

Art Marrapese

Partner

Buffalo
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Education

- University at Buffalo School of Law, JD
- Hobart and William Smith Colleges, BA

Practices & Industries

- Employee Benefits

Admitted to Practice

- New York

Court Admissions

- US Court of Appeals for the Second Circuit
- US District Court for the Northern District of New York
- US District Court for the Western District of New York

Biography

A former ERISA compliance and record-keeping firm owner with in-house financial services industry experience and over 30 years of legal experience, Art serves as the firm's Employee Benefits Practice Area chair. He primarily concentrates on helping plan sponsors and fiduciaries identify, prioritize, and minimize the litigation and liability risks associated with the management and administration of employee benefit programs through plan drafting, employee-communications strategies, plan-governance ideas, and “best practice” policies and procedures.

Art has extensive experience drafting employee benefit plan documents and summary plan descriptions, assisting senior executives and board members in understanding their fiduciary responsibilities and counseling on steps to minimize those responsibilities and the attendant litigation and liability risks.

He regularly advises plan sponsors, insurers, and health-plan service providers on issues relating to ERISA, COBRA, the Affordable Care Act (ACA), and HIPAA privacy and security. He routinely negotiates administrative-service agreements, business-associate agreements, and nondisclosure and data-transmission agreements related to the operation and administration of self-funded medical plans. Art also advises health insurance companies and brokers on designing, documenting, and administering insurance products and services in a manner that comports with applicable law, most notably the ACA.

In ERISA claims and dispute resolution, Art helps claims administrators and administrative committees maintain compliant-claims procedures, communicate the procedures to participants, and adhere to the timeline, notice, and substantive requirements of the procedure and federal law to help preserve administrative discretion. When litigation is unavoidable, Art aggressively represents plan sponsors, service providers, employee benefit plans, and plan fiduciaries in the defense of ERISA benefits and fiduciary-breach claims. He has argued ERISA cases in federal courts across New York State, including the Second Circuit Court

of Appeals, and also represents plan sponsors and fiduciaries in connection with US Department of Labor investigations and enforcement matters.

Representative Experience

- Led a team that helped a large public company organize and restructure complex benefit programs into a single, comprehensive ERISA welfare-benefits plan, and drafted a consolidated ERISA plan document and summary plan description.
- Helped a large public company establish employee benefit plan policies and procedures to ensure compliance with FMLA, COBRA, HIPAA Privacy and Security, GINA, the Wellstone-Domenici Mental Health Parity Act, the Affordable Care Act, and various other laws that impact the implementation and administration of wellness, disease management, and smoker-cessation initiatives.
- Developed 18 risk-management strategies for consideration by employers and other sponsors of self-funded medical plans. Informed by case law, these strategies are designed to reduce litigation and liability risks, and include “best practice” recommendations relating to plan document provisions, policies and procedures, and plan governance.
- Assisted in the successful defense of a national employee-benefit-plan service provider in a fiduciary breach lawsuit that reached the Court of Appeals for the Second Circuit.
- Secured a favorable ruling on behalf of a claimant in one of the earliest ERISA fiduciary-breach suits following the US Supreme Court’s decision in *Varity Corp. v. Howe*.
- Helped a plan sponsor and fiduciary avoid civil enforcement action arising from an alleged multi-year prohibited transaction. The matter was resolved through voluntary compliance and without penalty.
- Led a multidisciplinary team to help a large medical practice restructure its 401(k) recordkeeping and investment-management program using a carefully designed and implemented RFP process.
- Represented a client in connection with an Audit Closing Agreement Program negotiation, negotiating a retroactive amendment spanning 28 years to conform the plan document to the operational practice, avoiding restorative contributions potentially in the seven-figure range.
- Served as transaction counsel to the purchase of the business assets of a closely held industrial abrasives manufacturer and distributor by a WNY-based private equity company.

Prior Experience

- Damon Morey LLP, Partner
- Hodgson Russ LLP, Partner

Selected Honors

- *The Best Lawyers in America*®: Employee Benefits (ERISA) Law, 2007–2027; Litigation – ERISA, 2006–2027
- Selected to *Super Lawyers* Upstate New York: Employee Benefits, 2008–2026
- *The Best Lawyers in America*®: Buffalo "Lawyer of the Year": Employee Benefits (ERISA) Law, 2014, 2024, and 2026
- *Buffalo Business First*, Legal Elite of Western New York, 2018
- Martindale-Hubbell AV Preeminent Peer Review Rated for Very High to Preeminent Ethical Standards and Legal Ability

Selected Speaking Engagements

- New York State Bar Association, “Employer Liability in Managed Health Care, Estate Planning for Qualified Plan Benefits, and Employee Benefit Plan Implications Associated With Worker Misclassification,” Panelist
- Strafford, “Tax and ERISA Rules Governing Employee Benefit Plan Overpayments,” Panelist
- Barclay Damon, “Managing and Insuring ERISA Litigation and Liability Risks” Webinar
- Barclay Damon, “Managing ERISA 403(b) Plan Litigation Risks in Higher Education” Webinar
- Strafford, “New Individual Coverage and Excepted Benefit HRAs: DOL Guidance and Compliance Challenges for Employers” Webinar

Selected Media

- Law360, "11th Circ. Ruling Could Unravel Strict ERISA Exhaustion Rule"
- *Employee Benefit News*, "SECURE 2.0 Student Loan Matching Will Serve as Talent Magnet"
- Law360, “ERISA Exhaustion Defense Still Viable in Some Jurisdictions”
- Law360, “Fiduciary Best Practices Helped NYU Win ERISA Class Action”
- Law360, “When 403(b) Prudence Claims Survive Dismissal”
- Thomson Reuters, *Taxation of Distributions From Qualified Plans*

Selected Alerts & Blog Posts

- Recent US Supreme Court Decision Will Spur ERISA Litigation
- ERISA Forfeiture Lawsuits: Navigating the Emerging Legal Landscape
- New York State Adopts Employer Retirement Plan Mandate
- COBRA Update: IRS Issues New FAQ Guidance on ARPA Premium Subsidies & Extended Election Period
- Urgent Action Items: Employers Must Offer 100 Percent COBRA Subsidy and New Enrollment Period Beginning April 1, 2021

Selected Podcasts

- *Barclay Damon Live: Labor & Employment Podcast*— "Medical Plan Coverage During a Leave of Absence," With Art Marrapese