NICHOLAS L. SAAKVITNE
A LAW CORPORATION
NICHOLAS L. SAAKVITNE
4712 ADMIRALTY WAY, PMB #601
MARINA DEL REY, CALIFORNIA 90292-6998
STEVEN E. ROSEBAUGH
ADMINISTRATOR

(310) 451-3225 FAX (310) 451-9089 E-MAIL saaklaw@aol.com
www.erisafiduciary.com

EMPLOYEE BENEFITS LAW * ERISA FIDUCIARY SERVICES
GENERAL BUSINESS LAW

May 4, 2005

VIA E-MAIL AND OVERNIGHT MAIL

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N - 5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attn: Abandoned Plan Regulation

Re: Comments by Two "White Knights" Regarding Proposed Regulations Governing Termination Of Abandoned Individual Account Plans and "Qualified Termination Administrators" ("QTAs")

Dear EBSA:

We are both "White Knights" appointed by the U.S. Department of Labor as independent ERISA Fiduciaries to oversee the administration, termination and orderly liquidation of orphan retirement plans. Mr. David M. Lipkin, F.S.A. is an actuary and experienced pension administrator, President of Metro Benefits, Inc. in Pittsburgh, PA; he can be reached at david@metrobenefits.com. Mr. Saakvitne is a pension attorney with his own firm; 80% of his practice is as an ERISA fiduciary; he is appointed by Boards of Directors, Bankruptcy Trustees and Courts; his contact information is listed at his website, www.erisafiduciary.com. Each of us has more than 25 years experience as a professional

in the employee benefits field; between us we have provided ERISA fiduciary services for hundreds of retirement plans. Both of us provided comments to the Advisory Council for its Orphan Plan Project.

In brief, we are writing to recommend that the QTA definition in the proposed regulations be expanded to include individuals. Our reasons for the recommendation are set forth below, followed by our suggestions as to safeguards which could be imposed on individual QTAs to protect plan participants and beneficiaries.

I. REASONS FOR EXPANDING QTA STATUS TO AT LEAST SOME CLASS OF INDIVIDUALS

As of a year or so ago, we believe the National Office worked with at least 74 "White Knights"; we suspect that most if not all of these are individuals. There are many large financial institutions active not only as investment custodians and recordkeepers but providing third party administration, benefit distribution and consulting services; nevertheless, **we believe that most ERISA fiduciaries with the requisite experience, judgment and willingness to be both creative and practical in addressing all aspects of orphan plan operation, participant communications and plan liquidation are individuals.** This is particularly so in the small plan market which most frequently will require a QTA's involvement (normally less than 100 participants).

[It is worth noting that Treasury Regulation section 1.408-2, enumerating the requirements necessary for a non-bank Trustee to be approved as Trustee or Custodian of Individual Retirement Accounts, is very onerous and expensive to meet. A non-bank entity must have at least several noncontrolling shareholders (to address continuity concerns); bonding, net worth, auditing and other requirements make the thresholds for obtaining IRS approval very high. These rules may be appropriate for IRA custodians, since an IRA conceivably could be maintained for more than 50 years. They are much less needed in the context of an orphan plan which often can be fully liquidated in 1-2 years].

It would be impractical in our view for financial institutions to obtain QTA status and take custody and manage the plan assets, but contractually delegate to individual White Knights such as ourselves the fiduciary responsibility for administrative decision making for the plan (among other concerns, the institutions would perceive themselves as retaining full

responsibility for our actions). It is far more practical for us to be named as (individual) QTAs, and for us to delegate the financial management and custody of the plan assets to institutions (see part 2 discussion below).

We believe that it is much likely for a qualified individual to have the requisite skills to perform these duties than it is for a financial institution to have them. For example, the proposed regulations provide for simplified Form 5500 reporting, eased concerns regarding plan document updates, and limitations of liability. However, in our experience there are a myriad of issues that frequently arise (forfeiture allocation, fee allocation, missing participants, illiquid assets, IRS issues, EBSA inquiries, uncashed checks, participant death and divorce, contributions owed the plan, implementation of automatic IRA rollovers above and below $1,000, required purchase of joint and survivor annuities, etc.) which have more commonly been resolved by individual professional fiduciaries than institutions. Again, we believe that individuals are more likely to have the skills and agility to perform these tasks than financial institutions.

Accordingly, we believe that if the regulations are finalized in their current form, they will have little practical impact since few financial institutions will be willing or competent to step in and resolve these judgment-call issues for orphan plans notwithstanding the expertise of a number of financial institutions in asset management, recordkeeping, and (in some instances) participant communication. Instead, individual White Knights will continue to perform these roles, and, denied the QTA's ability to take control of a plan without Court order or Board of Directors action, will be appointed by Courts as in the past, often with the assistance of the Office of the Solicitor. This unfortunate result would damage plans, since the added efficiencies offered by the proposed regulations would not be available. This would result in unneeded expense, thus harming, instead of helping, the abandoned participants.

II. SAFEGUARDS WHICH CAN BE IMPOSED ON INDIVIDUAL QTAs TO PROTECT PLAN PARTICIPATION AND BENEFICIARIES

The first issue is a preliminary screening mechanism to identify qualified individuals. Some options:

- grandfather existing White Knights as QTAs.

- in recognition of the fact that the required skills are more likely to reside with individuals, require a professional designation, such as accountant, actuary, or lawyer. In addition, a minimum requirement of ten (or more) years of "responsible" pension experience could also be required.

- provide for National Office and/or EBSA Regional Director Offices to approve individuals as QTAs.

- provide for select organizations (ASPPA, NIPA, or the newly established Center for Fiduciary Studies) to certify select individuals as QTAs, with some guidelines as to experience and qualifications. The organizations should not be exposed to liability for such certifications.

The second issue is what restrictions on plan asset handling (if any) would be appropriate for individual QTAs. Since any restrictions could increase expenses to the plan, we do not recommend any special restrictions on individual QTAs. However, if some restrictions are necessary in order to obtain approval of individual QTAs, some alternatives are:

- plan assets to be held in an IRS approved Group Trust, audited annually by an independent CPA, with all transfers of funds to be through the Group Trust;

- plan assets to be held by a financial institution (in a separate account for each plan) with all transactions to occur through the account and copies of the monthly check register statements to be filed with the 5500;

- some other restrictions such that the individual QTA can have practical responsibility for fiduciary decisions, participant communication, compliance reporting, and all the other specific tasks related to plan termination, while the assets can be parked with a financial institution custodian engendering some appropriate level of reporting and audit trail; and/or

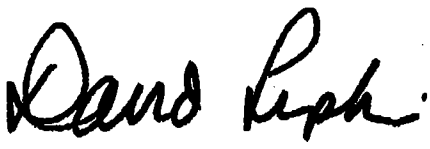
- bonding and fiduciary insurance at appropriate levels.

No regulatory structure will be absolutely fool-proof, even financial institutions have not been immune from misconduct. The perfect should not be the enemy of the good.

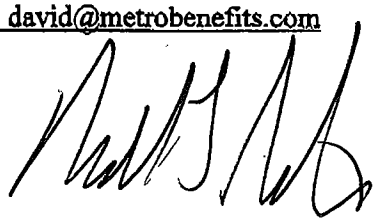
We recognize that these proposals can be further developed; we would be willing to come to Washington, D.C. to meet with you and discuss them. We strongly believe that the expertise you seek in coordinating the orderly termination of orphan plans most likely resides with individuals, not financial institutions, and that limiting QTAs to financial institutions will, in all probability, mean that the rules when finalized will have little practical impact.

Thank you for your consideration.

Sincerely,



David M. Lipkin, FSA, President
Metro Benefits, Incorporated
Pittsburgh, PA
david@metrobenefits.com



Nicholas L. Saakvitne, Esq., President
Nicholas L. Saakvitne, A Law Corporation
Marina Del Rey, California
www.erisafiduciary.com
saaklaw@aol.com

– bonding and fiduciary insurance at appropriate levels.

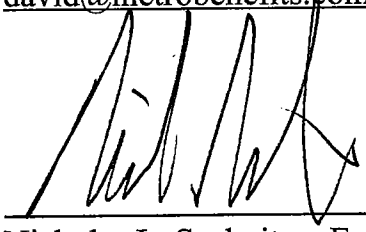
No regulatory structure will be absolutely fool-proof, even financial institutions have not been immune from misconduct. The perfect should not be the enemy of the good.

We recognize that these proposals can be further developed; we would be willing to come to Washington, D.C. to meet with you and discuss them. We strongly believe that the expertise you seek in coordinating the orderly termination of orphan plans most likely resides with individuals, not financial institutions, and that limiting QTAs to financial institutions will, in all probability, mean that the rules when finalized will have little practical impact.

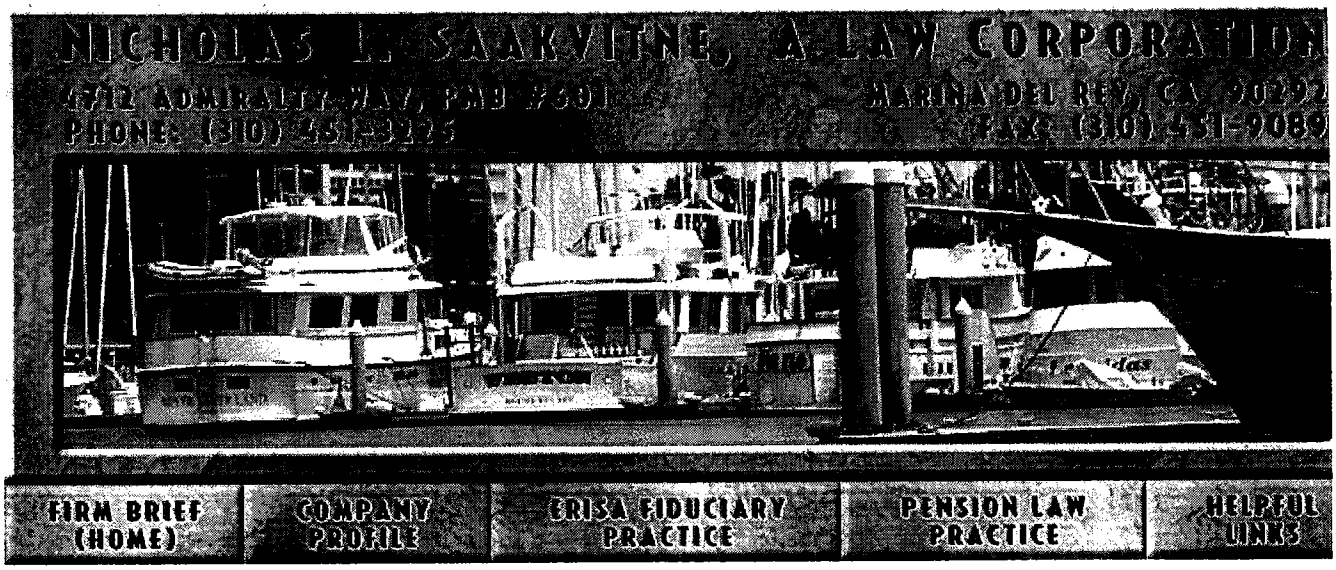
Thank you for your consideration.

Sincerely,

David M. Lipkin, FSA, President
Metro Benefits, Incorporated
Pittsburgh, PA
david@metrobenefits.com



Nicholas L. Saakvitne, Esq., President
Nicholas L. Saakvitne, A Law Corporation
Marina Del Rey, California
www.erisafiduciary.com
saaklaw@aol.com



PRINTABLE PAGE

FIRM BRIEF (HOME)

NICHOLAS L. SAAKVITNE
A LAW CORPORATION

A law firm providing ERISA fiduciary and pension law services, located in Southern California.

Nicholas Saakvitne acts as ERISA Plan Administrator and/or Trustee for more than 50 employee benefit plans at any point in time, many of which are "orphan plans" (the plan sponsor is no longer in business).

His office has coordinated tens of thousands of benefit distributions; the cumulative total of plan assets for which he has had fiduciary responsibility exceeds $500 million.

Mr. Saakvitne also acts as Independent Fiduciary for PTE 2003-39 ERISA litigation settlement evaluations and for ERISA special projects and transactions.

4712 Admiralty Way, PMB #601
Marina del Rey, CA 90292

Phone: **(310) 451-3225** • ***Fax:*** **(310) 451-9089**

saaklaw@aol.com