

JCEB ABA Joint Committee
on Employee Benefits

The Sections of:

Business Law

Health Law

Labor and

Employment Law

Real Property, Trust &

Estate Law

Taxation

Tort Trial and Insurance Practice

and

The American College of
Employee Benefits Counsel

The 23rd Annual National Institute on

Employee Benefits in Mergers and Acquisitions:

Benefits in Transactions During Troubled Times

April 24, 2009

The New York Helmsley Hotel

212 East 42nd Street, New York, NY 10017

Early Bird Registration March 26th

Hotel Registration March 26th

www.abanet.org/JCEB

(202) 662-8641



6.67 CLE Credit Hours have been requested from 60-minute states

8.00 CLE Credit Hours have been requested from 50-minute states

BENEFITS IN TRANSACTIONS DURING TROUBLED TIMES — EMPLOYEE BENEFITS IN MERGERS AND ACQUISITIONS AGENDA

FRIDAY, APRIL 24, 2009

7:30 **Registration and Networking Continental Breakfast**

8:30 **Introduction**

Susan P. Serota, Pillsbury Winthrop Shaw Pittman LLP, New York, NY

8:35 **Employee Plans – Emerging Liabilities and Hidden Assets**

Learn how increasingly material benefit costs, dramatically smaller trust values, and almost desperate attempts to shed benefit liabilities are getting serious attention in transactions.

Thomas A. Jorgensen, Calfee, Halter & Griswold LLP, Cleveland, OH

9:25 **New Internal Revenue Code Rules Affecting Benefits in a Deal**

What roles will funding and accrual restrictions, “yield curve” rates vs. “market segment” rates for valuing distributions, recent legislation, expected regulations and other guidance play in a transaction?

Kurt L. Lawson, Hogan & Hartson LLP, Washington, DC

Alan Tawshunsky, Deputy Division Counsel/Deputy Associate Chief Counsel for Employee Benefits, Internal Revenue Service, Washington, DC

10:15 **Morning Break**

10:30 **Severance and Windows for a Disappearing Workforce**

How companies efficiently “right size”, either post-deal or to prepare for a deal.

Priscilla E. Ryan, Sidley Austin LLP, Chicago, IL

11:20 **Fiduciaries in a Bull’s Eye**

As fiduciaries’ conduct during and after a deal is subjected to increasing court scrutiny, learn how to advise fiduciaries successfully in light of this increased attention.

Howard Pianko, Seyfarth Shaw LLP, New York, NY

11:45 **Questions and Answers**

12:00 **Luncheon Address**

Benefits in the Obama Administration

W. Thomas Reeder, Benefits Tax Counsel, U.S. Department of the Treasury, Washington, DC

1:15 **Shedding Retiree Medical to a VEBA—What Should You Fear?**

Retiree medical obligations transferred to a VEBA or otherwise eliminated – examine whether they are really gone.

Greta E. Cowart, Haynes and Boone, LLP, Dallas, TX

1:40 **Transforming Executive Compensation: What are the New Rules?**

Salvaging underwater equity grants, implementing severely capped executive compensation, and living with strict enforcement of 409A are the new reality in transactions.

Susan P. Serota, Pillsbury Winthrop Shaw Pittman LLP, New York, NY

Pamela Baker, Sonnenschein Nath and Rosenthal LLP, Chicago, IL

Daniel L. Hogans, Morgan, Lewis & Bockius LLP, Washington, DC

2:30 **Afternoon Break**

BENEFITS IN TRANSACTIONS DURING TROUBLED TIMES — EMPLOYEE BENEFITS IN MERGERS AND ACQUISITIONS AGENDA

- 2:45 **Escaping Distressed Private Equity Investments**
Plan investments in hedge funds and other private equity funds are everywhere, but are losing value and popularity. How to cope with restricting, recovering, or eliminating private equity investments.
Andrew L. Oringer, White & Case LLP, New York, NY
- 3:10 **Using EPCRS to Clean Up**
Using leaner, faster EPCRS to make it possible to live with a target's qualified plan.
David A. Mustone, Hunton & Williams LLP, McLean, VA
- 3:35 **Representations, Warranties and Covenants—What's New Now?**
Discover the new protections this environment demands.
T. David Cowart, Sonnenschein Nath & Rosenthal LLP, Dallas, TX
- 4:25 **Bankruptcy & Benefits**
Has bankruptcy become the new tool to shed unwanted benefit obligations and legacy costs? Find out what is being tried and what is working.
Mark S. Wintner, Strook & Strook & Lavan LLP, New York, NY
- 5:15 **Questions and Answers**
- 5:30 **Adjourn**

This National Institute brings together a rich, multi-disciplinary faculty and participant group to examine employee benefits issues and concerns in corporate takeovers, sales, bankruptcies and major reorganizations.

MARK YOUR CALENDAR AND CHECK OUR WEBSITE FOR UPDATES

www.abanet.org/jceb

23rd Annual National Institute on ERISA BASICS Chicago, IL	June 10-12, 2009
20th Annual National Institute on HEALTH AND WELFARE BENEFIT PLANS: RESPONDING TO CHANGE Arlington, VA	October 19-20, 2009
24th Annual National Institute on COMPENSATION FOR EXECUTIVES AND DIRECTORS New York, NY	November 12-13, 2009
19th Annual National Institute on ERISA LITIGATION Chicago, IL	November 16-17, 2009
24th Annual National Institute on ERISA BASICS Chicago, IL	May 19-21, 2010

HIGHLIGHTS OF BENEFITS IN TRANSACTIONS DURING TROUBLED TIMES — EMPLOYEE BENEFITS IN MERGERS AND ACQUISITIONS

Who Should Attend?

- **In-house Counsel** making key decisions regarding employee benefits issues.
- **Benefits Specialists** wanting to improve their knowledge of the current law and practices in corporate acquisitions and dispositions.
- **Private Practitioners** who advise their corporate clients on employment matters.
- **Consultants, Accountants and Corporate Executives** seeking a more comprehensive understanding of employee benefits issues in corporate mergers and acquisitions.

What Unique Features Does This National Institute Offer?

- More than a “theory” seminar, you will hear from experienced lawyers who handle the biggest deals and how they incorporate innovative concepts into their successful practices.
- Receive immediate feedback to your questions.
- Learn the stories from behind the scenes.
- Pick up the finer points on handling a deal.
- Meet and network with government officials: find out why they take the positions they do on the latest controversial issues.
- A program format that goes well beyond lectures with informational panel discussions and case studies.

What Past Participants Have Said ...

“This program gave practical solutions to real-life problems in my practice.”

- Michael J. Duane, *Pitney Hardin Kipp & Szuch*

“I liked the diverse experience presented by the speakers: good perspective from buyer/seller; union/non-union; and government regulatory oversight.”

- Mark B. Peabody, *Peco Energy Company*

“This seminar had uniformly excellent and knowledgeable speakers with useful outlines. I intend to attend this seminar again in the future. Excellent program.”

- Richard A. Naegele, *Wickens, Herzer & Panza*

“Quickly moved from relevant topic to relevant topic. I also liked the case studies and panel discussions.”

- Elizabeth A. Nedrow, *Holland & Hart LLP*

National Institute Faculty

T. David Cowart

Program Co-Chair
Sonnenschein Nath & Rosenthal LLP
Dallas, TX

Susan P. Serota

Program Co-Chair
Pillsbury Winthrop Shaw Pittman LLP
New York, NY

Pamela Baker

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White & Case LLP
New York, NY

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New York, NY

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Benefits Tax Counsel
U.S. Department of the Treasury
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Priscilla E. Ryan

Sidley Austin LLP
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Alan Tawshunsky

*Deputy Division Counsel/
Deputy Associate Chief Counsel
for Employee Benefits*
Internal Revenue Service
Washington, DC

Mark S. Wintner

Strook & Strook & Lavan LLP
New York, NY

BENEFITS IN TRANSACTIONS DURING TROUBLED TIMES — EMPLOYEE BENEFITS IN MERGERS AND ACQUISITIONS INFORMATION

ABA TUITION

Attend the entire two-day program, both luncheons, each breakfast and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by Wednesday, March 26 to receive the discount.

Early Bird Registration—Before March 26

- \$720 General Public
- \$690 ABA Member (*\$30 Savings—join a Section, and save even more!*)
- \$655 Sponsoring Section Member (*\$65 Savings*)

Full Tuition—After March 26

- \$755 General Public
- \$720 ABA Member (*\$35 Savings—join a Section, and save even more!*)
- \$690 Sponsoring Section Member (*\$65 Savings*)

On-Site Tuition

- \$790 General Public
- \$755 ABA Member (*\$35 Savings—join a Section, and save even more!*)
- \$720 Sponsoring Section Member (*\$70 Savings*)

ADDITIONAL SAVINGS

If three or more people register from the same firm, one registrant will receive a \$50 reduction in program tuition! Every registrant will receive a copy of the informative course materials binder which can be used as a comprehensive resource long after the program is held. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

SCHOLARSHIPS

A limited number of scholarships to defray tuition expenses for full-time LL.B. candidates only are available for this program. To request an application or receive additional information, contact Karen Case at (202) 662-8641. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation.

MCLE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for all lawyers. 6.67 hours of credit have been requested from states that recognize a 60-minute credit hour and 8.00 hours from those states granting credit hours on a 50-minute basis (8 hours in NY). Lawyers seeking credit in Pennsylvania must pay a fee of \$1.50 per credit hour directly to the PA CLE Board. The ABA pays applicable fees in other states where the sponsor is required to do so. In states where a late fee may become applicable, the ABA pays this fee as well. Please be aware that each state has its own rules and regulations including its definition of CLE as well as "Ethics". Therefore, certain programs may not receive credit in some states. Please check with your state agency for confirmation of general as well as ethics approval for any program. You may contact the ABA Service Center at (800) 285-2221 or Karen Case at (312) 662-8641 for confirmation of the number of credits approved by any particular state. This transitional CLE program has been approved for all New York licensed attorneys in accordance with the requirements of the New York CLE Board for NYMCLE.

QUESTIONS?

If you have a specific question that you want answered, you can e-mail it to Karen Case at casek@staff.abanet.org, or ask the speakers directly during the program presentation.

SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Karen Case at (202) 662-8641 or casek@staff.abanet.org. Reasonable advance notice is requested.

BENEFITS IN TRANSACTIONS DURING TROUBLED TIMES — EMPLOYEE BENEFITS IN MERGERS AND ACQUISITIONS INFORMATION

CANCELLATIONS

Cancellations will be honored on the following basis:

- January 5 to March 26—100% Refund minus \$50 administrative fee
- March 27 to April 24—No Refund**

* “Day of Cancellation” is the day the cancellation is received, by telephone or in writing, by the ABA. It is calculated based on ABA business days remaining before the National Institute presentation for which registered.

** No refunds will be made for cancellation requests received after this time; written confirmation of refund requests must be received within 14 days following the National Institute presentation. Substitute registrants are welcome. Please contact Karen Case at 202-662-8641.

COMPLAINT RESOLUTIONS

Please contact Karen Case at 202-662-8641.

PROGRAM CONFIRMATION

Written confirmation of your registration will be e-mailed to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at (202) 662-8641 to confirm that your registration was received and that the program is being held as scheduled.

HOTEL INFORMATION

**DEADLINE FOR HOTEL RESERVATIONS:
THURSDAY, MARCH 26**

The program will be held at the New York Helmsley Hotel, 212 E. 42nd Street, New York, NY. A limited number of rooms have been set aside for National Institute registrants at \$245. All room rates are subject to city occupancy and sales tax, and unclaimed rooms will be released on March 26, 2009, after which the hotel will accept reservations on a space-available basis only. All reservations must be guaranteed with a major credit card. A one night’s deposit is required to hold a reservation. The deposit is refundable if the reservation is cancelled by 4pm the day prior to arrival. To register at the hotel, call the hotel directly at (212) 490-8900 and be sure to mention the ABA – Employee Benefits in Mergers and Acquisitions National Institute – to receive the special discounted rate.

AIRLINE INFORMATION

Discounted airfares are available from ABA Orbitz for Business including ABA negotiated discounts on American, United and Continental Airlines. To book online, go to www.abanet.org/travel, click under the Orbitz for Business logo at the top of the page, and click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 1-877-222-4185.

Discounts can also be obtained directly from the carrier. American: Call 800-433-1790, code 20348; United: Call 800-521-4041, code 578IG; Continental: Call 800-468-7022, Z code ZEPB—Agreement code BQGH95. Continental discounts also available at www.continental.com enter ZEPBBQH95 in the “offer code box”.

TO REGISTER: Register on-line with a credit card
or download the registration form from www.abanet.org/jceb/
and fax the completed form with check payment to (202) 662-1012.

REGISTRATION AND ORDER FORM

Employee Benefits in Mergers & Acquisitions: Benefits in Transactions During Troubled Times

April 24, 2009 at The New York Helmsley Hotel, New York, NY
www.abanet.org/jceb (202) 662-8641

EARLY BIRD REGISTRATION—Before March 26

- \$720 General Public
- \$690 ABA Member
(\$30 Savings—join a Section, and save even more!)
ABA # _____
- \$655 Sponsoring Section Member *(\$65 Savings)*
ABA # _____

FULL TUITION—After March 26

- \$755 General Public
- \$720 ABA Member
(\$35 Savings—join a Section, and save even more!) ABA # _____
- \$690 Sponsoring Section Member *(\$65 Savings)*
ABA # _____

ON-SITE TUITION

- \$790 General Public
- \$755 ABA Member
(\$35 Savings—join a Section, and save even more!)
ABA # _____
- \$720 Sponsoring Section Member *(\$70 Savings)*
ABA # _____
- Two or more people have registered with me; please apply the \$50 tuition reduction to the tuition rate indicated above.

- Send me the **Employee Benefits in Mergers & Acquisitions Audiotape Package, PC5470717**, (tapes and course materials) available following the presentation, at the special price of \$632.95 including postage and handling*.
- Send me the **Employee Benefits in Mergers & Acquisitions CD Package, PC5470718**, (CDs and course materials) available following the presentation, at the special price of \$632.95 including postage and handling*.
- Send me the **Employee Benefits in Mergers & Acquisitions Course Materials, PC5470716**, at the special price of \$262.95 including postage and handling*.

TO REGISTER

On-line: <http://www.abanet.org/jceb>
Mail: American Bar Association

JCEB Registrar
Mergers & Acquisitions National Institute
740 15th Street, NW, 3rd Floor
Washington, DC 20005-1022

Fax: 202.662.1012 (check only)

PAYMENT (must include one of the following)

- Check made payable to
American Bar Association—JCEB
- MasterCard
- VISA
- American Express

PLEASE CHECK HERE IF YOU NEED CLE CREDIT IN ONE OF THE FOLLOWING STATES NY PA TX DE

Name _____

Organization _____

Address _____

City _____ State _____ Zip _____

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Phone _____ Fax _____

*District of Columbia residents add 5.75% use tax, Illinois residents add 9% sales tax, before including domestic postage and handling charges. Price is subject to change after 4/24/09.

ABA SPONSORING SECTIONS

Join one of these dynamic Sections, and become active in one of their employee benefits committees. Join the ABA and one or more of the Sections when registering for this program, and save up to \$200 on this program tuition.

- I am interested in becoming a member of the American Bar Association. Please send me information and membership forms.
- I am an ABA member but want a further reduction on my tuition for this program. Please enroll me into the Section listed below; I've enclosed a separate check made payable to the ABA.
 - Section of Business Law, \$55
 - Section of Health Law, \$50
 - Section of Labor and Employment Law, \$40
 - Section of Real Property, Trust and Estate Law, \$55
 - Section of Taxation, \$60
 - Section of Tort Trial and Insurance Practice, \$50