

Emily Seymour Costin

Partner

+1 202 239 3695

emily.costin@alston.com

Washington, D.C. | The Atlantic Building, 950 F Street, NW | Washington, DC 20004-1404

Los Angeles | 333 South Hope Street, 16th Floor | Los Angeles, CA 90071-3004



Employers faced with complex employment and 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 ERISA Litigation practice. She regularly represents employers, plan sponsors, insurers, and fiduciaries in 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 listed in *Chambers USA* and *The Best Lawyers in America*® for her ERISA litigation work and has been named a "Rising Star" by *Law360* in employee benefits. She's a frequent commentator and contributing author for publications such as *Plan Sponsor*, *Plan Advisor*, *Pensions & Investments*, *Law360*, and *BenefitsPro*.

Emily is a national co-chair of the firm's Women's Initiative and participates on the firm's Diversity Steering Committee. She serves on 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.
- Representing Aetna in nationwide class action brought by an out of network medical laboratory regarding the proper reimbursement rate for COVID-19 testing services.
- 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.
- Defended 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 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.
- Defending 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.
- Represented Dell and various individual fiduciaries of the Dell defined contribution plan in a matter involving Dell stock in the plan.
- Defended Nokia and related individuals in multiple employer stock-drop cases based on publicly reported difficulties with Nokia's transition to new products and a resulting drop in its stock price, which was affirmed by the Second Circuit.

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.
- *Law360* | Law360's 2021 Benefits Editorial Advisory Board | March 22, 2021
Emily Costin is noted for her selection to Law360's 2021 Benefits Editorial Advisory Board.

Publications

- "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.
- “Interference with Protected Rights,” in *ERISA Litigation*, 5th ed., and 2015 Cumulative Chapter Supplement, The Bureau of National Affairs, 2014.

Presentations

- “ERISA Plan Investment Committee Governance: Avoiding Breach of Fiduciary Duty Claims,” Strafford, webinar, June 8, 2022.
- “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.
- “Lessons Learned from Litigation,” PLANSPONSOR National Conference, Washington, D.C., June 5–7, 2019.
- “Lawyers Who Talk Too Much: Ethical Considerations for Employee Benefit Practitioners” and “The Ins and Outs of Fiduciary Liability Insurance,” ABA JCEB Employee Benefits Spring Update, Washington, D.C., April 3, 2019.
- “Fiduciary Liability Insurance and the Impact of ERISA Common Law on Insurance Coverage,” 45th Annual TIPS Midwinter Symposium, Coral Gables, FL, January 17–19, 2019.
- “Regulation and Litigation Update,” Best of PLANSPONSOR National Conference, New York, NY, November 14, 2018.
- “Best Practices to Protect Yourself and Your Company from Fiduciary Liability Lawsuits,” PLANSPONSOR National Conference, Washington, D.C., June 13–15, 2018.

- “Benefit Plan Overpayments: Recognition, Recovery and Write-Off,” ABA’s Joint Committee on Employee Benefits, webinar, May 24, 2018.
- “Emerging Trends in Employee Benefit Plan Design and Administration, Including Cybersecurity Issues” and “‘Hot Topics’ in ERISA Litigation,” ABA’s Joint Committee on Employee Benefits 2018 Employee Benefits Spring Update, Including Tax Reform, Washington, D.C., April 9, 2018.
- “Emerging Trends in Employee Benefit Plan Design and Administration,” 44th Annual TIPS Midwinter Symposium on Insurance and Employee Benefits, Coral Gables, FL, January 11-13, 2018.

Professional & Community Engagement

- Breast Care for Washington, board of directors
- 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

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

Related Services

Employee Benefits & Executive Compensation | Labor & Employment | ERISA Litigation | Litigation | Health Care Litigation | Class Action & Multidistrict Litigation | Insurance | Tax | Corporate Social Responsibility & Sustainability