

# RETROACTIVE AMENDMENT TO PROVIDE FOR INTERIM VALUATIONS UPHELD

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Under the provisions of the 1991 plan document of a company's profit sharing plan distributions were to be made based upon the value of a participant's account as of the preceding December 31. In November 2001, the plan was amended retroactively to January 1, 2001 and one of the provisions that changed in the document was the provision on when accounts would be valued for distribution purposes; the amended plan provided for interim valuation dates. A beneficiary of a deceased participant requested a complete distribution on November 1, 2001. The distribution, based upon asset values at the time of distribution was approximately \$1.5 million. The beneficiary sued claiming that the amount of distribution should be \$1.7 million, the value as of the preceding December 31, 2000. There was a huge drop in the market following the events of September 11, 2001. The District Court for Nevada, on a summary judgement motion, upheld the propriety of making a retroactive amendment because such an amendment was permitted under the plan terms. Further, the District Court found that the plan administrator was not abusing its discretion in amending the plan because if the distributions were based on the December 31, 2000 value it would have prejudiced other participants in the plan. *Feikes v. Cardiovascular Surgery Assocs. Profit Sharing Plan* (D. Nev. 2016)

## **Attorneys**

Peter Bradley  
Michael Flanagan  
Richard Kaiser  
Ryan Murphy

## **Practices & Industries**

Employee Benefits