



# ERISA Litigation

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## INTRODUCTION

- **ERISA litigation has increased dramatically in the last 15 years**
- **A “comprehensive” and “fully reticulated” statute**
- **Class action attorneys have learned that there is money in ERISA**
- **In 2014, the 10 largest class action claims settled for \$1.3 billion**
- **More to come?**

## **Characteristics of ERISA Litigation – Or Why is ERISA Attractive?**

- **Coverage**
- **Fiduciary and Prohibited Transaction Standards**
- **Class actions**
- **Attorneys' fees**
- **Individual liability**
- **Extremely technical rules**

## Pension Plan Litigation: Company Stock

- It all started with the 2001 recession
- Conflict between special ERISA rules and securities laws
- *First Third Bancorp v. Dudenhoeffer* resets the table.
- Since *Dudenhoeffer*, most claims have failed
- Fraud Claims?
- ESOPs?

## **Pension Plan Litigation: 401(k) Fees**

- **Schlichter's 2006-07 revolution**
- **Large settlements lead to new players**
- **Types of claims**
- **2016 saw a new wave of claims**
  - **College 403(b) Plans**
  - **2bp v. 4bp**
  - **RFP process**
  - **Investment Advisors**
- **What to do? What's next?**

## Pension Plans: Defined Benefit Litigation

- Long dormant due to *Harley*
- A New Hope for Plaintiffs?
  - *Spokeo*
  - *Verizon*
  - *Fletcher*
- Church plan litigation
- What to do; What's next?

## **Claims for Benefits/Executive Compensation**

- **Claims for Benefits**
  - **Understand your process**
  - **Make disciplined decisions**
  - **Control your Plan documents**
- **Executive Compensation**
  - **Yes, it might be ERISA**
  - **Make sure your contract reflects this**

## Other Pension Plan Issues

- **New Fiduciary Rules?**
- **Will aggressive DOL audits continue?**
- **Lawsuits by pension plans?**



## Health Law Litigation: Provider Lawsuits

- **A class action without a class**
- **Administrative process complexity**
- **Who gets to sue?**
- **Who can be sued?**
- **Beware requests for information**
- **Welfare Plan Fees?**

## **Health Law Litigation: The Health Plans Strike Back**

- **Health plan administrators have aggressively attacked medical providers**
- **Issues:**
  - **Copay/balance billings**
  - **Fraudulent bills**
  - **ACA plans**

## How to Avoid Litigation

- **Process, Process, Process**
- **Know what your service providers are doing and charging**
- **Beware of ERISA 104(b) requests**
- **Negotiate fees and engage in RFPs**
- **Document, Document, Document**
- **Fiduciary exception**