



SCOTT M. PETERSEN

FABIAN & CLENDENIN

215 South State Street, Suite 1200

Salt Lake City, Utah 84111-2323

TEL: 801-531-8900

FAX: 801-596-2814

EMAIL: spetersen@fabianlaw.com

AREAS OF PRACTICE:

- Employment
- Complex Litigation

PRACTICE SUMMARY

Scott Petersen practices all aspects of employment and ERISA law and life, health, and disability insurance. He represents employers in every stage of discrimination litigation both in state and federal administrative proceedings and in state and federal court. He represents national and local employers in drafting employment applications, policies, handbooks and agreements.

Scott also has extensive experience in ERISA and non-ERISA insurance litigation and represents self-funded and insured ERISA plans, including plan insurers, administrators, and fiduciaries. His non-ERISA insurance representation includes claims for life, health and disability insurance benefits, policy rescission, misrepresentation, and bad faith. He has litigated cases involving employment discrimination and benefits including Title VII, ADA, ADEA, FMLA, FLSA, ERISA, COBRA, and others.

Scott is admitted to practice in all Utah State and federal courts, the Court of Appeals for the Tenth Circuit, and the United States Supreme Court. He is a member of the Utah State Bar and the American Bar Association.

PROFESSIONAL

- Attorney and Shareholder, Fabian & Clendenin, 2000-Present
- Director, Fabian & Clendenin Board of Directors, 2004-2006, 2008-Present
- Member, American Bar Association
- Member, Salt Lake County Bar Association
- Recognized as a leader in ERISA Law by Chambers U.S.A., 2007-2010
- Recognized in Super Lawyers as one of the top 5 percent of lawyers in Nevada, Utah, Montana, Idaho and Wyoming for Employment and Labor Law in 2006, 2007, 2008 and 2009
- Recognized as "Legal Elite" in the field of Employment Law, Utah Business Magazine
- Admitted to the Utah State Bar (1996), the Tenth Circuit

Court of Appeals (1998), the US Supreme Court (2000)

EDUCATION

- J.D., Top 10%, J. Reuben Clark Law School, Brigham Young University, 1996, Order of the Coif, Law Review, 1995-96, National Moot Court Team, 1994-1995
- M.A., Political Science, Arizona State University, 1992, Thesis Title: "Continuity or Change? Justice O'Connor Eleven Terms Later"
- B.A., Political Science, Brigham Young University, 1991, Minor in Spanish, Cum Laude

PUBLICATIONS & PRESENTATIONS

- Co-Author, "ERISA Survey of Federal Circuits," 2010 Ed., American Bar Association, Chapter 10 (Tenth Circuit), 2010
- Co-Author, "Misrepresentation in Life and Health Disability Insurance," American Bar Association, Utah Chapter, 2008
- Co-Author, "ERISA Survey of Federal Circuits," Second Ed., American Bar Association, Chapter 10 (Tenth Circuit), 2007
- Author, "Aging Workforce Alert: Considerations Under the ADEA," 6 Utah Labor Letter 6, 2000
- Co-Author, "Employee Absenteeism Under the ADA - When is Enough, Enough?," 5 Utah Labor Letter 6, 1999
- Co-Author, "Supreme Court Voting behavior: 1994 Term," 23 Hastings Const. L.Q. 1, 1995
- Co-Author, "Supreme Court Voting Behavior: 1993 Term," 22 Hastings Const. L.Q. 269, 1995
- Speaker, "The Who & What of Basic ERISA Litigation," Annual Bar Convention, July 2007
- Speaker, "ERISA 101," Utah State Bar CLE, February 2007
- Speaker, "Employment Discrimination Laws (Title VII, ADA, ADEA)," Utah State Bar CLE, December 2001

REPRESENTATIVE PROJECTS

- ERISA LAW - Scott has successfully defended medium and large employers, plans, fiduciaries, insurers and administrators against claims for wrongful denial of benefits, breach of fiduciary duty, and penalties under 29 U.S.C. § 1132(c).

Most ERISA litigation is resolved on the administrative

record through summary judgment, and Scott has been very successful in prevailing in such cases, including litigation regarding discretionary authority to plan fiduciaries, the appropriate standard of review, and restricting discovery.

Scott recently successfully defended a national insurer in a purported class action lawsuit brought under ERISA challenging various state mental health parity laws.

Scott has argued several cases before the Tenth Circuit Court of Appeals with great success.

- **NON-ERISA LIFE, HEALTH, AND DISABILITY** - Scott represents regional and national insurance companies in claims for breach of contract, misrepresentation, and breach of the covenant of good faith and fair dealing.

He has been very successful in limiting broad discovery and the use of "bad faith" experts in such cases.

Scott has successfully pursued rescission claims on behalf of insurers who learn of material misrepresentation by claimants in their insurance applications.

Scott is a proponent of mediation and settlement when appropriate and has successfully postured cases toward favorable resolution with the help of alternate dispute resolution.

- **EMPLOYMENT LAW** - Scott has successfully defended small, medium and large employers in all aspects of employment claims from responding to charges of discrimination in state agencies and the EEOC to defending discrimination and harassment claims in state and federal court.

Some of Scott's successes include defense of several appeals to the Tenth Circuit Court of Appeals and two petitions for a writ of certiorari to the United States Supreme Court.

Scott has successfully defended a broad range of clients including a national hotel company, regional airline, utility companies, regional and national construction companies, a popular film company, assisted living centers, insurers, and local restaurants.

Scott pursues trade secret violations and breaches of non-competition and non-solicitation agreements on behalf of his employer clients and helps his clients draft and negotiate employment agreements, handbooks, policies, procedures, and severance agreements.

Scott regularly conducts anti-harassment and discrimination training of owners, managers, supervisors and other employees on behalf of local and regional

clients and advises these clients in employee hiring and termination decisions and strategies.

He has successfully defended employers in wage and hour litigation both in federal court and with the Department of Labor. He provides compliance advice to employers seeking help with the FLSA and state wage and hour laws.