

TECH NEWS

Cyber vigilance: Protecting Taft-Hartley plans in a digital world

by Jason Wolan, CIO



Jason Wolan is chief information officer at BeneSys Inc.

In the world of Taft-Hartley benefit plans — where the well-being of hardworking members and their families depends on accurate, timely and secure information — cybersecurity is not optional. It's essential.

Ransomware attacks, phishing schemes and social engineering are now common threats, and not just for Fortune 500 companies. Smaller, specialized entities like Taft-Hartley funds are firmly on hackers' radar. Why? Because cyber criminals know that these organizations often:

- Work with limited IT resources.
- Use legacy systems.
- Handle high-value, regulated data such as Social Security numbers, medical records, financial information and personally identifiable information.

Just one data breach can cause reputational damage, financial loss and regulatory scrutiny.

Fiduciaries governed by ERISA (the Employee Retirement Income Security Act) are required to act prudently in the interest of plan participants. Courts and regulators are beginning to view failure to secure digital assets as a failure of fiduciary responsibility.

So, what can trustees, fund administrators and technology partners do to stay ahead in an increasingly hostile cyber landscape? Follow these five pillars of cyber vigilance:

- 1. Put cyber risk management on the boardroom agenda.** Trustees and administrators should treat cybersecurity as a strategic priority, not just an IT issue. Set clear policies, fund your defenses and stay informed.
- 2. Insist on vendor and partner due diligence.** Third-party vendors (TPAs, custodians, software providers) can introduce risk. Require proof of regular penetration testing, SOC reports, and security certifications like ISO 27001 or HITRUST. Don't be afraid to ask tough questions.
- 3. Educate your people.** Phishing emails are the No. 1 entry point for attackers. Regular cybersecurity training and simulated phishing exercises help staff recognize threats.
- 4. Back up, test, repeat.** Even the best systems can fail. Ensure that all critical data is regularly backed up — securely and offline. But don't stop there: Test your recovery process. When ransomware hits, time is everything.
- 5. Use multifactor authentication everywhere.** No login should rely solely on a password. MFA is now a baseline requirement for secure access — especially for administrative portals and financial platforms.

By fostering a culture of security-first thinking, funds, TPAs and their associated vendors can maintain the trust of the members they serve. ●



SHUTTERSTOCK.COM

Wrap up the year with the gift of feedback

by Ed Wolyniec, CEO

Our feedback is welcome at any point during the year, but every December, we do hope you'll make time to complete our annual client satisfaction survey. Our goals are simple:

- Be the best TPA partner for trustees and members.
- Be the best TPA overall in the Taft-Hartley space.

We use the Net Promoter Score methodology for the survey and over the past five years have consistently received a positive score from you, our clients. Candidly, I always focus more on any lower scores because that tells us where we need to improve. Our leadership team reviews and discusses all feedback and looks for actionable suggestions. If you can spare the time to complete the survey, please keep in mind that we love to see specifics on how we can better serve your trust and members.

My best wishes to you for a holiday season that is safe, happy and restful! •

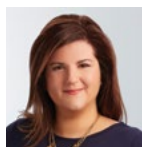


LEADERSHIP

Meet our new COO, Healthcare Services VP and claims director

In our quest to be the best TPA and software provider to Taft-Hartley and other benefit plans, BeneSys continues to make important organizational changes, including the following promotions.

• **Dayna Thorman, Chief Operating Officer.** Dayna brings deep technical knowledge, operational expertise and a strong strategic vision to her new role as COO. Since joining BeneSys in 2004, Dayna has overseen complex client implementations and has been instrumental in guiding our teams through system



migrations, automation initiatives, and data-driven strategies that have strengthened client satisfaction and operational efficiency.

• **Janet Jackowicz, Vice President, Healthcare Services.** Janet, who joined BeneSys in 2017, will oversee the day-to-day operations of our Eligibility and Member Services teams in addition to her current teams — Claims Processing and Claims Systems Implementations. With strong leadership and a passion for continuous improvement, Janet will focus on



streamlining healthcare service delivery by aligning these key areas to create a more seamless experience for our members and enhance overall satisfaction.

• **Tia Wooden, Claims Director.** Tia, who has been instrumental in our recent claims automation projects, will lead the day-to-day claims operations for all BeneSys clients nationwide, overseeing medical, dental, vision and specialty claims. Her proven leadership and operational expertise will help ensure our claims services remain efficient, accurate and client-focused. •



Creative ways to hold parties liable for contributions to pension plans

by Tom Shaevsky, General Counsel



Tom Shaevsky is general counsel at BeneSys Inc. He has spent more than 25 years practicing ERISA/employee benefits law.

ERISA (the Employee Retirement Income Security Act of 1974 as amended) as well as court decisions provide creative ways for a variety of parties to be liable for contributions to defined benefit pension plans — for both ongoing contribution liability and withdrawal liability.

The controlled group concept — who is the employer?

The actual entity — in other words, the common law employer of the employees participating in the pension plan — is liable for ongoing contributions to the plan and for liability if it withdraws from participating in the plan.

Certain entities that are related to the employer can be jointly and severally liable with that employer for contributions to the pension plan and for withdrawal liability — depending on the level of common ownership and common control.

ERISA section 4001(b)(1) provides in relevant part that “all employees of trades or businesses (whether or not incorporated) which are under

common control shall be treated as employed by a single employer and all such trades and businesses as a single employer.” The Pension Benefit Guaranty Corp. is instructed to issue regulations consistent and coextensive with IRS regulations pertaining to commonly controlled trades or businesses under Internal Revenue Code section 414(c). The PBGC has done so: See, for example, PBGC Regulation 4001.3.

Very generally speaking, IRS regulations define three types of controlled groups:

- **Parent-subsidiary.** A parent-subsidiary controlled group exists where one business owns at least 80% of one or more other businesses.
- **Brother-sister.** A brother-sister controlled group may exist where the same five or fewer individuals own at least 80% of two or more businesses, and taking into account “identical” ownership of each such person, such persons are in “effective control” of each organization.
- **Combined.** A combined group of trades or businesses under common control is any group of three or more organizations, if (1) each such





Unsuspecting owners of a participating employer can be inadvertently deemed to be operating a trade or business and ultimately held personally liable for the withdrawal liability.

organization is a member of either a parent-subsidary or brother-sister group of trades or businesses under common control, and (2) at least one such organization is the common parent organization of a parent-subsidary group of trades or businesses under common control and is also a member of a brother-sister group of trades or businesses under common control.

An activity 'on the side' can result in personal liability

The case of *Central States Southeast and Southwest Areas Pension Fund v. Miller*, 868 F. Supp. 995 (N.D. Ill. 1994), demonstrates how unsuspecting owners of a participating employer can be inadvertently deemed to be operating a trade or business and ultimately held personally liable for the withdrawal liability of the participating employer. In this case, Miller Brothers was a corporation, owned and operated by the Millers (husband and wife). Prior to December 1986, Miller Brothers made contributions to the multiemployer pension fund pursuant to a collective bargaining agreement. In December 1986, Miller Brothers was dissolved and ceased making contributions to the pension fund, which then determined that Miller Brothers effected a "complete withdrawal" from the fund. On Aug. 28, 1987, Miller Brothers notified the fund that it had no assets to satisfy their withdrawal liability and defaulted on the requested payments.

In July 1986, the Millers bought a house, as joint tenants, in order to sell it to their daughter and her husband. The Millers' daughter and her husband did not move into the house because of marital difficulties, and the house remained vacant during the first two months after the Millers purchased it. In September 1986, Robert Miller entered into an agreement to rent the house to two individuals unrelated to the Millers. The Millers asserted that they never intended to make a profit from the house, and the only reason they rented it out was to minimize their losses until their daughter's marital problems

subsided and she decided to buy the house. This was the Millers' first involvement in leasing real property to third parties.

The rental of the house was not related in any way to the business of Miller Brothers, nor was the house ever used to benefit Miller Brothers. No money from any account of Miller Brothers was used to purchase or maintain the house. The Millers did not buy, sell or rent any property to Miller Brothers, nor did they have any type of lease with Miller Brothers. When it became apparent that their daughter's divorce was inevitable, the Millers decided to sell the house.

The Millers argued that because the rental of the house was an activity totally unrelated to Miller Brothers, it did not constitute a trade or business within the meaning of ERISA. They also contended that because the rental of the house was not continuous and regular and not engaged in primarily for profit or income, it was not a trade or business within the meaning of ERISA.

After engaging in much analysis, the court held that the Millers' rental activity was (1) a trade or business, (2) regular and continuous and designed to produce income, and (3) under common control with the withdrawing corporation. The court held that the lack of an economic relationship between the withdrawing employer (Miller Brothers) and the Millers' real estate activity did not defeat the plan's claim for withdrawal liability against the Millers personally.

Corporate officers 'withholding' plan assets

With regard to *employee* contributions to section 401(k) plans, Department of Labor regulation 2510.3-102 provides that participant contributions can become plan assets before such contributions are actually deposited into the section 401(k) plan. The regulation provides in relevant part that "the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution or repayment of a participant loan to the plan, as of the earliest date



If found to be an ERISA fiduciary, the officers (and directors) could then be held individually liable for the unpaid contributions to the plan.

on which such contributions or repayments can reasonably be segregated from the employer's general assets."

By contrast, employer contributions due and owing to a retirement plan are generally not considered plan assets until they are actually deposited into the plan. See, for example, DOL Field Assistance Bulletin No. 2008-01. Some pension plan documents and/or collective bargaining agreements, though, explicitly state that due and owing — but unpaid — employer contributions are considered plan assets. Some courts have held that unpaid employer contributions are plan assets where the pension plan documents and/or collective bargaining agreements explicitly define them as such.

In these cases, the courts will consider whether the officers (or directors) of the employer exercised a level of control over corporate assets sufficient to make them a fiduciary under ERISA. If found to be an ERISA fiduciary, the officers (and directors) could then be held individually liable for the unpaid contributions to the plan. See, for example, *Bricklayers & Allied Craftworkers Local 2, Albany, N.Y. Pension Fund v. Moulton Masonry & Constr., LLC*, 779 F.3d 182 (2nd Cir. 2015), and *ITPE Pension Fund v. Hall*, 334 F.3d 1011 (11th Cir. 2003). Contrary decisions (i.e., holding that unpaid employer contributions are not plan assets and/or that officers/directors cannot be held personally liable) include *Board of Trustees of Ohio Carpenters' Pension Fund v. Bucci (In re Bucci)*, 493 F.3d 635 (6th Cir. 2007); *Navarre v. Luna (In re Luna)*, 406 F.3d 1192 (10th Cir. 2005); and *Glazing Health and Welfare Fund v. Lamek*, 896 F.3d 908 (9th Cir. 2018).

Corporate officers signing CBAs in their individual capacity

A recent case from the U.S. Court of Appeals for the Seventh Circuit again shows the importance of express wording of plan-related documents. In *R.R. Maint. & Indus. Health & Welfare Fund v. Mahoney*, 144 F.4th 957 (7th Cir. 2025), the participating employer signed a memorandum of

agreement adopting a collective bargaining agreement and the terms of the plan's trust agreement. The trust agreement contained a provision that officers and directors of signatory employers would be personally liable for underpayments to the plan caused by willful violations of the agreement. The participating employer (a limited liability company) dissolved, and the plan sought to hold the employer's sole manager/member personally liable for the unpaid contributions.

The manager argued that he had signed the memorandum of agreement only in his capacity as a manager of the employer — not in his individual capacity. The district court ruled in favor of the plan. On appeal the Seventh Circuit reversed the decision and held that state law (in this case Illinois law) applied. The court stated that an individual who signs a contract in his/her representative capacity (e.g., as the sole manager of the limited liability company) is not personally bound to the contract absent clear evidence to the contrary. So, the signature suggested no personal liability; yet the provision at issue suggested otherwise. So, the court determined that because a genuine factual dispute existed, a jury (or a judge in the absence of a jury) should conclusively determine the facts.

In sum, depending on the facts, a plan-related document that contains a personal liability provision combined with an officer (or director) of a participating employer signing an agreement in his/her personal capacity could make the officer/director personally liable for the employer's contributions to the plan.

Private equity owners

A recent court decision, *Longroad Asset Management LLC v. Boilermaker-Blacksmith National Pension Trust*, highlights that if a participating employer is owned by a private equity entity, the potential liability of that entity (and its other portfolio companies) for unpaid contributions to the pension plan remains unsettled law.

A previous seminal case, *Sun Capital Partners III, LP v. New Eng. Teamsters & Trucking Indus. Pension*



In *Longroad*, the court addressed whether a private equity entity and its management entities could be held liable for multiemployer plan withdrawal liability under ERISA.

Fund, 724 F.3d 129 (1st Cir. 2013), addressed a private equity entity's potential liability for the withdrawal liability of one of its portfolio companies, with the U.S. Court of Appeals for the First Circuit holding that a private equity fund could be considered a trade or business subject to pension liabilities. The case involved multi-employer plan withdrawal liabilities of a bankrupt portfolio company. The court applied a facts and circumstances analysis to determine whether the private equity entity's management and control over the portfolio company gave rise to a trade or business. The court held that the private equity entity was engaged in a trade or business based on partnership agreement provisions and disclosure language referencing active management of portfolio companies, and the private equity entity's authority to appoint portfolio-company board members, along with other factors. In other words, using what is referred to as an "investment plus" test, the court determined that two Sun Capital funds were not merely passive investors but instead were trades or businesses because they operated and managed the portfolio company and were provided a direct economic benefit that an ordinary passive investor would not derive. However, six years later, in a subsequent decision, the court held that because (1) neither Sun Capital fund owned at least 80% of the portfolio company and (2) the two funds were determined not to be in an implied partnership with each other, the two funds were not considered in common control with the portfolio company and thus not responsible for the portfolio company's withdrawal liability.

Since the 2019 *Sun Capital* decision, there had been a lack of court decisions on the private equity liability topic until recently. On Aug. 19, 2025, the U.S. District Court for the Western District of Missouri issued an opinion in *Longroad Asset Management LLC v. Boilermaker-Blacksmith National Pension Trust*, where it

addressed whether a private equity entity and its management entities could be held liable for multiemployer plan withdrawal liability under ERISA. The court found that the limited partnership was an "employer" for purposes of ERISA withdrawal liability — in other words, the limited partnership could be liable for the portfolio company's unpaid contributions to the pension plan. The court's reasoning was that the limited partnership was actively managing its portfolio companies, so its conduct went beyond mere passive investment activity and hence satisfied the "plus" factor under the investment plus analysis. However, the court held that the management company and the general partner should not be treated as a partnership-in-fact with the limited partnership (i.e., the management company and general partner would not be liable for the unpaid contributions). The court's reasoning was that their roles were limited to a passive general partner and a contractual management agent.

Longroad reiterates what the First Circuit had previously held: Under certain circumstances a private equity entity can be potentially liable for the unpaid withdrawal liability of a portfolio company. The key is whether the private equity entity is considered a trade or business if its activities extend beyond passive investment. The governing documentation and operational aspects of a private equity entity's arrangement with its portfolio companies can dictate the entity's potential liability for a portfolio company's unpaid contributions to a pension plan.

Consult with your legal professionals

The above discussion is extremely general in nature, yet the concepts referenced are highly detailed and complex. Legal counsel for pension plans should be consulted for questions and for developing strategies. •

This article is provided for informational purposes only and does not constitute legal advice. Readers should consult with their own legal counsel before acting on any of the information presented.

Powering real-time connectivity with SpyGlass APIs

In today's healthcare environment, data needs to move quickly, securely and intelligently. While traditional batch processing remains a trusted and effective method for transferring large volumes of data, real-time integration through application programming interfaces, or APIs, offers an additional layer of flexibility and responsiveness. Beacon's premier claims processing technology, SpyGlass, provides a powerful suite of APIs and secure real-time file exchange capabilities that work alongside existing infrastructure to enhance connectivity and streamline operations.

SpyGlass APIs provide real-time access to a wide range of data and functionality across client ecosystems, including claims adjudication, benefits administration and member services. Whether you are connecting internal analytics tools, external portals or customer service applications, SpyGlass makes it easy to share data securely and efficiently across all the



Beacon Technologies Group, a leading provider of health claims management solutions, including SpyGlass, is part of the BeneSys family of companies.

systems you rely on.

These real-time capabilities extend the power of SpyGlass beyond the claims platform. They can help you gain quicker insight into operations, improve responsiveness to members and providers, and adapt more easily to new programs or partnerships. With accurate, up-to-date data available at every point of interaction, your team and trading partners can reduce delays and make better, faster decisions.

Our integration tools are built to work with a wide range of systems, complementing the systems and processes you already have in place. SpyGlass connects the dots between your existing tools to help reduce manual steps, eliminate delays and make better use of your data.

To learn more about how SpyGlass makes it easier to connect your systems and share data in real time, visit beaconspyglass.com or contact us at marketing@beaconspyglass.com to start the conversation. •

ABOUT BENESYS

BeneSys has been providing Taft-Hartley trust fund administration and IT services since 1979. Our dedicated specialists understand the nuances of Taft-Hartley benefit plans, and our software system, BenefitDriven, is designed to give our clients and their plan Participants the most efficient tools for self-administering trust fund accounts.

CORPORATE HEADQUARTERS

700 Tower Drive, Suite 300
Troy, MI 48098-2808
248-813-9800

WEST COAST HEADQUARTERS

7180 Koll Center Parkway, Suite 200
Pleasanton, CA 94566-3184
925-398-7060

BUSINESS DEVELOPMENT

National Sales Director
Thomas Lally: 401-378-1299
thomas.lally@benesys.com

SaaS Sales

Blake Holderread: 217-801-8911
bholderread@beaconspyglass.com

www.BeneSys.com

FOLLOW US

To keep up with BeneSys between *Navigator* editions, visit us at www.BeneSys.com or follow us on LinkedIn.

