

Fisher Broyles

Name: Robert Lesko

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Office: New York

Practice Areas: Commercial Litigation; Benefits & Exec Comp; Employment; Insurance

Bar Admissions: New York; New Jersey; Pennsylvania

Education: Pepperdine University School of Law, JD, 1993; Muhlenberg College, BA, 1990

Experience: Wilson Elser Moskowitz Edelman & Dicker LLP; McCarter & English LLP

Rob is a commercial litigator with more than 25 years of experience. His singular focus in all engagements is to ensure “success” as defined by the client, including fidelity to budgets and avoidance of surprises. He incorporates legal project management and process improvement skills, close collaboration with clients, careful initial planning, and continuous monitoring and measurement of performance to fully understand and faithfully meet client objectives and satisfy expectations in all cases.

Areas of Focus

Commercial & Contracts Litigation

Rob represents diverse businesses in domestic and international litigation and arbitration involving a variety of commercial disputes, such as alleged unfair business practices, intellectual property infringement, sale of goods (UCC), consequential damages, non-compete agreements, supply contracts, distributorship and various other contractual disputes. He also represents clients in connection with complex fraud claims. Rob’s clients range from large multinational manufacturers to small and mid-sized domestic businesses.

Benefits and Insurance Litigation (Life, Health, Disability & ERISA)

Rob served as a co-chair of the Life, Health, Disability & ERISA practice of a leading AmLaw 100 law firm before joining FisherBroyles. Rob represents employers, insurers, fraternal benefits societies, employee benefit plans, plan fiduciaries and third-party administrators in connection with disputes relating to employee benefits (life, health and disability, pension and others) arising under both common law and the Employee Retirement Income Security Act (ERISA). Rob's extensive litigation experience includes representing the insurance industry in connection with the prosecution of fraud and STOLI schemes and the defense of sales practices litigation throughout the country. He also represents the industry in employment and agency contract disputes. Based on this experience, Rob serves by appointment as a member of the Board of Directors – Concordia Plan Services and Board of Trustees – Concordia Plans (including a defined benefit plan, defined contribution plan, health plan and life and disability plans). Concordia is the employee benefits provider for more than 6,000 Lutheran Church – Missouri Synod congregations, schools, universities and other organizations in the United States and in mission fields worldwide.

Employment

Rob has represented employers and management in connection with all manner of employment-related disputes under federal, state and municipal laws, including alleged adverse employment actions based on disability, gender, age and other protected classifications; whistleblower/retaliation claims; wage-and-hour claims; and contractual disputes such as non-compete and confidentiality agreements, among others.

Consumer Securities Litigation

Rob has extensive experience representing issuers, broker-dealers and registered representatives in litigation concerning the sale and performance of retail consumer financial products, including mutual funds, variable life insurance and annuity products and brokerage accounts, before courts and regulatory boards such as the Financial Industry Regulatory Authority (FINRA). He has served successfully as lead counsel in numerous arbitrations involving the sale and administration of variable insurance products and mutual funds from New York to California.

Stop Loss & Catastrophe Health Insurance Litigation

Stop loss and catastrophe health insurance products are unique in their function and often not well understood in the legal community. Rob has litigated numerous claims under catastrophe and stop loss policies and has a thorough understanding of these products and the legal and regulatory schemes under which they operate.

Warranty Litigation

Rob represents specialty underwriters and warranty providers, including claims asserted in connection with credit card benefits programs and consumer warranties.

Representative Transactions Include

- Secured favorable arbitration award before the International Centre for Dispute Resolution on behalf of multinational manufacturing and technology firm, defeating Brazilian sales representative attempt to apply Brazilian statutory remedy as mandatory international law in contravention of contractual choice of law provision.
- Secured rescissions without refund of premiums, and in some cases payment of attorneys fees, on behalf of major national life insurer prosecuting claims for rescission and damages arising out of complex fraud schemes inducing insurer to issue multiple large life insurance policies on the lives of individuals far exceeding rational indemnity limits based on actual income and net worth, which policies ultimately inured to the benefit of persons and entities lacking bona fide insurable interest (STOLI litigation).
- Won summary judgment awarding to major national life insurer reimbursement of nearly \$2 million of overpaid life insurance benefits.
- Secured Third Circuit reversal of New Jersey District Court order denying ERISA plan's and claim administrator's motion for summary judgment regarding denial of continuing disability benefits and granting claimant's cross-motion for summary judgment.
- Secured Second Circuit reversal of New York Southern District Court order denying ERISA plan's and claim administrator's motion for summary judgment regarding denial of continuing disability benefits and granting claimant's cross-motion for summary judgment.

- Obtained award of summary judgment in New Jersey Superior Court on behalf of stop loss insurer with respect to claim by employer and plan sponsor that unilaterally paid benefits under self-funded group health plan contrary to the terms and provisions of the plan.

Presentations & Teaching Experience

- Deposition Techniques and Training
 - September 24, 2019
 - 110th Annual Education Conference of the International Claims Association
- Life Insurance and AD&D Update
 - May 2019
 - Eastern Claims Conference
- Enforcing Time Limits
 - April 13, 2018
 - DRI's Life, Health, Disability and ERISA seminar
- Deposition Witness Seminar and Workshop
 - September 19, 2017
 - International Claim Association 108th Annual Education Conference
- Complaint Files & Depositions
 - October 25, 2016
 - Insurance Consumer Affairs Exchange (ICAE Annual Exchange)
- Rescission Mechanics and Pitfalls
 - September 2014
 - ICA Annual Education Conference
- Overcoming Association Counsel's Inherent Ethical Challenges – Easier Said than Done
 - June 2014
 - Association of Fraternal Benefits Counsel (AFBC)
- TechnUnclaimed Property Litigation Update
 - October 2013
 - ICA Annual Education Conference
- The Fraternal Difference

- October 2013
 - ICA Annual Education Conference
- Understanding the Boundaries: Avoiding the Unauthorized Practice of Law
 - February 2013
 - Paralegal Association of Wisconsin, Fox Valley Chapter
- Initial Claims Procedures: Questions of Eligibility and Rescission
 - November 2012
 - Customized Client Training Seminar
- STOLI Update
 - October 2012
 - ICA Annual Education Conference
- The Insurance Professional's Role in the Prevention and Detection of Fraud
 - October 2012
 - ICA Annual Education Conference
- Insurance Fraud Act Training
 - December 2011
 - Customized Client Training Seminar
- Deposition Workshop
 - October 2011
 - Customized Client Training Seminar
- Developments in Stranger-Originated Life Insurance Litigation
 - September 2011
 - ICA Annual Education Conference
- Mental Health and Subjective Disorder Disability Claims: Assessing Conditions, Treatment Modalities, and the Impact on the Case
 - June 2010
 - 13th Annual National Advanced Forum on Litigating Disability Insurance Claims, American Conference Institute
- Suitability of Life Insurance Company Products: A Sea of Change
 - November 2009
 - Customized Client Training Seminar
- Stranger-Originated Life Insurance: Strategies Deployed and Lessons Learned
 - October 2009

- International Claims Association Annual Education Conference
- The Impact of MetLife v. Glenn on the Standard of Review and Discovery
 - June 2009
 - American Conference Institute's 12th Annual Advanced Forum on Litigating Disability Insurance Claims
- Solutions to Complex Life and Annuity Beneficiary Issues
 - March 2009
 - Eastern Claims Conference
- Deal or No Deal: Hot Topics in ERISA Litigation, Presentation and Paper
 - September 2008
 - ICA Annual Education Conference
- Anything and Everything You Wanted to Know About Beneficiary Designations, Panel Discussion
 - September 2008
 - ICA Annual Education Conference
- ERISA Litigation Basics
 - March 2008
 - Internal Firm Training Seminar
- Insurance Fraud: The Insurance Professional's Role in Detection and Prevention of Fraud
 - March 2008
 - Customized Client Training Seminar
- Legal Aspects of Complex Death Claims, Presentation
 - September 2007
 - ICA Annual Education Conference
- The Missing Insured: A Guide for Handling Claims for Death Benefits Where the Insured Is Missing presented and published in connection with ICA Annual Education Conference, September 2007
- Attorney-Driven Claims: Potential Pitfalls and Solutions
 - September 2007
 - Customized Client Training Seminar

Publications

- Co-Author, Insurance Law Practice, Third Edition, Chapter 31, Disability Insurance, NYSBA 2019

- Raising the Stakes: Offsetting Costs and Fees Incurred to Rescind Life Insurance Policies
 - DRI: For the Defense
 - August 2017
- Third Circuit Rules Failure to Disclose Deadline to File Suit in Denial Letter Warrants Setting Aside Limitations of Suit
 - Provision in Plan Disclosure of Deadline to File Suit in Denial Letter
 - September 1, 2015
- Now binding law in the Third Circuit, all denial letters must include the plan-imposed suit limitation deadline, if any. Failure to include the deadline will result in application of the most analogous limitations period imposed under state law, which in New Jersey is the six-year statute of limitations applicable to breach of contract actions.
- Disgorgement of Profits Not Available for Arbitrary and Capricious Benefits Denial – This Time
 - Wrongful Denial of Employee Benefits
 - March 24, 2015
- The Sixth Circuit has determined that wrongful denial of employee benefits will not expose plan fiduciaries to equitable remedies – such as disgorgement of profits – where restoration of benefits is adequate to make the claimant whole. But disgorgement might still be available to redress separate and distinct injuries.
- A Pre-answer Motion to Deposit Funds
 - December 11, 2014
- Life, Health, Disability & ERISA Newsletter
 - Insurance Fraud & Group Policy Limitations
 - February 2010
- Raising the Stakes for Insurance Fraud: Offsetting Costs and Fees Incurred to Investigate and Rescind Life Insurance Policies
 - ICA News
 - Winter 2009/2010
- “Third Circuit Upholds Life Insurer’s Right to Approve Reinstatement,”
 - ICA News
 - Spring 2008
- “The Missing Insured: A Guide for Handling Claims for Death Benefits Where the Insured Is Missing,”
 - ICA News

- Fall 2007
- “Pinto v. Reliance Standard Life Ins. Co.: The Third Circuit Adopts the Sliding Scale Approach to Conflicts of Interest in ERISA Cases”
 - TIPS Committee News, Fall 2000
- “By Lawsuit or by Letter: Rescission of Insurance Policies Governed by ERISA”
 - Life Health and Disability News, Spring 2000