14-2237, 2015 WL 6468197 (D. Mary. Feb. 24, 2015) (same); *Griffith v. Providence Health & Services*, No. C14-01720-JCC (W.D. Wash.) (same); *Carver v. Presence Health Network*, No. 15 CV 2905 HDL (N.D. Ill.) (same); *Morris v. Daughters of Charity*, Case No. 14-cv-04681-VC (N.D. Cal.) (same); *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) (same – amicus brief for Church Defendant Amici); *Smith v. Regional Transit Authority*, 2015 WL 6442337 (E.D. La. Oct. 23, 2015) (defending retiree health claim based on governmental plan exemption to ERISA), *aff'd* 827 F.3d 412 (5th Cir. 2016).
- **Pension Benefits** – *Skelly v. Insurance Services Office*, No. 1:12-cv-08889-AKH (S.D.N.Y. Sept. 16, 2014) & 599 Fed. Appx. 409, 60 EBC 2939 (2nd Cir. April 27, 2015) (class action claim for pension benefits); *Allen v. Honeywell*, 698 F. Supp. 2d 1197 (D. Ariz. 2010) (defending company and plan against \$1 billion class claims that plan change cutback benefits and that plan terms provided richer benefits) (after became involved summary judgments granting these claims were reversed, case eventually amicably settled);
 - **PBGC litigation** – *PBGC v. Renco Group*, Civil Action No. 1:13-cv-621 (S.D.N.Y) (claim financing transaction done to evade pension liabilities).
 - **Litigation on age discrimination and benefits:** *Osberg v. Foot Locker*, 656 F. Supp. 2d 361 (S.D.N.Y. 2009) (defending company and plan against class claim that pension change discriminated on the basis of age) (age claim successfully dismissed).
 - **Litigation on age discrimination and benefits:** *Aull v. Cavalcade Pension Plan*, 988 F. Supp. 1360 (D. Colo. 1997) & 185 F.R.D. 618 (D. Colo. 1998) (defended company and plan against class action including claim that pension formula discriminated on the basis of age, and for breaches of fiduciary duties and for benefits) (after successful defenses and IRS audit, case amicably settled).
 - **Litigation on age discrimination and benefits:** *IACP v. Continental Airlines* (Grievance No. CAL 96-26) (defending company against pilot class action grievance regarding “age 60” issues) (case amicably settled).

- **Prohibited Transaction** – *Sprague v. Central States & UPS et al.* 269 F.3d 811 (7th Cir. Oct. 18, 2001) (defending company against claim it owed approximately \$100 million in contributions) (won case dismissal).
- **Advise on best practices to maintain church plan exemption** – Advise mid-market and smaller religiously affiliated employers on best practices to maintain church plan exemption in light of case developments.
- **Expert witness on class settlement and malpractice exposure** – Provided expert report on whether plaintiff had a reasonable, non-speculative basis to allocate large class settlement to one of the professional defendants.

Articles:

Author Article, “*View From Proskauer: Pension Plan Administration and Court Deference to the IRS—The ‘Church Plan’ Cases as a Case Study on the Significance of Agency Deference to Plan Administration*” in Bloomberg BNA, Pension & Benefits Daily (April 13, 2015).

Author Article, “*Challenging ERISA’s Church Plan Exemption Is Not Easy,*” in Law 360’s Employment Newsletter (September 2013).

Co-Author Article, “*Cases and Issues in Cash Balance Litigation*” in 22 *The Labor Lawyer* 29 (Summer 2006) (excerpt republished in “Best Articles” compendium in ABA’s *GP Solo* Sept. 2007).

Co-Author Article, “*Litigation Issues in Cash Balance Plans*” in 17 *Benefits Law Journal* 66 (Spring 2004 & Summer 2004) & 30 *Journal Pension Planning & Compliance* 1 (Spring 2004).

Speeches:

Speaker at American Conference Institute 9th National Forum on ERISA Litigation on New Developments in Church Plan Litigation (April 2015, Chicago, IL).

Speaker at West LegalWorks teleconference on “EEOC and Consideration of Age in Providing Retirement Benefits.” (February 2008).

Speaker ABA JCEB teleconference on “The Beat Goes On: New Cash Balance Cases That May Rock Things” (August 2003).

Glasser/Fordham University and ABA Joint Committee on Employee Benefits. Designed, organized, and co-chaired multi-disciplinary seminar of lawyers, benefit consultants, PBGC Executive Director and Congressman Earl Pomeroy on cash balance pension plans. (May 1999 San Francisco & New York City; July 1999 Chicago; October 1999 Washington, D.C.). Presentations included litigation issues in cash balance plans and the basics on cash balance plans.

“*Cash Balance Litigation*” – Glasser/Fordham University 12th Annual ERISA Litigation Conference (September 1999, New York, NY).

BENEFIT CLAIMS: Benefit claims are based on the terms of the plan, and run the gamut from class claims seeking benefits plan-wide, to individual disputes over benefits. They often raise unique procedural issues, such as the requirement for administrative exhaustion and deference to the plan administrator’s interpretation of the plan. My work in this area includes:

Significant Cases:

- **Pension benefits** – *Humphrey v. United Way of the Texas Gulf Coast*, No. 11-20617 (U.S. Fifth Circuit Court Appeals) (retained after loss at trial on class action; on appeal argued plaintiff’s proposed construction was unlawful, case amicably settled after filing of brief).
- **Retiree health benefits** – *Raetsch v. Lucent*, 2006 WL 3068648 (D.N.J., Oct. 27, 2006) (case included claim that plan terms imposed retiree healthcare requirements) (won motion to exhaust claims, and worked with healthcare actuaries to develop defenses and offsets that eventually led to an amicable settlement).
- **Pension Benefits** – *Allen v. Honeywell*, 698 F. Supp. 2d 1197 (D. Ariz. 2010) (reversed \$300 million judgment plan terms obligated company to provide enhanced “minimum benefits”).
- **Pension Benefits** – *Frazier v. Honeywell*, Case No. 2:10-cv-01618-SRB (D. Ariz) (defending company and plan against claims that plans did not properly

credit benefits for a class of transferred employees).

- **Examples individual benefit claims** – *Green v. Publicis Benefits Connection Health & Group Benefits Program*, No. 17-cv-1808 (N.D. Ill.) (claim for health benefits, amicably resolved after defeated plaintiff’s motion for conflict discovery); *Gallagher v. Allied Pilots Association Disability Income Plan*, Case No. 9:06-1000-PMD (D.S.C.) (disability claim, case resolved amicably through remand to administrative process); *Mortex* (amicable settlement of claim had erred in providing life insurance benefits); *Sprint* (agreed dismissal after plaintiff shown flaw in severance plan claim).
- **Advise on resolving complex benefit claims** – Advise companies and fiduciaries on complying with procedural and legal requirements in resolving complex benefit claims.
- **Expert witness on SERP claims process** – Provided expert rebuttal report on claims process and impact of the substance of the claims.

Speeches & Articles:

Panel presenter at ABA JCEB National Institute program on ERISA Litigation on Benefit Claims Litigation (June 2014, Chicago, IL).

“*Benefit Claim Litigation*” – Glasser/Fordham University 12th Annual ERISA Litigation Conference (September 1999, New York, NY).

EXECUTIVE COMPENSATION: Disputes often arise over complex benefits and agreements with executives on bonus agreements and deferred compensation. Many of these disputes are for large dollar claims. My work in this area includes:

Significant Cases:

- **Litigation on executive compensation** – *Gray v T.V. Guide et. al.* (Civil Action No. 99-02808) (USDC, S.D. Fla.) & 77 Fed. Appx. 507 (11th Cir. 2003) (Table) (defended company against claim owed over \$8,000,000 in executive compensation because of an alleged duty to create a top hat plan to provide options in the company) (case dismissed on ground not an ERISA plan, and affirmed on appeal).

- **Arbitration on executive compensation** – Panel arbitrator for confidential arbitration involving executive and pension benefits.
- **Benefit claims for executive compensation.** Advise fiduciaries on resolution of claims for benefits under SERP plans.

Speeches & Articles:

Author article “*Recent Litigation Developments Affecting Delaware Executive Compensation,*” in BloombergBNA Tax Management Compensation Planning Journal (August 2017).

Panel presenter at Practising Law Institute’s annual program on Hot Issues in Executive Compensation 2014-2017, Ethical Considerations When Counseling Boards, Compensation Committees, Companies and Executives, on fiduciary privilege and Delaware executive compensation litigation (New York, NY).

Panel presenter at ABA JCEB National Institute program on Executive Compensation on Counseling Companies, Boards, Compensation Committees and Executives – Ethical Obligations and Issues (Nov. 2014, Chicago, IL).

Speaker at ABA JCEB National Institute program on Employee Benefits in Mergers & Acquisitions on Ethical Complexities in Deals (June 2014, New York, NY).

Presented at ALI/ABA Executive Compensation seminar on Executive Compensation Litigation (June 2002, New York, NY).

HEALTHCARE LITIGATION AND EMPLOYEE BENEFITS: This is a complex and evolving area in labor and employment law, in which the risk of litigation is increasing substantially in light of the Affordable Care Act and the Federal Health Mental Parity Act. I was recently quoted on some of these issues in *Mental Health Parity Ruling Called “Watershed Case,”* in Class Action Litigation Report (Bloomberg BNA August 24, 2015) & Pension & Benefits Daily (Bloomberg BNA August 25, 2015). My work in this area includes:

Significant Cases:

- **Litigation on retiree health benefits** – *Smith v. Regional Transit Authority*, 2015 WL 6442337 (E.D. La. Oct. 23, 2015) (defending retiree health claim on whether plan was a governmental or ERISA plan), *aff'd* 827 F.3d 412 (5th Cir. 2016).
- **Litigation on retiree health benefits** – *Raetsch v. Lucent*, 2006 WL 3068648 (D.N.J. Oct. 27, 2006) (defending company against claim tax code imposed retiree healthcare requirements)(worked with healthcare actuaries to develop defenses and offsets that eventually led to an amicable settlement).
- **Litigation on retiree health benefits** – *Stewart v. KHD Deutz*, 980 F.2d 698 (11th Cir. 1993) & 75 F.3d 1522 (11th Cir. 1996) (defending company on class action claim collective bargaining agreement created vested rights to retiree health benefits) (after six years of litigation, working with healthcare actuary used new benefit structures of Medicare HMOs and VEBA to lead to an amicable settlement).
- **Litigation on sex discrimination and health benefits:** *EEOC v UPS*, 141 F. Supp. 2d 1216 (D. Minn. 2001) (defending company on class action claim benefit plan discriminated against females in the provision of contraceptive benefits) (after preliminary proceedings and investigation, amicably settled).
- **Fiduciary breach claim** –*Gearlds v. Entergy Services*, 709 F.3d 448 (5th Cir. 2013)(defending company against claim misled on entitlement to retiree health benefits) (appeal reversed on remedy issue).

Books & Articles:

Co-Author, “*View From Proskauer: Developing Issues and Litigation Under the Federal Mental Health Parity Act and the Affordable Care Act,*” in Bloomberg BNA, Pension & Benefits Daily (July 9, 2014).

Chapter Co-Author, ERISA LITIGATION Chpt. 24 “*The Affordable Care Act and ERISA Litigation.*” (BNA 5th ed 2014)

Co-Author Article, “*How ACA Modifies ERISA’s Benefit Claims Procedures,*” in Law 360’s Employment, Health, Insurance and Public Policy Newsletters

(October 2012).

Co-Author Article, “*The Affordable Care Act and Its Coverage Mandates for Employers: A Potent Recipe for ERISA Class Actions*,” in Bloomberg BNA, Pension & Benefits Daily (August 7, 2012).

Co-Author Article, “*Pay-or-Play State Health Insurance Laws and ERISA Preemption*,” in HR Advisor (May/June 2008).

Speeches:

Speaker at Employee Benefits Update Seminar on ACA Litigation (August 2014, Knoxville, TE & November 2014, Bristol VA).

Co-Chair of ABA JCEB National Institute program on ERISA Litigation, and panel presenter on Healthcare Claims and Related Litigation Under the Affordable Care Act (May 2013, Chicago IL).

Panel presenter ABA Employee Benefits Committee mid-winter meeting on ERISA Preemption (January 2006 Key Biscayne, FL).

Presenter at ABA Employee Benefits Mid-Winter Meeting on the *Davila* and *Calad* Cases and ERISA Preemption for HMOs (February 2004, New Orleans, LA).

Panel presentation at ABA Employee Benefits Mid-Winter meeting on *Moran v Rush Prudential* and scope of ERISA preemption (February 2002, San Juan, P.R.).

LABOR LAW: Throughout my career I have had some involvement in labor law issues, including representing employers in collective bargaining:

Significant Cases:

- **Litigation on labor law and union election** – *Avondale Industries v. NLRB*, 180 F.3d 633 (5th Cir. 1999) (overturning certification of 4,000 person union election); *Fleischut v. Avondale Industries, Inc.* 1995 WL 27464, 148 LRRM (BNA) 2685 (E.D. La. 1995) (attempted injunction of labor practices of 4,000

person employer).

- **Litigation under Railway Labor Act preemption** – *Hastings v. Wilson*, 516 F.3d 1055 (8th Cir. Feb. 22, 2008) (defending ALPA-appointed committee members) (successfully asserted standing and Railway Labor Act defenses that led to case dismissal).
- **Litigation of section 301/duty fair representation suit** – *Ware v. General Motors* (Civil Action No. 96-30006) (USDC, W.D. La.) (claim for breach of strike settlement contract).
- **Advise on collective bargaining** – UPS (2002 national negotiations – advise on health and welfare benefit issues); Coastal Cargo Co. (advise on 1995 bargaining negotiations); Cajun Sugar Coop. (handle 1995, 1999, 2004 and 2009 bargaining negotiations).

Speeches & Articles:

Author Article, “*Machinists Preemption Under the NLRA: A Powerful Tool to Protect an Employer’s Freedom to Bargain*,” 58 *La. L. Rev.* 1065 (Summer 1998).

Co-Author Article, “*Fifth Circuit Symposium 1999 – Labor and Employment Law*,” 46 *Loy. L. Rev.* 187 (Spring 2000).

EMPLOYMENT LAW: Throughout my career I have periodically defended and advised companies on general employment issues, including in particular employment issues that intersect with employee benefits. My work in this area includes:

Significant Cases & Advice:

- **Advise on contingent workers** – Advise Fortune 500 company on employment and benefit issues related to contingent workers.
- **FLSA claim** – *Varnado v. Petrochemical Services Inc.*, Civil Action No. 1:05 cv 0481 (E.D. Tex. 2006) (claim bonus plan caused supervisors to lose exempt status).
- **Defending EEOC Commissioner’s Charge** – Across the board race/sex

challenge to large employer's hiring and testing practices.

- **Sex Discrimination and Harassment** – *Hoaglund v. United Airlines* (Civil Action No. 93-4145) (USDC, E.D. La.) (disciplinary termination); *Fouquier v. Playtex, Inc.* (Civil Action No. 95-2918) (USDC, E.D. La.) (performance termination); *Butler v. SGS Control Services, Inc.* (Civil Action No. 95-2197) (USDC, E.D. La.) (third party harassment and constructive discharge); *EEOC v General Motors* (Civil Action No. 98-637) (USDC, W.D. La.) (sexual harassment).
- **Race Discrimination** – *Taylor v. B & G Lumber Co.* (Civil Action No. 95-0018) (USDC, E.D. La.) (e.g., rates of pay, working conditions, promotions); *Bourgeois v. Amoco Corporation* (Civil Action No. 94-2250) (USDC, E.D. La.) (releases, lay off); *Young v. Gallo Wine* (Civil Action No. 94-3396) (USDC, E.D. La.) (termination and sales assignments).
- **Age Discrimination** – *Cole v. Entergy Corp.* (Civil Action No. 95-3384) (USDC, E.D. La.) (reduction in force and company ranking system).
- **Disability Discrimination** – *Kocher v. Loyola University* (Civil Action No. 96-2997) (USDC, E.D. La.) (reduction in force).

Speeches & Articles:

Panel presenter at ABA Annual Labor and Employment Conference on “*Employment Discrimination Litigation and Employee Benefit Issues: What Every Employment Attorney Should Know*” (Chicago Nov. 2016).

Co-Author Essay, “*Report on the Growing Tension Between the First Amendment and Harassment Law,*” 12 *The Labor Lawyer* 475 (Winter/Spring 1997).

Instructor at Loyola Law School on handling cases under the Americans With Disabilities Act (February 2000 & 2001).