TRUCKER ✦ HUSS

Benefits Report

JUNE 2014

In this issue...

1 Not So Much: The Ninth Circuit Clarifies Whether the Supreme Court's Decision in *Amara* Vastly Expanded Remedies Available Under ERISA § 502(a)(3)

3 Revenue Ruling 2014–9 and Revised Form 5310: Uncertain Compliance Standard for Rollover Contributions

6 Final 90-Day Health Plan Waiting Period Rules Issued

7 Firm News

TRUCKER ✦ HUSS
A PROFESSIONAL CORPORATION
ERISA AND EMPLOYEE BENEFITS ATTORNEYS

One Embarcadero Center
12th Floor
San Francisco, California
94111-3617
Telephone: (415) 788-3111
Facsimile: (415) 421-2017
Email: info@truckerhuss.com
www.truckerhuss.com

Not So Much: The Ninth Circuit Clarifies Whether the Supreme Court's Decision in *Amara* Vastly Expanded Remedies Available Under ERISA § 502(a)(3)

SEAN T. STRAUSS

In *Gabriel v. Alaska Electrical Pension Fund,* — F.3d —, 2014 WL 2535469 (9th Cir. June 6, 2014), the Ninth Circuit provided its most comprehensive discussion to date of the scope of remedies available to plaintiffs seeking "appropriate equitable relief" pursuant to ERISA § 502(a)(3) (29 U.S.C. § 1132(a)(3)) following the Supreme Court's decision in *CIGNA Corp. v. Amara,* 563 U.S. —, 131 S.Ct. 1866 (2011). In *Amara*, the Supreme Court held that "appropriate equitable relief" under ERISA § 502(a)(3) includes those categories of relief that were typically available in equity, such as equitable estoppel, reformation, and surcharge. In *Gabriel,* the Ninth Circuit clarified the factual circumstances that could give rise to these remedies, making plain that they are not as readily available as plaintiffs would like.

Factual Background

In *Gabriel,* Plaintiff Gregory Gabriel participated in the Alaska Electrical Pension Plan (the "Plan") from 1968 through 1975. Under the terms of the Plan, a participant who completed ten or more years of service became vested under the Plan and eligible to apply for pension benefits. In 1975, after completing 8 years as a participant in the Plan, Gabriel became the sole proprietor of Twin Cities Electric ("Twin Cities"). From 1975 through 1978, Twin Cities made contributions on behalf of Gabriel and Twin Cities' employees to the Plan. Based on these contributions, the Alaska Electrical Pension Fund (the "Fund") initially credited Gabriel with eleven years of service, enough to qualify him as a vested participant under the Plan.

In 1979, Fund determined that Gabriel was an owner of Twin Cities, rather than an employee, and therefore ineligible to participate in the Plan. The Fund sent Gabriel a letter informing him of this determination, further explaining that because he had reported fewer than 500 service hours to the Fund for the past two years, Gabriel was terminated from the Plan as of January 1, 1978. After two months of negotiations, the Fund agreed to refund Gabriel the improper contributions paid by Twin Cities to the Plan. In order to receive the refund, Gabriel signed a release agreement acknowledging that he was receiving a refund arising from "the improper employer

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues. The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.

contributions paid from the year 1975 through 1978" to the Plan on his behalf.

Gabriel did not meet any of the requirements for reinstatement and so never vested in the Plan. Nevertheless, in late 1996, Gabriel asked the Fund for a pension benefit calculation if he retired. A Fund representative mistakenly informed Gabriel in early 1997 that based on his years of service from 1968 to 1978, if he retired, Gabriel would receive a monthly pension benefit of $1,236. Gabriel subsequently retired and applied for benefits, which he began receiving in March 1997.

In May 2000, Gabriel began working part-time for Udelhoven Oilfield Services to supplement his retirement income. In November 2001, the Fund suspended Gabriel's pension benefits on the basis that his employment for Udelhoven constituted prohibited post-retirement employment in the industry. Gabriel challenged that determination and, when evaluating his claim, the Fund rediscovered its earlier determination that Gabriel was ineligible to participate in the Plan from 1975 through 1978 and therefore never met the Plan's vesting requirements. Because Gabriel was never eligible for retirement benefits, the Fund terminated his benefit payments and threatened to seek reimbursement for the $81,033 in benefits Gabriel had erroneously received.

In response, Gabriel brought an ERISA action against the Fund and other defendants, asserting claims for recovery of benefits, clarification of rights to future benefits under ERISA § 502(a)(1)(B), and for "appropriate equitable relief" under ERISA § 502(a)(3) (29 U.S.C. § 1132(a)(3)) to remedy breaches of fiduciary duty. In a series of orders, the district court resolved all of Gabriel's claims in the Fund's favor. Gabriel appealed the district court's summary judgment rulings to the Ninth Circuit.

The Ninth Circuit Opinion

On appeal, Gabriel asserted that his pension benefits should be reinstated because (1) the Fund's fiduciaries breached their fiduciary duties by misrepresenting Gabriel's eligibility for pension benefits, and (2) Gabriel relied on that misrepresentation to his detriment by taking early retirement. Gabriel argued that he was entitled to "appropriate equitable relief" in the form of equitable estoppel, reformation, or surcharge under ERISA § 502(a)(3) to remedy defendants' breach of fiduciary duty. The Ninth Circuit rejected Gabriel's entitlement to any of these equitable remedies.

In evaluating Gabriel's claim for an equitable estoppel remedy, the Ninth Circuit reaffirmed a line of cases holding that equitable estoppel is only available in the ERISA context when the plaintiff can establish the following elements:

- the party to be estopped must know the facts;
- he must intend that his conduct shall be acted on or must act in a way that the party asserting the estoppel has a right to belief it is so intended;
- the latter must be ignorant of the true facts;
- he must rely on the former's conduct to his injury;
- extraordinary circumstances;
- the plan provisions at issue were ambiguous, such that reasonable persons could disagree as to their meaning or effect; and
- the representations made about the plan were an interpretation of the plan, not an amendment or modification of the plan.

The court held that Gabriel could not establish equitable estoppel because the Fund's 1997 letter regarding Gabriel's pension benefits "does not provide an interpretation of the Plan, but merely provides the erroneous information that Gabriel is entitled to benefits of $1,236 per month upon retirement. Such an error in calculating benefits is just the sort of mistake that we repeatedly have held cannot provide a basis for equitable estoppel."

When assessing Gabriel's claim for equitable reformation of the Plan to remedy the "false or misleading" information provided by the Fund, the court stressed that the equitable power to reform a contract was available only in the event of mistake or fraud. In the case of mistake, a plaintiff may obtain reformation in two circumstances: (1) if there is evidence that a mistake of fact or law affected the terms of a trust's instrument and there is evidence of the settlor's true intent; or (2) if both parties to a contract were mistaken about the content or effect of the contract and the contract must be reformed to capture the terms upon which the parties had a meeting of the minds. In the case of fraud, reformation was available in two other circumstances: (1) a trust was procured by wrongful conduct, such as undue influence, duress, or fraud; or (2) a party's assent to a contract was induced by the other party's misrepresentations as to the terms or effect of the contract and was justified in relying on the other's misrepresentations. The court held that Gabriel could not obtain reformation based on mistake because, "Gabriel wants to reform the

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues.
The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.

Fund's administrative records to conform to the misinformation given him by the plan representative. But reformation does not extend so far. The administrative records are not part of the Plan, and the Fund's mistaken administrative records did not reflect the parties' true intent in entering into the Plan." The court concluded that Gabriel also was not entitled to reformation based on fraud because he did not allege that the Plan "was procured by wrongful conduct, such as undue influence, duress, or fraud" or that he "was justified in relying on the Fund's misrepresentations."

Finally, the Ninth Circuit turned to Gabriel's argument that the equitable remedy of surcharge entitled him to an amount equal to the benefits he would have received if he had been a participant with the hours erroneously reflected in the Fund's records when he applied for benefits. Citing to its decision in *Skinner v. Northrop Grumman Ret. Plan B,* 673 F.3d 1162, 1166 (9th Cir. 2012), the court noted that, under the traditional equitable principles specified in *Amara,* a surcharge remedy is available only when a breach of trust committed by a fiduciary (1) resulted in a loss to the trust estate; or (2) allowed the fiduciary to profit at the expense of the trust. Quite simply, a trustee could not be subject to surcharge for a breach of trust that results in no loss to the estate or profit to the trustee. Gabriel could not establish either of these circumstances. First, "Gabriel [did] not argue that any of the defendants here were unjustly enriched by their alleged breaches of fiduciary duty. Nor could he, because the defendants merely prevented Gabriel from receiving benefits that he was not entitled to receive under the Plan, and such actions appropriately discharged the fiduciaries' duty to act 'solely in the interest of the participants and beneficiaries,' the individuals eligible to receive such benefits from the Fund." Furthermore, Gabriel was not requesting compensation to recoup the Plan for losses occurring from a fiduciary breach. "Because the surcharge remedy Gabriel seeks would not restore the trust estate, but rather would wrongfully deplete it by paying him benefits he is not eligible to receive under the Plan," Gabriel was not entitled to a surcharge remedy for the Fund's alleged breach of fiduciary duty, and the Ninth Circuit affirmed the district court's dismissal of Gabriel's claims.

Conclusion

The Supreme Court's decision in *Amara* created significant uncertainty regarding the scope of "appropriate equitable relief" available to plaintiffs under a cause of action pursuant to ERISA § 502(a)(3). For courts within the Ninth Circuit, the decision in *Gabriel* clarified some of that uncertainty. *Gabriel* stressed that the remedies of equitable estoppel, reformation, and surcharge under ERISA § 502(a)(3) are limited to specific factual circumstances, and a plaintiff cannot utilize these remedies to recoup benefits beyond those provided by unambiguous plan language, including when a plan makes a simple benefit entitlement mistake. The *Gabriel* decision forecloses the hope for some that *Amara* significantly expanded the scope of remedies available to plaintiffs in the Ninth Circuit under ERISA § 502(a)(3).

Revenue Ruling 2014-9 and Revised Form 5310: Uncertain Compliance Standard for Rollover Contributions

SUSAN M. QUINTANAR
AND BENJAMIN F. SPATER

On April 3, 2014, the Internal Revenue Service ("IRS") issued Revenue Ruling 2014-9, which expands on previous IRS guidance addressing how a plan administrator may "reasonably conclude" that a potential rollover contribution is a qualified distribution and will not adversely affect the recipient plan's qualified status. This revenue ruling updates the guidance provided under Treas. Reg. 1.401(a)(31)-1, Q&A-14(b)(2) by offering two additional examples of "due diligence" procedures a plan administrator of a recipient plan (a "recipient plan administrator") may rely on to meet the "reasonableness" standard.

Interestingly enough, the IRS also recently updated its Form 5310 (Application for Determination for Terminating Plan — revised December 2013). One significant change on the Form is that applicants are now required to submit "proof" that any rollover contributions received by the applicant's plan were from qualified plans or individual retirement accounts ("IRAs") offering plan determination letters and timely interim amendments as examples of such proof. Accordingly, the updated instructions seem to require a higher level of compliance than in the guidance

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues.
The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.

provided in the regulations under Code Section 401(a)(31) or the current Revenue Ruling.

Unemployment Compensation Amendments of 1992 and Code Section 401(a)(31) Regulations

The IRS first issued regulations under Code Section 401(a)(31) in 1995 to provide guidance on the Unemployment Compensation Amendments of 1992 ("UCA"). UCA expanded the types of plan distributions eligible for rollover under the Code and required qualified plans to offer a direct rollover option. Modifications were issued in 1996 to expand and clarify the 1995 guidance.

As a result of UCA and its goal to expand pension portability, many plan administrators were concerned that accepting rollovers under these regulations could jeopardize their own plans' tax-qualified status if the IRS later determined that the rollovers were from disqualified plans. To help address these concerns, the IRS amended the 1996 guidance in 1998 to grant relief from disqualification to affected plans, in response to a congressional directive contained in the Taxpayer Relief Act of 1997. The 1998 amendment clarified that distributing plans did not need a favorable determination letter for a plan administrator to reasonably conclude that a potential rollover contribution was valid. The modification helped ease plan administrators' compliance burden by simplifying their due diligence obligations, which would have required obtaining numerous supporting documents, as well as expert opinions in some cases, to verify the distributing plan's qualified status.

In addition, the 1996 guidance clarified that the acceptance of a rollover contribution later found to be invalid would not jeopardize the qualified status of the recipient plan, as long as the following two conditions were met:

- The recipient plan administrator "reasonably concluded" that the contribution was an "eligible rollover distribution" prior to accepting the rollover contribution; and
- Following the discovery that a rollover contribution was invalid, the plan administrator distributes the rollover amount (including earnings) to the affected eligible employee within a reasonable time after making the discovery.

If the plan administrator satisfied these conditions, the defective rollover contribution in the recipient plan would still be treated as a rollover contribution for purposes of satisfying the recipient plan's qualification requirements (*e.g.,* the contribution would not be treated as an annual addition under Code Section 415 or an employee contribution for nondiscrimination testing under Code Section 401(m)). The examples set forth in the 1996 guidance generally permit plan administrators to reach a reasonable conclusion that the rollover was an "eligible rollover distribution" based on certifications provided by the distributing plan administrator, trustee, and/or the eligible employee (along with some limited documentation in certain circumstances). These certifications could include statements that the distributing plan either received a determination letter, was a qualified plan at the time distribution was made or the plan administrator was not aware of any provision that would result in plan disqualification at the time of distribution.

This clarification addressed in the 1996 guidance was fully retained in final regulations issued in 2000 (the "2000 Final Regulations"). The "reasonableness" standard and the protection it affords, as well as the clarification concerning determination letters were both addressed in Section 1.401(a)(31)-1, Q&A-14 of the 2002 Final Regulations.

Revenue Ruling 2014-9

Rev. Rul. 2014-9 offers further clarification by providing two additional examples in which plan administrators would be deemed to have met the "reasonableness" standard as set forth in the previous guidance.

Situation One

An eligible employee requests a distribution of his prior employer's vested plan benefit as a direct rollover into his current employer's plan. The prior employer's plan trustee issues the eligible employee a check made payable to the current employer's plan trustee. The attached check stub identifies the source of funds as attributable to the prior employer's plan. The eligible employee also certifies that the distribution does not include after-tax contributions or amounts attributable to designated Roth contributions (as the current employer's plan does not accept such amounts for rollover).

To verify that the prior employer's plan is a qualified plan, the recipient plan administrator obtains a copy of the distributing plan's most recent Form 5500 submitted to the U.S. Department of Labor (the "DOL") and checks line 8a (or 9a on Form 5500-SF) to ensure it does not include code 3C (*i.e.,* Form 5500's designated code for plans not intended to be qualified under Code Sections 401, 403, or 408).

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues.
The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.

Situation Two

The situation is the same as in situation one, except that the eligible employee's distribution is from a traditional IRA rather than a qualified plan. On the attached check stub, the eligible employee's IRA is identified as the source of funds. In addition, the eligible employee certifies that the distribution includes no after-tax amounts and that the employee will not have attained age 70½ by the end of the year in which the check is issued.

A Reasonable Conclusion

In these situations, the IRS determined in Rev. Rul. 2014-9 that a plan administrator could reasonably conclude that a potential rollover contribution is valid if, absent any evidence to the contrary, the following measures were taken:

- With respect to rollovers from qualified plans, the recipient plan administrator verified that the distributing plan filed its most recent Form 5500 without using the code 3C. The IRS determined that the plan administrator could reasonably rely on the information reported on the distributing plan's Form 5500, because such information was the plan administrator's representation to the DOL that the plan was intended to be a qualified plan;
- The recipient plan administrator could identify the rollover contribution's source of funds as attributable to the distributing plan. The IRS has stated that the distributing plan could provide such identification on the check stub or the check itself. In addition, wire transfers (or other electronic methods) would also be acceptable, as long as the recipient plan administrator received some form of communication from the distributing plan identifying the source of funds.
- The eligible employee certified to the recipient plan administrator that the rollover contribution did not include any amounts that were ineligible for rollover. For example, if the distributing plan included after-tax contributions or designated Roth contributions that the recipient plan did not accept, the plan administrator must have obtained the employee's certification that the rollover contribution did not include such amounts. Likewise, with respect to distributions from an IRA, the plan administrator would need the eligible employee to certify that the employee would not have attained age 70½ by the end of the year in which the check was issued to avoid any concerns that the employee would have been required to receive a required minimum distribution ("RMD") from the IRA.

  In this regard, the Revenue Ruling notes that the IRS does not require a similar certification for RMDs made from qualified plans. By issuing the distribution in the form of a direct rollover, the distributing plan's trustee had sufficiently asserted that the distribution met the requirements of an eligible rollover distribution. In this situation, the plan administrator could assume, for example, that the distribution occurred during or after the year in which the eligible employee had attained age 70½ and that the distributing plan had distributed the RMD to the eligible employee before making the direct rollover distribution.

As a result, the IRS permits plan administrators to continue relying on such certifications and limited documentation for compliance in Rev. Rul. 2014-9, thereby maintaining its objective to simplify plan administrators' due diligence procedures before accepting rollover contributions on their eligible employees' behalf.

But What about Updated Form 5310?

While Rev. Rul. 2014-9 limits the amount of due diligence required by plan administrators for accepting rollover contributions, the IRS appears to have a different compliance standard for reviewing the qualified status of *terminated* plans. In the instructions to Line 19c of its updated Form 5310 (revised December 2013), the IRS now requires applicants to provide evidence that any rollover contributions or asset transfers received by the plan during the termination year and the preceding five plan years were made from qualified plans or IRAs, referring to determination letters and timely interim amendments as acceptable forms of evidence.

However, as noted above, Section 1.401(a)(31)-1, Q&A-14 of the 2002 Final Regulations expressly states that a distributing plan is not required to have a determination letter for the recipient plan administrator to reasonably conclude that the potential rollover contribution is valid.

Rev. Rul. 2014-9 states that all Form 5310 applications must be submitted on the updated form after June 30, 2014. Going forward, this standard of "proof" could impose a significant burden on Form 5310 applicants, especially for plan administrators of larger plans with numerous participants.

Plan terminations occurring as a result of corporate acquisitions can present additional concerns. In many instances, it can be quite difficult to obtain records documenting a terminating plan's qualification status, especially where

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues.
The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.

a former service provider no longer maintains an ongoing relationship with the acquired company. This requirement may force many plan administrators to forgo submitting terminated plans for a ruling altogether to avoid the heightened scrutiny associated with providing inadequate proof.

Recommended Course of Action

The IRS has informally notified us that its forthcoming Employee Plans newsletter will include a statement clarifying that plan applicants using the revised Form 5310 are not actually required to provide the extensive documentation of proof outlined in the revised Form's instructions, given the recently issued Rev. Rul. 2014-9. We also understand that the IRS has instructed its examiners not to request such items for verification during their examinations. However, we have also been told that it may take a few years for the agency to revise the actual Form and its instructions.

As a result, we recommend continuing to apply the simplified compliance standard provided in the 2002 guidance, as further modified by Rev. Rul. 2014-9. Regarding any imminent Form 5310 applications submitted for terminated plans, we suggest providing the IRS with the information received when the rollover was first accepted (*e.g.,* the rollover forms completed by participants and related plan administrators). In recent examinations, we have seen the IRS accept these forms of verification from terminating plans and issue determination letters on their qualified status.

Finally, it should also be permissible for the plan administrator of the terminated plan to submit the related Forms 5500 for the rollover contributions as set forth in Rev. Rul. 2014-9, even though the plan administrator may not have used the ruling's new standard of proof to conclude that a rollover was valid at the time of receipt. In any case, even though the instructions currently require a higher level of due diligence, we do not believe plan administrators need to modify their practices for accepting rollover contributions, provided they are currently following the standards set forth in the 2002 guidance, as modified by Rev. Rul. 2014-9.

OTHER DEVELOPMENTS IN EMPLOYEE BENEFITS

Final 90-Day Health Plan Waiting Period Rules Issued

On June 20, 2014, the Internal Revenue Service, Department of Labor and Department of Health and Human Services (collectively, the "Departments") published final rules addressing the maximum length of an employment-based orientation period (the "June 2014 Regulations") that would be consistent with the 90-day waiting period limitation under the Affordable Care Act (the "ACA"). The Departments previously published final regulations implementing the ACA's 90-day waiting period restriction on February 24, 2014 (the "February 2014 Final Regulations") and related proposed regulations regarding the permissible orientation period (the "February 2014 Proposed Regulations"). The June 2014 Final Regulations follow the February 2014 Proposed Regulations with few significant changes. Like the February 2014 Proposed Regulations, the June 2014 Final Regulations apply to plan years beginning on or after January 1, 2015. For information about the proposed and final regulations, please see our May 2013 and March 2014 articles.

90-Day Waiting Period Limit

The February 2014 Final Regulations define a waiting period as the period that must pass before coverage for an employee who is "otherwise eligible to enroll" in a plan can become effective. Under the ACA and February 2014 Final Regulations, such a waiting period may not exceed 90 days from the date an individual meets the plan's eligibility criteria. Under these rules, an individual is "otherwise eligible to enroll" if that individual has met the plan's substantive eligibility conditions, such as attainment of an eligible job classification (*e.g.,* full-time status); acquiring a job-related license; or "satisfying a reasonable and bona fide employment-based orientation period".

Employment-based Orientation Period

Under the June 2014 Final Regulations, a plan may require an employee to complete a reasonable and bona fide employment-based orientation period as a condition of eligibility, if the waiting period commences on the first day

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues.
The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.

after the end of the orientation period AND the orientation period is no more than one month. In the preamble, the Departments note that a reasonable and bona fide orientation period allows an employer to start standard orientation and training processes, to determine if a new employee can handle the assigned job duties and challenges, and allows the employer and employee to evaluate whether the employment situation is satisfactory for each party.

The orientation period can begin on any day of a calendar month, but the end of the month is determined by adding one calendar month and subtracting one calendar day. Therefore, if an employee starts work on May 3, the last permitted day of a required orientation period is June 2. If there is no subsequent date in the next calendar month when adding a calendar month, the last permitted day of the orientation period is the last day of the next calendar month. So, if an employee's start date is January 30, the last permitted day of the orientation period is February 28 (or February 29 in a leap year).

New Employer "Pay or Play" Compliance Issues

In the preamble to the June 2014 Final Regulations, the Departments note that if a large employer *(i.e.,* the employer has 50 or more full-time employees, taking into account full-time equivalents) is subject to both ACA's waiting period rules and the employer shared responsibility requirement of Internal Revenue Code Section 4980H (*i.e.,* the "pay or play provision" of the ACA), it may not be able to impose both a full one-month orientation period and a 90-day waiting period without incurring a penalty under Section 4980H. The June 2014 Final Regulations illustrate how these two sets of rules interact, stating that if a large employer hires a new full-time employee on January 6, then the employer's plan may offer health plan coverage to the employee on May 1 and comply with both the "pay or play" mandate and the waiting period rule. However, if the employee's health coverage doesn't begin until May 6 (*i.e.,* one month plus 90 days after the employee's actual hiring date), the employer may be subject to an assessment under Section 4980H despite complying with the waiting period rules.

Next Steps

To ensure timely compliance, plan sponsors should examine their eligibility criteria to ensure that any waiting period included in plan eligibility requirements meets both the ACA's waiting period rules *and* Section 4980H requirements, if applicable. This may require amending the plan's eligibility provisions, preparing and disseminating any summary of material modifications to affected employees, and verification of administrative procedures with health insurance issuers and third party administrators for self-funded plans, to ensure that plan coverage begins in a timely manner and minimizes any liability under Section 4980H as applicable.

— SONYA M. GORDON

FIRM NEWS

On June 3, 2014, **Tiffany N. Santos** moderated a webinar for the ABA's Joint Committee on Employee Benefits entitled, *Roadmap to Understanding What Employers and Plans Must Report to the IRS and Employees to Comply with the ACA.*

On June 22, **Brad Huss** was quoted in a *Wall Street Journal* article entitled, *U.S. Increases Scrutiny of Employee Stock Ownership Plans*. The article examines federal government's increased scrutiny of employee stock ownership plan (ESOP) valuations, noting a settlement reached with GreatBanc Trust Company regarding firm client Sierra Aluminum Company's ESOP.

Nick White will be speaking as part of a panel at the Western Pension and Benefits Conference in Las Vegas on July 28, 2014. His session is entitled, *Best Practices for Retirement Plan Committees.*

The Trucker ✦ Huss *Benefits Report* is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of *Benefits Report* are posted on the Trucker ✦ Huss web site (www.truckerhuss.com).

Editor: Sonya M. Gordon, sgordon@truckerhuss.com

In response to new IRS rules of practice, we inform you that any federal tax information contained in this writing cannot be used for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters in this *Benefits Report*.

Copyright © 2014 Trucker ✦ Huss. All rights reserved. This newsletter is published as an information source for our clients and colleagues.
The articles appearing in it are current as of the date shown above, are general in nature and are not the substitute for legal advice or opinion in a particular case.