

## Scott J. Stitt

### Partner

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#### education

The Ohio State University Moritz  
College of Law (J.D.), *with honors*,  
2001; *Ohio State Law Journal*,  
Managing Editor  
Boston University (B.A.), 1995

#### services

ERISA Litigation  
Employee Benefits & Executive  
Compensation  
ESOP  
Business Litigation  
Class Action Litigation  
Financial Services Litigation  
Health Care  
Insurance  
Labor & Employment  
White Collar Criminal Defense &  
Corporate Investigations  
Commercial Asset Recovery &  
Protection

Scott Stitt's national litigation practice focuses on three overlapping areas: ERISA and employee benefits disputes, employee stock ownership plan (ESOP) matters, and business and employment litigation.

Scott co-chairs both the Tucker Ellis ERISA Litigation and ESOP practices and is the Partner-in-Charge of the Columbus office.

As lead trial counsel, Scott has represented corporations, ESOP and defined benefit plan trustees, physicians and medical practice groups, Fortune 500 companies, and individuals in complex class-action litigation in Ohio, New York, Illinois, California, Virginia, Indiana, Tennessee, Missouri, and other jurisdictions.

Scott's ERISA and employee benefits litigation experience includes ERISA criminal and civil disputes; DOL and IRS audits and investigations; benefit claim disputes; breach of fiduciary duty claims regarding issues such as defined benefit plan collections and calculations and the fees incurred in 401(k) plans; alleged prohibited transactions; and executive compensation issues, such as disputes regarding bonuses and deferred compensation.

Scott's extensive ESOP experience includes representing ESOP trustees, selling shareholders, ESOP companies and Boards of Directors, private equity firms that have purchased ESOP-owned companies, ESOP valuation firms, and other ESOP professionals as litigation counsel and sometimes special counsel in scenarios including ESOP purchases, ESOP sales, administrative disputes,

litigation filed by the DOL, class-action litigation filed by participants, and special investigations, among others.

Scott also litigates employment and business disputes in state and federal courts, including claims for breach of contract, misappropriation of trade secrets, fraud, breach of fiduciary duty, product liability claims, claims for accounting or legal malpractice, and disputes over the value of privately held businesses and other assets.

Scott and his wife Aimee reside in Powell, Ohio, with their golden retriever Pippa.

#### **state admissions**

- Ohio (2001)

#### **federal admissions**

- Supreme Court of the United States
- United States Court of Appeals, Sixth Circuit
- United States Court of Appeals, Eighth Circuit
- United States District Court, Northern District of Ohio
- United States District Court, Southern District of Ohio

#### **experience**

#### **REPRESENTATIVE CASES**

- Lead trial counsel in two class-action ERISA cases regarding the benefits owed to class members after a corporate change in control; prevailed in both cases before the Sixth Circuit and Eighth Circuit Courts of Appeal
- Represented the plan sponsor of a self-funded ERISA health plan in defense of ERISA breach of fiduciary duty claims regarding the coverage available to spouses
- Represented ESOP trustees in defense of ERISA breach of fiduciary duty and prohibited transaction claims in federal district and bankruptcy courts in Ohio, Indiana, and New York
- Represented numerous clients pursuing or defending claims for misappropriation of trade secrets, tortious interference with contract or business expectancy, conversion, and other related claims
- Represented the former managing member of an LLC in an executive compensation dispute; obtained an arbitration award for the entire amount in dispute – \$1.3 million – affirmed by the trial court and court of appeals
- Represented plan sponsors and trustees with ERISA issues and claims, such as claims against stop-loss carriers for the sponsor's health plan, investigations and audits of the plans by the DOL or IRS, and other special counsel situations
- Defended a selling shareholder in a complex breach of contract matter in Ohio state court and federal bankruptcy court adverse to the private equity fund that acquired the company; obtained advancement of the client's attorney fees in a case of first impression under Ohio corporate law and successfully dismissed the resulting appeal
- Represented medical practice corporations in disputes against departing physicians for the physicians' breach of contract, violation of trade secrets and confidential information, and other related claims
- Represented plaintiffs and defendants in numerous malpractice actions – legal malpractice, accounting malpractice, medical malpractice, and other related claims for professional negligence

## publications & events

### PUBLICATIONS

- "Do You Know What You're Paying for Your 401(k) Plan?", *Fine Print* (Fall 2015)
- "The 'Duty to Monitor' and ERISA's Statute of Limitations After *Tibble*," *Westlaw Journal* (July 2015)

### SELECTED SPEAKING ENGAGEMENTS

- "Asserting Claims and Crafting Defenses Based on Valuation of Stock in ESOP Litigation," ERISA Litigation Conference, American Conference Institute, New York, New York (November 2018)
- "Analyzing the Valuation Issues in Recent ESOP Lawsuits," NCEO Employee Ownership Conference, Atlanta, Georgia (April 2018)
- "ERISA Hot Topics," Emerging Topics in Employment & Employee Benefits Law, Tucker Ellis LLP, Columbus, Ohio (April 2018); Cleveland, Ohio (March 2018)
- "ERISA Litigation Update," American Society of Pension Professionals & Actuaries, Cleveland Chapter, Independence, Ohio (December 2017)
- "On Representing ESOPs," *The ESOP Podcast*, Episode 13, Capital Trustees, LLC (November 2017)
- "ERISA and the Trump Administration: Hot Topics and New Developments in 2017," 2017 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2017)
- "401(k) Plan Litigation and the Fiduciary Rule: The Impact of President Trump," Retirement Plans, Inc.'s Straight-Talk Series, Columbus, Ohio (June 2017)
- "ESOP Legal & Regulatory Update," Ohio Employee Ownership Center's 31st Annual Conference, Fairlawn, Ohio (April 2017)
- "Hot New Legal & Regulatory Issues for ESOPs," The ESOP Association's Ohio/Kentucky Chapter's Spring Conference, Columbus, Ohio (March 2017)
- "Employee Benefits and ERISA Year-End Review," Ohio State Bar Association webinar (November 2016)
- "ERISA Year-End Update," Employee Benefits Committee, Columbus Bar Association, Columbus, Ohio (November 2016)
- "Hot Topics in ERISA & Employee Benefits," Hot Topics in Employment & Employee Benefits Law, Tucker Ellis LLP, Columbus, Ohio (November 2016); Cleveland, Ohio (October 2016)
- "ERISA Update," 2016 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2016)
- "Emerging Trends in ERISA Class Actions, Including Supreme Court Developments," American Conference Institute's 12th National Forum on ERISA Litigation, San Francisco, California (June 2016)
- "Emerging Trends in ERISA Class Actions," American Conference Institute's ERISA Litigation Conference, Chicago, Illinois (March 2016)
- "ERISA at a Fundamental Level and Recent Supreme Court Rulings with Scott Stitt," *Civilly Speaking* – the monthly podcast for the Ohio Association for Justice (February 2016)
- "ERISA Litigation Update: Subrogation and Other Hot Issues Before the U.S. Supreme Court," Ohio Association for Justice, Dublin, Ohio (January 2016)
- "ESOP Litigation: New and Emerging Claims and Guidelines for ESOP Valuations," American Conference Institute's 10th National Forum on ERISA Litigation, New York, New York (October 2015)
- "ESOP is a 4-Letter Word," Great Lakes Regional ESOP Conference, Sandusky, Ohio (October 2015)

- "Avoiding ERISA Red Flags in Healthcare, Retirement Plans, and Litigation," 2015 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2015)
- "LGBT Issues in the Wake of the Supreme Court's Same Sex Marriage Ruling," Columbus Bar Association's Master Class: Employment Law Institute, Columbus, Ohio (October 2015)
- "ERISA Litigation Risks," A 360-Degree Review of ERISA Issues, Ohio State Bar Association, Columbus, Ohio and Cleveland, Ohio (July 2015)
- "Multi-Employer Plan Issues – Lifetime Healthcare, Withdrawal Liability and Other Challenges," A 360-Degree Review of ERISA Issues, Ohio State Bar Association, Columbus, Ohio and Cleveland, Ohio (July 2015)
- "Emerging ERISA Issues," Advanced Employment Law, Ohio State Bar Association, Columbus, Ohio (July 2015)
- "Don't Do That: Avoiding ESOP Problems," The National Center for Employee Ownership (NCEO) 2015 Conference, Denver, Colorado (April 2015)
- "Legal Update," Ohio/Kentucky Chapter Annual Spring ESOP Conference, Powell, Ohio (March 2015)
- "The Employer Mandate, ERISA and the ACA – Health Coverage for Employers in 2015 and Beyond," The Ohio State University Moritz College of Law (February 2015)
- "ERISA Litigation Update," Employee Benefits Committee, Columbus Bar Association (January 2015)
- "ESOPs: New and Emerging Trends in Private Company ESOP Litigation, Lessons Learned from Recent Decisions in ESOP Cases, and the Latest on DOL Investigations and Enforcement Priorities," ACI ERISA Litigation Conference, New York, New York (October 2014)
- "The Future of Employer Stock After the Supreme Court's Decision in *Fifth Third Bancorp v. Dudenhoeffer*," Moderator, Ohio State Bar Association's ERISA CLE, Columbus, Ohio and Cleveland, Ohio (July 2014)
- "ESOP Litigation: New and Emerging Claims and Recent Developments," ACI ERISA Litigation Conference, Chicago, Illinois (April 2014)
- "Helpful Hints for Fiduciaries: Avoiding and Surviving Litigation," The National Center for Employee Ownership, Annual Conference, Atlanta, Georgia (April 2014)
- "An ESOP Fable: Lessons from the Tribune Transaction," The ESOP Association, Ohio/Kentucky Chapter, Fall Conference (October 2013)
- "Financial Considerations: Indemnification, Insurance Recovery, and Compensation Clawbacks," Ohio State Bar Association, Business Law CLE (July 2013)
- "The Inside Story of *US Airways v. McCutcheon* and Its Impact on ERISA Health Plans," ERISA Group webinar (May 2013)
- "Fee Disclosures – Litigation and Regulatory Update," Everhart Advisors' 2011 Breakfast with the Department of Labor (October 2011)
- "Avoiding the Billion-Dollar Typo and Other Litigation Lessons for Employee Benefits Practitioners," Keynote Speaker, International Society of Certified Employee Benefit Specialists (ISCEBS), Central Ohio Chapter, 25th Annual Meeting (December 2009)

#### **MEDIA QUOTES**

- "The Free Market Is Always One Step Ahead of Regulators," *BenefitsPro* (February 2016)
- "What Employers Need to Know About the Montanile Case," *Employee Benefits News* (January 2016)

- "Should Your Small Business Offer Employees a Retirement Plan?", *Successful Business News* (January 2016)
- "Justices Hear ERISA Reimbursement Case," *SHRM Online* (November 2015)

## **honors**

### **AWARDS & PROFESSIONAL RECOGNITION**

- "Forty Under 40," *Columbus Business First* (2009)
- Ohio Super Lawyers® (2014-2019)
  - Top 50 Columbus Ohio Super Lawyers (2016)
- Ohio Super Lawyers Rising Stars® (2007-2012)
- The Best Lawyers in America® (2016-2019)

## **in the community**

### **CIVIC & PROFESSIONAL INVOLVEMENT**

- Ohio State Bar Association
  - ERISA Continuing Legal Education Seminar, Course Planner (2009, 2010, 2014, 2015)
  - Business Litigation Continuing Legal Education Seminar, Course Planner (2007-2010, 2012-2013)
- Columbus Bar Association
  - Judicial Screening Committee
    - Chair (2012-2013)
    - Member (2006-present)
- Cleveland Metropolitan Bar Association
- The ESOP Association, Ohio/Kentucky Chapter
  - Executive Committee, Program Committee Co-Chair (2011-present)
  - Advisory Committee (2007-2011)
- Federal Bar Association
- The Chief Justice Thomas J. Moyer American Inn of Court
- Ohio Employee Ownership Center
- National Kidney Foundation, Columbus Chapter, "Cooking with the Stars" Committee (2013-present)