



RICHARD W. KAISER

Partner

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Dick has worked with virtually all forms of benefit plans and compensation arrangements, including plans for tax-exempt organizations and special requirements for plans of churches and religious organizations. His practice focuses on employee benefits, including qualified and non-qualified retirement plans, tax and Employee Retirement Income Security Act (ERISA) requirements, executive compensation and employment agreements, stock and equity-based compensation programs, and multiemployer plan-withdrawal liability.

Dick has worked extensively on executive and nonqualified deferred compensation issues, including the design of traditional deferred compensation plans, supplemental executive retirement plans (SERPs), annual and long-term bonus plans, change in control and severance arrangements, employment agreements, and equity awards in compliance with Internal Revenue Code sections 83, and 162(m), and other "top-hat" plan and rabbi trust design and compliance issues. He also has extensive experience addressing Code section 409A issues in the design and operation of non-qualified plans and executive compensation arrangements.

Dick is regularly involved in mergers and acquisitions and handling the issues that arise, including preparation of executive employment agreements, application of the 280G golden parachute rules, and transition of benefit plans. He has also represented plan sponsors, in and out of bankruptcy, in devising, negotiating, and implementing changes to employee benefit plans, including standard and distress termination of defined benefit plans. Because of the recent severe underfunding situation faced by some multiemployer pension funds, he has also worked on issues involved in the determination of withdrawal liability and structuring transactions so as not to trigger withdrawal liability when possible.

Dick co-authored the treatise *Taxation of Distributions from Qualified Plans* (Thomson Reuters/Tax & Accounting; 2013). He is responsible for the sections on tax deferred annuities (403(b) plans), distributions of employer securities, minimum required distributions, and international tax issues.

The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202

Practices & Industries

Education
Employee Benefits

Admissions

New York
U.S. Tax Court

Education

B.A., University at Buffalo, B.A.
UCLA School of Law, J.D.
University of Miami School of Law,
L.L.M. (Taxation)

RICHARD W. KAISER

Every month, Dick and fellow Employee Benefits attorneys compile an Employee Benefits newsletter to highlight important changes and amendments throughout the industry. The monthly newsletters can be found in the Publications section of the Hodgson Russ website.

Honors

- Listed, *Best Lawyers in America* (Employee Benefits [ERISA] Law) 2010 - 2024
- Listed, *Upstate New York Super Lawyers*, 2010 - 2012

Experience

Dick has extensive experience performing the following services:

- Negotiation and drafting of executive employment agreements
- Negotiation and drafting of separation agreements
- Performing employee benefit plan due diligence and advising clients engaged in merger and acquisition activities, including corporate transactions involving ESOP-owned companies
- Developing voluntary correction strategies and negotiating compliance agreements with governmental agencies (IRS and DOL)
- Advising clients on ERISA compliance matters, including fiduciary governance and investment policies
- Designing, drafting, and maintaining qualified and non-qualified retirement plan documents, summary plan descriptions and plan procedures, including preparation of IRS determination letter application filings
- Advising clients on ERISA compliance matters, including fiduciary governance and investment policies

Below are specific representative matters Dick has completed:

A team of Hodgson Russ attorneys represented an international hotel operator in the closing of a highly complex financing package involving \$226.6 million in new CMBS mortgage and mezzanine debt. The transaction involved 17 hotels in 11 states and included the defeasance of \$100 million of existing CMBS indebtedness, a major restructuring of the existing hotel owner and management companies, the formation of 20 new entities, the movement of 11 hotel franchises and 7 management agreements, and the buyout of a strategic partner.

Hodgson Russ assisted a large, multinational corporation with respect to liability for posting of security with the Pension Benefit Guaranty Corporation (PBGC) under Employee Retirement Income Security Act of 1974 (ERISA) Section 4062 (e). Under ERISA Section 4062(e), if there is a cessation of business operations that results in more than 20 percent of active participants separating from employment, the employer is required to deposit a calculated amount into an escrow account with the PBGC or obtain a bond in favor of the PBGC. In connection with this representation, the client was ultimately able to demonstrate to the PBGC that there was no additional risk to the PBGC as a result of the cessation of operations. As a result, the employer was able to avoid the need to post security with the PBGC. This was a very favorable result because the PBGC has become extremely active in pursuing security or other means of promoting plan solvency in

RICHARD W. KAISER

these situations.

When a privately held, multinational company underwent a corporate restructuring, the transaction had unintended consequences for the stock appreciation rights (SARs) of the company's U.S. employees. Hodgson Russ attorneys analyzed the tax compliance issues arising under 409A as a result of the transaction, prepared corrective amendments for the plan and award agreements, advised our client on the various correction options and reporting obligations, and prepared the required IRS statements and participant notices. Once the corrections were made, we assisted the client in designing new incentive plans suitable for the company's corporate structure and unique circumstances.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITGR), in a \$1.7 billion acquisition of Lake Region Medical, a privately held portfolio company of KKR. The purchase price consisted of cash (including assumed debt) and unregistered shares of common stock. Financing was through a bank/bond package, consisting of a \$1.6 billion credit facility (TLA/TLB/revolver) and \$360 million of senior notes offered under Rule 144A. Hodgson Russ counseled on every aspect of the transaction, performing U.S. and supervising international due diligence; negotiating the merger agreement and related acquisition documentation; advising on U.S. competition law matters, including preparing Hart-Scott-Rodino and related foreign filings; negotiating the bank credit facility and leading the high-yield note offering; and advising on executive compensation and employment law aspects of the transaction. The Hodgson Russ team consisted of attorneys Craig M. Fischer, Cristin L. Murray, Matthew R. Scherer, and David G. Reed (securities regulation and corporate compliance); Robert B. Fleming, Jr. (antitrust and trade regulation); Christofer C. Fattey and Timothy Ho; Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); and Michael J. Hecker (environmental); and paralegals Courtney Scanlon, Deborah Kalstek, and Betsy Mills.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation, in a \$600 million disposition of its Orthopedics and Advanced Surgical business lines to Viant Group. The transaction involved the sale of stock and assets representing operations in several countries, including the United States, Mexico, Germany and France. Hodgson Russ advised on all aspects of the transaction, including preparation of a transition services agreement, coordinated with local counsel and handled the company's subsequent early redemption of its outstanding high-yield bonds. The Hodgson Russ team consisted of Craig M. Fischer, Cristin L. Murray, Matthew R. Scherer (securities regulations and corporate), Andrew D. Oppenheimer (international and business tax); Ryan M. Murphy and Richard W. Kaiser (employee benefits), Christofer C. Fattey (banking and finance), Michael J. Hecker (environmental), and Valerie E. Stevens (antitrust and trade regulation).

Hodgson Russ assisted a large, multinational corporation and sponsor of multiple qualified retirement plans in connection with its response to the illegal appropriation of plan assets by an employee of the plan sponsor. Our work included providing assistance and support in unraveling the techniques by which monies were illegally appropriated from the plan accounts of participants, assessing the many operational errors triggered by the illegal appropriation of plan funds, developing a strategy for restoring funds to the accounts of the affected participants, and correcting the operational errors so as to preserve the qualified status of the affected plans. We helped our client successfully implement the necessary corrections, develop procedures to prevent similar problems in the future, and communicate the corrections to the affected participants in a manner that helped preserve participant confidence in the security of their retirement plans. Our work also included

RICHARD W. KAISER

analyzing fiduciary liability and prohibited transaction issues, reporting obligations, and the potential liability of a third-party administrator.

A team of Hodgson Russ attorneys led by John J. Zak represented long-time client, Integer Holdings Corporation (NYSE: ITBR), in its successful tax-free spin-off of its subsidiary, QiG Group, LLC, which converted into Nuvectra Corporation prior to the completion of the spin-off. Nuvectra is a medical device company that is concentrated on the development and commercialization of its neurostimulation technology platform, and, in particular, its Algovita spinal cord stimulation system, for the treatment of various disorders through the stimulation of tissues associated with the nervous system. As part of the spin-off, Nuvectra received approval to list and to have its common stock traded on the NASDAQ Global Market under the symbol "NVTR." Hodgson Russ advised on all aspects of the separation of Nuvectra from Greatbatch and the corresponding distribution of the Nuvectra shares of common stock to Greatbatch's stockholders, including the registration of Nuvectra with the SEC, the listing of Nuvectra's common stock on the Nasdaq Global Market, facilitating the negotiation of agreements between Nuvectra and Greatbatch to establish a framework for their post spin-off relationship; preparation of corporate governance policies and procedures for Nuvectra as a newly publicly-traded company and assisting in the separation of Greatbatch's existing employee benefit programs and the establishment of new programs by Nuvectra. The team of Hodgson Russ attorneys consisted of Craig M. Fischer (securities regulation and corporate compliance); Christofer C. Fattey (banking and finance); Terrence M. Gilbride and Elizabeth A. Holden (real estate); Ryan M. Murphy and Richard W. Kaiser (employee benefits); Peter C. Godfrey (labor and employment); Richard F. Campbell and Andrew D. Oppenheimer (business tax); and paralegal Courtney Scanlon.

In the News

Peak Resorts Completes Acquisition Of Hunter Mountain For \$36.8 Million
The Street, January 7, 2016

Fifty-Five Hodgson Russ Attorneys Named to *Best Lawyers* 2014
August 28, 2013

Press Releases

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*
August 17, 2023

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

55 Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2021

55 Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America*
Hodgson Russ Press Release, August 20, 2020

RICHARD W. KAISER

52 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings
Hodgson Russ Press Release, August 20, 2019

48 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings
Press Release, August 15, 2018

Fifty-two Hodgson Russ Attorneys Named to 2018 *Best Lawyers* Listing, Five Included in “Lawyer of the Year” Categories
Press Release, August 15, 2017

2017 *Best Lawyers* Names Fifty-four Hodgson Russ Attorneys From Multiple Offices
Hodgson Russ Press Release, August 18, 2016

Fifty-Five Hodgson Russ Attorneys Named to *Best Lawyers* 2016, Five Honored as Buffalo ‘Lawyers of the Year’
Press Release, August 17, 2015

Publications

Final HIPAA Privacy Rule Provides New Protections for Reproductive Health Care Information
Hodgson Russ Employee Benefits Alert, May 22, 2024

U.S. Department of Education Announces Long-Awaited Final Title IX Regulations
Hodgson Russ Education Alert, April 25, 2024

Welfare Plan Fiduciaries Sued Due to Excessive Pharmacy Costs
Hodgson Russ Employee Benefits Alert, March 19, 2024

A Look at the IRS’s Proposed Long-Term Part-Time Employee Regulations
Hodgson Russ Employee Benefits Alert, March 8, 2024

Alternative Instruction for Suspended Students
Hodgson Russ Education Alert, October 20, 2023

SECURE 2.0 Update: IRS Announces Two-Year Delay for New Roth Catch-Up Contribution Rule Implementation
Hodgson Russ Employee Benefits Alert, September 6, 2023

IRS Provides New Required Minimum Distribution Relief and Guidance
Hodgson Russ Employee Benefits Alert, August 16, 2023

NYSED to Begin Monitoring School District Websites for Compliance with Privacy Laws
Hodgson Russ Education Alert, July 21, 2023

IRS Issues EPCRS Guidance to Implement SECURE 2.0’s Expansion of Self-Correction Opportunities
Hodgson Russ Employee Benefits Alert, June 22, 2023

RICHARD W. KAISER

Orthodox Jewish Parent Group Challenges New York State Education Department Substantial Equivalency Regulations in State Court

Hodgson Russ Education Alert, April 18, 2023

Presentations & Events

Public Company Update 2020

Hodgson Russ LLP, January 30, 2020

Public Company Update 2019

Hodgson Russ, Buffalo, NY, February 12, 2019

Public Company Update 2018

Hodgson Russ LLP, January 24, 2018

Public Company Update 2017

Hodgson Russ LLP, January 26, 2017

Public Company Update 2016

Hodgson Russ, Buffalo, NY, January 21, 2016

Public Company Update 2015

Hodgson Russ, Buffalo, NY, December 10, 2014

Public Company Update 2014

Hodgson Russ, Buffalo, NY, November 13, 2013

Public Company Update 2013

Hodgson Russ, Buffalo, NY, October 30, 2012

New York State Bar Association Trusts and Estates Law Section Seminar: Dealing With Your Client's Retirement Assets
Buffalo, NY, May 17, 2012

Public Company Update 2012

Hodgson Russ, Buffalo, NY, November 17, 2011

Professional Affiliations

- American Bar Association Section of Taxation Committee on Employee Benefits