

ACI, creator of the annual ERISA Litigation conference, now brings you its:

*National Advanced Compliance Forum on*

Minimizing Legal Risks in the Design, Implementation & Administration of

# EMPLOYEE BENEFIT PLANS

May 24-25, 2010 | The Carlton on Madison Avenue | New York, NY

31 in-house counsel will help you avoid poor and inconsistent drafting, design, implementation, and administration of employee benefit plans.

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Gain expert advice and strategic insights on:

- » **Fiduciary compliance**, avoiding faulty plan documents, and aligning plan documents with plan administration
- » **IRS/Treasury, DOL, and PBGC** developments
- » The **determination letter process**
- » Designing and maintaining health and welfare benefit plans (**including wellness, domestic partner, and retiree medical**) that are in line with reporting and disclosure requirements
- » **Cafeteria plan nondiscrimination testing**
- » Avoiding liability exposure under **PPA requirements** and amending plans to reflect changes under the Act
- » **Cash balance plans**: Keeping pace with the changing requirements
- » **Fiduciary liability insurance coverage**
- » **Defined contribution plans: Employer stock, 401(k) and fees, automatic enrollment, QDIA, safe harbor, ESOP, 404(c)**
- » Avoiding and fixing scrivener's errors in drafting plans
- » **Service provider relationships**: Responding to concomitant pressure over their practices and meeting reporting and disclosure requirements of Schedule C Form 5500
- » **409A compliance and correction**
- » Employee benefits for **contingent workers**
- » Design and administration of **plan loans**
- » Employee benefit issues and **M&A**



Plus, hear from:



*Michael L. Davis*  
Deputy Assistant Secretary of Labor  
Employee Benefits Security Administration  
U.S. Department of Labor

*Nichelle Langone*  
Supervisory Investigator (NY)  
U.S. Department of Labor

*Michele Varnhagen*  
Majority Labor Policy Director  
House Education and Labor Committee

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## 31 in-house counsel, DOL, and top outside counsel will help you avoid poor & inconsistent drafting, design, implementation, and administration of employee benefit plans.

Employee benefit plans and the laws that govern them are inherently complex and constantly evolving. Add to the mix recent corporate scandals, major bankruptcies, and a volatile stock market, all resulting in billions of dollars in retirement plan losses, and it has never been more vital for in-house counsel and outside counsel for plan fiduciaries, sponsors, administrators, advisors and insurers to *avoid poor or inconsistent drafting, design, implementation, and administration of employee benefit plans*.

However, having good, accurate and consistent employee plan documents is vastly easier said than done. In keeping the language in employee benefit plans “up to snuff,” counsel for companies, plan fiduciaries, sponsors, administrators, advisors and insurers face a *distinct uphill battle, including:*

- Incomplete/missing/inconsistent documents
  - Document provisions not aligning with actual plan administration
  - Document slippage – issues that arise when a plan’s operating procedures and/or its administrative documents drift from the official plan document
  - Improper delegation of decision-making authority
- ....*Just to name a few*

As a result of this uphill battle, there is simply no room for error when it comes to minimizing the increased litigation risk in this high stakes arena. Following the great success of ACI’s ERISA Litigation conference in October, we are proud to introduce an event focused on the front end preventive aspects of employee benefits law: ACI’s *National Advanced Compliance Forum on Minimizing Legal Risks in the Design, Implementation & Administration of EMPLOYEE BENEFIT PLANS*. Through a faculty of more than 30 distinguished in-house counsel, the DOL, and top outside counsel, this conference will provide even the most seasoned employee benefit lawyers with clarity and certainty with respect to *today’s key risk minimization issues*.

PLUS, be sure to also register for the post-conference workshop:  
**Master Class on Pension Plan Risk Management**  
Tuesday, May 25, 4:30 p.m. - 6:30 p.m.

Register now by calling 888-224-2480, faxing your registration form to 877-927-1563 or registering online at [www.AmericanConference.com/BenefitPlans](http://www.AmericanConference.com/BenefitPlans)

### Who You Will Meet

- ✓ Attorneys handling compliance for:
  - employee benefit plans
  - benefit plan sponsors
  - ERISA fiduciaries
  - ERISA service providers
- ✓ Attorneys for insurers who write policies for ERISA related risks
- ✓ Employee pension and benefits attorneys
- ✓ Executives and decision makers whose actions could result in employee benefits litigation

### Continuing Legal Education Credits



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7:15 Registration and Continental Breakfast

7:55 Co-Chairs' Welcoming Remarks






**John R. Hickman**  
Partner  
Alston & Bird LLP (Atlanta, GA)



**Peter M. Varney**  
Counsel, Employee Benefits / ERISA  
Lowe's Companies, Inc. ( Mooresville, NC)

8:00 **In-House Think Tank: Best Practices for Fiduciary Compliance, Avoiding Faulty Plan Documents, and Aligning Plan Documents With Plan Administration**

Panel 1 8:00-9:00	Panel 2 9:00-10:00 <i>(morning coffee break from 10:00-10:05)</i>	Panel 3 10:05-11:00
<p><b>JoAnn L. Beck</b> Senior Counsel, Global Benefits LyondellBasell Industries (Houston, TX)</p> <p><b>Vicki D. Blanton</b> Senior Benefits Counsel - Legal Department American Airlines (Fort Worth, TX)</p> <p><b>Ann Habernigg</b> Senior Attorney Law and Corporate Affairs Department Microsoft Corporation (Redmond, WA)</p> <p><b>Kurt D. Hallock</b> Assistant General Counsel Computer Sciences Corporation (El Segundo, CA)</p> <p><b>Lynne Harkel-Rumford</b> Associate General Counsel Manager, Financial Security Plans CenterPoint Energy, Inc. (Houston, TX)</p> <p><b>Brad Schlichting</b> Senior Counsel Wells Fargo &amp; Co. (Minneapolis, MN)</p> <p><b>Daniel A.R. Shoemaker</b> Assistant General Counsel Xcel Energy Services Inc. (Minneapolis, MN)</p> <p><b>Moderator:</b></p> <p> <b>Michael J. Nader</b> Baker &amp; Daniels LLP (Fort Wayne, IN)</p>	<p><b>Kelli Christenson</b> Senior Counsel, Benefits Kraft Foods Global, Inc. (Northfield, IL)</p> <p><b>Marianne W. Culver</b> Counsel The Boeing Company (Chicago, IL)</p> <p><b>Stephanie A. Edwards</b> General Attorney AT&amp;T (Atlanta, GA)</p> <p><b>Dorothy Sanders Wells</b> Staff Director, Tax &amp; Employee Benefits Law FedEx Corporation (Memphis, TN)</p> <p><b>R. Eric Powers, III</b> Corporate Counsel Crawford &amp; Company (Atlanta, GA)</p> <p><b>Jennifer Ting</b> Senior Counsel Corporate Secretary, Security &amp; Employee Benefits Legal Division The Procter &amp; Gamble Company (Cincinnati, OH)</p> <p><b>Michael J. Wise</b> Corporate Counsel, Compensation and Benefits Caterpillar Inc. (Peoria, IL)</p> <p><b>Moderator:</b></p> <p> <b>Steven J. Sacher</b> Jones Day (Washington, DC)</p>	<p><b>Keith D. Bilezerian</b> Senior Compensation and Benefits Counsel Covidien (Mansfield, MA)</p> <p><b>John C. Braun, Jr.</b> Senior Compensation and Benefits Counsel Tyco International (Princeton, NJ)</p> <p><b>Michael A. Lalli</b> Associate General Counsel, Benefits and M&amp;A Pitney Bowes Inc. (Stamford, CT)</p> <p><b>Millicent Lundburg</b> General Counsel Comprehensive Care Corporation (Tampa, FL)</p> <p><b>Renata Pompa</b> VP &amp; Corporate Counsel Prudential (Newark, NJ)</p> <p><b>Peter M. Varney</b> Counsel, Employee Benefits / ERISA Lowe's Companies, Inc. ( Mooresville, NC)</p> <p><b>Moderator:</b></p> <p> <b>Elizabeth Bondurant</b> Smith Moore Leatherwood LLP (Atlanta, GA)</p>

Reviewing the Governing Documents and Properly Handling the Administrative Record

- Vigilant plan drafting and administration & avoiding incomplete/missing/inconsistent documents
- Following plan document terms: Reviewing the plan document or SPD to ensure compliance with the documents, and determining whether either needs to be amended
- Document slippage – issues that arise when a plan's operating procedures and/or its administrative documents drift from the official plan document
- Follow through by the decision maker: following the plan terms, regulations, and avoiding improper delegation of decision-making authority
- Consistency between the plan document and the employer's actual practice: Ensuring that plan document provisions align with actual plan administration
- Ascertaining whether a plan has an IPS and guidelines, and reviewing them for compliance
- Developing a complete and well reasoned administrative record

ERISA Fiduciary Practices and Procedures and Prohibited Transactions

- Fiduciary compliance so that plan investments, design issues, and claims are monitored adequately
- Ensuring plan fiduciaries are sensitive to fiduciary responsibilities with respect to plan investments
- Allocation of duties with regard to fiduciary compliance
- Processes an ERISA fiduciary should follow when reviewing documents or determining actions to take
- Fiduciary "best practices" that have emerged from recent litigation
- Governance and process concerns for ERISA fiduciaries involving delegation from the Board of Directors and Plan Administrator to other fiduciaries
- Who should be appointed to administrative and investment committees



**Michael L. Davis**  
Deputy Assistant Secretary of Labor,  
Employee Benefits Security Administration  
U.S. Department of Labor (Washington, DC)

**Nichelle Langone**  
Supervisory Investigator (NY)  
U.S. Department of Labor  
(New York)



**Patrick S. Menasco**  
Steptoe & Johnson LLP  
(New York, NY)



**Andrew L. Oringer**  
Ropes & Gray LLP  
(New York, NY)



**Linda A. Wilkins**  
Attorney and Counselor  
(Dallas, TX)

**IRS/Treasury**

- Recent IRS and Treasury activities, rulings and interpretations affecting benefit plans compliance: Keeping up with increasingly complicated legislative changes, regulations and interpretative advice
- Resolving the complexity and cost burdens of Treasury/IRS recent regulations on defined benefit plans, funding, benefit restrictions and cash balance plans
- Payroll/deferral issues and IRS penalties
- Adapting to IRS changes in positions, refusal to honor prior determination letters and the determination letter process
- The IRS 2009-2010 Priority Guidance Plan for employee benefit plans, executive compensation and health and welfare plans – what's completed, what's pending, and what's delayed because of PPA and other agenda items
- The new "DB/K Plan" under Section 414(x) of the Code:
  - the retirement plan of the future?
- Benefit limitations due to funding deficiencies under IRC Sections 430 and 436 – compliance with the restrictions for defined benefit plans
- IRS interim amendments – what you now need to know
- Filing excise tax returns with the IRS (Form 5330) and the "de minimis" rule
- Update on the 2010 EPCRS Program for correcting plan operational errors
- Developments regarding Sections 409A, 457 and 457A and new regulations applicable to incentive stock options (Section 422) and employee stock purchase plans (Section 423)
- Update on annual reporting (Form 5500) requirements

**DOL**

- Recent Department of Labor rulings and interpretations
- The impact of changing Administrations on pending DOL regulations, e.g., regulations addressing investment advice, participant-directed individual account plan disclosures, compensation to plan service providers and guidance on fiduciary status
- DOL guidance on health and welfare plan issues
- Complying with DOL participant contribution regulations
- The DOL crackdown on fees and auditors, and regulatory activity (including SEC and State-related activity) relating to placement agents and consultants

**PBGC**

- Recent PBGC regulatory, enforcement and other developments
- PBGC funding requirements for defined benefit plans
- Mastering PBGC reporting requirements for defined benefit plans, in particular the notice required by ERISA Section 4062(e)
- Employee benefit issues and liabilities in bankruptcy, including negotiations and litigation with PBGC over funding liabilities, controlled group issues, PBGC liens, and termination premiums
- The PBGC's position on controlled group liability in the context of private equity funds

12:15 **New and Anticipated Legislation, Regulations, and Amendments Affecting Welfare Plans: How to Resolve the Extreme Complexity Arising from Constant Legislative Tinkering of Rules and Administer a Fully Compliant Plan**



**Gary D. Blachman**  
Thompson Hine LLP  
(Cincinnati, OH)



**Juliana Reno**  
Kutak Rock LLP  
(Omaha, NE)



**Michael F. Tomasek**  
Freeborn & Peters LLP  
(Chicago, IL)

**Michele Varnhagen**  
Majority Labor Policy Director  
House Education and Labor Committee, US Congress  
(Washington, DC)

*There are sweeping changes within the Obama administration, Congress and federal and state agencies. The full impact of these changes remains to be seen, but employers and their counsel need to prepare for major changes to how the employment relationship is regulated as well as to how those changes will affect industry's risk profile. Speakers will address the key issues currently in play and make sense of it all, including:*

- New laws, amendments to old laws, legislative intent behind these new statutes, and pending bills/initiatives
  - Effective date / substantive content compliance with stimulus legislation objectives
  - American Recovery and Reinvestment Act of 2009– "ARRA"
  - Health care reform: How will health reform impact employers? Will employers have to make changes in their administration or the terms of their plans? Will there be a cost impact on employers or health plan participants? What's the effect on executive compensation?
  - HITECH changes to HIPAA
  - Genetic Information Nondiscrimination Act
  - Mental Health Parity Law
  - Michelle's Law
  - New rules for COBRA subsidies
  - Federal benefit mandates
  - Restrictions on preexisting condition exclusions and disclosure requirements
  - Late breaking tax developments

1:15 **Networking Luncheon for Speakers and Delegates**

2:10 **Health and Welfare Benefit Plan Preparation and Compliance: Designing and Maintaining Plans (Including Cafeteria, Wellness, Domestic Partner, and Retiree Medical) That Are in Line With Reporting and Disclosure Requirements**



**Sharon Goldzweig**  
Associate Counsel, ERISA Counsel  
Consolidated Edison, Inc. Law Department (New York, NY)



**John R. Hickman**  
Alston & Bird LLP  
(Atlanta, GA)



**Steven J. Sacher**  
Jones Day  
(Washington, DC)



**Todd A. Solomon**  
McDermott Will & Emery LLP  
(Chicago, IL)

**Ethical Obligations**

- Selection of providers and networks
- Overcoming ethical concerns regarding financial incentives and disclosure, scope of covered treatment, and confidentiality of patient information
- Fiduciary considerations for health and welfare plans: where the line between settler and fiduciary functions may be drawn; the vendor through which to offer benefits; to what extent does the financial ability of the employer affect the prudence of that choice?; how should vendor activities be monitored when functions are outsourced?

**Cafeteria Plans**

- Structuring administrative and tax issues for cafeteria plans
- Cafeteria plan rules and the hot issues under the proposed regulations
- Nondiscrimination testing and the cafeteria plan regulations: Clarifying testing under the proposed/final regulations

**Wellness Plans**

- Making wellness programs more accessible or providing a more cost-efficient and productive way to treat employees with minor emergency or chronic conditions

- On-site wellness clinics and on-site medical clinics – the latest implementation issues

#### Domestic Partner Benefits

- Legal issues with regard to providing benefits to domestic partners
- Who is a “spouse” for purposes of ERISA welfare plans?
- Definition of marriage and its impact on welfare plans
- When are benefits to domestic partners required/prohibited/optional?
- When they are provided, how are they taxed and what are the other administrative issues?

#### Retiree Medical

- Termination and cut-back issues in retiree medical plans
- Including a termination of participation clause in a retiree medical plan for violation of a non-compete
- Strategies for providing retiree medical benefits and funding with employer stock
- Growth of VEBAs for employers, retirees, and labor unions and how VEBAs are being used to manage retiree medical liabilities

### 3:20 Avoiding Liability Exposure Under PPA Requirements and Amending Plans to Reflect Changes Under the Act



**Elizabeth Drake**  
Miller & Chevalier Chartered  
(Washington, DC)



**Nancy W. Furney**  
Winstead PC  
(Dallas, TX)

#### PPA Liability

- Reporting and disclosure: Satisfying the large number of notices/disclosures to participants and beneficiaries (and in some cases to employers and unions)
- Satisfying the content requirements of the notices
- Keeping track of the deadlines for the various notices
- Deciding which notices can be delivered electronically and to whom
- New funding requirements for defined benefit pension plans

#### Plan Amendments

- When must plans be amended?
- Amending plans to reflect the changes under PPA: Managing the annual and sometimes semi-annual obligation on plan sponsors to amend their plans to stay in compliance with new statutory and regulatory requirements
- Keeping track of the amendments that need to be made to the plans and when those amendments need to be adopted
- Keeping up with the volume and timing of amendments
- Keeping up with the due dates of various amendments given the new remedial amendment period schedule and the IRS’ exceptions
- Keeping straight the regular remedial amendment period, the five year cycle extended period and the legislative deadlines and extensions included in the statutory changes
- How to avoid large penalties by the IRS for untimely amendments, when there is no specific direction from IRS regarding content – what checklists have been used and are they more effective than the cumulative list put out by IRS?
- Responding to the IRS when it asks for proof as to when certain amendments were adopted
- Amending plans to reflect technical changes in the law (as opposed to just having to comply with such changes)

4:00 Afternoon Refreshment Break

### 4:05 Cash Balance Plans: Keeping Pace With the Changing Requirements



**Susan Hoffman**  
Littler Mendelson P.C.  
(Philadelphia, PA)



**Michael R. Maryn**  
Sonnenschein Nath & Rosenthal LLP  
(Washington, DC)



**Christopher J. Rillo**  
Schiff Hardin LLP  
(San Francisco, CA)

- New significant regulations for employers that sponsor cash balance plans
- Redressing IRS assertions of pre-PPA cash balance plan violations (age-discrimination, backloading and whip-saw): how to implement cost effective corrections without adversely affecting employee morale
- Compliance with the PPA cash balance plan requirements
- Cash balance and hybrid pension plan uncertainty: Factoring in all the new cash balance plan guidance/case law
- Market rate of return and actuarial assumptions to be used to calculate annuities
- Strategies to minimize risk of breaching fiduciary duty for cash balance plans
- Analysis of whether employers have additional protection from cash balance litigation
- What is the future of cash balance plans for the employer?

### 5:00 Fiduciary Liability Insurance: Assessing Current Coverage and Future Needs

#### *Jessica M. Lermond, Esq.*

Complex Claims Director, D&O Pension, Financial Lines Claims  
Chartis (New York, NY)

#### *Steve Shappell, Esq.*

Managing Director, Legal and Claims Practice  
Aon Financial Services Group, a Division of Aon Risk  
Services, Inc. (Denver, CO)

#### *Miles R. Afsbarnik, Esq.*

Vice President, Director, National Claims and Legal Resource,  
Professional Risk Group  
Wells Fargo Insurance Services USA, Inc. (New York, NY)

#### *Christine A. Dart*

Vice President, Global Fiduciary Liability Product Manager  
Chubb & Son (Simsbury, CT)

#### *Alicia R. Bromfield, Esq.*

Senior Claims Analyst – Allied World Healthcare  
Allied World Assurance Company (Farmington, CT)

#### Moderator:



#### *Scott C. Hecht*

Stinson Morrison Hecker LLP  
(Kansas City, MO)

- Typical policy provisions and the issues they raise, and strategic considerations that arise as a result
- Coverage issues under ERISA fiduciary liability insurance
- What’s currently being covered and not covered in fiduciary liability policies? Coverage extensions?
- Post-*LaRue* benefits due exclusion
- Indemnification and liability insurance coverage options for ERISA fiduciaries
- Lessons to learn from recent ERISA fiduciary liability insurance coverage cases
- ERISA fiduciary liability insurance negotiation, placement and underwriting issues

6:00 Conference Adjourns

## DAY TWO: Tuesday, May 25, 2010

7:30 Continental Breakfast

### 8:00 Defined Contribution Plans: Employer Stock, 401(k) and Fees, Automatic Enrollment, QDIA, Safe Harbor, ESOP, 404(c), and Beyond

#### *Allison R. Klausner*

Assistant General Counsel – Benefits, Corporate Law  
Honeywell International Inc. (Morristown, NJ)



**Howard Pianko**  
Seyfarth Shaw LLP  
(New York, NY)



**Michael J. Prame**  
Groom Law Group  
(Washington, DC)



**Lisette Sell**  
Cooley Godward Kronish LLP  
(San Francisco, CA)



**Mark S. Weisberg**  
Winston & Strawn LLP  
(Chicago, IL)

### Employer Stock

- Stock drop cases: issues for plan sponsors, fiduciaries and their insurers
- Reviewing plan investments, including employer stock investments
- Continuing issues regarding employer stock, including whether plan fiduciaries are entitled to the benefit of a presumption favoring the holding of such stock if the plan does not unequivocally require the plan to offer employer stock
- Resolving liquidity and other employer stock issues

### 401(k) and Fee Claims

- Heightened scrutiny on ERISA fiduciaries for investment practices in design/operation of 401(k) plans
- The rejuvenated and tumultuous 401(k) fee claim front
- Fees of plan investments – administrators not being aware of fees
- Review of fees and development of policies and procedures regarding investment matters
- Disclosure to 401(k) participants about fees and investment options (target date funds, index funds)
- Issue of fees and investment advice/education – transparency and uniformity so that participants can properly evaluate them in their fund selections; giving participants a tool or access to an advisor that will tell them how to invest their contributions based on the participant preferences and risk tolerances; and providing employees with the appropriate level of investment education so they can manage their accounts
- Investment alternatives for 401(k) plans – review and evaluation of guaranteed income products, the on-going monitoring of the products, distribution assumptions and restrictions, market limitations and related fiduciary issues

### Automatic Enrollment and QDIA

- The trend of many plan sponsor doing automatic enrollment, auto-escalate, and Qualified Default Investment Alternatives (QDIAs) – amending plans to comply with problems in changing to them
- Providing appropriate investment options as well as tools to help participants appreciate retirement needs and make appropriate investment decisions with regard to automatic enrollment and QDIA
- Dealing with the disconnect between the plan language and the administration in automatic enrollment, and using a sound methodology for auto enrollment
- Keeping up with recent QDIA rules and all the right notices/disclosures
- Payroll/deferral issues—when recordkeepers miss or make late plan contributions to 401(k) plans

### Safe Harbor Plans

- Affording a safe-harbor match
- Safe harbor plan notices
- Suspension of safe harbor nonelective contributions
- Stopping safe harbor, and getting out of them mid-year – avoiding more errors & increased costs
- Changing to contingent safe harbor

### ESOPs

- Carefully designing an ESOP
- Repricing of stock options for ESOPs
- ESOP nonallocation issues
- Difficult issues on S Corporation ESOPs
- Latest on smaller plan sponsors failing to pay back ESOP loans and release stock appropriately

### Complex 404(c) Compliance

- What is now required for 404(c) protection?
- When plan sponsors think they have “404(c) protection” but don’t because they don’t comply with one requirement or another
- New landscape on investment issues & 404(c) compliance as a result of recent stock market issues
- Nuances with small business owners who are trustees – what are the 404(c) liability issues?

9:30

## Guidance on Avoiding and Fixing Scrivener’s Errors in Drafting Plans: Fiduciary Issues, Tax Compliance Problems & Benefit Claims



**Brian Berglund**  
Bryan Cave LLP  
(St. Louis, MO)



**Amy Covert**  
Proskauer Rose LLP  
(Newark, NJ)



**Lee T. Polk**  
Barnes & Thornburg LLP  
(Chicago, IL)



**Stefan P. Smith**  
Locke Lord Bissell & Liddell LLP  
(Dallas, TX)

- Providing guidance on the scrivener’s error issues – what precedent is out there and examining its favorability/unfavorability to employers
- Scrivener’s error issues with regard to complex statutory claims (204(h) notice, 204(g) cutback; 204(b) accrual), cash balance claims, and claims driven by attempting to construe complex plan language and statutory provisions to manufacture claims
- Examining the recent Verizon case and its impact on the scrivener’s error issue
- Vigilant plan drafting and administration to avoid scrivener’s error issues
- Overcoming the difficulty of fixing scrivener’s errors in light of IRS and litigation exposure

10:40 Morning Coffee Break

10:50 **Service Provider Relationships: Responding to Concomitant Pressure Over Their Practices and Meeting Reporting and Disclosure Requirements of Schedule C Form 5500**



**R. Bradford Huss**  
Trucker Huss, APC  
(San Francisco, CA)



**Jeffrey D. Zimon**  
Benesch  
(Cleveland, OH)

### Contracting with Service Providers and Monitoring Them

- Examining whether discretion has been delegated to third parties and whether service providers are fiduciaries
- The unique issues that arise in connection with the provision of services to employee benefit plans
- Minimizing risks of selection, retention, monitoring, and termination of providers of service to employee benefit plans
- Service provider contracts and fees considering potential action by the U.S. Dept. of Labor, including unstated and/or undisclosed fees and potential related operational considerations and potential breach of fiduciary duty claims under ERISA
- TPAs
  - issues surrounding third-party administrators and getting plan information and data from third-party service providers, particularly when contracts terminate
  - conflicts of interest when TPAs are used, & protecting against conflict of interest claims
  - negotiating administrative services agreements (especially fiduciary status) with TPAs considering new potential regulation in this area
  - consistent plan documentation
  - language of plan documents provided by TPAs and need for consistency with employer drafted SPDs
  - TPAs defense of their work and contract terms to protect employers, plans and participants

### Reporting and Disclosure: Form 5500 Schedule C (Service Provider Compensation)

- Preparation for detailed reporting of service provider fees as required by the new Form 5500
- Auditing benefit plans to do the form 5500 annual report
- Auditing third party providers to health plans in attempts to show plan overpayments by the TPA

11:40 **409A Compliance and Correction: How to Adequately Administer Plans Given the Complexity of the Rules and Avoid Operational and Documentation Failures**

**Daniel J. Gallagher**  
Assistant General Counsel  
ACE INA Holdings, Inc.  
(Philadelphia, PA)

**Derek Windham**  
Associate General Counsel  
Del Monte Foods  
(San Francisco, CA)

**Peter Haller**  
Senior Executive Compensation and ERISA Counsel  
Credit Suisse Securities (USA) LLC (New York)



**Christian D. Hancey**  
Nixon Peabody LLP  
(Rochester, NY)



**Mark D. Spencer**  
McAfee & Taft  
(Oklahoma City, OK)

- 409A compliance issues for executive plans, especially in light of upcoming documentary-compliance programs and apparent audit initiatives
- 409A deferred compensation issues for severance plans
- Operational failures: Compliance problems resulting from the failure to operate the plan in accordance with Code section 409A
- Documentation failures: Failure of the plan documents to reflect the formal requirements of the statute
- Correction of executive compensation programs under 409A: operational failures, document failures, and future guidance
- Overcoming the difficulty of administering plans subject to 409A when even the most intelligent and experienced practitioners are unable to agree on the right answer (or even the most conservative answer)
- 409A compliance issues for nonqualified plans that have been “linked” to elections under qualified plans
- The “phantom” nonqualified deferred comp plan and exposure under 409A
- The funding issues under section 409A(b)(2) due to an employer’s financial health
- Section 457A issues for global share plans and fund-related compensation

12:50 **Networking Luncheon for Speakers & Delegates**

1:45 **Employee Benefits for Contingent Workers: What You Now Need to Know**

**Ann M. Schmidt**  
Senior Counsel and Managing Attorney  
Hoffmann-La Roche Inc. (Nutley, NJ)



**Patricia A. Shlonsky**  
Ulmer & Berne LLP  
(Cleveland, OH)

- Regulatory developments regarding employee benefits for contingent workers
- Use of contingent workforce and its impact on employee benefit plans
- Changing to contingent safe harbor and questions along those lines

2:30 **Plan Loans: Design and Administration and Minimizing Exposure to Prohibited Transaction Penalties**



**Jeanne L. Bakker**  
Montgomery, McCracken, Walker & Rhoads, L.L.P.  
(Philadelphia, PA)



**Patsinelli Shughart**  
PC  
(St. Louis, MO)



**Lori W. Jones**  
Thompson Coburn LLP  
(St. Louis, MO)

- Following the terms of the plans appropriately – does the plan provide for loans?; determining whether to allow loans
- The increased desire by participants to gain access to their 401(k) retirement savings by way of plan loans
  - design of plan loan provisions in response
  - dealing with the myriad of questions/inquiries from participants on plan loan repayments, interest rates, amortization, etc.
- Avoiding administrative mistakes with regard to plan loans (such as repayment periods miscalculated) that can expose the plan to prohibited transaction penalties

- What are prohibited loans between a plan and a party in interest?
- Defaulted plan loans in retirement plans

3:25 **Employee Benefit Issues and M&A**



**Greta E. Cowart**  
Haynes and Boone, LLP  
(Dallas, TX)



**Ann E. Murray**  
McKenna Long & Aldridge LLP  
(Atlanta, GA)



**Magan Pritam Ray**  
Greenberg Traurig LLP  
(Silicon Valley, CA)

- The latest benefit issues in mergers and acquisitions
- Issues associated with inherited plan integration resulting from M&A activity
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- Benefits issues that should be considered when completing M&A transactions in difficult economic times

4:20 **Conference Ends – Master Class Registration Begins**

**Post-Conference Workshop**  
**Tuesday, May 25, 2010**  
**4:30 p.m. - 6:30 p.m. (registration opens at 4:20 p.m.)**  
**Master Class on Pension Plan Risk Management**

*A valuable 2-hour drill down on:*

- Analyzing the allegations for breach of fiduciary duty
- Grasping what actions can lead to personal liability
- Identifying common fiduciary liability claims
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- The FAQ’s of fiduciary liability insurance
- Accurate calculation of pension benefits
- Sponsor organization duties in calculating plan benefit
- Pension calculation of employees’ retirement funds
- Preparing for a shift in stock value
- Making sure money coming in to the fund is properly received
- Implementing proper collection procedures
- Documentation requirements
- Collection procedures
- Audit procedures in preparing for a DOL visit
- PPA requirements
- Multi- versus single-employer considerations
- Changing the funding or investment strategy

*Plus much more (speakers to be announced shortly)*

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