

David R. Godofsky, F.S.A.

Partner

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David is a Fellow of the Society of Actuaries and Chairman of the Firm's Retirement and Insurance Committee. He has a unique multidisciplinary practice including litigation, transactions and compliance in employee benefits involving actuarial science and statistics. David has represented clients before two state supreme courts and in many other bet-the-company litigation matters.

David Godofsky is a partner in the firm's Employee Benefits & Executive Compensation Group, which was named "Law Firm of the Year" by *U.S. News – Best Lawyers*® four times for ERISA Litigation and for Employee Benefits (ERISA). BTI Consulting named David a "Client Service All-Star" for 2019. David is also the chairman of the Firm's Retirement and Insurance Committee. He has a multidisciplinary practice that is unique in the United States. His ability to integrate legal analysis with cost, funding, administration and benefit design considerations is informed by his education and years of experience as an actuary and consultant. David is a member of a team of litigators who have represented several major employers in cutting-edge class action litigation and other "bet the company" litigation matters. He has represented clients before the Supreme Courts of Florida and Illinois, as well as U.S. district courts and state trial courts around the country.

David is a Fellow of the Society of Actuaries, an Enrolled Actuary, a former director of the Conference of Consulting Actuaries, and former vice chairman of the Education & Examination Committee of the Society of Actuaries. He served as chairman of a committee of the Actuarial Standards Board, and currently serves on the program committee of the Enrolled Actuaries Meeting. In response to his comment letters, the U.S. Department of the Treasury corrected an error in pension funding regulations and changed the rules for determining whether cash balance plans satisfy the backloading requirements.

Before joining Alston & Bird, David spent 18 years designing, implementing and administering employee benefit plans, determining costs, and helping employers control costs and get the most for their employee benefits budgets. His clients seek his advice for practical, workable solutions to complex problems, and the ability to make highly technical concepts understandable to executives, employees, judges and arbitrators.

Representative Experience

- Currently representing three large pension plans in separate class actions in which plaintiffs contend the actuarial assumptions used to compute joint & survivor benefits are unreasonable because the mortality tables are out of date.
- Lead counsel for the defense in three large actuarial malpractice cases.
- Has represented numerous actuaries in ethics hearings before the Actuarial Board for Counselling and Discipline and the IRS's Office of Professional Responsibility.
- Led the defense of one of the largest actuarial consulting firms in the U.S., in which the plaintiff contended that the defendant committed actuarial malpractice in estimating the savings from its 2012 pension reforms. The U.S. district court granted our motion for summary judgment on all counts, which the plaintiff did not appeal.

- Represented the Retirement Plan for Chicago Transit Authority Employees in the Supreme Court of Illinois in *Mathews v. Retirement Plan for CTA Employees*, in which employees challenged the state constitutionality of the cost-saving modifications to the CTA's retiree medical benefits (one class of 7,000 plaintiffs was dismissed, and the litigation for the remaining plaintiffs was remanded to the lower courts).
- *Merial Limited v. Velcera, et al.*, Civil Action No. 3:12-cv-75, United States District Court for the Middle District of Georgia. Represented Merial Limited in successful motion for preliminary injunction to prevent defendants from selling a competing product that would infringe on the patent for Frontline Plus anti-flea and tick medicine for dogs and cats.
- Represented the governor of Florida and the State of Florida in *Scott et al., v. Williams et al.*, winning complete victory in the Supreme Court of Florida in a landmark case in which plaintiffs claimed that Florida's new pension law for state and municipal employees violates the state constitution.
- Represented numerous companies in negotiations with the PBGC on a variety of issues, including 4062(e) liability.
- Drafted a comment letter on proposed Liquidity Shortfall funding regulations signed by the Chief Actuaries of Towers Watson, Aon Hewitt, Buck Consultants, Principal Financial Group, The Segal Company, Savitz and Turpin Consulting Group. In September of 2015 the Department of the Treasury issued the final regulation implementing the change to the proposed regulation that Mr. Godofsky requested.
- Represented several large public companies in benefits issues in numerous acquisitions and mergers of equals, and advised those companies on the integration of their benefits plans and executive compensation arrangements.
- Represented a major airline in a billion-dollar, class action involving pension calculations, which was settled for less than two percent of the amount claimed by the plaintiffs.
- Represented one of the largest public companies in the United States in negotiations with the PBGC over liability under Section 4062(e) of ERISA.
- Represented a major insurance company in litigation with another insurer regarding transfer of actuarial reserves, winning a complete victory in Federal District Court.
- Represented several clients in litigation, arbitration and administrative hearings relating to actuarial computations, actuarial equivalencies, and mortality tables in their defined benefit plans.
- Represented a publicly held media conglomerate in connection with a violation of the anti-discrimination rules under Section 401(a)(4) of the Internal Revenue Code, reducing the cost of correction by more than 98 percent.
- Drafted amendments to hundreds of non-qualified retirement plans, executive compensation arrangements and employment agreements to comply with Section 409A of the Internal Revenue Code.
- Represented a mining conglomerate in an arbitration regarding a transfer of pension assets, resulting in a transfer to our client of the entire amount in the controversy.
- Represented a major financial institution in a dispute with federal regulators over statistical evidence of employment discrimination, settling the case for less than one percent of the amount claimed by the government.
- Represented an actuarial firm in a malpractice suit that was settled for less than one percent of the amount claimed.
- Represented numerous public companies in VCP filings and other self-corrections for qualified plans.

Publications & Presentations

Publications

- “Nondiscrimination Rules: Testing,” *Benefits Guide: Basics*, *Bloomberg Law*, July 2020.
- “The Real Reasons You Should Use Roth 401(k) or a Roth ISA,” *Bloomberg BNA*, May 8, 2017.
- “Illinois Supreme Court Affirms Constitutional Protection of Public Pensions,” *Benefits Law Journal*, Vol. 28, No. 3, Autumn 2015.
- “Cash Balance Developments,” *The Practical Lawyer*, October 2015.
- “*M&G Polymers v. Tackett*: New Standards for Vesting of Retiree Medical Benefits in Collective Bargaining Agreements,” *ECFC Flex Reporter*, Vol. 19, No. 1, March 2015.
- “Florida Supreme Court Upholds Right of Legislature to Prospectively Alter Public Employee Retirement Benefits,” *Benefits Law Journal*, Vol. 26, No.2, Summer 2013.
- “Florida Supreme Court Upholds Prospective Changes to State’s Public Employees Retirement System,” *Employee Benefit Plan Review*, May 2013.
- “401(k) Discrimination Testing and Peanut Butter and Jelly Sandwiches”, *BNA Pension & Benefits Reporter*, December 6, 2011.
- “Pay or Play? How Health Care Reform Changes the Game for Employers,” *Benefits Compliance Advisor*, March 9, 2011.
- “Does It Make Economic Sense to Drop Health Coverage? The Answer May Surprise You,” *The Self-Insurer*, March 2011.

Presentations

- 2019 Annual Enrolled Actuaries Meeting, Washington, D.C., April 7-10, 2019.
- “ERISA Litigation Affecting Defined Benefit Plans,” “Ethics,” “Church Plans,” and “Overfunded Plans – Effective Use of Surplus,” 2019 Annual Enrolled Actuaries Meeting, Washington, D.C., April 7-10, 2019.
- “Daily Small Plan Consulting Issues” and “Ethics,” 2018 Conference of Consulting Actuaries Annual Meeting, Colorado Springs, CO, October 21-24, 2018.
- “2018 Professionalism Seminar – Managing Professional Liability and Reputational Risk,” Conference of Consulting Actuaries, Washington, D.C., April 8, 2018.
- “Litigation Update Impacting Defined Benefit Plans,” 2017 ASPPA Annual Conference, National Harbor, Maryland, October 22, 2017.
- “Managing Professional Liability Risk,” Conference of Consulting Actuaries Annual Meeting, Orlando, FL, October 22-25, 2017.
- “Update on Employee Benefits Regulations and the Outlook for 2017,” Middle Tennessee Employee Benefits Council, Nashville, Tennessee, April 25, 2017.
- “Accrual Rule Testing,” “Ethics,” “More Ethics,” and “Reducing Professional Liability Risk,” 2017 Annual Enrolled Actuaries Meeting, Washington, D.C., April 2-5, 2017., Washington, D.C., April 2-5, 2017.

Professional & Community Engagement

- Society of Actuaries, Fellow, former vice chair of Education & Examination Committee
- Enrolled Actuary

- Actuarial Standards Board, chair of ASOP 17 Task Force
- Conference of Consulting Actuaries, Fellow, former director
- American Academy of Actuaries
- Enrolled Actuaries Meeting, Program Committee
- The *Best Lawyers in America*®, every year since 2013
- Listed in *Chambers USA: America's Leading Lawyers for Business*

Education

- University of Virginia (J.D., 1982)
- College of Insurance (B.S., 1979)

Admitted to Practice

- District of Columbia
- Tennessee
- Missouri

Related Services

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