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Taft-Hartley Report

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The Importance of Effective Collection Policies and Procedures

The collection of contributions is a fiduciary responsibility under ERISA.[1] More specifically, trustees are required to make systematic, reasonable and diligent efforts to collect delinquent employer contributions, and the failure to do so could be deemed a prohibited transaction under Section 406 of ERISA.[2] However, this does not mean that trustees are required to pursue the collection of contributions at all costs. Trustees should evaluate a number of factors, including the amount of contributions being sought, the likelihood of collection and the expenses expected to be incurred by the plan.[3] Adopting written collection policies and procedures can streamline the process and assist trustees in discharging their fiduciary obligations with respect to the collection and management of plan assets.

There are many players involved in the collection process, including plan administrators, attorneys and auditors. An important function of a collection policy is to clearly designate the role of each player and establish consistent procedures for all to follow. The policy should first establish administrative collection procedures. These procedures typically include the mailing of delinquency notices warning that continued non-payment will result in additional collection activity, including but not limited to the referral to fund counsel. However, not all collection matters will warrant a referral to fund counsel.

An effective collection policy should also consider the amount of the delinquency. For example, further collection action may not be warranted if the anticipated costs will exceed the amount sought. As such, the collection policy should establish a threshold amount for the referral to counsel to help ensure the costs do not exceed the recovery. Establishing a threshold amount for the referral to counsel also helps protect against "runaway" collection matters where the amount of the delinquency quickly increases and becomes unmanageable before the funds take any legal action. In these cases, swift action can be the difference between recovering plan assets and missing the opportunity to collect anything.

In addition to outlining collection procedures, a collection policy can be useful in describing the fund's audit procedures, bonding requirements, and policy on assessing liquidated damages, interest, and attorney's fees. But once adopted, a written collection policy becomes a plan document that must be administered according to its terms. For this reason, there is no "one-size fits all" policy, and trustees should work closely with fund counsel to craft a policy that adequately addresses the specific needs of the fund.

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[1] *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport*, 472 U.S. 559, 571 (1985).
[2] DOL Field Assistance Bulletin 2008-01.
[3] *Diduck v. Kaszycki & Sons Contractors*, 874 F. 2d 912 (2nd Cir. 1989).

IRS Cutback Impacts Multiemployer Retirement Plans

On July 21, 2015, the IRS announced that "to more efficiently direct its limited resources," determination letters for ongoing law changes will no longer be issued for individually designed plans. Under IRS Announcement 2015-19, determination letters will be issued only upon initial qualification and plan termination. This change applies to all individually designed plans, including multiemployer retirement plans.

According to the Announcement, the current program's staggered 5-year determination letter cycles will terminate effective January 1, 2017. This change to the determination letter program means that the current Cycle D submissions applicable to multiemployer plans will be the last determination letter such plans will receive prior to plan termination. In addition, the option for an off-cycle submission is eliminated effective July 21, 2015.

The Announcement makes clear that the new program will increase the potential liability for document errors. Plan document compliance is critical when there is a change in the law and when there is an IRS audit.

When there is a change in the law, a plan must be amended by the deadline for the applicable change. However, the current program provides for an extended remedial amendment period based on filing for a timely determination letter. Thus, if the IRS determines that a plan has a disqualifying provision when it reviews the plan for a determination letter, the plan can be retroactively amended to correct the disqualifying provision if there was a good faith attempt at compliance. The new program eliminates determination letters for ongoing law changes. Accordingly, plans do not get the benefit of retroactively correcting a disqualifying provision identified during the determination letter process.

When there is an IRS audit, an up-to-date determination letter protects against retroactive disqualification for a document error. Under the new program, the IRS will no longer issue determination letters for ongoing law changes. Without the assurance of ongoing determination letters, plans will be subject to increased risk of penalty or disqualification if a document error is discovered during an IRS audit.

The Announcement states that the remedial amendment period for current law changes will be extended at least to December 31, 2017. How this extension works in practice and whether plans will have to be restated as of the extension date awaits further IRS guidance.

The IRS has said that it will provide model amendments and will allow greater incorporation by reference in order to facilitate plan compliance. Also, there may be changes to the IRS Employee Plans Compliance Resolution System (EPCRS) to provide additional options to correct documentation errors. The IRS comment period ended October 1, 2015, after which additional guidance is expected.

Successor Liability Claims for Withdrawal Liability Are Alive

In late July 2015, the Seventh Circuit issued a decision in *Tsareff v. ManWeb Servs., Inc.*, No. 14-1618, 2015 BL 238411 (7th Cir. July 27, 2015), overturning a decision from the Southern District of Indiana that essentially eliminated a multiemployer defined benefit pension plan's ability to pursue a successor liability claim for withdrawal liability.

The Indiana Electrical Pension Benefit Plan ("Plan") sued ManWeb Services, Inc. ("ManWeb") under a successor liability theory of recovery for withdrawal liability owed by its predecessor, Tiernan & Hoover. It was undisputed that ManWeb was aware of Tiernan & Hoover's potential withdrawal liability resulting from its sale. In addition, it was undisputed that ManWeb continued the operations of Tiernan & Hoover without interruption. However, the District Court held that the notice requirement of successor liability excluded pre-sale notice of potential withdrawal liability. In addition, the District Court held that the notice requirement of successor liability could not be satisfied because the withdrawal liability was not assessed until after the sale occurred.

The Plan appealed the decision to the Seventh Circuit. In a decision rejecting the District Court's opinion, the Seventh Circuit held a party seeking to impose successor liability must prove that "(1) the successor had notice of the claim before the acquisition; and (2) there was substantial continuity in the operation of the business before and after the sale." *Id.* As to the District Court's interpretation of the notice requirement, the Seventh Circuit held that "notice of contingent withdrawal liability satisfies the successor liability notice requirement." *Id.* In addition, the Seventh Circuit ruled that it was equitable to impose successor liability on ManWeb because ManWeb had protected itself against liability by requiring Tiernan & Hoover to indemnify it for any claims brought for liabilities outside of those specifically agreed to in the asset purchase agreement.

Therefore, the Seventh Circuit appears to have expanded the definition of "notice" to allow constructive notice if it is equitable to do so. As such, the Seventh Circuit reopened the doors for multiemployer defined benefit plans to pursue claims for withdrawal liability against a purchaser under a successor liability theory of recovery.

Plan Participant Makes Novel Argument in Attempt to Skirt ERISA's Anti-Cutback Rules

The Sixth Circuit recently denied a pension plan participant's novel argument in an attempt to avoid the implications of the long-standing precedent that disability benefits imbedded in a pension plan are not subject to the ERISA anti-cutback rules. [1]

In this case, a participant in a multiemployer pension plan, worked for twenty (20) years in the masonry trade. In 2009, he suffered a heart attack that left him permanently disabled.[2] The plan initially awarded him a disability pension of $515 a month.[3] However, the plan then found out that he previously worked in non-covered masonry employment.[4] As a result, the plan disqualified him from receiving the disability pension because the plan alleged that he violated an eligibility condition by working in non-covered masonry employment.[5] The decision by the plan was based on an amendment that became effective in June 1988. The participant filed a complaint against the plan alleging that the 1988 amendment which adopted a disqualifying eligibility condition, violated the anti-cutback provision of ERISA.

The District Court dismissed the lawsuit as a result of the rule that the anti-cutback provisions do not apply to "disability benefits." On appeal, the participant presented a novel argument that his disability pension benefit was not technically a "disability benefit" because it qualified as an accrued benefit under Treasury Regulation 26 CFR 1.411(d)-3(g)(6)(iv), (v). The treasury regulation, adopted in 2005, defines certain types of accrued benefits as: "the excess …of the actuarial present value of a …benefit over the actuarial present value of the accrued benefit commencing at normal retirement age, and a benefit …where the actuarial present value of the …benefit available to the participant under the plan at that annuity starting date exceeds the actuarial present value of the accrued benefit commencing at normal retirement age."[6] The plaintiff in this case argued that this Regulation protected his pension from cutback. Rather than deciding the merits of whether the participant's disability benefit was an accrued benefit under the Treasury Regulation, the Court of Appeals held that the Regulation did not apply to the participant's benefit because it could only apply to amendments made on or after August 12, 2005, and here the plan amendment at issue was adopted in 1988.[7] The Court did not specifically address the applicability of the Treasury Regulation to disability pensions.

The only similar argument made to date was launched in the Tenth Circuit in 2009 by participants who argued that the elimination of an optional discounted version of their pensioner death benefit providing for lump sum payout violated the anti-cutback rules.[8] Specifically, the plaintiffs argued the benefit was a "retirement type subsidy" for purposes of the anti-cutback rules. Similar to the Sixth Circuit, the Tenth Circuit held that the Treasury Regulation didn't apply because the argument was inadequately briefed by the plaintiffs.[9] The Court noted, however, that had the issue been adequately briefed, the benefit would not be considered an accrued benefit under the Treasury Regulation for purposes of the anti-cutback rules for two reasons.[10] First, the Court reasoned that the death benefit at issue was not a retirement subsidy as it was a lump sum payout not intended to continue over a period of time following retirement.[11] In addition, the Court held that the death benefit option was not an accrued benefit because the plan expressly defined accrued benefits to exclude any death benefits. [12]

It is interesting to note that while the Tenth Circuit opined the Treasury Regulation would not apply, its holding was mostly based on a procedural issue similar to the Sixth Circuit's decision. As a result, the door has been slightly opened for similar challenges, especially in Circuits where the Court has not yet addressed this type of argument. Thus, plan's should take note that (1) a plan participant may bring a similar argument in litigation in order to skirt the rule that anti-cutback rules don't apply to disability benefits and/or other benefits excluded from anti-cutback protection and (2) that at the very least, in the Sixth Circuit, the regulation wouldn't apply to amendments adopted prior to 2005.

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[1] *Myers v. Bricklayers & Masons Local 22 Pension Plan*, 2015 U.S. App. LEXIS 18586 (6th Cir. Oct. 22, 2015).
[2] *Id* at *2.
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] 26 CFR 1.411(d)-3(g)(6)(iv), (v).
[7] *Myers*, 2015 U.S. App. LEXIS 18586, at * 4-5.
[8] *Kerber v. Qwest Pension Plan*, 572 F.3d 1135 (10th Cir. 2009).
[9] *Id.* at 1146 (holding "[w]e therefore reject, as inadequately briefed, plaintiffs argument that the DLS Equivalent constitutes a retirement type subsidy").
[10] *Id.* at 1147.
[11] *Id.*
[12] *Id.*

Illinois Supreme Court Strikes Down Pension Reform

On May 8, 2015, the Illinois Supreme Court unanimously ruled unconstitutional a major pension law that aimed to scale back government worker benefits, sending lawmakers and the governor back to the negotiating table to try to resolve the problem of the state's $105 billion retirement system debt.

At issue in this case is the state law Public Act 98-599, signed in December 2013 by then-Democratic Governor Pat Quinn to address changes to four of the state's five pension programs. Most notably, Public Act 98-599 called for the termination of the 3 percent compounded cost of living adjustment added in 1989, replacing it with a formula that provides increases on a portion of benefits, depending on years of service. The law would also delay the retirement age for workers age 45 and younger on a sliding scale, and limit the amount of salary used to calculate pension benefits. Under the law, some participants would have the option of freezing their pensions and contributing to a 401(k)-style plan.[1]

After Governor Quinn signed the bill into law, employee unions filed a lawsuit almost immediately, arguing that the Illinois Constitution holds that pension benefits amount to a contractual agreement and those benefits cannot be "diminished or impaired" once they are bestowed. Specifically, the challengers of the law relied on Article XIII, Section 5 of the Illinois Constitution, also known as the "Pension Protection Clause," that provides in relevant part:

> "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency of instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."[2]

Adopted in 1970, the Pension Protection Clause was a solution proposed by the drafters of Illinois new Constitution as a reaction to the concern over ongoing retirement funding deficiencies and the attendant threat to the security of retirees in public pension systems.[3] The clause protects the benefits of membership in public pension systems not by dictating specific funding levels, but by safeguarding the benefits themselves in two ways: (1) mandating a contractual relationship between the employer and the employee; and (2) mandating the General Assembly not to impair or diminish these rights.[4] In theory, the guarantee would induce the General Assembly to meet its funding obligations. Unfortunately, the "inducement" did not have the desired effect. As funding obligations worsened, there have been many attempts over the years to chip away at state retirement benefits. However, the Illinois Supreme Court has consistently held that "the politically sensitive area of how the benefits would be financed was a matter left to the other branches of government to work out. That [the Pension Protection Clause] created an enforceable obligation on the State to pay the benefits and prohibits the benefits from subsequently being reduced was and is unquestioned."[5]

In November of 2014, a circuit court judge in Springfield relied on past case law to agree with the employee union's argument, striking down Public Act 98-599. Shortly after, the state government appealed the decision to the Illinois Supreme Court on the grounds that economic necessity forced the reduction of public employee retirement benefits.

The Illinois Supreme Court rejected the state government's "economic necessity argument." First, the Court held that the reduction violated the Pension Protection Clause, finding that the protections afforded to such benefits by the Clause attach once an individual first embarks upon employment in a position covered by a public retirement system, not when the employee ultimately retires.[6] The Court specifically stated that retirement benefits are unquestionably a "benefit of contractually-enforceable relationship resulting from membership" in the retirement systems.[7]

Next, the State argued that the Illinois financial situation has become so dire that the General Assembly is allowed to invoke the State's "police powers" to override the rights and protections afforded by the Pension Protection Clause in the interests of the greater public good. Police power is the capacity for states to regulate behavior in their state for the betterment of the health, safety, morals, and general welfare of its inhabitants. Although the Illinois and U.S. Constitutions each contain a provision called the Contract Clause, which provides that a state cannot pass a law impairing the obligations of contracts, the State argued that because membership in public retirement systems is an enforceable contract, these contractual rights are subject to modification by the General Assembly through its police power. In other words, the State believed it could enact regulations, like Public Act 98-599, to secure the fiscal welfare of the community, even if that changed its obligations under some contracts, like the ones it has with participants.

The Court rejected this argument for several reasons. The Court reiterated the rule that in order for it to find the State's impairment of a contract proper, it must pass strict scrutiny, meaning Public Act 98-599 must (1) have been passed to further a compelling state interest and (2) be narrowly tailored to achieve that interest. The Court held that the changes to pension benefits contained in Public Act 98-599 constitute an impairment which is too substantial to survive strict scrutiny. Moreover, the Court pointed out that the State sought to impair a contract to which it is itself a party and

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noted that its interest in avoiding the contract or changing its terms was entirely financial. The Court found that the State's self-interest was too powerful and that there were other less-drastic options – such as raising taxes – which the State can adopt to achieve its purpose of fixing the funding of its public pensions. Finally, it noted that this funding problem was foreseeable when the lawmakers in 1970 adopted the Pension Protection Clause, and they could have added some language to it to avoid this result, such as making the guarantees in the clause subject to the authority of the State to step in when public safety and welfare required. However, they chose not to add this type of language.

In striking down Public Act 98-599, the Court focused on Illinois' history of fiscal difficulties and found that even in cases of "great emergency," neither the General Assembly, nor the Governor, nor any Judge can disregard the provisions of the Constitution.[8] After the Court's ruling, Governor Rauner expressed his intention to obtain a constitutional amendment that would aim to clarify the distinction between currently earned benefits and future benefits not yet earned, which he believes would allow the state to move forward on pension reform.

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[1]Hinz, Greg. *State High Court Strikes Down Pension Reform*. Crains Chicago Business. May 8, 2015.

[2]Ill. Const. 1970, art. XIII, § 5.

[3]*Heaton v. Quinn (In re Pension Reform Litig.),* 2015 IL 118585, 32 N.E.3d 1, 5 (Ill. 2015).

[4]*Id*. at p. 6.

[5]*Id*

[6]*Id.* at 15.

[7]*Id.*

Illinois Ruling on Common Fund Doctrine Affects Subrogation and Reimbursement Matters

The Illinois Appellate Court recently addressed the common fund doctrine. *Schrempf, Kelly, Napp & Darr, Ltd. v. Carpenters' Health & Welfare Trust Fund*, 2015 Ill. App. LEXIS 531 (Ill. App. Ct. 5th Dist. 2015). In *Carpenters' Health and Welfare Trust Fund*, James Miller ("Miller") was a participant in the Carpenters' Health and Welfare Trust Fund of St. Louis ("Plan") and was injured when he fell from a ladder. The Plan is a self-funded, multi-employer, employee welfare benefit plan subject to ERISA that expended $86,709.73 on the participant's behalf as a result of his injury.

The Plan documents mandated that the Plan receive 100% reimbursement for the benefits extended to Miller without any deduction for attorney's fees or costs incurred to create the fund of money used to reimburse the Plan. As a condition for payment of Plan benefits, Miller and his attorney were required to complete and sign a subrogation agreement to warrant that they would adhere to the requirements of the Plan in the event of any third party recovery on account of the participant's injuries. The written agreement acknowledged the Plan's right to subrogation and reaffirmed Miller's obligation to reimburse the Plan up to 100% of the payments made, without any deduction whatsoever.

Miller retained the law firm of Schrempf, Kelly, Napp & Darr, Ltd. to represent him in a personal injury action and ultimately settled his claim for $500,000.00. Following settlement, Miller reimbursed the Plan in the full amount of $86,709.73, without any deduction for attorney's fees or costs. Miller's attorney then made a demand on the Plan for payment of attorney's fees in the amount of $28,903.25, representing one-third of the Plan benefits that Miller had returned to the Plan as a result of the settlement. Miller's attorney also requested costs in the amount of $3,020.09. The Plan refused payment, which led to the filing of a separate action based upon the Illinois common fund doctrine.

The Plan filed suit in the U.S. District Court for the Southern District of Illinois and sought an injunction to stay the state court action for attorney's fees and costs. The federal district court entered an injunction and Miller's law firm appealed to the Seventh Circuit. The Seventh Circuit concluded that ERISA did not preempt the law firm's lawsuit and vacated the injunction, allowing the state court litigation to proceed.

The Illinois state appellate court determined that Miller was the plan beneficiary who was bound by the contractual terms of the Plan. His lawyers, however, were not deemed parties to the contract and the contractual provisions did not govern the relationship between the Plan and the law firm. According to the appellate court, the fact that the Plan's terms attempted to shift the payment of attorney's fees to Miller had no effect on the claim by Miller's law firm. As a result, the appellate court affirmed the trial court's ruling granting the law firm one-third of the monies recovered and costs incurred for the successful pursuit of the litigation.

The bottom line is that in Illinois, attorneys have a right to pursue common fund doctrine claims directly against self-funded welfare plans. While we are developing plan document language and litigation strategies to counter this new attack on 100% recovery, this is a new wrinkle that appears to be here to stay.

Final Rule Issued for Preventive Services

On July 14, 2015, the Departments of Labor, Treasury, and Health and Human Services (the "Departments") published final regulations addressing the Affordable Care Act's ("ACA") preventive services mandate. The ACA requires non-grandfathered health plans to cover certain preventive services without cost-sharing. The preventive services that must be provided without cost sharing fall into the following categories:

- Evidence-based items or services with an "A" or "B" recommendation from the U.S. Preventive Services Task Force ("USPSTF");
- Evidence-informed preventive care and screenings for infants, children, and adolescents provided in comprehensive guidelines supported by the Health Resources and Services Administration ("HRSA");
- Immunizations for routine use in children, adolescents, and adults that have a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention ("CDC"); and
- Certain women's services listed in the HRSA guidelines.

The final regulations confirm that when a preventive service is billed together with an office visit, a plan must look to the "primary" purpose of the visit when determining whether it may impose cost-sharing with respect to the office visit. The final regulations also state that if a plan's network does not have a provider who can offer or perform a particular recommended preventive service, then the plan must cover that service without cost-sharing when performed by an out-of-network provider. The final regulations also clarify that if a recommendation or guideline for a preventive service does not specify the frequency, treatment, method or setting for the provision of the particular service, then the plan may use reasonable medical management techniques to determine any coverage limitations. This means that plan sponsors do not necessarily have to defer to the recommendations of a treating physician.

Although the regulation does provide some exceptions, in general it provides that a plan must provide coverage for recommended preventive items and services for an entire plan year, even if the recommendation or guidelines for that service changes or is eliminated during the plan year. However, if the USPSTF downgrades an "A" or "B" recommendation to a "D" rating, or if any item or service is the subject of a safety recall or poses a significant safety concern, a plan is not required to cover the service or item through the end of the plan year.

Because these final regulations apply to plan years beginning on or after September 14, 2015, non-grandfathered health plans should take steps to make sure that their plans are being administered consistently with the final regulations. For further information, please contact our office.

NLRB Decision Could Have Broad Implications on Construction Industry Employers

On August 27, 2015, the National Labor Relations Board ("NLRB" or "Board") issued its decision in *Browning-Ferris Industries of California, Inc.,*[1] significantly redefining its standard for determining joint employer status under the National Labor Relations Act ("NLRA"). In its 3-2 ruling which could have broad implications on future labor issues, the NLRB overturned nearly three decades of precedent and redefined a fundamental concept in employment and labor law – the definition of employer.

For nearly 30 years, the Board has determined whether two separate entities are joint employers, and thus liable for the actions of the other, by assessing whether they exercised direct and significant control over the same employees such that they "share or codetermine those matters governing the essential terms and conditions of employment . . . ." Under the prior rule, separate entities were not considered joint employers unless they exercised direct control over the employees of the second entity. The Board's decision in *Browning-Ferris* expanded the standard to include situations where a company exercises only indirect control over the essential terms and conditions of employment of another entity's employees, or has the right to do so (even without exercising such control).

In the case at issue, Browning-Ferris, a recycling facility that receives and sorts various materials, had contracted with Leadpoint, a staffing agency, to supply employees to its recycling facility. This action arose after a union sought to represent the Leadpoint workers and sought to force Browning-Ferris to be at the bargaining table to negotiate over the terms of a collective bargaining agreement for such employees. Both Leadpoint and Browning-Ferris defended the action on the grounds that Browning-Ferris was a separate entity from Leadpoint and thus could not be forced to bargain with the union over employment terms for Leadpoint's workers. The Regional Director initially agreed. Applying the former standard for joint-employers, the Regional Director found that Browning-Ferris did not exercise direct control over essential terms and conditions of employment and was therefore not a joint-employer.

However, on appeal the NLRB disagreed. In its decision announcing the new joint-employer standard, the NLRB found that Browning-Ferris was a joint-employer of Leadpoint because it exercised indirect control over the essential terms and conditions of employment of Leadpoint's workers. In reaching this conclusion, the Board considered an array of factors such as: (1) Browning-Ferris maintained substantial control over Leadpoint's hiring for workers at the facility; (2) Browning-Ferris had an unqualified right to discontinue use of personnel assigned by Leadpoint or to reject any referral by Leadpoint; (3) Browning-Ferris assigned specific tasks to Leadpoint workers and had oversight of worker performance at the facility; (4) Browning-Ferris controlled hours of work for Leadpoint's workers at the facility; and (5) Browning-Ferris had a significant role in setting wages for Leadpoint's workers. As a result of the Board's finding, since Browning-Ferris is considered to be a joint-employer of Leadpoint, it is obligated to bargain in good faith with the union and will be jointly responsible for any violation of the collective bargaining agreement by Leadpoint.

The Board's decision in *Browning-Ferris* could have broad implications on non-union construction industry employers where it has become more common to utilize staffing agencies to perform work on projects instead of hiring the workers directly. Under this new standard, a contractor that engages such a staffing agency to perform services at a project may be deemed to be a joint employer of the staffing agency's workers if they exercise direct or indirect control over the employees working on their project. The Board's ruling will also likely have a significant impact on union-organizing efforts as it will force companies – which had previously skirted bargaining obligations through the use of these staffing agencies – to bargain with the union.

However, this may not be the final decision on the matter, as Browning-Ferris may appeal the decision to the federal courts.

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[1] 362 NLRB No. 186 (Aug. 27, 2015).

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J&K Welcomes New Associate Attorney Nicollette L. Khuans

During law school, Nicollette focused her studies on litigation. She honed her advocacy skills as an award-winning oralist for Loyola's Phillip C. Jessup International Law moot court team and the New York City Bar Association's National moot court team, distinguishing herself as one of the top advocates in her class. Nicollette's tenure as a 711-Licensed clinician in Loyola's Community Law Clinic and as a Research Assistant to her Mergers and Acquisitions professor allowed her to practically advance her legal writing and research abilities.

Nicollette's practice focuses on ERISA litigation and labor litigation, as well as the representation of Taft-Hartley benefit funds.

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