



Expert Witness

Our Expertise

Our attorneys have served as expert witnesses in several areas of ERISA, employee benefits, executive compensation and investment management law. They have represented clients with distinction in cases relating to plan design, benefit administration, financial issues, fiduciary matters, best practices and evolving industry standards. A sample of our expert witness experience is provided below.

Payne v. DST Systems, Inc., et al.

(Served as Expert Witness for the Claimant)
American Arbitration Association
2020

Ms. Wagner was retained by counsel (Humphrey, Farrington & McClain, P.C.) for the Plaintiff, as an expert on the standards of conduct and practices of fiduciaries that manage retirement plan assets, to evaluate whether Defendants' process for managing the profit sharing component of a 401(k) plan (the "Plan") was consistent with the prevailing standard of care that a prudent fiduciary acting in the best interest of the Plan's participants and beneficiaries would use. In particular, counsel for the Plaintiff requested that Ms. Wagner review and determine: (i) whether the Defendants prudently and effectively monitored the Plan's 3(38) investment manager and its compliance with the Duty of Diversification under the Employee Retirement Income Security Act of 1974 ("ERISA"), and (ii) whether the Defendants took timely and effective remedial action once it became clear that the securities for a single business enterprise had increased in value to become more than 25% of the assets comprising the Plan's profit sharing component.

Turner et al. v. Northern Montana Hospital, et al.

(Served as Expert for the Defendants)
U. S. District Court for the District of Montana, Great Falls Division
2019

Ms. Wagner was retained by counsel (Strong and Hanni) for one of the defendant-hospitals to produce an expert report to evaluate whether the actions taken by the defendant in connection with its health insurance plan were consistent with the requirements of Title I of ERISA. In particular, counsel for the defendant requested that Ms. Wagner review and determine whether the defendant's implementation of its agreement with an insurer satisfied the requirements of Title I of ERISA.



Super Lawyers



Specifically, Ms. Wagner's report included a review of the plan's compliance with ERISA's trust requirements, whether certain amounts were in fact plan assets under ERISA and whether the allocation of payments between plan participants and the defendant complied with ERISA.

Gopher et al. v. Wells Fargo Bank, N.A., et al.

(Served as Expert for the Plaintiffs)

Circuit Court for Broward County, Florida

2019

Ms. Wagner was retained by counsel (Conrad & Scherer LLP) for the plaintiffs to produce an expert report and to testify as an expert in rebuttal to a claim that the criteria to establish a rabbi trust under the Internal Revenue Code of 1986 applied to the terms and conditions of the Seminole Tribe of Florida Minors' Per Capita Trust Agreement and that such trust operated as a rabbi trust.

Vazquez v. Marriott International, Inc.

(Served as Expert for the Defendant)

United State District Court for the Middle District of Florida, Tampa Division

2019

Ms. Watson was retained by counsel (DLA Piper LLP) on behalf of the defendant-plan sponsor to produce an expert report and to testify regarding various allegations as to Defendant's COBRA notice. Ms. Watson issued a report, and was deposed. A motion was brought to strike Ms. Watson as an expert, and that motion was denied. The matter was settled prior to trial.

Jacobs et al. v. Verizon Communications Inc., et al.

(Served as Expert for the Defendant)

United State District Court for the Southern District of New York

2019

Ms. Wagner was retained by counsel (DLA Piper) on behalf of the defendant-plan sponsor to produce an expert report and to testify with respect to the standards of conduct imposed on plan fiduciaries under the ERISA. In particular, the report provided an evaluation of the plan sponsor's adherence to these fiduciary standards with respect to its selection and monitoring of an alternative investment option as an investment option in its 401(k) plan investment lineup.

Beach et al. v. JPMorgan Chase Bank, et al.

(Served as Expert for the Plaintiffs)

U.S. District Court for the Southern District of New York

2019

Ms. Wagner was retained by counsel (Kessler, Topaz, Meltzer & Check, LLP) for the Plaintiffs as an expert on the standards of conduct and practices of fiduciaries that manage retirement plan assets, to evaluate whether Defendants' process for managing a 401(k) plan (the "Plan") was consistent with the prevailing standard of care that a prudent fiduciary acting in the best interest of the Plan's participants and beneficiaries would use.

In particular, counsel for the Plaintiffs requested that Ms. Wagner review and determine whether the Defendants: (i) met the applicable standards of care with respect to their process for selecting and monitoring the Plan's investment options; and (ii) adequately monitored the Plan fiduciaries appointed to manage the Plan's investment options.

Great-West Life & Annuity Insurance Company and FASCore LLC v. Perry Christie and Voya Financial, Inc.

(Served as Expert for the Plaintiffs)

District Court, Arapahoe County, Colorado

2019

Ms. Wagner was retained by counsel (Davis, Graham & Stubbs LLP) for the Plaintiffs (Great-West) as an expert on the standards of conduct and practices for administrative service providers, including recordkeeping service providers such as the Plaintiffs and Defendants in the matter. In particular, counsel for the Plaintiffs requested that Ms. Wagner review and determine whether the Defendants' conduct was consistent with the standards of conduct and ethics established within the retirement plan industry.

New York State Nurses Association Pension Plan v. White Oaks Global Advisors, LLC

(Served as Expert for the Plaintiffs)

American Arbitration Association – New York Regional Office (New York)

(2019)

Ms. Wagner was retained by counsel (Covington & Burling LLP) for the Plaintiff, i.e., the trustees for a union-sponsored pension plan, as an expert in connection with matters relating to the standard of conduct and practices of 3(38) fiduciaries that manage retirement plan assets. In particular, Ms. Wagner has been engaged to evaluate whether the Defendant registered investment adviser violated the Employee Retirement Income Security Act of 1974 ("ERISA") and breached a related Investment Management Agreement.

Moitoso et al. v. FMR LLC, et al.

(Served as Expert for the Plaintiffs)

U.S. District Court for the District of Massachusetts

(2019)

Ms. Wagner was retained by counsel (Nichols Kaster, LLP) for the Plaintiffs as an expert with respect to whether Defendants' process for managing a 401(k) plan (the "Plan") was consistent with the prevailing standard of care that a prudent fiduciary acting in the best interest of the Plan's participants and beneficiaries would use. In particular, counsel for Plaintiffs have asked me to determine whether it was consistent with the applicable standard of care for the Defendants to disregard all fiduciary norms in selecting and monitoring all but two of the Plan's hundreds of investment options, and to assess the Defendant committees' conduct in: (i) retaining certain proprietary investments as Plan investment options, and (ii) monitoring the performance and expenses attributable to these Plan investments.

Charles Dennis, M.D., v. Deborah Heart and Lung Center

(Served as Expert for the Defendant)

Superior Court of New Jersey – Chancery Division

(2019)

Ms. Wagner was retained by counsel (Epstein, Becker & Green, P.C.) for the Defendant, as an expert in matters arising under Title I of ERISA, including whether an arrangement qualifies as an employee benefit plan under Section 3(3) of ERISA, and whether a certain variable life insurance policy purchased by the Plaintiff pursuant to a salary reduction agreement with Defendant is a plan under ERISA.

Ology Bioservices, Inc. v. Goodwin Procter, LLP

(Served as Expert for the Claimant)

American Arbitration Association – Southeast Case Management Center (Atlanta)

2019

Ms. Wagner was retained by counsel for the claimant corporation to produce an expert report with respect whether the Defendants committed legal malpractice and breached their fiduciary duties owed to the corporation by providing negligent legal advice in connection with the claimant's issuance of stock option awards. Among other things, the Defendants were accused of rendering incorrect legal advice concerning the underlying stock valuations and related tax issues under Internal Revenue Code Section 409A.

Culinary Academy of Las Vegas v. Fava et.al.

(Served as Expert for the Plaintiff)

United States District Court, District of Nevada

2019

Marcia Wagner produced an expert report on behalf of the board of trustees for an Apprenticeship and Training Plan ("ATP") evaluating whether the defendants had breached their fiduciary duties owed to the ATP under ERISA by failing to act prudently and solely in the interest of the ATP's participants and beneficiaries, and to exercise the skill, care, prudence and diligence in administering the ATP and its assets. Among other things, the defendants were accused of causing the ATP to engage in costly operations that were beyond the scope of its stated non-profit purpose (i.e., to provide education and training opportunities in the Las Vegas hospitality industry).

Marshall, et. al. v. Northrop Grumman Corporation, et. al.

(Expert for Defendant)

United States District Court, Central District of California

2018

Marcia Wagner was retained by counsel for the Defendant employer and its plan committees to produce an expert report and to testify as an expert with respect whether the defendants followed a prudent process in overseeing reimbursements made from a 401(k) plan to the employer for expenses the employer incurred (e.g., salaries and fringe benefits) in providing certain administrative and investment-related services to the 401(k) plan.

Marilyn Johnson, et. al v. City of Memphis

(Expert for Plaintiff)

United States District Court, Western District of Tennessee, Western Division

2018

Marcia Wagner provided an expert opinion on behalf of the Plaintiff with respect to the application of Internal Revenue Code Section 415 to governmental plans and long service police officers, and the relationship of the Code Section 415 limitations to a plan's benefit formula.

Quatrone, et. al. v. Gannett Co., Inc. et. al.

(Expert for Plaintiff)

United States District Court, Eastern District of Virginia Alexandria Division

2018

Marcia Wagner provided an expert report on behalf of participants in a 401(k) plan. The report evaluated whether the plan sponsor followed a prudent process in monitoring and continuing to offer the former plan sponsor's common stock as a plan investment option following its spinoff from the current plan sponsor in 2015.

TI Group Automotive Systems, LLC v. Vollmar et. al.

(Expert for the Defendant)

Delaware Superior Court

2018

Marcia Wagner delivered an expert report in a case involving a dispute over certain representations and warranties made under a stock purchase agreement concerning the administration of the company's ERISA-governed defined contribution retirement plan. The report included a review of the plan's compliance with the Internal Revenue Code's nondiscrimination requirements in order to maintain its tax-qualified status.

Barrett et. al. v. Pioneer Natural Resources USA, Inc. et. al.

(Expert for the Plaintiff)

United States District Court, District of Colorado

2018

Marcia Wagner prepared an expert report on behalf of participants in a 401(k) plan. The report evaluated the plan sponsor's adherence to the standards of conduct imposed on plan fiduciaries under the Internal Revenue Code and ERISA with respect to the selection, monitoring and retention of the plan's recordkeeper and certain investment options appearing on the plan's platform.

Spires et. al. v. Schools et.al.

(Expert for the Plaintiff)

United States District Court, District of South Carolina Charleston Division

2018

Marcia Wagner produced an expert report on behalf of participants in an Employee Stock Ownership Plan ("ESOP") evaluating whether the defendants had breached their fiduciary duties owed to the participant Plaintiffs under ERISA by failing to act prudently and solely in the interest of the ESOP's participants and beneficiaries, and to exercise the skill, care, prudence and diligence in administering the ESOP and its assets. The defendants were accused of managing the company whose shares were the ESOP's primary asset for the financial advantage of themselves and their family members.

Novant Health, Inc. v. Federal Insurance Company, Inc. and Travelers Casualty and Surety Company of America

(Serve as Expert for Defendant)

United States District Court, District of South Carolina Charleston Division

2018

Ms. Wagner prepared an expert report on behalf of two insurance companies that had issued primary and excess fiduciary liability insurance policies to Novant. Ms. Wagner's report evaluated whether \$32 million was

a reasonable amount for Novant to settle a matter involving certain breach of fiduciary claims brought against the fiduciaries for several of its defined contribution plans. Ms. Wagner's report included an analysis of whether the investment management fees, recordkeeping fees, and investment consulting fees paid by Novant's defined contribution plans were reasonable.

Sacerdote, et. al. v. New York University

(Expert for Defendant)

United States District Court, Southern District of New York

2018

Marcia Wagner was retained by counsel for the Defendant university and its plan committee to provide an expert report and to testify as an expert on behalf of the plan sponsor with respect to two 403(b) plans featuring participant direction of investments. The report evaluated the plan sponsor's adherence to the standards of conduct imposed on plan fiduciaries under the Internal Revenue Code and ERISA with respect to the selection, monitoring and retention of the plans' recordkeeper and certain investment options offered on the recordkeeper's platform. The Court dismissed the class-action case against New York University and cited Ms. Wagner's expert testimony as being "consistent, reasonable, logical and ultimately, highly credible."

Urakhchin et al. v. Allianz Asset Mgmt. of America, L.P. et al.

(Served as Expert for Plaintiff)

United States District Court, Central District of California

2017

Ms. Wagner produced an expert report on behalf of participants in a 401(k) plan relating to the duties owed to them by Allianz Asset Management of America, L.P. ("Allianz") with respect to its role as the plan's sponsor and fiduciary for the plan. In particular, the report provided an evaluation of: (i) whether it was consistent with the applicable standard of care and the best interests of participants and beneficiaries to maintain a plan investment menu consisting entirely of investments affiliated with Allianz; (ii) whether Allianz prudently and objectively evaluated and monitored the investments in the plan's investment menu; (iii) whether Allianz' conduct in approving the addition of certain proprietary funds and a new default investment option to the plan's investment menu was consistent with fiduciary standards and the best interests of participants and beneficiaries; and (iv) whether Allianz adequately addressed potential conflicts-of-interest.

Austin v. Union Bond & Trust Company

(Served as expert for plaintiff)

United States District Court, District of Oregon, Portland Division

2017

Ms. Wagner produced an expert report on behalf of participants in an employee stock ownership plan relating to ERISA duties owed by a member of a controlled group which managed a collective investment trust that was a plan investment option. The report discussed how the duties of prudence and loyalty owed to the plan affected the controlled group's members and limited the extent to which the group's business objectives could be taken into account in managing plan assets.

Main et al. v. American Airlines, Inc. et al.

(Served as expert for plaintiff)

United States District Court, Northern District of Texas

2017

Ms. Wagner produced an expert report on behalf of participants in an employer-sponsored defined contribution plan relating to the duties owed to them by American Airlines, Inc. ("American") with respect to its role as the plan's sponsor and a fiduciary for the plan. The report discussed the duties of prudence and loyalty and whether American violated these duties with its decision to continue to offer mutual funds issued by a controlled group member investment advisory firm as designated investment alternatives for plan participants. The report also evaluated an independent fiduciary's process for determining whether it was prudent and in the interest of the plan to retain the controlled group member as the plan's investment manager responsible for selecting and monitoring the plan's designated investment alternatives. The process used by American's benefit plan committees for addressing potential conflicts of interest and whether those processes were adequate was also evaluated in the expert report.

Bentley et al. v. Equity Trust Company

(Served as expert for Defendant)

Court of Common Pleas, Lorain County, Ohio

2017

Ms. Wagner produced an expert report on behalf of a Defendant custodian for certain self-directed individual retirement accounts ("IRA"s), relating to the standards of conduct imposed on custodians under the Internal Revenue Code and ERISA and how such standards relate to custodians holding IRA assets. The report also discussed what level of monitoring can be expected from providers of custodial services, particularly in the context of fraudulent activity by third parties rendering investment advice to IRA owners and providing plan investments to their IRAs.

Moreno et al. v. Deutsche Bank Matched Savings Plan Investment Committee, et al.

(Served as expert for Plaintiff)

United States District Court, Southern District of New York

2017

Ms. Wagner provided an expert report on behalf of participants in a 401(k) plan concluding that the Defendants had failed to adhere to a prudent process regarding the selection and monitoring of investment options for the plan's investment menu by favoring proprietary investments issued by the plan sponsor and disregarding the plan's investment policy statement in the selection and monitoring process.

Sgroi v. Edward D. Jones and Company, L.P.

(Served as expert for Plaintiff)

2015

Ms. Wagner produced an expert report on behalf of a participant in a simplified employee pension plan ("SEP"), as defined under Section 408(k) of the Internal Revenue Code, relating to the duties owed by Edward D. Jones and Company in recommending the establishment of the SEP to the participant's Wyoming governmental employer where adoption of such a plan by a governmental entity was prohibited by state law. The report discussed an adviser's duty of prudence with respect to recommendations relating to the selection of a viable retirement benefits plan.

DeLollis et al. v. Investment Performance Services, LLC

(Served as expert for Defendant)

United States District Court, Eastern District of New York

2014

Ms. Wagner prepared an expert report on behalf of a defendant national investment consulting firm on investment allocation practices by Taft-Hartley plans seeking recovery of funds lost as a result of investment in Madoff feeder funds. The case entails issues of adherence to investment policy guidelines with respect to alternative investments and following appropriate steps to comply with ERISA standards of procedural prudence.

Sylvester v. Beck

(Served as expert for the Defendant)

20th Circuit Court of Pinellas County

2014

Roberta Casper Watson was engaged as an expert to testify regarding the conduct of the defendant in creation of a welfare benefit trust. Ms. Watson was deposed and the matter was settled (prior to report being issued) by plaintiff's dismissal of the case.

Dunkin' Brands, Inc. v. Pernod Ricard USA, LLC

(Served as expert for Defendant)

2013

Ms. Wagner delivered an expert report in a case involving a dispute over the allocation of plan expenses between formerly affiliated plan sponsors under an administrative cost sharing agreement. The report included a review of plan expenses, discussion of those expenses properly paid from plan assets, and an explanation of required procedures for reimbursement of expenses paid by an employer.

Tax Deferred Services Group v. Cetera Advisors Network, LLC

(Served as expert for Defendant)

Arbitration Matter

2013

Ms. Wagner furnished an expert report and was engaged as an expert witness on behalf of the Defendants in arbitration proceedings contesting a third-party administrator's putative authority to exercise signature authority on behalf of a plan sponsor and, pursuant to such purported authority, to transfer 457(b) plan accounts to investment providers selected by the administrator. Ms. Wagner concluded that such an assumption of fiduciary authority would violate the exclusive benefit and prudence standards of ERISA and California law. Ms. Wagner also concluded that it would have exceeded the authority of the typical administrator so that a specific delegation of fiduciary authority (not mere signatory authority) would have been required to move funds.

Spaz Beverage Co. Defined Benefit Pension Plan v. 1st Global Advisors

(Served as expert for Defendant)

Arbitration Matter

2012

Ms. Wagner was retained by Defendants to provide an expert report and to testify in arbitration proceedings as an expert in rebuttal to a claim that ERISA fiduciary standards require liquidation of defined benefit pension plan

assets within a precise period of time following notice of the plan's impending termination. The plan in question suffered severe losses in the financial downturn of 2008 - 2009 as a result of its equity investments which were liquidated by the plan without the concurrence of the defendant investment adviser.

Harris et al. v. Koenig et al.

(Served as expert for Plaintiff)

United States District Court, District of Columbia

2011

Ms. Wagner was asked by Plaintiffs to evaluate the conduct of State Street Bank and Trust Company, as plan trustee, in settling securities law claims held by the Waste Management Retirement Savings Plan against the plan sponsor. Ms. Wagner concluded that State Street's actions and omissions in responding to the offer of settlement violated the standard of care applicable to fiduciaries settling and releasing claims, as prescribed by statute as well as administrative guidance, such as Prohibited Transaction Exemption 2003-39. These duties are premised on the assumption that a claim for fiduciary breach is an asset of the plan and that a fiduciary's decision whether to opt out of a class action settlement must include an evaluation of the dollar value of the claim to be relinquished and whether the terms of the release are too broad and might be modified to preserve ERISA claims.

Shirk v. Fifth Third Bancorp

(Served as expert for Plaintiff)

United States District Court, Southern District of Ohio, Western Division

2008

Shirk was a stock drop-case in which participants in a 401(k) plan that also qualified as an ESOP incurred losses due to the decline in value of the plan's investment in employer stock. Ms. Wagner was requested by plaintiffs to render an opinion on the fiduciary standards that applied to the plan fiduciary's decision to continue the plan's investment in employer stock in light of the employer's deteriorating financial condition. Ms. Wagner concluded that, given the plan's structure and the facts applicable to the employer, the plan fiduciaries could and should have exercised their fiduciary duty to terminate the investment in employer stock.

Walker et al. v. Monsanto Company Pension Plan and Monsanto Company

(Served as expert for Plaintiff)

United States District Court, Southern District of Illinois

2008

Monsanto involved a cash balance plan where the plan sponsor had discontinued making interest credits on behalf of participants after the attainment of age 55. Ms. Wagner rendered an expert opinion on behalf of the plaintiffs that this practice failed to meet statutory requirements prohibiting age discrimination.

Abbott et al. v. Lockheed Martin Corporation

(Served as expert for Plaintiff)

United States District Court, Southern District of Illinois

2008

Ms. Wagner was retained by plaintiffs to render an expert opinion as to the operational procedures employed by Lockheed Martin with respect to its 401(k) plans for the purpose of meeting the requirements of Section 404(c) of

ERISA. That provision relieves ERISA fiduciaries of liability where investment losses result from a plan participant's exercise of discretion and control with respect to the investment of his or her plan account, provided the plan sponsor furnishes participants with sufficient investment information and discloses certain material facts about the plan and its administration. Ms. Wagner concluded that Lockheed Martin's actions during a specified period consistently fell short of what was required to obtain this relief from fiduciary responsibility.

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