

# EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

Compensation and benefits are critical to recruiting and retaining the best employees. And given the heavy regulation involved and the rapid pace at which those regulations change, establishing and administering plans can be challenging.

Our Employee Benefits and Executive Compensation lawyers provide counsel to clients regarding the application of the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) to benefit plans, agreements and compensation programs. We continually review and analyze the latest developments in the field to provide clients the most current and applicable advice. Working closely with human resources personnel, plan administrative professionals and other plan advisers, we strive to provide the most practical and straightforward compliance strategies.

Our lawyers provide counsel on a wide range of benefits and compensation instruments, including:

- Title I of ERISA, including ERISA fiduciary issues in connection with managing and investing of ERISA plan assets (including IRAs) and the prohibited transaction rules.
- Advising on ERISA issues related to the formation of and the investing in investment funds including the “venture capital operating company” and “real estate operating company” rules and the “significant” participation tests under the plan asset regulations; ERISA issues related to borrowers and lenders in credit facilities; and ERISA issues in connection with various securities offerings including mortgage-backed securities, asset-backed securities, collateralized loan obligations and bond offerings.
- Retirement plans, including the establishment and administration of 401(k), 403(b) and 457 plans; qualified profit sharing and money purchase pension plans; defined benefit plans; Employee Stock Ownership Plans (ESOPs); Simplified Employee Pensions (SEPs); Taft-Hartley plans; and government and church plans.
- Welfare and fringe benefit plans, group health plans, health reimbursement arrangements (HRAs), health savings accounts (HSAs); cafeteria plans, including health FSAs and dependent care assistance accounts; group life, disability and indemnity plans; Voluntary Employee Beneficiary Associations (VEBAs); and commuter benefits, tuition assistance and other fringe benefit plans.
- Executive compensation, equity compensation, nonqualified deferred compensation plans, supplemental executive retirement plans (SERPs), severance and change in control plans and agreements, phantom equity arrangements, executive employment agreements, Section 457 plans for governmental and tax-exempt organizations, and annual and long-term incentive compensation arrangements.

We also have experience with joint boards of trustees, government plans and systems, IRS and Department of Labor practices and procedures, including audits and correction programs, the prohibited transaction rules of ERISA and the Internal Revenue Code, and employee benefits in connection with mergers and acquisitions.

## EXPERIENCE

**\$50 Million+ Corporate Debt Restructuring**

Advised a client in a corporate debt restructuring of more than \$50 million that allowed it to part ways with the family of its deceased founder. The restructuring included a comprehensive court-approved settlement agreement involving the payoff of several debt obligations, the release of the related security agreement, the purchase and extinguishment of a warrant to purchase over 500,000 shares of common stock of the client's holding corporation, and the release of rights under multiple purchase agreements, including a stock purchase agreement. The negotiated settlement agreement price included approximately \$17 million of debt forgiveness to the client's benefit. Also represented the client in a \$2 million revolving loan and a \$44 million term loan, handled employment agreements for the CEO and CFO, negotiated landlord consents on client leases in dozens of locations, and provided assurances to the lender on the client's employee stock ownership plan.

**Representation of CEO in Compensation, Wrongful Termination Dispute**

Represented former CEO of a major corporation in a dispute involving wrongful termination and compensation including stock options.

**\$65 Million Sale of Specialty Home Furnishings Business**

Represented the seller, a manufacturer of specialty home furnishings, in its acquisition by a leading brand aggregator in numerous different consumer products spaces. The sale, for \$65 million in cash and equity, represented the buyer's first acquisition in the home furnishings space. We also provided counsel on employment, employee benefits, tax, patent, and intellectual property aspects of the transaction.

**\$108 Million Acquisition of Bank Holding Company**

Represented Delta Bancshares Company, bank holding company of Jefferson Bank and Trust, St. Louis, Missouri, in its merger with a subsidiary of First Mid Bancshares, Inc. (NASDAQ: FMBH), bank holding company of First Mid Bank & Trust, Mattoon, Illinois. The total consideration for this cash and stock deal was approximately \$108 million. We also provided counsel on employee benefits and tax aspects of the transaction.

**Representation of Employee Benefits Consultant in Misrepresentation, Fraud Case**

Defended multimillion-dollar claims against employee benefits consultant for negligent misrepresentation and fraud.

**Acquisition of Franchise Restaurants**

Represented a private investment firm in its acquisition of franchise restaurant outlets across multiple states. Handled the acquisition agreement and other operative documents, due diligence, franchise documentation and licensing.

**Summary Judgment in \$850,000 Employment Contract Dispute**

Obtained summary judgment in Missouri state court on behalf of an employer in the health care and life sciences field. A former employee had sought over \$850,000 in alleged unpaid bonuses.