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# eLunch Briefings



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# Hot Topics In ERISA Litigation

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Relations Department

# Today's eLunch Presenter



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# Why Are Pensions Still a Huge Target?

- Pension Plan Demographics
- Participants Are Suing Plan Fiduciaries for Making Bad Investment Choices
- Fiduciary Standards Are Unclear and Still Evolving

# What Benefit Snafus Do Plaintiff Lawyers Look For?

- Enron Claims
- Temporary Stock Price Declines
- Excess Service Provider Fee Claims
- Securities Lending Claims

# What Benefit Snafus Do Plaintiff Lawyers Look For?

- Complete Pension Plan Terminations
  - Standard
  - Distress
- Partial Pension Plan Terminations
- ERISA § 4062(e)
- Fiduciary Breach Claims in Bankruptcy
- Withdrawal Liability Claims

# Lessons Learned

## ■ Fiduciary "Do's and Don'ts"

- *In re Citigroup ERISA Litigation*, 2009 WL 2762708 (S.D.N.Y. 2009)
- *Brieger v. Tellabs*, 629 F. Supp. 2d 848 (N.D. Ill. 2009)

# Lessons Learned

- Fiduciary "Do's and Don'ts"
  - *Hecker v. Deere & Co.*, 556 F.3d 575 (7<sup>th</sup> Cir. 2009)
  - *Braden v. Wal-Mart Stores, Inc.*, 2009 U.S. App. LEXIS 25810 (8<sup>th</sup> Cir. 2009)

# Lessons Learned

- Fiduciary "Do's and Don'ts"
  - *Kennedy v. Plan Administrator for Dupont Savings and Investment Plan*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 865 (2009)
  - *Metlife v. Glenn*, 554 US \_\_\_, (2008)

# Lessons Learned

- Release of All Employment Claims As Condition for Plan Participation?
  - *Lockheed Corp. v. Spink*, 517 U.S. 882 (1996)
- Ability to Amend at Last Minute?
  - *Joanou v. Coca-Cola*, 26 F.3d 96 (9<sup>th</sup> Cir. 1994)

# What Is the Best Way to Use Employee Benefits During Bad Economic Times?

- Fiduciary "Do's and Don'ts"
  - Procedural Prudence
  - Investment Policy
  - Three Plan Document "Must Haves"

# New Issues

- Annuitization of DC Benefits
- Can the *Moensch* "Presumption of Prudence" Apply to:
  - Annuities?
  - Default investment options?

# New Issues

- Active vs. Passive Investment Management
- Excess Service Provider Fee Litigation Impact on Active Management
- DOL Investment Regulations
- "Reverse" Stock Drop Cases?

# What Benefit Snafus Do Plaintiff Lawyers Look For?

- Retiree Medical Changes
- Salaried Plans
  - *Sprague v. General Motors*, 133 F.3d 188 (6<sup>th</sup> Cir. 1998) (en banc)
- Union Plans
  - *UAW v. Yardman, Inc.*, 716 F.2d 1476 (6<sup>th</sup> cir. 1983)
  - *Reese v. CNH America, LLC*, 574 F.3d 315 (6<sup>th</sup> Cir. 2009)

# What Is the Best Way to Use Employee Benefits During Bad Economic Times?

- Severance Plans
- Early Retirement Incentive Plans
- Top Hat Plans and Covenants Not to Compete



Questions?



Thank You.

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