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EDUCATION

Georgetown University Law Center
LLM

Georgetown University
State University of New York at
Buffalo Law School

JD

Indiana University
BA, with highest honors

ADMISSIONS

New York
District of Columbia
U.S. Supreme Court
U.S. Court of Appeals Second Circuit
U.S. Court of Appeals Fourth Circuit
U.S. Court of Appeals Ninth Circuit
U.S. Court of Appeals District of

Mark C. Nielsen

Principal

Mark's background includes a broad array of multijurisdictional and complex commercial disputes, including extensive class action and multidistrict litigation experience.

Mark has practiced before state and federal courts across the nation, as well as in arbitration actions, and he has been involved in all aspects of litigation — from pretrial discovery, taking and defending hundreds of depositions, arguing motions before courts, to trial advocacy and appellate practice. He also regularly represents plans, their sponsors, and insurance companies before federal and state regulatory agencies.

Examples of Mark's litigation work include:

Serving as trial counsel representing plan fiduciaries and a service provider in a class action before a federal jury, involving allegedly excessive recordkeeping fees paid to the service provider;

Obtaining a settlement of approximately \$100 million on behalf of a multiemployer pension fund, following a withdrawal liability arbitration that spanned multiple years;

Successfully defending one of the nation's largest health insurance companies in arbitration alleging that the insurer violated Medicare Part D's reimbursement rules — and successfully obtaining unanimous affirmance of the award from the Ninth Circuit Court of Appeals;

Successfully representing one of the nation's largest health insurers in multiple class actions involving proton beam radiation therapy ("PBRT") as a treatment for cancer, and obtaining dismissals of multiple of plaintiffs' claims and theories of liability;

Serving as trial counsel on behalf of a large institutional trust company against the U.S. Department of Labor ("DOL") concerning the trust company's valuation of an employee stock ownership plan ("ESOP"), which resulted in a favorable post-trial settlement;

Achieving dismissal, on a motion to dismiss, of breach of fiduciary duty and prohibited transaction claims in a putative class action involving allegedly excessive health care expenses charged by employers — a decision which the Ninth Circuit Court of Appeals unanimously affirmed;

Successfully defending, at trial, a plan trustee accused in a class action of violating ERISA's fiduciary and prohibited transaction rules relating to a stock repurchase program;

Obtaining dismissal, on a motion to dismiss, of two federal lawsuits brought by a trade association representing long term care pharmacies, who alleged that a large health insurer violated Medicare Part D's reimbursement rules;

Obtaining dismissal, on a motion to dismiss, of a putative class action brought by employees against their former employer (and Board members) alleging breach of fiduciary duty claims related to the employer's termination of retiree health benefits—a decision that was unanimously affirmed by the Second Circuit Court of Appeals;

Successfully arguing for reversal, by the Second Circuit Court of Appeals, of a district court's grant of summary judgment to a participant seeking accidental death and dismemberment ("AD&D") benefits, and then obtaining, after trial, a verdict in favor of the insurer;

Obtaining dismissal, in multiple lawsuits, of breach of fiduciary duty and prohibited transaction claims brought by plan participants against their former unions;

Serving as lead defense counsel in two sprawling multidistrict litigation ("MDL") actions, one involving the propriety of a large Church's pension investments, and the other involving the propriety of multiple multiemployer plan investments with a particular investment firm;

Successfully defeating DOL \$30M+ fiduciary breach and prohibited transaction claims against a multiple employer welfare arrangement ("MEWA") relating to the MEWA's expenses.

Mark has also successfully defended plans and their fiduciaries in benefit claim disputes in both trial and appellate courts, and he has successfully defended employers against claims arising under COBRA, the Mental Health Parity and Addiction Equity Act ("MHPAEA"), and the Americans with Disabilities Act.

In addition, Mark regularly counsels plans, plan trustees, and plan sponsors as to their fiduciary obligations under ERISA. These include duties attendant to plan investments and transactions, as well as the requirements of federal and state health care laws, including Medicare Part D, HIPAA, COBRA, and the Age Discrimination in Employment Act.

Mark previously served as a member of the firm's Executive Committee, and currently serves on the Firm's Professional Development Committee.

PREVIOUS EXPERIENCE

- Investigator with the Department of Labor's Employee Benefits Security Administration

PROFESSIONAL AFFILIATIONS

- Vice Chair, Employee Benefits Committee, Bar Association of the District of Columbia
- Co-Chair, Subcommittee on Welfare Plan Litigation, Employee Benefits Committee, American Bar Association

HONORS & DISTINCTIONS

- Listed, *The Best Lawyers in America*, Employee Benefits (ERISA) Law (2023)
 - Listed, *The Best Lawyers in America*, Litigation - ERISA (2024-2025)
 - Leading Lawyer, *The Legal 500 US*, ERISA litigation (2016, 2017, 2019)
 - Listed, *The Legal 500 US*, Employee Benefits and Executive Compensation (2013)
 - Listed, *The Legal 500 US*, Healthcare (2012, 2014)
 - Chapter Editor, *Employee Benefits Law*
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Employee benefits is such a multifaceted legal field that I knew it was an area in which I would never stop learning.