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BENEFITS REPORT

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Ninth Circuit Upholds 401(k) Plan's Provision That Compels Arbitration and Prohibits Class or Collective Action

CLARISSA A. KANG

SEPTEMBER, 2019

Last month, the Ninth Circuit held in favor of retirement plan fiduciaries to require arbitration of a participant's claims for breach of fiduciary duty on an individual basis, rather than on a class action basis. *Dorman v. Charles Schwab Corp.*, -- F.3d --, 2019 WL 3926990 (9th Cir. 2019). In doing so, the Ninth Circuit overturned its 35-year-old opinion that had held that ERISA claims were not arbitrable (*Amaro v. Continental Can Co.*, 724 F.2d 747 (9th Cir. 1984)). The *Dorman* decision relied on the U.S. Supreme Court's rulings in non-ERISA cases that upheld arbitration agreements and sought to align the Ninth Circuit with other appellate courts holding that statutory ERISA claims can be arbitrated. On September 10, 2019, the participant-plaintiff petitioned the Ninth Circuit for rehearing by the Ninth Circuit and may pursue further relief by petitioning the Supreme Court for review.

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IN THIS ISSUE...

Trucker ✦ Huss Director Kevin Nolt Inducted as a Fellow of the American College of Employee Benefits Counsel

Trucker Huss, APC is pleased to announce that Director Kevin Nolt has been inducted as a Fellow of the American College of Employee Benefits Counsel, Inc. (ACEBC) at the 2019 Annual Induction Dinner and Ceremony on September 21, 2019 in Washington, DC.

The ACEBC is an invitation-only organization of nationally recognized employee benefits legal experts with twenty or more years of experience. Fellows of the ACEBC are selected by the College's Board of Governors from among employee benefits attorneys nominated for that honor and recommended for consideration by the Board's Membership Committee after considering the recommendations of regional screening committees. Selection as a Fellow reflects the Board's judgment that a nominee has made significant contributions to the advancement of the employee benefits field.

Six other senior or retired Trucker Huss attorneys are also Fellows of the ACEBC, including:

- Barbara Creed
- Craig Hoffman
- Brad Huss
- Charles Storke
- Lee Trucker (retired)
- Nick White

Kevin focuses his practice on qualified retirement plans, including defined benefit plans (both traditional and cash balance plans) and defined contribution plans (401(k), profit sharing, ESOPs and money purchase pension plans), and plans of tax-exempt entities, public schools and universities, including 403(b) and 457 plans. His clients include benefit plans, service providers and employers of all sizes and industries, including Fortune 50 companies. Kevin currently serves as President-Elect of the Governing Board for the Western Pension & Benefits Council (WP&BC). He has been listed as a Top Rated Employee Benefits Attorney in San Francisco by Super Lawyers; he is a member of The American Society of Pension Professionals & Actuaries (ASPPA) and is involved with the National Institute of Pension Administrators (NIPA). Kevin is also on the planning committee for the NIPA Annual Forum and Expo.

About Trucker Huss

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Plan Contained Arbitration Provision; Employee Participant Also Signed Arbitration Agreement as a Condition of Employment and Compensation

Michael Dorman, a former participant in the Schwab Retirement Savings and Investment Plan (the "Plan"), a 401(k) plan, brought a putative class action in federal district court alleging that the Plan fiduciaries breached duties and violated prohibited transaction rules by selecting Plan investment funds affiliated with Schwab and maintaining those funds as Plan investments despite their alleged poor performance. For himself and on behalf of a class of Plan participants, Dorman brought claims under ERISA sections 502(a)(2) and (a)(3) and sought plan-wide relief.

The Plan document contained an arbitration provision stating that "[a]ny claim, dispute or breach arising out of or in any way related to the Plan shall be settled by binding arbitration . . ." The provision also stated that any arbitration would be conducted "on an individual basis only, and not on a class, collective or representative basis." While the arbitration provision was not in the Plan when Dorman began participating in the Plan in 2009, the Plan was amended in 2014 to add the provision, and the provision was present in the Plan document that governed Dorman's participation in the Plan for the last twelve months before he took a full distribution of his Plan account and exited the Plan.

During the course of his employment, in connection with a compensation plan for financial consultants, Dorman had also signed an agreement by which he agreed to arbitration of "[a]ny controversy, dispute or claim arising out of or relating to [his] employment or the termination of employment." The arbitration agreement governed claims that arise out of "federal, state or local law" and excluded "claims for benefits" under the Plan as those were subject to the claim procedures and arbitration provision prescribed by the Plan. The compensation plan contained a class action waiver requiring "any claims or disputes between [Dorman] and [Schwab] shall be brought solely on an individual basis. [Dorman] and [Schwab] agree to waive the right to commence, be a party to, or be an actual or putative class member of any class, collective, or representative action arising out of or relating to [Dorman's] employment."

The Plan fiduciaries argued that Dorman could only bring his action in arbitration and moved to compel arbitration. The district court denied the motion, and the Plan fiduciaries appealed to the Ninth Circuit. On appeal, the Ninth Circuit reversed the district court's ruling and remanded the case to the district court to order arbitration of claims for relief for Dorman's own account resulting from the alleged fiduciary breaches.

Are a Participant's ERISA Breach of Fiduciary Duty Claims Arbitrable?

The Ninth Circuit answered "yes" to that question, overturning a case it decided 35 years ago in 1984 and aligning its position with the Supreme Court's recent decisions in favor of arbitration where parties agree to arbitration as a matter of contract.

In the first of two decisions issued in *Dorman* on August 20, 2019, the Ninth Circuit overturned its ruling in *Amaro v. Continental Can Co.*, a ruling which foreclosed arbitration of an ERISA section 510 discrimination (interference with protected rights) claim and stated that arbitration was not appropriate for ERISA statutory claims generally. The Ninth Circuit held that *Amaro* was no longer good law in light of Supreme Court precedent decided after *Amaro*. Although *Amaro* only concerned a section 510 claim, in that case the Ninth Circuit opined broadly that arbitration was not proper for ERISA claims and was below the "minimum standards [for] assuring the equitable character of [ERISA] plans." 724 F.2d at 752. In the eyes of the *Amaro* court, "[a]rbitrators, many of whom are not lawyers, lack the competence of courts to interpret and apply statutes as Congress intended." *Id.* at 750. According to the *Dorman* panel, this view was no longer tenable in the face of the Supreme Court's decision in *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013), holding that federal statutory claims are generally arbitrable, arbitrators are competent to interpret and apply federal statutes, and arbitration is not inherently unfair for individuals who wished to vindicate their statutory rights. In light of this intervening Supreme Court precedent, the Ninth Circuit overruled *Amaro*.

Dorman's Claims Could Only Be Brought in Individual Arbitration Action

In the second of the two decisions issued on August 20, 2019, the Ninth Circuit held that Dorman was bound by the Plan document's arbitration provision and that Dorman's ERISA section 502(a)(2) claims (for breach of fiduciary duty resulting in losses to the Plan) were subject to arbitration because the Plan expressly agreed in the Plan document that all ERISA claims should be arbitrated. The Ninth Circuit relied principally on four Supreme Court decisions since 2010 that upheld arbitration provisions and, within such provisions, waivers of class or collective actions.

The Ninth Circuit rejected the district court's holding that the addition of the arbitration provision to the Plan through a plan amendment was an effort to insulate plan fiduciaries from liability under ERISA and therefore was unenforceable under ERISA section 410, which disallows exculpation of ERISA fiduciaries for breaches of fiduciary duty. Citing the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, -- U.S. --, 128 S. Ct. 1612, 1621 (2018), the Ninth Circuit deemed the Schwab Plan's arbitration requirement merely the selection of a forum that offered quicker, more informal, and often lower cost resolutions. The agreement to arbitrate on an individual basis as opposed to a class basis, or through a representative action, did not relieve a fiduciary from responsibility or liability, nor was it a violation of the National Labor Relations Act (NLRA). The Supreme Court in *Epic Systems* held that an arbitration agreement by which an employee agrees to arbitrate claims against an employer on an individual basis (as opposed to a class or collective basis) did not violate the NLRA. The Ninth Circuit, citing decisions by the Fifth and Tenth Circuits, noted that every circuit to consider the issue of whether Congress intended to prohibit arbitration of ERISA claims has held that no such intention existed; and that, therefore, an agreement to arbitrate ERISA claims was generally enforceable on the principle — recognized by the Supreme Court in *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 233 (2013) — that a violation of a federal statute (ERISA, in the *Dorman* case) can be arbitrated absent a contrary Congressional command prohibiting arbitration.

The Ninth Circuit then rejected the district court's holding that the Plan's arbitration provision was unenforceable because a plan participant cannot agree to arbitrate an ERISA section 502(a)(2) claim for losses to the plan without the plan's consent. The Ninth Circuit observed that the Plan had, in fact, expressly consented to such arbitration by adopting and maintaining a Plan provision that required arbitration of all ERISA claims. In addition, the Ninth Circuit commented that Dorman's individual agreement to arbitrate did not waive any rights that belonged to the Plan; an agreement by one individual did not give up any substantive rights that belonged to others.

Citing the Supreme Court decisions in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 684 (2010), and *Lamps Plus, Inc. v. Varela*, -- U.S. --, 139 S.Ct. 1407 (2019), the Ninth Circuit held that Dorman could only bring an individual action in arbitration and was foreclosed from any collective or class action even in arbitration. The Ninth Circuit concluded that the arbitration agreement must be enforced according to its terms, as arbitration is a matter of contract. Because the arbitration agreement contained no agreement by the parties to class-wide or collective arbitration and expressly prohibited such class-wide or collective action, the Ninth Circuit held that Dorman could only demand an arbitration on an individual basis.

The Ninth Circuit addressed Dorman's ERISA section 502(a)(2) claim and stated that although claims under ERISA section 502(a)(2) seek relief on behalf of a plan, the claim could be brought by an individual. Analogizing its opinion to the Supreme Court's decision in *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248 (2008), the Ninth Circuit held that its decision limiting Dorman to only individual arbitration was consistent with *LaRue*'s holding that a defined contribution plan participant can bring a 502(a)(2) claim for plan losses in his or her own individual account.

The Ninth Circuit reversed and remanded the case to the district court to order individual arbitration of claims limited to relief for the alleged impaired value of plan assets in Dorman's individual account.

What Next? Further Action in *Dorman*: Claims for Plan-Wide Relief under ERISA section 502(a)(2)

The Ninth Circuit and the Supreme Court may be grappling soon with the issue of whether ERISA section 502(a)(2) claims are arbitrable, as Dorman has recently petitioned the Ninth Circuit for rehearing of its August 20, 2019 decision and has the option to pursue a petition for Supreme Court review. Earlier this year, the Supreme Court denied the University of Southern California's petition for review of the Ninth Circuit's 2018 ruling in *Munro v. University of Southern California*, 896 F.3d 1088 (9th Cir. 2018).[1] In *Munro*, unlike *Dorman*, the USC retirement plan documents did not contain any arbitration provision, and USC sought to compel arbitration based on the participants' consent, in their employment agreements, to arbitrate claims arising from their employment. The Ninth Circuit in *Munro* affirmed the district court's denial of USC's motion to compel arbitration on the basis that an agreement to arbitrate that employees entered into in their individual capacities did not bind the plans because the plans had not consented to arbitration. In *Dorman*, the Ninth Circuit had before it a plan that expressly provided for arbitration of statutory claims.

However, the debate continues as to whether an ERISA section 502(a)(2) claim for relief on behalf of the plan can be forced into arbitration on an individual participant basis. Dorman, in his September 10, 2019 petition for rehearing, argued that the Ninth Circuit's ruling in his case conflicted with *Munro* and wrongly applied the Supreme Court's decision in *LaRue v. DeWolff, Boberg & Associates* by upholding the Schwab Plan's arbitration clause (that foreclosed anything but individual arbitration) and by concluding that fiduciary breach claims regarding defined contribution plans are "inherently individualized." Dorman argued, instead, that under the Supreme Court's holding in *Massachusetts Mutual v. Russell*, 473 U.S. 134 (1985), ERISA section 502(a)(2) allows a plan participant to bring a breach of fiduciary claim only in a representative capacity and on behalf of the plan and only to recover losses suffered by the plan. Dorman argued that the Schwab Plan's bar of any representative action under 502(a)(2) violated ERISA section 410 as an exculpatory clause and that, under the Supreme Court's Federal Arbitration Act precedent, an arbitration clause that purports to waive a party's right to pursue statutory remedies is invalid on public policy grounds.

Notwithstanding Dorman's efforts to seek further review of the Ninth Circuit's decision, the *Dorman* opinion will likely encourage plan sponsors to consider amending their plans to require arbitration of ERISA statutory claims. Note, however, that *Dorman* did not involve any claims for benefits, and therefore the Ninth Circuit did not address whether a challenge to a denied benefit claim could be limited to binding arbitration.

Should Plan Sponsors Amend Their Plans Now to Include Arbitration and a Waiver of Class, Collective, or Representative Actions?

It depends. With Dorman's petition for rehearing and potentially a later attempt to seek Supreme Court review, the Ninth Circuit's August 20, 2019 decision as to the arbitrability of Dorman's ERISA section 502(a)(2) and (a)(3) claims may be amended or even overturned. Plan sponsors might wait to see how *Dorman* proceeds.

If a plan sponsor would like to begin considering now whether arbitration is appropriate, it should consider the costs and benefits of arbitration before concluding that arbitration — and a waiver of class, collective, or representative arbitrations — is the right option. Compelling participants to bring individual arbitration actions on an issue that is common to several participants may deter certain individual participants and certain plaintiff's attorneys from pursuing individual breach of fiduciary duty actions. However, an employer might consider whether the costs of defending multiple individual actions — as opposed to a single class action — outweigh the benefits of having an arbitration provision and class action waiver.

In addition, multiple individual arbitrations on the same issue also raise interesting legal questions of issue preclusion and precedent — that is, what effect would an arbitration of one participant's individual claim have on the next participant's action on a similar claim. When considering whether arbitration is preferred to litigation in court, employers might also take into account the differences between an arbitrator and a federal district court judge. For example, an arbitrator may conduct an arbitration under rules that vary — potentially widely — from court rules, and arbitration does not provide an automatic right to appeal an arbitrator's decision. Although *Dorman* may appear to be a green light to plan sponsors to include arbitration provisions and class action waivers in their plan documents, the choice to include such provisions should not be made automatically in favor of inclusion. We encourage plan sponsors who are considering amending their plans to consult their plan legal counsel.

[1] Our October 2018 *Benefits Report* discussed the *Munro* case, the district court's decision in *Dorman*, and the question of whether ERISA claims are subject to arbitration.

Individual Coverage HRAs: Practicalities and Potential Pitfalls for Employers (PART ONE)

SARAH KANTER

SEPTEMBER, 2019

This article is part one of a two-part article examining many of the issues that employers and other plan sponsors may want to consider when deciding whether to offer employees an Individual Coverage Health Reimbursement Arrangement (ICHRA), which was created by final regulations (the "final regulations") released on June 13, 2019 by the Departments of Labor, Health and Human Services, and the Treasury (the "Departments") and which will be effective January 1, 2020. This first article provides background on the final regulations and discusses the circumstances when offering an ICHRA may be advantageous for employers. The second article will examine areas that employers will need to consider before deciding to offer an ICHRA (such as "affordability" for employer shared responsibility purposes, and interaction with nondiscrimination rules). For an in-depth look at the substance of the new regulations (including the new excepted benefits HRA), please see this Tiffany Santos article from July 2019: Final Regulations Issued — Key Highlights.

Background

Prior to the release of the final regulations, in order to comply with certain requirements of the Affordable Care Act (ACA) (i.e., the prohibition against annual or lifetime limits on essential health benefits, and the obligation to provide federally required preventive care with no cost-sharing), an HRA covering two or more current employees was required to be integrated with an ACA-compliant group health plan. An HRA could not be integrated with an individual health insurance policy, whether purchased on the ACA Health Insurance Marketplace (also known as the "Exchange") or elsewhere, or be offered on a "stand-alone" basis.[1]

In response to President Trump's October 12, 2017 Executive Order, "Promoting Healthcare Choice and Competition Across the United States"[2] the Departments will now permit an HRA to be integrated with an individual health insurance policy beginning January 1, 2020, and allow employers, regardless of size, to make contributions to help employees pay for the cost of individual health insurance coverage without regard to any statutory annual dollar maximum. Federal regulators have predicted that 800,000 employers (with 11 million employees) will adopt an ICHRA over the next five years (approximately 156 million people currently receive health coverage through an employer, and enrollment in the Health Insurance Marketplace is estimated at 11.4 million people in 2019).[3] Whether or not that estimate holds true will depend on many factors, including the stability of the individual insurance marketplace, the future of the ACA,[4] and any other future major healthcare reform at the federal level.

When Offering An ICHRA May Be Advantageous

The chief advantage of offering an ICHRA as opposed to traditional employer-sponsored group health plan coverage is that it transfers much of the financial risk from the employer to the individual marketplace, thus allowing for more predictable costs for the employer from year to year (however, stay tuned for the discussion on "affordability" in the second part of this article). The downside is that, for many employers, the benefits offered to employees (including, of course, health coverage) are critical to employee recruitment and retention. Offering an ICHRA will also result in employers giving up nearly all control regarding the kinds of health benefits they offer to their employees.

Additionally, the final regulations created strict rules regarding the kinds of employees (and the combination of employees) who can be offered an ICHRA. The chief concern of regulators in designing the ICHRA rules was to ensure that the availability of ICHRAs would not result in adverse selection in the individual insurance market. In other words, the regulators designed the ICHRA rules so that it would be more difficult for employers to keep younger and healthier employees enrolled in traditional group health plan coverage, while steering sicker and older employees to the individual insurance market through the use of an ICHRA. The regulations prevent this, chiefly, in four ways:

1. prohibiting employers from offering a choice between a group health plan and an ICHRA to the same class of employees;
2. requiring that an ICHRA be offered on the same terms (i.e., same amount and otherwise on the same terms and conditions) to all employees within a class of employees (subject to certain limited exceptions);[5]
3. defining "permissible classes" of employees so that it would be difficult for employers to strategically manipulate the population of each class to target high-risk individuals; and
4. requiring that certain classes of employees offered an ICHRA must meet a minimum size (10–20 employees depending on employer size).[6]

While these requirements may help achieve the policy goal of preventing adverse selection in the individual insurance market, they also present challenges for employers when deciding whether or not to adopt an ICHRA and to which classes (or combination of classes) of employees it would be offered.

Below, we examine certain scenarios in which offering an ICHRA may be an attractive option for an employer.

The Part-Time Workforce of Large Employers

It appears unlikely that most large employers will replace their current employer-sponsored group health plans with ICHRAs for their full-time employees (given the role that employer-sponsored health coverage plays in employee recruitment and retention). However, offering an ICHRA to part-time employees may be an attractive option to employers looking to provide some sort of benefit to their part-time workforce. Employers need to be aware that because the regulations require that the ICHRA be offered on the same terms to *all* employees within the same class, the employer would be required to offer the ICHRA to *all* of its part-time employees (even employees working a very limited number of hours).

The Small Workforce of a Large Employer Working in a High-Cost Area

Under the regulations, a permissible class includes employees working in the same geographic area (generally the same insurance rating area, state or multi-state region). For employers with a small number of employees working in a high-cost area, it may make financial sense to offer these employees an ICHRA instead of traditional group health plan coverage. For example, an employer that has the bulk of its employees working in California, but a small number of employees working remotely in Alaska, may want to offer its Alaskan employees an ICHRA, while maintaining traditional group health plan coverage for its California employees. However, as noted above, the class size of employees offered an ICHRA must meet certain minimum requirements. So, this option would be unavailable to employers with a very small number of employees working remotely in high-cost areas (if the class size was based purely on geographic area).

Small and Medium-Sized Employers

For small employers (under 50 employees) and medium-sized employers (under 500 employees), the financial advantages of more stable health care costs may outweigh any negative impact on employee recruitment and retention. The ICHRA may be a particularly attractive option for small employers who currently find it too cost-prohibitive to offer traditional group health plan coverage to their employees.

"Phasing In" the ICHRA

The regulations permit the ICHRA to be phased in over time. This allows an employer to continue to offer a group health plan to a class of employees, while offering an ICHRA to employees within that same class who are hired after a certain date (any date after January 1, 2020 is permitted to be used). This may be an attractive option for employers who are looking to take advantage of the financial benefits of the ICHRA, but are concerned about the disruption it would cause to current employees. However, employers may also want to keep in mind that there are currently no definitive rules regarding the treatment of former employees who are rehired after the ICHRA is implemented.

The second article will examine areas that employers will want to consider before offering an ICHRA to their employees, such as:

- How to determine whether ICHRA coverage is "affordable" for employer shared responsibility purposes;
- The interaction between ICHRA coverage and nondiscrimination rules;
- The prohibition on employers promoting or endorsing any particular individual insurance coverage.

If you have any questions regarding this article, please contact its author.

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[1] Please note that "retiree-only" HRAs have never been subject to these restrictions and are unaffected by the final regulations.

[2] This Executive Order also directed the relevant Departments to expand access to Association Health Plans (AHPs) and to expand the availability of Short-Term, Limited Duration Insurance (STLDI). Both AHP and STLDI regulations have now been issued (although parts of the new AHP regulations were subsequently enjoined by a federal court). It is notable that while both the expansion of AHPs and STLDI were seen by many as likely having a negative impact on the individual insurance market, the success of ICHRAs will likely depend on having a robust individual insurance market.

[3] Kaiser Family Foundation "Health Insurance Coverage of the Total Population."

[4] In 2018, a Federal District Court, in *Texas v. U.S.*, determined that the entirety of the ACA was unconstitutional because, in 2017, Congress zeroed out the individual mandate penalty as part of the Tax Cuts and Jobs Act. Oral arguments in the Fifth Circuit Court of Appeals were heard in July 2019. The lawsuit will likely be resolved by the Supreme Court.

[5] The final regulations permit the contribution amount to vary by age or family size. However, the maximum dollar amount available to the oldest participant cannot be greater than three times the maximum dollar amount available to the youngest participant.

[6] The minimum class size requirement generally applies to the following classes of employees offered an ICHRA: (1) salaried employees; (2) non-salaried employees; (3) full-time employees; (4) part-time employees; and (5) employees whose primary site of employment is in the same rating area (although the minimum class size requirement does not apply if the geographic area defining the class is a state or a combination of two or more entire states).

FIRM NEWS

On September 7, **Katuri Kaye** was installed as an officer of the Black Women Lawyers Association of Los Angeles for 2019–2020.

On September 14, **Katuri** participated as a panelist at the inaugural Women of Color Forum at the California Minority Counsel Program Annual Business Conference in Los Angeles.

On September 9, **Jennifer Truong** was a co-presenter on *Individual Policy HRAs: 2020 and Beyond* at the 38th Annual International Society of Certified Employee Benefits Specialists Employee Benefits Symposium in New Orleans.

On September 19, **Brad Huss** gave a presentation, *Update on ERISA Litigation and Lessons Learned*, at the Orange County Chapter of the Western Pension & Benefits Council. Brad reviewed the most recent developments in ERISA litigation concerning employee benefit plans, including issues pending at the Supreme Court.

On October 4, **Marc Fosse** will participate on a panel, *Employee Benefits Executive Compensation, Fringe Benefits and Federal Securities Law Update*, presented by the Subcommittee on Employee Benefits Executive Compensation, Fringe Benefits, and Federal Securities Law at the American Bar Association's 2019 Tax Section Fall Meeting. Topics to be discussed include updates on Code section 4960 and recent IRS guidance.

On October 4 and October 17, **Mary Powell** will give a talk, *Pharmacy Benefit Managers (PBMs) — The Secret Behind High Drug Costs*. The October 4 presentation takes place at the American Bar Association's 2019 Tax Section Fall Meeting in San Francisco. The October 17 presentation takes place at the Commonwealth Club. At both events, the discussion will focus on the skyrocketing costs of prescription drugs and the dangerous implications for patients.

On October 10, **Clarissa Kang** will participate in a webinar from the American Bar Association, Joint Council on Employee Benefits entitled *Plan Expenses: Avoiding Trouble Through Appropriate Use of Plan Assets*. The panel will discuss the appropriate use of plan assets and limitations on plan fiduciaries when they seek services from service providers to plans, or provide services to the plan.

On November 19, **Clarissa** will present a Strafford Webinar, ERISA Remedies: Key Provisions and Scope of Equitable Relief for Benefit Claims. This CLE webinar will provide employee benefits counsel with a detailed analysis of the types of remedies available under ERISA for benefit claims

On October 16 – 18, **Angel Garrett** and **Robert Gower** will join panels at the American Bar Association Joint Committee on Employee Benefits' 2019 ERISA Basics National Institute in Chicago.

- On October 16, **Angel** will participate in a session which introduces the fundamental principles of ERISA preemption, the impact preemption has on other legislation related to employee benefit plans and the exceptions to preemption the statute permits.
- On October 18, **Robert** will co-present on a panel which will discuss exceptions to the broad rule that the benefits provided by employee benefit plans generally may not be alienated. The panel will introduce the basics of QDRO's, QMSCOs, and other spousal and related rights.

The Trucker ✦ Huss *Benefits Report* is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of *Benefits Report* are posted on the Trucker ✦ Huss web site (www.truckerhuss.com).

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