

Skadden has successfully defended numerous corporate and individual clients in litigation arising under the Employee Retirement Income Security Act (ERISA), including class actions and proceedings under other federal laws. We utilize an interdisciplinary approach, drawing on the skills from lawyers with deep ERISA-related litigation experience coupled with the extensive backgrounds of our top-ranked compensation and benefits attorneys.

Our representations go well beyond the financial industry, spanning a wide range of sectors, for which we successfully have represented clients in trial and appellate courts nationwide on a wide variety of ERISA issues. Our team has deep experience with often-overlapping ERISA claims, securities class and derivative actions, and internal and government investigations. Our work includes counseling on, among other areas, ESOP and 401(k) plan stock-drop cases, cases alleging breaches of fiduciary duties, claims involving ERISA's prohibited transactions provisions, challenges to ERISA plan amendments, ERISA preemption of state law claims and claims alleging fiduciary misrepresentation.

Skadden was named *New York Law Journal's* 2021 Litigation Department of the Year, as well as a finalist in the general litigation category of its 2019 and 2020 Litigation Department of the Year competitions and *The American Lawyer's* 2018 Litigation Department of the Year competition. In the *BTI Litigation Outlook 2022*, Skadden was again named to the BTI Consulting Group's list of top litigation law firms: The BTI Fearsome Foursome. Additionally, members of our executive compensation and benefits practice repeatedly have been recognized as "leading lawyers" in their fields by, among others, *Chambers USA*, *Chambers Global*, *The Best Lawyers in America* and *The Legal 500 U.S.*, and a member of our team was named *Best Lawyers' 2017 New York City Employee Benefits (ERISA) Law Lawyer of the Year*.

## Experience

Skadden attorneys have represented some of the world's largest, most influential corporations and individuals in ERISA-related litigation, including significant ERISA actions for clients such as Anheuser-Busch, Bank of America, the Capital Group Companies, Connell Limited Partnership, DST Systems, Inc., Eaton Vance, Fidelity Investments, JP Morgan Chase, Liberty Mutual, McKesson Corporation, Merrill Lynch, Morgan Stanley, Pfizer, Inc. and Putnam Investments. Our experience has included:

- American Medical Security, Inc. in ERISA class action litigation alleging improper methods for calculating health insurance premiums.
- Anheuser-Busch InBev NV in:
  - a federal ERISA dispute filed by former employees who alleged they failed to receive enhanced pension benefits following Anheuser's sale of its theme park unit to a major private equity firm; and
  - the dismissal of a putative class action alleging violation of ERISA in connection with a wrongful denial of pension benefits and breach of fiduciary duty.
- Bank of America Corporation and certain of its officers in a class action brought on behalf of all participants in three 401(k) plans sponsored by Bank of America and alleging ERISA violations.
- The Capital Group Companies in the dismissal of a putative class action alleging violations of ERISA in connection with the use of affiliated investment products in their 401(k) plan.

# ERISA Litigation

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- Cedars-Sinai Medical Center in connection with a putative class action filed against Voya Retirement Insurance and Annuity Company alleging ERISA violation
  - Cerner Corporation in a putative class action alleging breaches of ERISA fiduciary duties by maintaining certain imprudent investment options in the plan and by failing to monitor the Plan's recordkeeping expenses.
  - Connell Limited Partnership in the dismissal of a purported class action seeking damages relating to an acquisition by the defendant of certain divisions of an ESOP-owned (employee stock ownership plan) company. The plaintiffs complained that the transaction was prohibited under ERISA and that the defendants breached ERISA fiduciary duties to the ESOP participants, committed federal common law fraud and deceit, and violated RICO.
  - Corteva, Dow and DuPont in a putative class action alleging that the companies breached ERISA fiduciary duties and engaged in prohibited transactions in connection with the Dow-DuPont merger.
  - DST Systems, Inc. and certain of its officers and directors in securing a dismissal of a putative class action in connection with allegations that defendants breached ERISA fiduciary duties by investing a portion of the company's 401(k) plan assets with an investment adviser who allegedly failed to diversify those assets adequately.
  - Eaton Vance in a putative class action alleging that Eaton Vance's in-house 401(k) plan includes unduly expensive and underperforming proprietary investment options, which allegedly were offered more inexpensively to outside clients.
  - Fidelity Investments:
    - in a putative class action in connection with allegations that Fidelity offers products to plan sponsors that violate ERISA's fiduciary duty and prohibited transaction provisions; and
    - in connection with allegations that Fidelity used participants' confidential data to market non-plan retail financial products to participants.
  - The Goodyear Tire & Rubber Company in the dismissal of a federal securities class action (including ERISA claims) in the Northern District of Ohio rejecting the claim that Goodyear had committed intentional fraud by restating its earnings.
  - Invesco in a putative class action alleging that Invesco's use of affiliated investment products in its 401(k) plan, and in the brokerage window offered through the plan, breaches ERISA fiduciary duties and constitutes prohibited transactions.
  - JPMorgan Chase in a putative class action in connection with allegations that JPMorgan's use of affiliated mutual funds and other investment products in its 401(k) plan breaches ERISA fiduciary duties and constitutes prohibited transactions under ERISA.
  - Koenig in a nationwide class action alleging violations of ERISA Sections 404-407.
  - Liberty Mutual and certain of its executive officers in a putative class action alleging violations of ERISA in connection with the costs of recordkeeping fees and managed account services.
  - The former directors of MBNA Corporation in ERISA-related litigation based upon an alleged failure to diversify the holdings of the MBNA 401(k) plan.
  - McKesson Corporation and its audit committee in class action litigation brought by ESOP participants alleging violations of fiduciary duties under ERISA in connection with a drop in value of stock held by the ESOP.
  - Merrill Lynch & Co., Inc. in an ERISA action brought on behalf of Merrill Lynch's 401(k) Saving and Investment Plan, Retirement Accumulation Plan and Employee Stock Ownership Plan.
  - Morgan Stanley & Co. Inc. in ERISA litigation in connection with its purchase of Burlington Industries.
  - The National Football League and related entities in securing a motion to dismiss and, ultimately, the settlement of a group action in the Southern District of New York brought by 93 former specimen collectors in the NFL's Drug Program who alleged ERISA and age discrimination claims based on their classification as independent contractors and the outsourcing of the specimen collection function of the Drug Program to a third-party administrator.
  - Occidental Petroleum Corporation in a lawsuit brought by retired welfare plan participants alleging that modification of the retiree welfare plan was a violation of the terms of the plan.
  - Pfizer, Inc. in:
    - a class action lawsuit under ERISA brought by former employees of Wyeth that was acquired by Pfizer in 2009; and
    - ERISA litigation alleging that Pfizer improperly marketed Lipitor for off-label uses.
  - The outside directors of Popular Inc. in derivative and ERISA litigation alleging that Popular's financial statements were misleading because they supposedly included an overstated deferred tax asset that should have been offset by a valuation allowance. The ERISA case, brought by plan beneficiaries on behalf of a putative class, alleged that the outside directors, among others, breached their duties by including Popular stock as an investment option for employees.
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# ERISA Litigation

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- Putnam Investments and certain of its officers in a complete trial win in a putative class action in connection with allegations that Putnam's use of affiliated mutual funds and other investment products in its 401(k) plan breaches ERISA fiduciary duties and constitutes prohibited transactions under ERISA.
  - State Street, as trustee of the United Airlines ESOP, in a successful trial and appeal to the 7th Circuit involving whether the trustees had a fiduciary duty under ERISA to vote ESOP shares against an employee buyout.
  - Tharaldson Motels, Inc. in the dismissal of a complaint filed against Tharaldson's ESOP, its ESOP committee and the individual directors alleging breach of fiduciary duty under ERISA in connection with changes made to the ESOP preventing former Tharaldson employees from keeping their vested account balances.