



Emily Seymour Costin

Partner

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Related Services

Employee Benefits & Executive Compensation ■ Labor & Employment ■ ERISA Litigation ■ Litigation ■ Health Care Litigation ■ Class Action & Multidistrict Litigation ■ Insurance ■ Tax ■ Environmental, Social & Governance (ESG)

Emily is a nationally recognized leader in ERISA litigation. Clients faced with complex employee benefit claims count on Emily to resolve disputes at the beginning stages with maximum efficiency. In addition to managing active cases, she advises clients on proven strategies to avoid future litigation.

Emily Seymour Costin leads the firm's nationally recognized ERISA Litigation practice group. She represents clients in complex litigation over benefits and fiduciary matters under ERISA, including those involving investments, fees, and employer stock in defined contribution plans, pension benefit calculations, benefit termination, and health benefits. She also represents several of the country's largest health insurers in disputes with medical providers over reimbursement from ERISA plans and recoupment of overpayments. Emily has a track record of advising diverse groups of clients in other disputes involving employment, securities, health care, insurance, contracts, and professional malpractice. She's experienced in managing administrative claims and appeals, responding to government audits, investigations, and subpoenas, and counsels clients on ERISA fiduciary best practices and other litigation avoidance strategies.

Emily is ranked by *The Best Lawyers in America*[®] and Chambers USA for ERISA litigation and employee benefits practice. Clients tell Chambers, "Emily is an excellent ERISA Litigator with a high level of attention to detail and focus on client service."

Emily is co-chair of the firm's Women's Initiative and serves on the firm's Diversity Steering Committee. She is pro bono legal counsel and a member of the Board of Directors of Breast Care for Washington, a non-profit dedicated to increasing access to medical screenings and treatment to all women in D.C. regardless of their ability to pay.

Representative Experience

- Leading the defense of PNC Bank (formerly BBVA Bancshares) in putative class action alleging excessive fees and imprudent investment options in a 401(k) plan formerly offered to company employees.
- Argued and prevailed on an issue of first impression before the Ninth Circuit regarding the ability of an out-of-network provider to seek reimbursement for COVID-19 testing services under the CARES Act.
- Leading the defense of a global insurance company in an action under Section 510 of ERISA and challenges to the status of a deferred compensation plan as a "top hat" plan.
- Representing several companies in putative class actions alleging statutory violations and breach of fiduciary duty under ERISA arising from the selection of certain actuarial equivalence factors used to calculate benefits in defined benefit pension plans.

- Defending clients across the country in putative class actions alleging breaches of fiduciary duties under ERISA regarding the selection of investments and payment of supposed excessive fees in 401(k) and 403(b) plans with favorable results.
- Argued and prevailed on an issue of first impression before the Second Circuit regarding Article III standing to bring ERISA claims related to a health plan benefits.
- Representing a multinational insurance and health care company in various disputes with out-of-network providers across the country claiming entitlement to benefits based on patient assignments and related counterclaims for overpayments, and billing fraud.
- Represented Insperity Inc. in a two-week bench trial challenging newly designed proprietary investment options in its 401(k) plan.
- Defended several actuarial consulting firms against claims for actuarial malpractice, breach of fiduciary duty, and breach of contract.
- Argued and prevailed on a motion for summary judgment in a dispute brought by a former American Basketball Association player regarding claims for pension benefits under the American Basketball Association Players' Retirement Plan.
- Defended four NBA teams and sponsors of the American Basketball Association Players' Retirement Plan in a class action alleging various violations of ERISA arising from administration of the plan.

Publications & Presentations

News Items

- *Benefits Pro* | How the Supreme Court Ruling on Northwestern's 403(b) Plan Could Affect 401(k) Fiduciaries | February 1, 2022
Emily Costin and Ellie Studdard comment on how the U.S. Supreme Court *Hughes v. Northwestern University* decision might affect 401(k) fiduciaries.
- *Pensions & Investments* | Supreme Court Backs DC Participants, but Industry Members Left Wanting More Guidance | January 28, 2022
Emily Costin comments on the ERISA implications of the U.S. Supreme Court decision in *Hughes vs. Northwestern University*, noting why plan fiduciaries may offer fewer investment choices as a result.
- *Plansponsor* | Attorneys Divided on Supreme Court Ruling's Employer Impact | January 28, 2022
Emily Costin is quoted on the *Hughes V. Northwestern* U.S. Supreme Court ruling that underscores the importance of keeping good committee meeting minutes.
- *Plansponsor, Planadvisor* | What the Supreme Court's Northwestern Ruling Means in Practice | January 25, 2022
Emily Costin comments on the U.S. Supreme Court's ruling in the Employee Retirement Income Security Act (ERISA) lawsuit *Hughes v. Northwestern University* and how the opinion may inspire plan fiduciaries to offer fewer investment options.
- *Pensions & Investments* | Court Ponders Whether DC Improvements Prove Imprudent Past | December 13, 2021
Emily Costin is quoted on the U.S. Supreme Court oral arguments in *Hughes vs. Northwestern University* and the implications for retirement plan fiduciaries.

Publications

- “Revenue Sharing Argument Might Save Barrick in 401(k) Case,” *Law360*, May 26, 2023.
- “3 Retirement Plan Fiduciary Considerations in the Wake of COVID-19,” *BenefitsPRO*, June 2, 2020.
- “The Road to Hell Is Paved with Good Intentions: COBRA Compliance in the Wake of COVID-19 Downsizing,” *Benefits Law Journal*, Vol. 33, No. 2, Summer 2020.
- “Key ERISA Litigation Trends to Monitor in 2019,” *BenefitsPRO*, February 18, 2019.
- “Arbitration of ERISA Claims: What’s the Deal?” *Benefits Law Journal*, Vol. 31, No. 3, Autumn 2018.
- “Ninth Circuit Goes ‘Off the Rails’ by Shifting the Burden of Proof in ERISA Claims,” *Benefits Law Journal*, Spring 2017.
- “Plan Sponsors, Approach Target-Date Funds with Caution,” *Law360*, February 13, 2017.
- “Can You Keep a Secret? Attorney-Client Privilege and the Work-Product Doctrine in the ERISA/Fiduciary Context,” *Bloomberg BNA Benefits Practitioners’ Guide*, October 27, 2016.
- “Dave & ... Busted? Employee Claims Nationwide Restaurant Chain Violated ERISA by ‘Interfering’ with Her Right to Health Benefits,” *Benefits Law Journal*, Vol. 29, No. 1, Spring 2016.
- “‘Fiduciary’ Defined: DOL’s Proposed New Rule Creates More Questions Than Answers,” *Benefits Law Journal*, Vol. 28, No. 3, Autumn 2015.
- “Declaration of Independence: Preserving the Role of the Independent Fiduciary Post-*Dudenhoeffer*,” *Benefits Law Journal*, Vol. 28, No. 2, Summer 2015.
- “Determining ERISA Duties Post-*Dudenhoeffer*,” *Law360*, March 26, 2015.

Presentations

- “Litigation Update,” Virtual Employee Benefits Spring Update 2024, American Bar Association Joint Committee on Employee Benefits, webinar, April 17, 2024.
- “Recent Trends in Fiduciary Liability,” Professional Liability Underwriting Society (PLUS), webinar, March 18, 2021.
- “ERISA 2020: The Evolving World,” PLI, webinar, December 16, 2020.
- “The Rise in Arbitration for ERISA Cases: Recent Ninth Circuit Cases—and the Impact on Class Waivers and Arbitration Clauses,” 18th National Forum on ERISA Litigation, webinar, November 18–19, 2020.
- “Lessons Learned from Litigation,” 2020 PLANSPONSOR National Conference, September 21–25, 2020.
- “Fostering Inclusion & Engagement During COVID-19,” National Diversity Council, webinar, May 7, 2020.

Professional & Community Engagement

- American Bar Association, Joint Committee on Employee Benefits, past chair
- American Bar Association, TIPS Employee Benefits Committee, past chair
- National Association of Women Lawyers
- *Law360* Editorial Board (Benefits) (2021)
- *Benefits Law Journal*, Editorial Advisory Board, former member

Court Admissions

- U.S. Supreme Court

- U.S. Court of Appeals for the Second, Fourth, Eighth, Ninth, Eleventh and DC Circuits
- U.S. District Courts for the District of Maryland, District of Columbia, Eastern District of Wisconsin, and the Central, Southern, and Northern Districts of California

Education

- The George Washington University (J.D., 2005)
- University of Pennsylvania (B.A., 2000)

Admitted to Practice

- District of Columbia
- California