

## MVP: Goodwin's James Fleckner

By Danielle Nichole Smith

*Law360 (December 3, 2019, 4:13 PM EST)* -- Goodwin Procter LLP's James Fleckner has helped companies fight off Employee Retirement Income Security Act suits, including securing a trial win for asset manager American Century in litigation over the management of its 401(k) plan, earning him a spot as one of Law360's 2019 Benefits MVPs.

### **WHY HE PRACTICES BENEFITS:**

Fleckner told Law360 that he started out as an attorney with a securities litigation practice and ended up switching gears after a senior partner asked for help on an ERISA case early in his career.

He agreed to help the partner nearly 20 years ago because he wanted to seem helpful, Fleckner said, but he stuck with ERISA because he finds the work to be "very interesting" and "thoroughly rewarding."

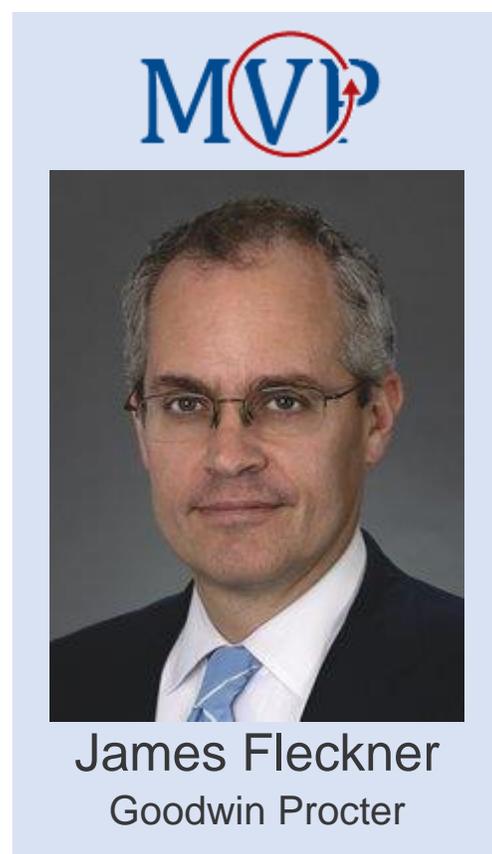
"On the surface, it's not the most sexy work in the legal profession to be sure, but I find it really exciting in that it affects so many people in the country," Fleckner said. "All of us hope to retire and hope to retire in a way in which we can live a meaningful life, and so having the ability ... to do that is really critically important."

### **HIS BIGGEST ACCOMPLISHMENT:**

In January, Fleckner helped secure a favorable verdict for American Century in an ERISA suit challenging the company's management of the proprietary funds in its retirement plan. The case was unusual in going to trial, according to him.

"These cases typically don't go all the way to trial," Fleckner said. "In fact, I think this was the first one challenging an asset manager that utilized its own products for its own 401(k) plan to have a full trial all the way to verdict in at least the past decade."

The challenge, as in many ERISA cases, was to boil down the issues in order to tell a coherent story and cut through some of the technicalities in the federal benefits statute, Fleckner said.



"With any trial you're trying to tell a story, and you want to be able to condense the issues to the critical, core components," he said. "Trying to sort through the record as to what that is and then coming up with the narrative to present that in a meaningful way to a judge is always a challenge — an interesting and enjoyable challenge, but certainly a challenge nonetheless."

Ultimately, the Missouri federal court concluded after a bench trial that the participants in American Century's retirement plan failed to show that the company had breached its fiduciary duties.

"Going through that trial, presenting our case to the judge and then ultimately obtaining a full defense verdict — that frankly was so complete the plaintiffs didn't even appeal — was really the most satisfying part of my year by far," Fleckner said.

#### **OTHER NOTABLE MATTERS:**

This past year, Fleckner led the team that helped Checksmart Financial LLC and affiliated parties beat an ERISA suit accusing the financial services company of including investment options in the plan that were excessively costly and performed poorly.

An Ohio federal court tossed the case in June 2018, but the worker leading the action appealed to the Sixth Circuit. In November 2018, the worker agreed to drop the appeal, which Fleckner also handled.

He said that the case was interesting in that it was brought over a plan that had only about \$25 million in assets, as opposed to plan with billions or — like American Century — hundreds of millions in assets.

"It was very interesting to work with people at a much smaller company who by necessity have a much leaner internal benefits operation," Fleckner said. "It was great to get a win for them."

Fleckner also helped successfully defend Newport Trust Co. against claims that it dropped the ball as the trustee to an employee stock ownership plan for a professional photography company. The participants in the plan agreed to drop their claims against the financial services company in October 2018.

#### **ADVICE FOR JUNIOR ATTORNEYS:**

Fleckner had two pieces of advice for attorneys early in their career. First he said to "roll up your sleeves and dig into the issues."

"I don't think any legal issue that your client confronts can be dealt with superficially," he said. "You really need to get your hands dirty with the law, so to speak, and really understand the statute or the regulation or the cases."

And second, Fleckner said, attorneys should "really understand the context of legal questions."

"Legal questions, particularly where your clients are corporations, are really business issues," he said. "You want to understand how this legal issue fits into your clients' business goals."

— *As told to Danielle Nichole Smith*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.*

All Content © 2003-2019, Portfolio Media, Inc.