



REID AND RIEGE, P.C.  
COUNSELLORS AT LAW

## Multiemployer Benefit Plans

The Multiemployer Benefit Plans Practice Area serves as counsel to over 20 jointly-administered employee benefit funds established under collective bargaining agreements, and to a coalition of health funds. The funds represented include multiemployer defined benefit and defined contribution plans (with the defined contribution plans having employer, employee/401(k) and rollover contribution components), related single employer or “staff” defined benefit plans, as well as health, supplemental unemployment and apprentice training funds. Our Practice Area normally advises trustees who are appointed in equal numbers by sponsoring unions and management and who are responsible under the Taft-Hartley Act, ERISA and the Internal Revenue Code for the administration of such funds.

Our Practice Area is thoroughly familiar not only with the Taft-Hartley Act, ERISA, COBRA, HIPAA, PPACA, ADA, ADEA, Medicare Part D, Medicare Secondary Payor rules, the Internal Revenue Code, the Pension Protection Act, the Worker, Retiree and Employer Recovery Act, and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act, but also with nuances of health care, trust, contracts, real estate, employment, investment and other laws. Our Practice Area is also familiar with procedures and regulations of the Internal Revenue Service, Department of Labor/Employee Benefits Security Administration, Pension Benefit Guaranty Corporation and various other federal and state regulatory bodies. In order to provide trustees with a level of comfort that any legal advice this Practice Area provides is independent, it is our firm policy not to represent either management or labor in the labor law field, nor do we represent clients in Davis-Bacon Act compliance matters.

The Multiemployer Benefit Plans Practice Area realizes that the trustees of multiemployer benefit funds devote an enormous amount of time in making sure their funds are in compliance with all legal rules and are properly administered. In return, the trustees get no pay or reward of any kind. Indeed, if anything should go wrong, the trustees may be personally liable. Our experienced and independent Practice Area can assist your funds as they navigate through this heavily regulated field.

The Multiemployer Benefit Plans Practice Area has the ability to handle all



### Attorneys

- Adam T. Boston
- Douglas K. Knight
- Eileen M. Marks
- Kaitlyn E. Stewart

## Multiemployer Benefit Plans continued

of the legal needs of multiemployer pension, annuity/401(k), health, supplemental unemployment and apprentice training funds. Our Practice Area works closely with trustees, fund staff, professional service providers and vendors, so that we can address all of your fund's legal matters promptly and comprehensively. While no list can outline all of the services this Practice Area provides, we have broken down this Practice Area's services into six basic categories.

### I. Administration and Operation

Whether it is a vesting or eligibility question, an inquiry about a contract or providing practical advice about an operational issue, numerous legal issues arise in the day-to-day operations of a multiemployer benefit plan. Our Practice Area has been responding to these issues for over 50 years, and here is a representative listing of some of the work we perform in this category:

- Assisting in all aspects of Retirement and Welfare Plan/Trust design and documentation
- Providing legal reports and advice to the trustees at their regular meetings, and providing assistance to the trustees, as necessary, in implementing their decisions, such as preparing Plan and/or Trust amendments
- Preparing disclosure materials, such as a Summary Plan Description (SPD) or a Summary of Material Modifications (SMM), to participants and beneficiaries, contributing employers, employee representatives, governmental agencies and other entities
- Documenting relationships with: (i) general service providers, including consultants, actuaries and collection counsel; (ii) Retirement and Welfare Plan investment manager agreements for standard (separate account) and alternative (hedge fund and real estate) investments; and (iii) specific Welfare Plan service providers, including HMOs, PPOs, PBMs, prescription drug, dental and vision care vendors
- Assisting the Fund Office with all benefit and eligibility issues, claims, appeals and lawsuits, including analysis of IRS Levies and those involving divorce or child support through a Qualified Domestic Relations Order (QDRO) or Qualified Medical Child Support Order (QMCSO)
- Negotiation of office leases, computer contracts, employment contracts and nonqualified deferred compensation plans/rabbi trusts
- Preparing applicable procedures and policies for the Plan/Trust, including audit, delinquency and collection procedures for contributing employers and educational conference expense/travel policies for trustees and designated fund employees
- Preparation of employee handbooks, and assisting the fund's chief executive officer with all day-to-day employment issues with fund staff

## **Multiemployer Benefit Plans** continued

- Advising trustees and fund office staff as to other legal matters which affect the operation of the Plan/Trust, such as state workers' compensation, unemployment compensation and insurance laws, as well as state and federal court decisions

### **II. Fiduciary Duties and Insurance Needs**

The primary federal law which governs multiemployer benefit plans, ERISA, imposes various fiduciary duties upon fund trustees and fund office staff, and it also requires that multiemployer benefit plans have in place sufficient fidelity bonds. On a related topic, trustees of multiemployer benefit plans should be sure that they have in place adequate levels of fiduciary (including waiver of recourse), fidelity and, as appropriate, employment practices and stop-loss insurance (aggregate and/or individual). Here is a representative listing of some of the work we perform in this category:

- Advising trustees and fund office staff as to the application of the "prudent man rule" and other fiduciary standards
- Advising trustees and fund office staff regarding prohibited transaction and fiduciary liability avoidance
- Reviewing the insurance policies described above, and advising the trustees as to any associated legal issues or concerns

### **III. Tax Qualification and Governmental Regulation**

Of critical importance to any Board of Trustees is maintaining the tax qualified status of their multiemployer benefit plan. Tax qualified status generally assures that employers can deduct the contributions they make to these multiemployer benefit plans, and employees covered by the plans will not be subject to taxation at the time such contributions are made. All multiemployer retirement plans must submit applications for new IRS favorable determination letters every five years, and the next normal cycle will open in February of 2014. Here is a representative listing of some of the work we perform in this category:

- Preparing appropriate documentation for submission to the IRS in order to either establish or maintain the tax qualified status of the multiemployer benefit plan and/or trust
- Conducting internal legal compliance audits and, as necessary, preparing for, and responding to, IRS and DOL/EBSA audits
- Assisting and providing support with respect to multiemployer benefit plan governmental filings and reports, such as the 5500, 990, LM-10 and FBAR Forms
- As requested by a Board of Trustees, responding to questions and

## **Multiemployer Benefit Plans** continued

legal issues presented in connection with a merger of multiemployer trust funds or the termination of such a fund

### **IV. Withdrawal Liability and Multiemployer Defined Benefit Plans**

ERISA generally provides that if a contributing employer to a multiemployer defined benefit plan “withdraws” from that fund, then the employer will be subject to “withdrawal liability.” In addition, there are special rules which govern “partial withdrawals” and “free looks” in the building and construction industry. If there is a withdrawal by a contributing employer for which liability can be assessed, it is the duty of the plan’s Board of Trustees to: (i) determine the employer’s portion of the fund’s overall withdrawal liability; (ii) notify the employer of its specific withdrawal liability figure; and (iii) collect that amount from the employer over the time frame specified by ERISA. The Multiemployer Benefit Plans Practice Area has significant experience in advising trustees on these withdrawal liability issues.

### **V. Funding of Multiemployer Defined Benefit Plans**

The Pension Protection Act of 2006, along with the Worker, Retiree and Employer Relief Act of 2008 and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, have ushered in a complex “green zone,” “yellow zone” and “red zone” system in connection with the funded status of multiemployer defined benefit plans. If such a plan falls into the yellow or red zone for a specific plan year (based on a determination by the plan’s actuary), then it will need to implement a funding improvement plan or a rehabilitation plan, as applicable, which is designed to improve the funded status of the plan over a specific time frame. There are strict deadlines and various notice requirements with these new funding rules, and this Practice Area already has extensive practical experience, working with funds’ actuarial consultants, in this area of the law.

### **VI. Federal Health Care Reform and Multiemployer Welfare Plans**

In March of 2010, two sweeping federal laws were enacted which will impact the way Americans receive their health care for years to come. These laws, jointly referred to as the Patient Protection and Affordable Care Act (PPACA), have changed the legal landscape for multiemployer health plans. Such plans now have to focus on a number of new issues, such as whether they want to (or can) maintain “grandfathered” status, when they must comply with the applicable PPACA mandates and whether they should apply for PPACA waivers and/or assistance

## **Multiemployer Benefit Plans** continued

programs (an example of such a program is the Early Retiree Reinsurance Program or ERRP). When adding the PPACA to already complex existing laws, such as the Mental Health Parity and Addiction Equity Act, this means that multiemployer health plans will need even more legal assistance. Our Multiemployer Benefit Plans Practice Area has considerable experience with these new laws and programs.

### **VII. Litigation and other Forms of Dispute Resolution**

While no multiemployer plan normally wants to be involved in legal disputes, they are a fact of life in today's heavily regulated and litigious environment. The Practice Area has significant experience in handling and guiding trustees in dispute resolution, and we would consult with the firm's Litigation Practice Area if arbitration, mediation and/or litigation proceedings were necessary. Our firm's Litigation Practice Area has a broad range and depth of experience in representing clients in state and federal courts, in arbitration and mediation forums and before state and federal government agencies.