

Preface

Cases are current at least through January 1, 2017, with additional coverage of relevant subsequent U.S. Supreme Court decisions through June 30, 2017.

We write this book to help both experienced and novice attorneys navigate complex ERISA cases. This book is designed to be your compass for that journey.

The Employee Retirement Income Security Act (ERISA) is an all-encompassing statute, and the odds are that you will be faced with an ERISA case at some point in your legal career. On average about 7,856 ERISA cases are filed per year in federal court.¹ That number does not include the untold number of state court cases that are labeled as breach of contract, divorce, insurance, personal injury, or fraud cases but are really ERISA cases in disguise. This book will help you determine whether ERISA applies to your case.

Judges complain that “garden variety” ERISA contract cases clog the court system. But the courts have found ERISA to be an exceedingly difficult nut to crack—especially its preemption clause. When wrestling with the preemption clause, courts liken themselves to heroic explorers on an epic journey who must descend into a Serbonian bog—an Egyptian lake with swirling sand that appears to be a lake but is really a bog. In this land, “judges are forced to don logical blinders and split the linguistic atom to decide even the most routine cases.”² Other courts have likened portions of ERISA to the seaweed-infested waters of the Sargasso Sea—“a veritable Sargasso Sea of obfuscation.”³ Still other courts invoke images of navigating through the whirlpool-spewing sea monster Charybdis.⁴ This is not a journey you want to undertake alone. In this book, dozens of ERISA attorneys will help you navigate into ERISA’s safe harbors.

¹Administrative Office of the U.S. Courts, Judicial Facts and Figures, Table 4.4, Civil Cases Filed by Nature of Suit (2015) (average number of ERISA cases filed annually between 2011 and 2015).

²*DiFelice v. Aetna U.S. Healthcare*, 346 F.3d 442, 453–54, 31 EB Cases (BNA) 1417 (3d Cir. 2003) (Becker, J., dissenting).

³*Travelers Ins. Co. v. Cuomo*, 14 F.3d 708, 717, 17 EB Cases (BNA) 1675 (2d Cir. 1993).

⁴*Eckelberry v. ReliaStar Life Ins. Co.*, 402 F. Supp. 2d 704, 707, 36 EB Cases (BNA) 1449 (S.D. W. Va. 2005) (quoting Adam F. Scales, *Man, God and the Serbonian Bog: The Evolution of Accidental Death Insurance*, 86 IOWA L. REV. 173, 191 (2000)).

This book has an altruistic goal. We want to educate the bench and bar so that counsel and judges can readily identify ERISA cases and resolve them quickly. The quick resolution of cases will have a significant impact on court congestion and the parties' wallets. The latter is no small issue, especially where the plaintiff is injured, disabled, laid off, or awaiting medical treatment. On the other hand, by expediting the dismissal of meritless or frivolous cases, the judicial system can stop the drain on plan assets used to pay unnecessary attorneys' fees—money that otherwise could be used to pay for pension or medical benefits.

This is the sixth edition of *ERISA Litigation*, first published in 2003. The book has been expanded to include new chapters on disability benefits and insured benefits. We continue to believe that this book serves an important role in encouraging more attorneys to recognize and accept cases that involve significant ERISA issues, and in assisting judges in interpreting ERISA in a consistent manner.

JAYNE ELIZABETH ZANGLEIN
Western Carolina University
Cullowhee, North Carolina

SEAN M. ANDERSON
University of Illinois College of Law
Champaign, Illinois

BRENDAN S. MAHER
Stris & Maher LLP
Dallas, Texas

PETER K. STRIS
Stris & Maher LLP
Los Angeles, California

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