



*The American Benefits Institute is the education and research affiliate of the American Benefits Council. The Institute conducts research on both domestic and international employee benefits policy matters to enable public policy officials and other stakeholders make informed decisions. The Institute also serves as a conduit for global companies to share information about retirement, health and compensation plan issues.*

## HIGHLIGHTS FROM IBIS ACADEMY & COUNCIL INTERNATIONAL BENEFITS COMMITTEE IN PRAGUE; FRENCH COURT HOLDS U.S. PARENT LIABLE

### **IBIS ACADEMY FOCUSES ON EMPLOYEE BENEFITS ACROSS THE GLOBE**

Members and staff of the American Benefits Council – through the Council’s education and research affiliate, the American Benefits Institute – partnered with IBIS Advisors at its recent Academy, held in Prague, Czech Republic. As in the past, this year’s program covered a wide range of topics with a focus on developments around the world and new approaches by companies to meet the challenges faced by multinational companies.

A record number of Council members participated in both the Academy and the Council’s International Benefits Committee meeting held in conjunction with the conference (see related story below). Several speakers, including Council members, offered perspectives on the impact of economic and political challenges facing plan sponsors and their benefits programs. The following is a summary of the topics and discussion at the Academy.

## *Governance Challenges and Measuring Employee Satisfaction*

A panel of senior corporate HR executives provided the attendees with perspectives on the changes and the challenges currently being faced by multinational companies providing benefits and what tools they are finding most effective. From first-hand experience, Council Board member **Beth Ewing**, FedEx Corporation, examined the challenges a company faces when implementing a single governance structure, including the merging of separate fiduciary bodies, varying strengths of the existing committees and reaction of local employees to corporate involvement. Bob Hartley, BMC Software, described the challenges and process needed to respond to information and data requests about benefits programs associated with multinational mergers and acquisitions, including how to identify legal and employee ramifications. **Stephan Dolling**, from Council Board member company Merck & Co., Inc., examined post-merger harmonization and how companies grapple with combining teams across many different countries. Dolling gave a first-hand description including the development of a timeline, side-by-side comparisons and recommendations for harmonizing benefits, setting expectations and using guiding principles, identifying financial impact and establishing a governance and tracking process.

Another panel of speakers offered insight into the tools their companies have developed to more effectively engage employees in company global total rewards programs and to measure job satisfaction. Identifying the elements of a rewards program that are most valued by employees is a key challenge when operating in multiple countries. **Deane Ilukowicz**, Hypertherm, Inc., provided a first-hand account of how increasing communication and transparency around total rewards had paid off, noting the direct correlation between receiving sufficient compensation information and job retention. **Allison Klausner**, Council Board member from Honeywell, examined the challenges associated with companies that have diverse lines of business in many countries with varied legally required compensation and benefit structures. Using specific country and benefit examples, Klausner walked the listeners through the company process from the analysis of applicable law, identification of stakeholders, obtaining appropriate support and approval of local management to communication with the employees.

Another session gave attendees an opportunity to learn from research recently performed by Aegon Global and published in its paper, *New DC – A Shared Responsibility*. The report is based on 18 interviews with multinational companies, illustrating concerns companies share regarding retirement income adequacy. The key findings from the paper include observations regarding getting the most value from defined contribution plans through outcome orientation and more effectively sharing responsibility with employees. **Peter Drew**, from Clarks, representing one of the interviewed companies, provided an overview of the actions his company had taken to strengthen retirement income adequacy while controlling pension risk. The company remade its retirement program to provide greater flexibility to employees; allowing

them to direct contributions within a hybrid scheme comprised of a money-purchase section providing an annuity based on what the account will purchase and a unitized final salary section.

Given the importance of governance, flexibility and cost control, many companies are examining “captives” insurance as a tool for managing benefits programs. Council Advisory Board member **Fred Thiele** shared Microsoft’s experience forming and funding an insurance company for the purpose of insuring risk. The discussion looked at how such a captive insurance company functions, the process of implementing a captive and the advantages to the local subsidiary and to the corporation creating the captive. The presentation discussed the potential for cost savings and flexibility in underwriting as well as the improved governance potential and the diversification of risk.

### *Benefits Developments Around the World*

Several sessions were devoted to benefit trends in many parts of the world. This gave participants valuable insight into the many variations in the legal and regulatory environment, culture and economies across the globe. The first of these sessions examined the development of medical and insurance operations in Africa, as well as how the developments are driving stronger economies which, in turn, are revolutionizing business in Africa. The session began with an overview by **Dr. Lori Stetz**, from Council Board member company Aetna International, of two case studies of care delivered in Africa followed by a description of the factors leading to growth in business and the consumer market. Stetz then examined the legal responsibilities and the costs of employees working in Africa.

An additional session provided a first-person account of the business and benefits challenges ongoing in South Africa. Significant personal debt has fostered the need for financial wellness programs and held back retirement savings. **Steve Tennant**, Tennant Benefits Company, examined the tax system, the fact that a comparatively small percentage of the population accounts for the majority of taxes paid, and that enormous disparities in income has made it difficult for workers to rely on a state-provided benefits program – both for health and retirement. The country is rapidly changing with a growing financial sector and a growing middle class, but companies doing business there must be sensitive to the need to supply additional healthcare support for expatriate workers and the additional protections required for workers given the potential danger in some areas.

One session took participants on a rapid trip – “80 Minutes Around the World” – through developments in several countries, including Brazil, Italy, Greece, the Philippines, Indonesia, India and Taiwan. The topics varied as different speakers captured the range of regulatory and economic changes occurring in each country. The

discussion examined some of the challenges relating to the structure of health insurance offered by employers in Brazil and what employers doing business there should be doing with respect to education, preventive care and wellness initiatives. The panel also reviewed the impact of the economic crisis on benefits in Italy that is shifting the costs from the government to companies and individuals. This, in turn, is driving greater examination of whether benefits are aligned with employee needs and leading the way to greater emphasis on flexibility and choice among benefits. The discussion also included an examination of the Czech Republic's pension system and voluntary insurance market, including pension reform and the creation of individual accounts involving voluntary transfer from First Pillar (i.e. state system) contributions.

The Academy offered an opportunity for participants to hear directly from those working with benefits in each of the countries examined. The panel examined the state of employee benefits in China, looking at differentiators in the providers supporting the programs. **Douglas Morgan**, Global HumanEdge, examined compensation practices in Asia amid its rapidly developing employment landscape and socio-political change. Morgan talked about managing multiple generations and changing priorities as Human Resource departments are detecting a preference by younger workers for flexible working hours rather than expanded benefits. Another panel focused on the impact of the financial crisis on retirement systems and the pull-back to a state system in some countries such as Argentina, as well as the use of supplementary corporate savings mechanisms in those situations.

One panel provided an overview of the history of regulation of insurance products and their role in benefits in Colombia. Due to the significant changes in the regulatory environment, new products are available and there is greater freedom in negotiations and greater selection among carriers including those based outside the country. The panel also examined the history and impact of regulatory changes on benefits offered in Chile. The speakers discussed some of the advantages of the reform of Chile's Social Security system and the challenges of the individual savings system adopted by the country as part of that reform, including the cost of the accounts and the lower-than-expected returns in recent years and its potential impact on retirement preparation. The panel then examined the significant changes in health care in Chile as more effort is being made to expand networks, reduce waiting times and improve access to complex treatments.

### *Understanding the Ongoing European Crisis and Its Impact on Benefits*

Lynn Dudley, Council senior vice president, retirement and international benefits policy, moderated a discussion with representatives of two European benefits organizations: **Matti Leppala**, Pensions Europe, and **Francesco Briganti**, European Association of Paritarian Institutions (AEIP). These panelists provided insight into the ongoing economic and political challenges facing the European Union and which provided a "point counter-point" analysis of key issues. Leppala and Briganti discussed

the European debt situation – its origins, the EU’s current state and long-term future and the impact on regulatory initiatives and on companies doing business in Europe. The panel examined arguments for austerity, comparing debt and government lending and examining whether austerity measures have been too severe and therefore counterproductive. Leppala and Briganti examined the decisions having to be made by governments in Europe as to how best to finance growth and address high unemployment. The panelists indicated that a one-size-fits-all approach does not generally work when economies and infrastructure are different. The panel also wrestled with the difficult choices facing the European Union as member nations look for ways to raise revenue while trying to lower taxes on wages and companies to stimulate growth in the economy.

The panel also looked at how these tough choices will affect the future of retirement security and the potential for reform of the pension system. Both speakers commented on the potential risk of strategies driven by public finance needs rather than retirement policy. Leppala and Briganti rounded out the discussion providing an update of some of the recent developments in retirement policy including cross-border issues, proposed rules regarding pension solvency and regulation of defined contribution plans. Finally, the panel noted the European Commission’s pilot project “to promote the development of pension tracking services to allow people to keep track of their pension entitlements acquired at different jobs” and establishment of a working group, including stakeholders, to work on a code of good practice for occupational schemes, addressing issues such as better coverage of employees, the payout phase, risk sharing and mitigation, cost effectiveness and shock absorption.

### *Healthcare Developments*

Many of the Academy attendees were non-US based employers. In response to interest in how multinational companies are navigating the changes in healthcare benefits resulting from the passage of the Affordable Care Act (PPACA) in the United States, a panel, including Council President **Jim Klein**, Council Board Chair **Wilma Schopp**, Sigma-Aldrich, **Leslie Lemenager**, from Board member company Gallagher International Benefits & HR, and **Joop Reitmulder**, Montae Pension Advisors, provided insight into the key challenges and developments in implementation of the new law.

The panel provided an overview of the PPACA structure and Schopp provided insight into how Sigma-Aldrich is integrating the new requirements into its total rewards package. Schopp described the company’s development of benefits principles, including being competitive and cost effective, balanced in cost sharing, moving away from risk and increasing education and wellness information. Schopp then shared her thoughts as to how the health care strategy is evolving in a manner consistent with company principles. Placing the new law in context, the panel also described the challenges around the U.S. debt burden and how interest in reforming the tax code could affect employer-sponsored health and retirement benefits.

Wellness is a key component to many multinationals' health benefits strategy and one panel devoted itself to describing wellness initiatives undertaken by their companies. One of the key challenges is trying to quantify the financial benefits of these programs. **Corrie Zenzola**, from Council Board member Intel Corporation, **J.B. Gruet**, Workplace Options, and Council Board member **Mark Poerio**, Paul Hastings, discussed the importance of striking a balance between efficiencies of a centralized coordinator with flexibility that allows for localized programs that best serve employee needs. It was noted, illustratively, that for one company located in a remote area, the best use of financial resources for its employees was to provide safer transport to and from work to avoid traffic accidents. The panel examined the value of innovation coupled with efficient global implementation. Poerio described the use of genetic testing as an example of an innovation that had been implemented by one company through the use of a global communication and consent process. Panel members all agreed that while that instance was highly successful, a company also has to be sensitive to local culture and customs when selecting the innovations it is implementing.

*The Globally Mobile Employee (see related story below regarding the Council's meeting)*

One of the challenges companies consistently face is the movement of employees from one country to another. The panel in this session, including Poerio, examined the employment and benefit considerations relating to mobile employees, noting the range of specialized concerns that can arise and the significant investment companies often have in the success of the movement of the employee. **Mike Mullins**, The Walt Disney Company, and **Ken Gulick**, of Council Board member Fidelity Investments, both noted that one of the big challenges is the piecemeal construction of pension plans and supplemental programs. Mullins and Gulick discussed the use of a platform to provide a global plan and a single currency to better coordinate the benefits and make the administration more efficient.

From a general employment and benefits perspective, the panel and audience agreed that employers need to be proactive to address country-specific issues in order to defuse the risk of surprises with respect to medical care for the employee and dependents, life insurance protection (especially if dangerous countries are involved), and pension plan benefits. Poerio called attention to the U.S. Internal Revenue Code 409A issues that may arise from an *ex pat* agreement. For example, a violation of the rules would arise from promising to provide a \$20,000 expense account for clothes during an *ex pat* assignment covering more than one tax year.

For stock awards, Poerio described trends toward using one global plan and individualized stock awards both for continuity and efficiency in assuring compliance with local laws. There was also discussion of case law in the E.U. that is decidedly protective of employees. For example, failing to provide contract terms, including performance goals, in the language of the local employer may result in problems for

employers ranging from outright violations of law to a judicial refusal to enforce contract terms. Non-competition and trade secret protection warrant similar caution and special attention.

Finally, the panel mentioned the burgeoning need to be alert to cross-border employee benefit and executive compensation issues from a merger and acquisition perspective, with tax law differences often creating material risks.

The [2014 IBIS Academy](#) will be held in St. Petersburg, Russia, May 5-9, 2014. The Council will provide additional information on our participation in a future *Benefits Passport*.

### **INTERNATIONAL BENEFITS COMMITTEE MEETING HELPS IDENTIFY CORPORATE BENEFITS PRIORITIES FOR GLOBAL COMPANIES**

In conjunction with the IBIS Academy in Prague, Czech Republic, in May, the Council held a meeting of its International Benefits Committee. This participant-led session preceded the opening of the Academy meeting and gave company representatives an opportunity to hold a dialogue about the many benefits challenges they are facing in multi-national operations. In addition, the discussion helped identify areas of particular interest to Council member companies and, as a result, has led to the development of a new study on mobile workers to be launched in the fall. The following is a brief summary of some of the issues discussed by the participants in the meeting.

Using a concurrent session structure, the first portion of the meeting focused on creating, implementing and maintaining competitive and effective benefits programs when a company is operating globally. Participants examined how the goals of creating maximum business leverage, exporting best practices and governance are connected in the process of designing and operating benefits programs. Participants also discussed how senior benefits executives can successfully undertake an effort to integrate the goals, making the business case for the changes they recommend and gain the cooperation and trust of local offices. The dialogue included a discussion the best models to use to build competitive benefits programs and the implementation of governance programs to monitor them.

The second portion of the meeting, led by Council board member **Margery Brittain**, MetLife, gave participants an opportunity to describe the goals of their company's mobility strategy and the challenges of managing compensation and benefits for mobile employees. The participants examined the reasons companies use mobile workers, such as driving new business or developing emerging markets or because of corporate culture and career development. They also discussed the goals a company might establish when designing a benefits or total rewards program for mobile employees and

what types of programs companies typically employ. These include, for example, employee allowances, support services (including tax advice and reporting) and supplemental health coverage. The discussion examined current challenges such as data gathering and organizing, benchmarking and costs. Participants explained how the Council might be helpful in pursuing more information about the issues affecting companies with mobile workforces. In this regard, support was expressed for pursuing a study on mobile workers and, in partnership with Council Board member company Aon Hewitt, the American Benefits Institute anticipates launching such a study in the fall. More information on participation in the study will be provided in a future *Benefits Passport*.

The third part of the meeting offered an opportunity for participants to exchange ideas and information on issues covering a range of benefits topics. Some of the topics raised included: the difficulties associated with identifying and tools available to better understand the benefits typically available in a region and how to find the services needed. There was significant discussion as to the variation in regulation, mandates and culture among countries. Compliance is a widespread challenge and the meeting attendees discussed the importance of data-gathering and good communication with local employees in making sure programs are compliant with local laws.

Making programs consistent with corporate philosophy is another challenge particularly when operating globally and when the employee populations in different countries and regions vary significantly. Streamlining the process for planning, implementing and monitoring benefits is also a consistent challenge but most meeting attendees noted that it can really help in maintaining their benefit strategy. Several companies noted the differences that result from having a more decentralized culture and how perspectives can differ for those companies' headquarters in the United States versus those based elsewhere.

Plugging benefits into the corporate and business decisions being made is an ongoing challenge as well, but can be very helpful in recruiting the right talent in a region. The participants discussed what is involved with developing competitive packages with the right elements for the right talent. Cost effectiveness is another important factor in global benefits and committee members described a range of tools to better control costs, including pooling and the use of captives.

Several of the issues covered during the Council session carried over to the subsequent IBIS Academy meeting (see story above), giving participants further opportunity to explore these ideas. The Council meeting also provided a setting for participants to ask for input on specific issues and learn from each other's first-hand experiences on such topics as implementing performance-based programs, redesigning retirement programs and greater use of defined contribution plans and wellness programs.



## FRENCH COURT HOLDS U.S. PARENT LIABLE FOR EMPLOYEE BENEFITS OF FRENCH SUBSIDIARY

Companies engaging in mergers and acquisitions as a way to grow internationally will want to pay particular attention to legal developments that might make them liable for costs resulting from the impact of such a merger/acquisition and even subsequent economic challenges. A French court recently held that a U.S. corporate parent of an insolvent French subsidiary was a joint employer with the subsidiary and therefore liable for employee benefits payable upon “redundancy” of the employees (i.e., layoffs following the merger). As the following summary – provided by David Powell at Council Board member firm Groom Law Group, Chartered, and prepared by the Paris law firm Lexcom – explains, the court’s finding relied heavily on the involvement of the US management in the closure of the French subsidiary. Other US companies with subsidiaries in France may be well advised to consider the facts outlined by the court.

### *Decision in Case Holds U.S. Company Liable*

*By Loïc Héron, Nicolas Léger (Employment Law), and Stéphanie Le Men-Tenailleau (Compensation and Employee Benefits) of Lexcom, a law firm located in Paris)*

In a decision dated February 7, 2013, the Court of Appeals of Toulouse ruled that Molex Inc., the U.S.-based parent company of Molex Automotive SARL ("MAS"), a French company it had set up in 2004 to take over some automotive components manufacturing and distribution business, was a joint employer of the MAS' workers working on MAS' plant near Toulouse. The Court held that Molex Inc. should therefore be liable to pay damages to the MAS' employees made redundant.

MAS, the French company, had closed in 2009, eliminating 283 positions under a social plan, which Molex Inc. had agreed to finance (as part of the financial and business undertakings it agreed to in a three-party agreement with the French state and HIG, the investment fund that was taking over the site). Shortly after the employees made redundant had filed a claim in court against MAS, Molex Inc. decided to wind up MAS and therefore filed an insolvency procedure before the commercial court. Molex Inc. then refused the court-appointed liquidator's request to financially contribute to MAS' social plan. This led both the employees made redundant and the liquidator of MAS to seek indemnification from Molex Inc. The Toulouse Labour Court and the Toulouse Court of Appeals upheld such claims and ordered Molex Inc. to pay for the social plan (as well as additional damages for unfair dismissal).

To reach such a decision, the two courts considered that, despite Molex Inc.'s arguments to the opposite (including especially the legal distinction existing between the two different corporate entities), there actually was a commingling of interests, activities and management between Molex Inc. and MAS, causing Molex Inc. to be considered the joint employer of MAS' employees.

Of course it is important to understand that such an extreme decision was a way to address Molex Inc.'s failure to pay for what it had agreed to pay (*i.e.*, the social plan measures and the initial two years of business for the Toulouse site under HIG's management). It is, however, also important for U.S. companies with subsidiaries in France to understand what criteria the two French courts considered to come to such a conclusion.

They *inter alia* considered that Molex Inc. acted as the French employees' joint employer when:

- i. it decided to replace MAS' French management with executives of Molex Inc.,
- ii. it decided to reorganize the automotive components distribution worldwide, on the basis of an operational rather than geographical matrix,
- iii. it decided to "clone" the Toulouse production in Lincoln (IL) and to store stocks with its new distributor (in order to prepare for MAS' closure), without involving MAS' management,
- iv. it explicitly presented the closure of the Toulouse site as Molex Inc.'s own decision (when for instance communicating to the shareholders of Molex Inc. (several months before the works council of MAS was informed and consulted) that as part of global restructuring of USD 125-140 million, USD 21.6 million would be used for closing a site in Europe, and
- v. it signed the three-party agreement with the French State and the investment fund which had agreed to take over the site and create between 20 and 60 positions.

If placed in the same situation, U.S. parent companies should be careful not to act as the sole decision-maker with respect to the employees of their French subsidiaries. Instead of deciding on every detail of the subsidiary's closure, parent companies should be careful only to act as shareholders, giving instructions to the subsidiary's management through the relevant corporate bodies (e.g., Board of directors). It is indeed not for the parent companies to handle distribution arrangements or disposal negotiations. And although French case law considers that the economic justification for redundancies should be considered at the level of the business sector of the group to which the employer belongs and the quality of the social plan measures should be assessed on the basis of the group's means, it is not for the parent company to monitor information and consultation of employee representatives or to determine social plan measures.

Although the Molex case is yet to reach the French Supreme Court, it is important to understand that, in a decision of September 28, 2011, the French Supreme Court held a parent company to be joint employer of its subsidiary's employees for the same reasons as Molex Inc. above and therefore ordered the parent company not only to contribute to its subsidiary liquidation (including the social plan) but also to pay damages to the subsidiary's employees made redundant.