

May 25, 2007

Members of Congress apparently remain concerned about possible executive compensation abuses by public company executives. While the "Shareholder Vote on Executive Compensation Act" (H.R. 1257) passed by the House last month awaits Congressional action, key members of the House of Representatives apparently now are looking into other perceived executive compensation abuses. Earlier this month, the powerful Chair of the House Committee on Government Oversight and Reform, Henry A. Waxman, announced that the Oversight Committee "is conducting a preliminary inquiry into executive compensation practices, including the role played by executive pay consultants." Letters set to top executives at six leading executive compensation consulting firms dated May 8, 2007 by Congressman Waxman indicate that the Oversight Committee is weighing the need to add executive compensation consultant independence or conflict of interest disclosure requirements to the ever-expanding the Sarbanes-Oxley executive compensation disclosure and auditor independence rules, impending Internal Revenue Code Section 409A deferred compensation requirements, and other federal executive pay regulations enacted in recent years.

In his letters to Pearl, Meyer & Partners; Towers Perrin; Frederick W. Cooke & Co.; Mercer Human Resources Consulting; Hewitt Associates; and Watson Wyatt, Congressman Waxman stated that press reports, recent company disclosures, and concerns expressed by shareholders and investors have raised questions about the independence of the advice companies receive from executive compensation consultants. Pointing to press reports¹ that Hewitt Associates received more than half a billion dollars from Verizon from 1997-2006 for services rendered to Verizon other than its executive compensation services as an example, Chairman Waxman stated some firms providing executive pay advice to a company's board also receive substantial fees for performing other types of services for company management, such as employee benefit plan and pension plan consulting. "[L]ittle is known about the extent of this practice, however, because the Securities and Exchange Commission does not require companies to disclose whether executive compensation consultants perform other services for management," he wrote.

To further the Committee's understanding of these issues, Congressman Waxman asked the six consulting firms by May 29, 2007 to disclose to the Oversight Committee each company listed among the top 250 companies measured by revenue in the 2007 Fortune 500 list for which the consulting firm alone or with its affiliated companies, provided both executive compensation consulting services as well as other types of services. He also asked the consulting firms to provide the following additional information about their relationship with each such identified company:

- Describe the nature of the executive compensation consulting services provided by your company;
- Provide the total revenues received annually for providing executive compensation consulting services;
- Describe the nature of all other services (other than executive compensation consulting services) provided by your company; and
- Provide the total revenues received annually for providing these other services.

The probe into the relationship between public companies and their executive compensation consultants reflects the continuing concern of Congress, as well as federal and state regulators with the executive compensation practices of public, nonprofit and other organizations and comes just as final Internal Revenue Code Section 409A executive compensation regulations and other reforms are about to take effect. Even if Congress doesn't enact additional reforms, public and non-public businesses, their executives and compensation and benefit consultants face a continuing challenge ensuring that their executive and deferred compensation practices comply with Sarbanes-Oxley, the new Internal Revenue Code Section 409A rules, and other federal law changes. As enforcement of executive pay regulations is a high priority for federal regulators, and this emphasis is not only directed to public companies and their executives. New Internal Revenue Code Section 409A regulations apply to both public and nonpublic companies. Furthermore, the Internal Revenue Service in recent years has undertaken several initiatives focusing on executive compensation practices by non-profit, as well as other non-public companies. In light of these developments, all employers and their compensation advisors should carefully monitor the adequacy of their existing executive compensation practices as well as keep a careful eye out for additional reforms.

You can review copies of Congressman Waxman's letters to the consulting companies through the link included in the copy of this alert posted on under the Breaking News link at CynthiaStamer.com. If you want assistance evaluating your executive compensation practices and exposures or have other questions about the implications of this investigation, Internal Revenue Code Section 409A, Sarbanes-Oxley or other federal regulatory and enforcement positions on your human resources and internal controls practices and liabilities, please contact: Cynthia Marcotte Stamer, P.C., Member, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, LB 48, Dallas, Texas 75240. Telephone (972) 419-7188. E-mail cstamer@gpm-law.com.

We hope that this information is useful to you. If you or someone else you know would like to receive future Alerts or other information about developments, publications or programs, please be sure that we have your current contact information – including your preferred e-mail – by providing that information to us through registration on our website at Cynthiastamer.com or via telephone, fax or e-mail.

For other helpful resources and information about corporate compliance and human resources matters, go to CynthiaStamer.com or contact Ms. Stamer.

ABOUT CYNTHIA STAMER

Board Certified In Labor and Employment Law by the Texas Board of Legal Specialization, attorney Cynthia Marcotte has nearly 20 years experience helping employers and business leaders design, implement, administer and defend human resources and other internal controls, outsourcing and other external services arrangements, employee benefit and compensation, and other human resources management and legal risk management practices. Her practice focuses on working with businesses to manage their people and processes to help the business prevent and solve problems, manage risks and costs, and support other business objectives.

¹ *Outside Advice on Boss's Pay May Not Be So Independent, New York Times (April 10, 2006).*

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal consultant, author and speaker, who regularly conducts management and other training on a wide range of human resources and other related risk management matters. She also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations. For instance, in addition her many leadership roles in the American Bar Association, Ms. Stamer also serves the editorial advisory board of The Bureau of National Affairs, Inc. (BNA), Employee Benefits Library on CD and various other editorial advisory boards, is a past Chair of the Dallas Bar Association's Executive Compensation and Employee Benefit Committee, is a former Board Member and Continuing Education Chair of the Southwest Benefits Association, a former member of the Society For Human Resources Management's Consultants Forum and Region IV Boards, on the Board of Directors of the National Kidney Foundation of North Texas, and in leadership roles in various other professional, charitable and civil organizations.

Ms Stamer is the author of 100s of publications on a host of human resources and related issues. Her writings have appeared in a variety of other publications, including works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, and Government Institutes, Inc. and others. For a listing of some of these publications, see cynthiastamer.com. Her insights on human resources risk management matters also have been quoted in The Wall Street Journal, various publications of The Bureau of National Affairs and Aspen Publishing, the Dallas Morning News, Spencer Publications, Health Leaders, Business Insurance, the Dallas and Houston Business Journals and a host of other publications.

IMPORTANT NOTICES REGARDING THIS COMMUNICATION

This publication is provided by attorney Cynthia Marcotte Stamer for general informational and educational purposes to clients and other interested persons. Neither its distribution to any party nor any statement or information it contains is intended to or shall be construed as establishing an attorney-client relationship or to constitute legal advice. Readers also are cautioned that the information in this publication may not apply to all situations. Consequently, readers must not rely upon this publication or information it contains as a substitute for competent individualized legal advice about the specific circumstances of the reader. If you have received this publication in error or do not wish to receive these in the future, please notify us of your preferences to the attention of Ms. Stamer via email, fax, regular mail or telephone.

REMINDER ABOUT ELECTRONIC COMMUNICATION SECURITY: E-mail and other electronic communication are not secure unless appropriate encryption methods are used. Therefore, they may present heightened risks of security breaches of the communication. Electronic communications also generally are subject to discovery on the same terms as other communications. Please consider carefully these concerns before communicating by e-mail or other electronic means. If you wish for us to communicate with you by means other than e-mail or wish for us to arrange for encryption of our e-mail communications, please contact us at 972.419.7188.

IMPORTANT NOTICE REGARDING TRANSMISSIONS OF PROTECTED HEALTH INFORMATION: Protected Health Information (PHI) is individually identifiable health information. Any PHI contained in this e-mail is intended only for the intended recipient and is disseminated subject to the understanding that all requirements of HIPAA and other applicable laws for this disclosure have been met. If this communication contains PHI, you are receiving this information subject to the obligation to maintain it in a secure and confidential manner. Re-disclosure without additional consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties as described in state/federal law. If you are not the intended recipient, you are hereby notified that any disclosure, copying or distribution of this information is strictly prohibited. If you have received this message in error, please notify the sender immediately to arrange for return or destruction.

ANTISPAM NOTICE: Pursuant to the CAN-SPAM Act this communication may be considered an advertisement or solicitation. If you would prefer not to receive future marketing and promotional mailings or to provide other directions about the tailoring of messages directed to your attention, please contact us via email to cstamer@gpm-law.com <<mailto:cstamer@gpm-law.com>> or via postal mail to Cynthia Marcotte Stamer, Member, Glast, Phillips, & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, L.B. 48, Dallas, Texas, 75240, Attention: Cynthia Marcotte Stamer, P.C

CIRCULAR 230 NOTICE: The following disclaimer is included to comply with and in response to U.S. Treasury Department Circular 230 Regulations. ANY STATEMENTS CONTAINED HEREIN ARE NOT INTENDED OR WRITTEN BY THE WRITER TO BE USED, AND NOTHING CONTAINED HEREIN CAN BE USED BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER FEDERAL TAX LAW, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED TRANSACTION OR MATTER ADDRESSED HEREIN.