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DEALS & PEOPLE June 19, 2020

Retirement Industry People Moves

Wagner Law Group appoints ERISA attorney to 'of counsel'; Financial Fitness promotes former executive VP; ProManage adds senior VP and consultant; and more.

By *Amanda Umpierrez*



Art by Subin Yang

Wagner Law Group Appoints ERISA Attorney to 'of Counsel'

The Wagner Law Group has announced that attorney Jordan D. Mamorsky has been elevated to of Counsel.

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financial advisers, plan participants, company executives, third-party administrators (TPAs), employers and others in a broad range of ERISA disputes, including breach of fiduciary duty, denial of benefits, employee stock ownership plans (ESOPs) and deferred compensation matters.

He also works closely with the firm's Bankruptcy and Restructuring group on employee benefit issues arising in Chapter 7 and Chapter 11 bankruptcies and Pension Benefit Guaranty Corporation (PBGC) counseling, disputes and litigation.

Mamorsky received his Juris Doctor from New York Law School and a bachelor's degree from Vanderbilt University, and completed a postdoctoral fellowship in corporate governance and business ethics at Yale University.

Financial Fitness Promotes Former Executive VP

Financial Fitness for Life has promoted Christian Mango to president of its national retirement plan solutions business. He formerly held the title of executive vice president.

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Management.

“Christian’s promotion demonstrates our confidence in his ability to lead this business moving forward,” says **Glenn Spencer, CEO of Financial Fitness for Life’s parent company, Prime Capital Investment Advisors.** “We are very optimistic about Financial Fitness for Life’s opportunities under Christian’s leadership.”

ProManage Adds Senior VP and Consultant

Dan Cassidy has joined the leadership team at ProManage in the newly created role of senior vice president and senior consultant, based in Boston.

Cassidy has over 30 years of experience in the financial services industry. He founded and helmed the investment and actuarial consulting firm Cassidy Retirement Group, eventually merging the business with P-Solve (now River and Mercantile Solutions) in 2012. He remained with River and Mercantile Solutions as managing director, guiding multinational pension and 401(k) plans, corporate 401(k) plans and U.S.-focused 403(b) plans.

“Dan has shown himself to be the right fit for

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Club Vita Appoints Team Leaders to Top Roles

Jennifer Haid has joined Club Vita's international team as chief executive officer.

Haid will oversee all facets of Club Vita's international business, including supporting the U.S., Canada and UK teams, working from New York City. Club Vita has also named **Dan Ryan and Brian Okupski to its board**. Ryan and Okupski will provide strategic direction and guidance to Club Vita's executive leadership team.

Previously, Haid was vice president of Strategic Marketing and Product Development at American International Group (AIG) in New York City, where she established a new international pension reinsurance capability. Prior to AIG, she worked for EY in New York consulting to the insurance community, and in Toronto at Willis Towers Watson. Haid serves on the Society of Actuaries' Board of Directors, was a founding member of its Longevity Advisory Group and acts as a leader and advocate for diversity and inclusion (D&I).

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market.

“Plan sponsors that keep those defined benefit [DB] plans ‘on the books’ face increasing administrative costs and earnings impacts associated with those plans,” says **Joe Sprague, president of the Nationwide Corporate Solutions team.** “Combine those aspects with interest rate and equity market risks, and it’s not surprising that plan sponsors are looking to ‘de-risk’ within the next five years.”

Sprague also announced that **Paula Cole has joined Nationwide to lead the Pension Transfer Risk team.** Cole joins Nationwide from Legal & General Retirement America, a United Kingdom-based market leader in pensions de-risking, where she supported the entrance, scaling and transformation of the U.S. pension risk transfer business. Her experience in pension risk transfer and defined benefit administration spans more than 18 years.

“Paula’s extensive experience in the pension transfer and defined benefits plan space will be key in supporting our entrance and longevity in the PRT market,” Sprague says.

Cole earned a bachelor’s degree in sociology

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Relationship Management Team Members

OneAmerica has added new team members to its relationship management team.

Manny Villagomez was previously with Precept Advisory Group and has close to 14 years of experience. Based in Sherman Oaks, California, **he will work as a relationship manager** with territory is Southern California and Los Angeles.

Tim Weishaar came to OneAmerica from Empower and, before that, OppenheimerFunds, working with retirement plan advisers and plan sponsors for 14 years on their retirement plans. He is serving the Rocky Mountain and Pacific Northwest regions as a **relationship manager** and is based in Denver.

Chris Whittaker had previously worked for Empower Retirement as a retirement education counselor, and now serves the Rocky Mountain region of Colorado and Utah as a **relationship manager**. He is also based in Denver.

Tagged: Investment Managers, retirement plan advisers, retirement plan providers

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Home > News > Compliance > [Lawsuit Says Plan Participants Shorted on Distributions During Coronavirus](#)

COMPLIANCE June 19, 2020

Lawsuit Says Plan Participants Shorted on Distributions During Coronavirus

A special valuation was processed

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A lawsuit has been filed against a company and its 401(k) plan alleging plan fiduciaries, for the benefit of themselves, implemented a special valuation of the plan to avoid paying terminated participants what their account values would have been on December 31, 2019.

Under the provisions of the Behan Bros. 401(k) Profit Sharing Plan, distributions may be made at the participant's election as soon as administratively feasible after the participant has incurred a one-year break in service. The plan does not allow participant direction of investments, and, according to the summary plan description (SPD), accounts are valued as of the last day of the plan year.

The lawsuit notes that the SPD also says the plan administrator may, in its sole discretion, declare a special valuation date for that portion of the plan that is not daily valued in extraordinary situations to protect the interests of participants in the plan or the participant receiving a distribution. It states that extraordinary circumstances include a significant change in economic conditions or market value of the trust fund in which participants' assets are held.

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based on the annual valuation statement of December 31, 2018. The notice further stated, "This is how all distributions have been handled for all participants that have terminated employment." It also advised, "If the market is up from December 31, 2018, you also have an option to keep the funds in the plan and take your distribution at a later date."

The participant responded by email specifically inquiring about the possibility of a special valuation. He noted that the stock market in March 2019 had been as high as 15% above the December 31, 2018, value and that such market volatility would support a special valuation to reflect increased values in the 401(k) accounts. But he was told that a special valuation could not be issued under the terms of the plan.

The lawsuit notes that absent a special valuation, per the terms of the plan, the next valuation date for the plan would have been December 31, 2019. Based on the company's response about the special valuation, the three plaintiffs elected not to take their account distributions at that time and to wait until the December 31, 2019, valuation was completed.

In early January 2020, the plaintiffs requested that their account balances be rolled over to

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rollovers. The email said, "This hopefully will be done by mid-March."

Prior to mid-March, the effects of the COVID-19 pandemic caused a sudden drop in the stock market. In a letter dated March 16, rather than providing the paperwork for distribution, Michael Behan, trustee of the plan, advised in a letter to participants that Behan Bros., at the recommendation of its TPA, would be would be performing a special valuation as of April 30. In a memo dated March 25, Behan provided the plaintiffs with their completed December 31, 2019, valuations, but the memo noted, "It has come to our attention that we will be receiving distribution requests and due to the unprecedented and extraordinary change in the market valuation due to the coronavirus pandemic, we have issued a special valuation date."

The plaintiffs were denied an opportunity to have their 401(k) accounts distributed at their December 31, 2019, value, and their appeal was denied.

The lawsuit notes that as of April 30, the Dow Jones Industrial Average had dropped 14% while the S&P 500 had dropped 9%. The plaintiffs each received letters on May 13 providing the amount that would be

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\$7,670.92; however, amounts given for the December 31, 2019, value of that plaintiff's account and the amount of the distribution creates some confusion on that point.

The plaintiffs contend that it was administratively feasible for the plan and Behan Bros. to issue the December 31, 2019, valuations within 30 days of year-end, as they were able to issue the special valuation within 13 days of April 30. However, the year-end valuations "for some inexplicable reason took almost three months to be issued."

The lawsuit accuses the plan and Behan Bros. of "unreasonably, arbitrarily and capriciously" applying the special valuation to the plaintiffs' distributions in violation of the terms of the plan. It further states that the "plan and Behan Bros. have unreasonably, arbitrarily and capriciously prevented plaintiffs from obtaining the full value of their December 31, 2019, 401(k) account distributions in violation of the terms of the plan." The lawsuit also claims these actions were a violation of the company's fiduciary duties under the Employee Retirement Income Security Act (ERISA).

The [complaint](#) says Behan Bros. has an actual conflict of interest in that it adjudicates claims under the plan and also pays benefits pursuant

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of the assets of the trust fund for the plan, so it is in the company's financial interest to minimize the amount of trust assets distributed to the plaintiffs.

"In March 2019, when the market was up 15% over December 31, 2018, the trustees did not issue a special valuation, presumably because it did not serve the trustees' financial interests to distribute a higher value of trust assets to plaintiffs," the complaint states. It contends it is in the trustees' individual financial interests to reduce the plaintiffs' distributions to preserve funds in the trust funds for themselves and to minimize the loss in value to their individual accounts.

Tagged: ERISA, retirement plan litigation



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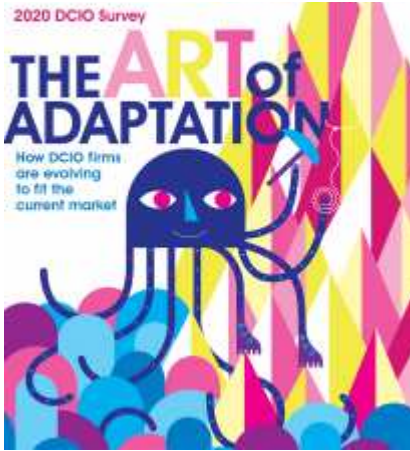
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