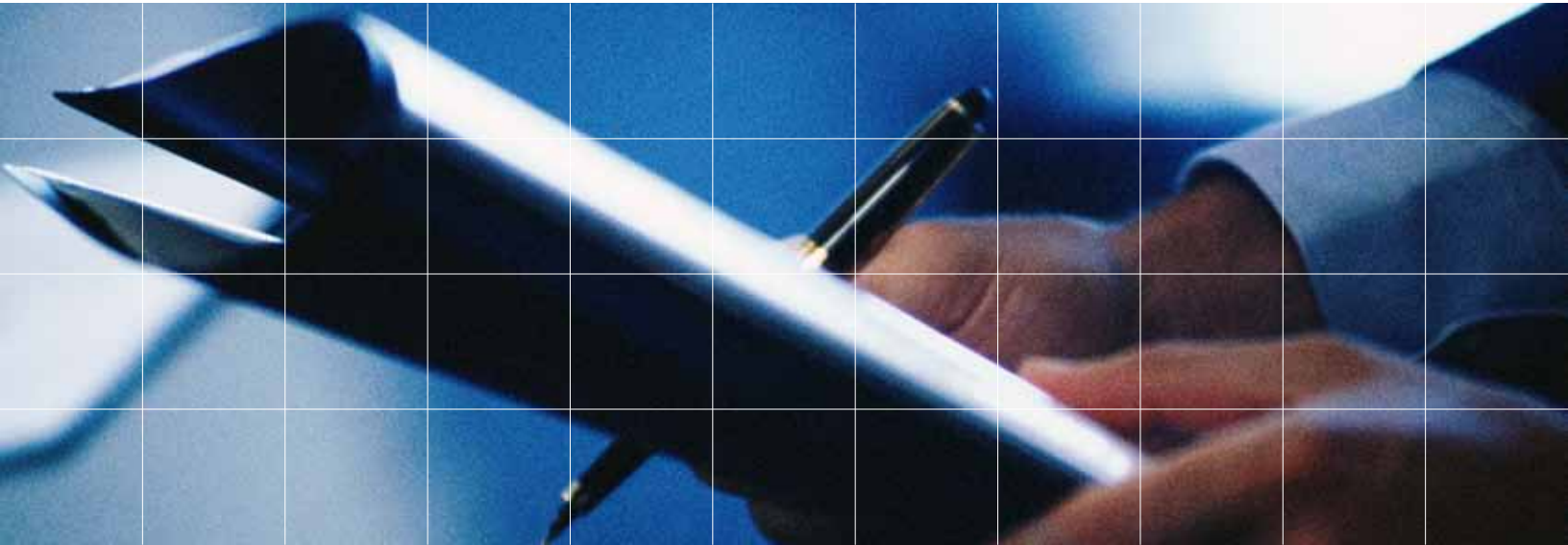




One Firm WorldwideSM



EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION PRACTICE

Jones Day provides sophisticated, practical legal advice to business organizations regarding employee benefits and executive compensation matters. We do this by combining the diversified talents of the lawyers in our Employee Benefits & Executive Compensation Practice (“EBEC”). These lawyers strive to be pragmatic, business-oriented counselors as well as knowledgeable technicians. This allows them to achieve our clients’ business objectives in a way that minimizes or eliminates legal risk, reduces tax burdens, and avoids negative financial accounting results.

Because of the breadth of our representations, we tend to see the hot issues and new products as they emerge in the market. As a result, we provide reasoned judgment and valued advice as to the best approaches for our clients in key areas.

COMPENSATION & BENEFITS COUNSELING FOR EMPLOYERS

Full-service representation of employers concerning executive, employee, and director compensation and benefits is the backbone of Jones Day’s EBEC Practice. With nearly 50 lawyers in the U.S. and Europe, we have substantial experience in, and in-depth knowledge of, the legal frameworks and business environment within which today’s compensation and benefits programs operate.

Our lawyers assist employers, both public and private, for-profit and nonprofit, in all aspects of their employee benefits programs. Our clients benefit from the business experience and sound judgment that we have developed over the years in these

relationships. We count among our clients dozens of *Fortune* 500 companies, as well as sophisticated private businesses.

We provide valuable input in all phases of the design, implementation, and administration of compensation and benefits programs and agreements. Our experience is particularly valuable in the design phase. In the implementation phase, our skills in drafting documents and employee communications and in negotiating agreements with executives, collective bargaining representatives, and service providers complement each other in critical ways. The basic goal is simple: to preserve flexibility while minimizing risks. Finally, our advice on plan administration helps clients execute programs properly so that their purposes and compliance with legal requirements are achieved and unexpected costs are avoided.

Representative major matters on which we have recently advised employers include:

- Executive compensation plan revisions in response to 2004 nonqualified deferred-compensation legislation.
- Cash-balance pension plan conversions.
- Health-care cost-containment initiatives including defined-contribution, or consumer-driven, approaches.
- Structuring investment options and fiduciary duty allocations in participant-directed 401(k) plans, including plans with significant employer stock funds.
- Retiree welfare benefit plan redesign.
- Handling proceeds received by employee benefit plans in insurance company demutualization (an area targeted by Department of Labor audits).

CORPORATE BANKRUPTCIES

Pensions, retiree medical benefits, ERISA fiduciary liability, and other employee benefits issues have been central to many of the bankruptcy restructurings and liquidations that have changed the face of certain industries in recent years. Lawyers in Jones Day's EBEC Practice have extensive experience in handling these difficult issues.

We have contributed significantly to the successful resolution of numerous cases in which Jones Day acted as counsel to a chapter 11 debtor. Our experience in bankruptcy matters is also invaluable when we advise prospective purchasers of businesses owned by chapter 11 debtors.

Handling the ERISA and other employee benefits aspects of complex bankruptcy matters requires a multidisciplinary approach for which Jones Day is well suited. Our experience in and knowledge of employee benefits and executive compensation mesh with the experience and knowledge of our industry-leading Business Restructuring & Reorganization Practice, as well as our Labor & Employment and other practices. In recent years, we have handled diverse creditor, debtor, and other third-party representations in bankruptcies within the steel, automotive supply and aftermarket, energy, textile, airline, and transportation industries.

Key to many recent bankruptcy reorganizations have been pension liability issues involving the Pension Benefit Guaranty Corporation ("PBGC"). Jones Day's benefits lawyers are veterans of difficult negotiations with the PBGC over PBGC claims, priorities, and recovery rights in bankruptcies; terminations of pension plans in bankruptcies (by the PBGC or distress terminations initiated by the debtor); and PBGC resistance to forward-going arrangements that the PBGC regards as impermissible follow-on plans. In this difficult area of law and policy, our experience is substantial.

Also critical in many cases are retiree medical and other welfare benefits and collective bargaining obligations to provide pension, medical, and other employee benefits. Modification of these obligations to attain a sustainable cost structure is often essential to a successful reorganization. Our lawyers have considerable experience in negotiating resolutions of these issues with unions, retiree committees, and other creditor groups under the rules of the Bankruptcy Code.

ERISA & OTHER EMPLOYEE BENEFITS LITIGATION

ERISA litigation is not for beginners. Jones Day's ERISA Litigation team includes partners with more than 90 years of combined ERISA litigation experience who have argued before federal district and federal circuit courts of appeal throughout the United States. The three partners who lead this practice—Jim Baker, Evan Miller, and Steve Sacher—have successfully litigated a number of cases that established basic precedent on ERISA fiduciary duties. *Chambers USA* (2008) ranked Jones Day's ERISA Litigation practice among the top 10 practices in the United States. At Jones Day, we emphasize prevention. Keeping our clients out of court is our priority. We try to keep our clients safe by providing them with practical advice as

to the scenarios that are most likely to trigger litigation, how courts interpret complicated employee benefits laws, and best practices a company can employ to reduce its risk of liability. But when litigation looms, we have the experience, skill, and bench strength to protect our clients.

- We are full-time litigators with solid ERISA procedural and substantive experience. We are not benefits lawyers throwing advice at general civil litigators, nor general civil litigators who, from time to time, are dragooned into handling an ERISA case.
- In representing our clients in employee benefits litigation, we work closely with our colleagues in the Employee Benefits & Executive Compensation Practice, more than 50 lawyers focused solely on this area in one of the largest employee benefits practices in the United States.
- Our team includes former U.S. Department of Labor attorneys, including partner Steve Sacher, a former Associate Solicitor (ERISA) of the U.S. Department of Labor, and Sara Pikofsky, a former trial attorney for the U.S. Department of Labor, Office of the Solicitor.
- We have a track record of successfully winning these cases through motions or reaching favorable settlements.

COVERAGE

- Class-action ESOP and 401(k) plan employer “stock drop” cases.
- 401(k) “excess” service provider fee cases.
- Imprudence and prohibited-transaction claims under ERISA.
- Cash balance and other qualified retirement plan controversies.
- U.S. Department of Labor fiduciary investigations.
- Preemption controversies.
- Benefit claims.
- Federal agency investigations.
- Executive compensation disputes involving rabbi trusts, “top hat” plans, equity compensation, and other kinds of deferred-compensation arrangements.
- Class-action and multidistrict litigation.
- Disputes involving claims against plan service providers.
- Amicus curiae briefs on employee benefits issues of general importance to plan fiduciaries, plan sponsors, service providers, and trade associations.



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ERISA PLAN ASSET INVESTMENTS

Employee benefit plan assets are an attractive source of investment capital. Jones Day has comprehensive knowledge of the ERISA requirements and constraints that apply to those seeking access to these assets, as well as those looking to invest them. This knowledge, along with our extensive experience with the investment funds and transactions involved, permits highly skilled representation of clients participating in these funds and transactions.

Our facility with the application of the ERISA plan asset rules and our profound understanding of investment funds and their operation allow us to help clients establish funds designed to attract plan assets and to assist clients investing such assets. In this regard, while working with other Jones Day lawyers to establish such funds, we have advised clients on how to comply with ERISA fiduciary and prohibited-transaction rules by structuring limited partnerships or limited liability companies with the general partner or managing member as a qualified professional asset manager. Similarly, we have assisted venture capital, private equity, and real estate clients to establish funds that are designed to take advantage of ERISA plan asset exceptions so that the investment of the fund assets is not subject to ERISA and the fund managers are not ERISA fiduciaries. In other situations, we have guided clients who are investing plan assets through ERISA's myriad requirements.

In these engagements, we balance the interests of benefit plan investors and fund managers in navigating ERISA's plan asset rules to achieve a structure

with investment flexibility for the managers and appropriate safeguards for the benefit plan investors.

We also regularly work with Jones Day corporate lawyers on structured finance transactions involving securitizations and swaps. We scrutinize these financings to ensure that the assets of the special-purpose vehicles ("SPVs") involved do not become ERISA plan assets and that the sales of securities issued by such SPVs do not constitute prohibited transactions under ERISA.

EXECUTIVE COMPENSATION

The full-service capabilities of our Employee Benefits & Executive Compensation team extend to the many facets of executive compensation arrangements, including:

- CEO-level and other employment, change-in-control, and severance agreements.
- Stock-based incentive plans.
- Supplemental retirement arrangements.
- Deferred-compensation plans.
- Director compensation.

Our lawyers work with other Jones Day lawyers, as well as employers' accountants and compensation consultants, to handle all of the disciplines that bear on executive compensation arrangements: tax, ERISA, state corporation and federal securities laws, stock exchange listing requirements, accounting requirements, and the concerns of institutional investors. In this difficult area, our experience, technical abilities, and sound judgment are critical to success. We understand the strategic concerns, contribute to the planning process, and implement the program.

GOVERNMENTAL EMPLOYERS & PUBLIC PENSION PLANS

Jones Day has extensive experience in the representation of public pension plans and other benefit plans and their governmental sponsors. The unique environment occupied by public plans derives from their status as tax-exempt entities that: (i) are sponsored and administered by a political body, typically operated under open-meeting, public-records, and contract-bidding standards, (ii) are subject to a special set of tax and fiduciary laws and standards, and (iii) typically rely upon outside investment advisors and consultants in their alternative asset and real estate investing. Understanding this background, we advise governments and their plans about:

- Fiduciary and governance counseling.
- Compliance with federal and state tax requirements.
- State pension laws, including “vested rights” concepts, and the impact of proposed legislation.
- Negotiation of private alternative equity and real estate investments through limited partnership funds or direct investment.
- Advice regarding the design, operation, administration, and funding of employee benefit plans.
- Advice regarding health-care regulation, including HIPAA.
- Litigation and prelitigation advice, including statutory interpretation, impairment of contractual vested rights, status of independent contractors as employees, and funding of defined-benefit plans.

INSTITUTIONAL FIDUCIARY SERVICES

Our representation of institutional fiduciaries encompasses the entire gamut of their business, from holding and managing the assets of employee benefit plans to sanctioning transactions involving these assets by acting in an independent capacity. Institutional fiduciaries benefit from the depth of our experience regarding the myriad requirements imposed by ERISA’s broad fiduciary standards and prophylactic prohibited-transaction constraints.

We have counseled institutional fiduciaries concerning the issues involved in the establishment and operation of bundled investment vehicles, comprising either mutual funds or other pooled investment vehicles (e.g., collective trust funds), and with respect to the conversion of the latter to the former. Our knowledge and experience permit us to structure bundled investment arrangements

so as to protect our clients from fiduciary liability to the maximum extent possible when performing their duties, whether acting as directed trustees or designing the investment menu. We have also assisted these clients with respect to the permissibility under ERISA of their fees.

Our familiarity with investment funds and their operation is comprehensive. We have helped clients establish investment funds designed to attract plan assets, and we have substantial experience structuring and implementing investment transactions (particularly those involving alternative investments) using plan assets held in a fiduciary capacity.

Finally, we have represented clients acting as independent fiduciaries in transactions where their participation is required to avoid fiduciary and prohibited-transaction violations. This includes representing institutional fiduciaries in novel and complex ESOP-based financings and acquisitions and in assessing litigation settlements where plans are parties to the litigation. Our dedication to fostering rather than frustrating transactions is apparent in all aspects of such representations, from negotiating the terms of the independent fiduciary’s engagement (including ensuring that our client is fully indemnified in a permissible fashion under ERISA) to ensuring compliance with the technical requirements of any applicable prohibited-transaction exemption.

MERGERS & ACQUISITIONS/EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION

Jones Day is a worldwide leader in merger and acquisition activity. A critical part of M&A transactions is the people element: employees and their compensation and benefits.

Our EBEC lawyers handle the compensation and benefits aspects of M&A deals, working closely with the entire Jones Day deal team. Our experience and substantive knowledge are extensive; collectively, we have been involved in thousands of transactions. We know that a lot is at stake, both in hard dollars (e.g., benefits under “golden parachute” contracts and pension underfunding) and in human capital (e.g., transition of key management and other employees). We understand the issues and get positive and creative results.

The Jones Day approach on compensation and benefits deal issues is both exacting and pragmatic. Where liabilities need to be identified or allocated, precision is the

goal, with special attention in the transaction agreement to: (i) representations and warranties, (ii) itemized allocations between the parties of liabilities and responsibilities, and (iii) coordinating these items with balance-sheet accruals, postclosing adjustments, and indemnification provisions. Where the focus is postclosing employment and benefit arrangements, including equity compensation and employment arrangements (always a focus in merger transactions), we design sensible solutions to difficult issues, consistent with the theory of the deal. Once found, the solutions are expressed in the transaction documents in a manner that provides flexibility and protection for our clients.

Our lawyers excel in due diligence and contract drafting in the deal process. We find “hidden” costs and legal issues in employment contracts, benefit plan documents, and the disclosures of these arrangements in the transaction documents. We know how equity and benefit plans and employment contracts work, where the liabilities are, and how to negotiate their allocation in any type of transaction.

Each deal tends to have its own key compensation and/or benefits issue or issues. The issues for which we need to find solutions most often relate to: (i) severance obligations, particularly executives’ rights under “golden parachute” employment or severance agreements, (ii) treatment of equity compensation arrangements, (iii) pension liabilities and funding issues, (iv) postclosing medical and other benefit plan coverage, (v) treatment of target or seller stock held in employee benefit plans of the target or seller, (vi) continuing employment arrangements with key employees of the seller or target, and (vii) ESOP participation in the transaction.

Our services extend beyond the closing of a transaction, as we have assisted hundreds of companies in the sensitive task of integrating employees of acquired businesses into our clients’ equity, retirement, and welfare plans. We are highly experienced in combining plans of acquired companies into our clients’ programs, a process that can entail difficult legal and administrative issues.

PRIVATE EQUITY/EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION

Lawyers in Jones Day’s EBEC Practice have a wealth of experience advising private equity clients in connection with acquisitions and exits, as well as day-to-day matters at

the portfolio-company level. Jones Day assists in identifying and dealing with the frequently complex compensation and benefits issues that arise in the transactional context. If the issues in question arose in prior periods, the task may be to quantify potential employee benefit costs and risks and determine how those costs and risks will be allocated as a business matter between buyer and seller. More important, in many instances Jones Day can provide helpful and creative advice that will minimize the likelihood that the same issues will recur in future periods, thereby facilitating a later exit transaction. In addition, Jones Day assists buyers with the implementation of employee benefit plans and programs and equity and other management incentive arrangements following the closing of the transactions.

In recent years Jones Day has done extensive compensation and benefits work for some of the most prominent private equity firms in the U.S., including Blue Point Capital Partners, Francisco Partners, Industrial Growth Partners, Kirtland Capital Partners, Morgenthaler, Parallel Investment Partners, The Riverside Company, Sun Capital Partners, and the Wasserstein family trusts. Through this experience, Jones Day has created an efficient and knowledgeable team of executive compensation and employee benefits lawyers who can provide advice in all aspects of private equity fundraising, portfolio-company management, investments, and divestitures.

TAX-EXEMPT ENTITIES & CHURCH PLANS

Jones Day lawyers have significant experience in counseling tax-exempt entities and church-related organizations. Our clients include nonprofit and religious hospitals, health-care systems, charitable organizations and foundations, schools and universities, trade associations, and federal credit unions.

With extensive knowledge of the special rules applicable to tax-exempt entities and church plans, Jones Day lawyers bring creative solutions to the issues that are unique to these plans, including:

- Choosing among different types of qualified retirement plans.
- Design and drafting of welfare benefit plans and health-care programs.
- Design and drafting of Code Section 403(b) programs.
- Design and drafting of Code Section 457(b) plans and Code Section 457(f) plans.
- Fiduciary and governance counseling.

- Applying for rulings on a plan's status as a church plan.
- Audits of welfare benefit plans by the Department of Labor.
- CEP audits conducted by the Internal Revenue Service.
- Contract negotiations for executives and special executive benefit products.

Our lawyers have significant experience in the unique fiduciary, regulatory, and governance issues applicable to church plans. Because of the breadth of our representations, we can provide our clients with information as to how others in the nonprofit world are approaching the hot issues and new products as they emerge in the market, and we can help them find possible solutions to problems.

INTERNATIONAL BENEFITS

Jones Day provides coordinated benefits and compensation services on a global basis.

INTERNATIONAL COMPENSATION AND BENEFITS

International considerations are a fundamental part of compensation and benefits today. Jones Day lawyers have extensive knowledge of international stock plans and pension and employment issues worldwide. We are well positioned to assist clients with these issues, given our in-depth knowledge and geographic reach. We have an experienced and pragmatic team of attorneys who regularly advise on these issues across Asia-Pacific, Europe, and Latin America.

INTERNATIONAL STOCK PLANS

When advising on the implementation of stock plans internationally, we strive to provide advice that is both effective and practical. Our approach is to look for ways to enhance the value companies and employees obtain from tailoring stock-based programs to their specific needs. This maximizes the potential benefit, in legal and business terms, in each jurisdiction where the programs are implemented.

The implementation of international stock plans requires the consideration of a wide range of issues. Among these are employer and employee tax issues, securities registration and exemption requirements, labor laws, data privacy requirements, regulatory issues, and best practices in meeting corporate governance and institutional investor requirements.

We regularly advise clients on the implementation and maintenance of their international stock plans, including stock

options, restricted stock, restricted stock units, stock appreciation rights, stock purchase plans, and performance-based programs. Our experience ranges from single-country plans for executives to global plans in more than 100 countries worldwide for employees, executives, and consultants. Our cross-border work in this area has been extensive. In addition to implementing stock programs for multinationals based in the United States, our experience includes the implementation of programs for multinationals headquartered in Australia, China, France, Hong Kong, India, Italy, Japan, Spain, and the United Kingdom, all of which have had to be "exported" and implemented in numerous jurisdictions.

PENSIONS

We regularly assist clients in drafting, reviewing, and implementing defined-benefit and defined-contribution pension plans. We also advise on all aspects of the operation of these plans, including regulatory and compliance issues and closure and amendment issues, including disputes between corporations and trustees.

We have substantial experience advising insolvency practitioners and companies on pension issues that arise during international and local insolvency proceedings and business restructuring and recovery, including the liability of group companies and dealing with national regulators and insurance and other insolvency funds.

CROSS-BORDER MERGERS AND ACQUISITIONS

Reviewing the worldwide impact of cross-border transactions on compensation and benefit programs is becoming increasingly important as the number of cross-border transactions, and transactions with cross-border implications, increases. Jones Day lawyers have significant experience with these issues worldwide. Our team has the experience to identify the potential exposures quickly and provide appropriate solutions without delaying the transaction.

Prior to closing, we identify the impact of the transaction on the employees' benefits by reviewing plan documents, sub-plans, award agreements, employment agreements, and any funding arrangements to assess the effect of any change-in-control provisions. Our team regularly assists in quantifying the potential exposure for prior noncompliance or funding issues and reviews the tax, regulatory, and securities ramifications of the proposed transaction on the benefit plans. Once these exposures have been identified, we assess the

alternatives for minimizing any negative impact, submit tax rulings and other regulatory filings, and assist with any subsequent negotiation and statutory consultations. We also draft employee communications to explain the impact of the transaction on the employees' benefits.

Our team regularly assists with post-transaction integration issues worldwide. This process typically includes drafting all necessary employment and severance agreements and benefit plans and integrating the benefit programs into a single, unified approach. We also advise on the tax and legal requirements applicable on a continuing basis.

INTERNATIONAL EMPLOYMENT COUNSELING

We assist clients with global advice and coordination of employment matters, including offer letters, employment agreements, severance agreements, and reductions in force. We also assist in preparing the work rules, employee handbooks, and codes

of conduct necessary when entering a new jurisdiction, and we provide advice in connection with expatriate employees, change of control, and executive agreements.

We also conduct due diligence and provide planning and implementation assistance on employment matters raised in cross-border mergers and acquisitions, spinoffs, and divestitures.

ADDITIONAL INFORMATION

For additional information about our Employee Benefits & Executive Compensation Practice, please contact your principal Firm representative or one of the lawyers listed in this publication. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com. Our extensive experience with employee benefits and executive compensation can also be found on the web site.

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JONES DAY GLOBAL LOCATIONS

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