



Of Counsel, New Orleans

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Robert W. Rachal is of counsel in the New Orleans, Louisiana, office of Jackson Lewis P.C. His practice focuses on complex ERISA fiduciary, benefits, and executive compensation litigation, including defending DOL investigations, and on advising ERISA fiduciaries.

Robert's work has included advising fiduciaries and defending, across the country, companies, plan providers and plan fiduciaries in all types of complex ERISA litigation, *e.g.*, from claims ESOP stock was overvalued, to claims 401(k) fees were excessive, or that pension plans owed greater benefits under complex provisions of ERISA. His work also includes advising and consulting on issues that arise in complex ERISA litigation and benefits claim processing and in disputed over executive benefits. Representative recent matters include:

## Practices

- Financial Services
- Employee Benefits
- ERISA Complex Litigation

## Education

- University of New Orleans, B.S. 1981
- Tulane University Law School, J.D. 1993

## Admitted to Practice

- 2nd Circuit Court of Appeals 2014
- 5th Circuit Court of Appeals 1993
- 6th Circuit Court of Appeals 2009
- 7th Circuit Court of Appeals 2001
- 8th Circuit Court of Appeals 2007
- 9th Circuit Court of Appeals 2002
- Louisiana - E.D. La. 1994
- Louisiana - M.D. La. 1994
- Louisiana - W.D. La. 1994
- Michigan - E.D. Mich. 2013
- Louisiana 1993

- Defended several Catholic health care organizations against claims their multi-billion dollar pension plans did not qualify for the "church plan" exemption to ERISA. Motion to dismiss granted, which ruling was subsequently quoted and adopted by the U.S. Supreme Court in *Advocate v. Stapleton*, 137 S. Ct. 1652 (2017)).
- Defended seller/ESOP trustee in claim ESOP paid too much for \$1 billion hotel company. Favorable summary judgment and *Daubert* rulings for defendants led to amicable settlement.
- Defended company against class action claiming company illegally cutback pension benefits in a cash balanced conversion. Motion to dismiss granted and affirmed on appeal.

Robert's clients include both Fortune 500 companies and small and mid-size employers.

He is a prolific writer and lecturer on cutting-edge ERISA litigation and fiduciary issues, including for the ABA and Bloomberg BNA.

Robert was the senior articles editor of *Tulane Law Review* while attending law school. After law school he clerked for Judge Jacques Wiener of the U.S. Fifth Circuit Court of Appeals.

## Honors and Recognitions

- *New Orleans Magazine*, "Top Lawyers: Employee Benefits Law" (2024)
- *The Best Lawyers in America*®, "Employee Benefits (ERISA) Law" (2019-present), "Employment Law - Management" (2021-present) and "Litigation - ERISA" (2016-present)
- *The Best Lawyers in America*®, "Lawyer of the Year - ERISA Litigation" (2019, 2021, 2024)
- *Chambers USA*, "Labor & Employment" (2019-2023) and "Employee Benefits & Executive Compensation" (2019-present)
- *Legal 500 USA*, "Recommended Attorney" (2008, 2012, 2014-2016, 2020, 2024)
- *Louisiana Super Lawyers*®, "Super Lawyers" (2008-2010, 2013-present)

- [Martindale-Hubbell@](#), "Distinguished® - Peer Rated for High Professional Achievement" (2006-present)

## Pro Bono and Community Involvement

- Fabourg Marigny Improvement Association, Legal Counsel (2006-2008)
- Lycee Farncais de la Nouvelle-Orleans, Legal counsel for parent group, advise board on personnel matters (2012-2014)

## Published Works

- *ERISA Fiduciary Answer Book*(Wolters Kluwer 11th ed. 2022) [Co-Author]
- "Belknap v. Partners Healthcare and Recent Developments in ERISA's Actuarial Equivalence Litigation," *American Bar Association*(May 2022) [Co-Author]
- "ERISA Fee and Investment Litigation – 2021 Developments and Best Practices to Mitigate Risk," *35 Benefits Law Journal*(Spring 2022) [Co-Author]
- *ERISA Fiduciary Answer Book*(Wolters Kluwer 10th ed. 2021) [Co-Author]
- "Fee and Investment Litigation 2015-2020: Five Year Review of Developments and Best Practices to Mitigate Risk – Part I," *34 Benefits Law Journal*(Spring 2021) [Co-Author]
- *ERISA Fiduciary Answer Book*(Wolters Kluwer 9th ed. 2019) [Co-Author]
- "Fee Litigation 2018 Round-Up: Recent Developments and Best Practices to Mitigate Risk," *32 Benefits Law Journal*(Spring 2019) [Co-Author]
- *ERISA Litigation*(BNA 6th ed. 2017 & 2018 Supp.), Chpt. 34 "Fees and Investment Prudence Litigation in Defined Contribution Plans" [Chapter Co-Author]
- "Fee Litigation 2017 Round-Up: Recent Developments and Best Practices to Mitigate Risk," *31, No. 1 Benefits Law Journal*25 (Spring 2018) [Co-Author]
- "Recent Litigation Developments Affecting Delaware Executive Compensation," *BloombergBNA Tax Management Compensation Planning Journal* (August 2017) [Author]
- "ERISA Fee Litigation: Recent Developments and Developing Best Practices to Limit Exposure," *Bloomberg BNA, Benefits Practice Resource Center*(July 7, 2017) [Co-Author]
- "Fee Litigation 2016 Round-Up: Mitigating Risk in the Face of Expanding Targets and Theories of Fiduciary Liability," *30, No. 1 Benefits Law Journal*21 (Spring 2017) [Co-Author]
- *ERISA Litigation*(BNA 6th ed. 2017), Chpt. 24 "The Affordable Care Act and ERISA Litigation" [Chapter Co-Author]
- "Fiduciary Liability, DOL Audit, Fiduciary Insurance and Bonding," *T. Rowe Price Fiduciary Source Guide*(Dec. 2016) [Author]
- "Disney and Chevron: Court Skepticism Can Provide Some Important Limits to Fee Litigation," *Bloomberg BNA, Pension & Benefits Daily*(Nov. 30, 2016) [Author].
- *ERISA Litigation*(BNA 5th ed. 2014) Chpt. 39 "Violation of Fiduciary Duty by Misrepresentation and Nondisclosure" [Chapter Co-Author]
- *ERISA Litigation*(BNA 5th ed. 2014) Chpt. 41 "Fiduciary Duties Regarding 401(k) & ESOP Investments in Employer Stock" [Chapter Co-Author]
- "Labor & Employment and ERISA Class Actions After Wal-Mart and Comcast – A Defense Perspective," *29 ABA Journal of Labor & Employment Law*319 (Winter 2014) [Co-Author]
- "Using Experts to Defeat or Limit Class Certification in Employment Law and ERISA Cases After Wal-Mart and Comcast" *Bloomberg BNA, Class Action Litigation Report* (February 14, 2014) [Co-Author]

- CIGNA Corp. v. Amara and ERISA’s Equitable Remedies: Revolutionary Overthrow or Doctrinal Clarification?” 25 *Benefits Law Journal* 37 (Spring 2012) [Co-Author].
- “Proof of Imprudence, Causation, and Damages in Fiduciary Breach Claims Involving Plan Investments,” *Bloomberg Law Reports, Labor & Employment* (February 2012) [Author]
- “Cases and Issues in Cash Balance Litigation” in 22 *The Labor Lawyer* 29 (Summer 2006) (excerpt republished in “Best Articles” compendium in ABA’s GP Solo Sept. 2007) [Co-Author]
- “Litigation Issues in Cash Balance Plans” in 17 *Benefits Law Journal* 66 (Spring 2004 & Summer 2004) & 30 *Journal Pension Planning & Compliance* 1 (Spring 2004) [Co-Author]

## Speeches

- “Defined Contribution Investment Litigation Update,” ABA 2020 Employee Benefits Committee Midwinter Meeting (February 2020, Rancho Mirage, CA) (panel presenter)
- “Fiduciary Litigation Update,” ABA Employee Benefits Committee mid-winter meeting (February 2019, Nashville, TN & February 2018, Clearwater) (panel presenter)
- “Lessons for 401(k) Plans from the University 403(B) Cases,” ABA Tax Section Midyear Tax Meeting (January 2019, New Orleans, LA) (panel presenter)
- “Benefit Claims Part I: Administrative Process” and “Benefit Claims Part II: Litigation Overview,” ABA JCEB National Institute program on ERISA Basics (October 2018, Chicago, IL) (panel presenter)
- “Ethical Considerations When Counseling Boards, Compensation Committees, Companies and Executives,” on fiduciary privilege and Delaware executive compensation litigation, Practising Law Institute, Hot Issues in Executive Compensation (September 2018, 2017, 2016, 2015 & 2014, New York, NY) (panel presenter)
- “Fiduciary Litigation,” Louisiana State Bar Association’s ERISA Seminar “The Razzle Dazzle of Employee Benefits” (September 2018, New Orleans, LA) (seminar co-chair and panel presenter)
- “Defined Contribution Investment Litigation” and “Interlocutory Appeals,” ABA Advanced ERISA Litigation National Institute on (May 2018, Chicago, IL) (panel presenter)
- “DOL Fiduciary Rule,” JCEB Government Joint Invitational (March 2017, Baltimore, MD) (panel presenter)
- “Employment Discrimination Litigation and Employee Benefit Issues: What Every Employment Attorney Should Know,” ABA Annual Labor and Employment Conference (Chicago Nov. 2016) (panel presenter)
- “ESOP Fiduciary Duties & Corporate Governance: Compliance & Litigation Perspectives,” National Center for Employee Ownership 2016 National Conference (April 2016, Minneapolis, MN) (panel presenter)
- “New Developments in Church Plan Litigation,” American Conference Institute 9th National Forum on ERISA Litigation (April 2015, Chicago, IL) (panel presenter)
- “Working with Independent Fiduciaries to Protect Participants and Reduce Risk” American Conference Institute 11th and 12th National Forum on ERISA Litigation (March & June 2016, Chicago, IL & San Francisco CA) (panel presenter)
- “It’s a New World for ESOPS: The DOL/Great Banc Fiduciary Process Agreement and Recent Court Decisions,” ABA JCEB Webinar (Oct. 2014) (moderator)
- “Ethical Complexities in Deals,” ABA JCEB National Institute program on Employee Benefits in Mergers & Acquisitions (June 2014, New York, NY) (speaker)

- “ESOP Litigation Update” ABA Employee Benefits Committee mid-winter meeting (February 2014, New Orleans, LA) (panel presenter)
- “Labor and Employment and ERISA Class Actions After *Wal-Mart* and *Comcast*,” Three Part Bloomberg BNA Webinar (February–April 2014) (panel presenter)
- “Employee Stock Ownership Plan (“ESOP”) Litigation Trends and Hot Button Issues,” ABA JCEB Teleconference (June 2013) (panel presenter)
- “Recent Developments in Complex ERISA Litigation,” ABA JCEB National Institute program on ERISA Litigation (May 2013, Chicago IL) (program co-chair and panel presenter)
- “Healthcare Claims and Related Litigation Under the Affordable Care Act,” ABA JCEB National Institute program on ERISA Litigation (May 2013, Chicago IL) (program co-chair and panel presenter)
- “Class Actions,” ABA JCEB National Institute program on ERISA Litigation (June 2012 Washington, D.C.) (program co-chair and panelist)
- “Supreme Court Update: ERISA and Class Actions” ABA JCEB Teleconference (July 2011) (panel presenter)
- “EEOC and Consideration of Age in Providing Retirement Benefits,” West LegalWorks teleconference (February 2008) (panel presenter)