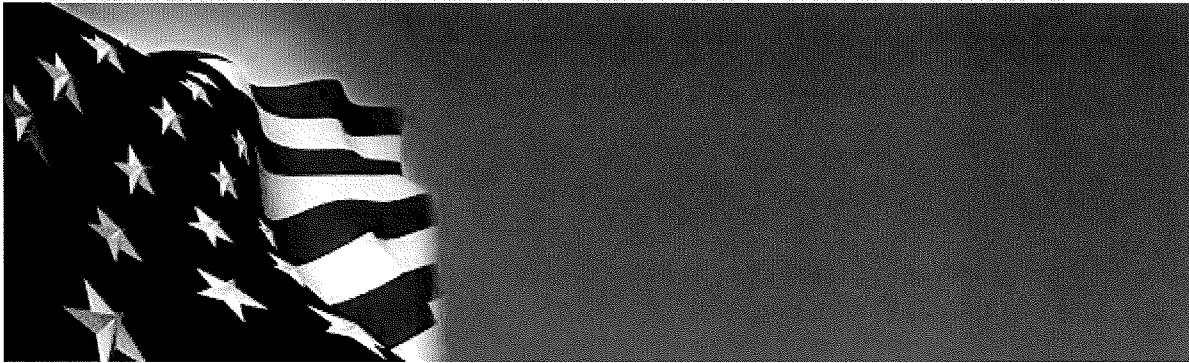


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CYPEN & CYPEN NEWSLETTER for

MAY 8, 2014

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. LET'S FACE IT -- NOTHING GUARANTEES LIFETIME INCOME LIKE A GOOD OLD FASHIONED DEFINED BENEFIT PENSION:

Writing in *Mondaq Business Briefing*, Bruce Ashton and Fred Reish say the aging of the baby boomers in a defined contribution plan world has revealed a weakness in many 401(k) and 403(b) plans: the plans offer no systematic process for providing lifetime income. By "lifetime income," the authors mean a source of money that will not run out during the retiree's life. Until now, plan sponsors have done a reasonably good job of focusing on participant needs in saving for retirement, but have not been as aware of the importance of addressing their needs after retirement. There is no fiduciary requirement to provide post-retirement help in a 401(k) or 403(b) plan; but when plan sponsors decide to do so, they face a perceived impediment -- fiduciary liability. (The authors have been able to study the issues elsewhere and develop an answer to the concern. The

instant paper is not an in depth discussion of the issues and fiduciary analysis.) Most important risks that retirees face are that they are living longer, which means their retirement savings need to last longer. Actuaries says that life expectancies for 65 year olds increased about three years between 2000 and 2014. For a 65-year-old couple, there is a significant probability that at least one spouse will live to 95! They face market risks on their retirement money. The risk is known as "sequence of returns," referring to the risk of a serious market downturn shortly before or after retirement. Because a retiree is forced to liquidate investments to pay his expenses while the market is down, he has little chance of recouping the loss and a good possibility of running out of money. Retirees are not sure how much to withdraw -- studies show that many retirees believe they can withdraw 10% of their retirement savings each year, while others are restricting themselves to required minimum distributions (starting at age 70½) -- in other words, too much or too little. However, most experts believe that a 65-year-old retiree should withdraw no more than 4% per year (adjusted for inflation) to have a 90% chance the money will last for 30 years. But they are not prepared for the erosion of their cognitive abilities as they age. A Harvard study indicates that, by the time a person reaches age 85, his ability to make prudent financial decisions is seriously diminished. Given the risks that retirees face and their need for in-plan solutions, the time has come for fiduciaries to consider offering some form of guaranteed lifetime income product. For fiduciaries who are used to the process of selecting investment alternatives for their plans, the selection of a lifetime income solution will seem unfamiliar. But, the authors believe that fiduciaries should be able to engage in a prudent process in an informed manner. (The authors do discuss available solutions and the need to address the fiduciary concerns about their selection. However, this item is not intended to address specific circumstances, in detail.)

2. TOWN'S LEGISLATIVE PRAYER PRACTICE DOES NOT VIOLATE THE FIRST AMENDMENT'S ESTABLISHMENT CLAUSE:

Since 1999, the monthly town board meetings in Greece, New York, have opened with a roll call, a recitation of the Pledge of Allegiance and a prayer given by clergy selected from the congregations listed in a local directory. While the prayer program is open to all creeds, nearly all of the local congregates are Christian; thus, nearly all of the participating prayer givers have been, too. Citizens who attend

meetings to speak on local issues, filed suit, alleging that the town violated the First Amendment's Establishment Clause by preferring Christians over other prayer givers, and by sponsoring sectarian prayers. They sought to limit the town to "inclusive and ecumenical" prayers that referred only to a generic God. The District Court upheld the prayer practice, on summary judgment, finding no impermissible preference for Christianity, concluding that the Christian identity of most of the prayer givers reflected the predominantly Christian character of the town's congregations, not an official policy or practice of discriminating against minority faiths; finding that the First Amendment did not require Greece to invite clergy from congregations beyond its borders to achieve religious diversity; and rejecting the theory that legislative prayer must be nonsectarian. The Second Circuit Court of Appeals reversed, holding that some aspects of the prayer program, viewed in their totality by a reasonable observer, conveyed the message that Greece was endorsing Christianity. On certiorari review, the United States Supreme Court reversed. Legislative prayer, while religious in nature, has long been understood as compatible with the Establishment Clause. The Court had previously concluded that it was not necessary to define the Establishment Clause's precise boundary in order to uphold a state's practice of employing a legislative chaplain, because history supported the conclusion that the specific practice was permitted. The Court's inquiry then must be to determine whether the prayer practice in the town of Greece fits within the tradition long followed in Congress and the state legislatures. To hold that invocations must be nonsectarian would force legislatures sponsoring prayers and the courts deciding these cases to act as supervisors and censors of religious speech, thus involving government in religious matters to a far greater degree than is the case under the town's current practice of neither editing nor approving prayers in advance and not criticizing their content after the fact. It would be unwise to conclude that only those religious words acceptable to the majority are permissible, for the First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech. Absent a pattern of prayers that over time denigrate, proselytize or betray an impermissible government purpose, a challenge based solely on content of a particular prayer will not likely establish a constitutional violation. So long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for

non-Christian prayer givers in an effort to achieve religious balancing. Predictably, Justices Ginsburg, Breyer, Kagan and Sotomayor dissented. *Town Of Greece, New York v. Galloway*, Case No. 12-696 (U.S. May 5, 2014).

3. HOW TO HELP RETIREES STICK TO SPENDING PLAN: Having a clear and sustainable withdrawal policy in place plays a critical role in helping to keep retired clients from outliving their assets, according to onwallstreet.com. Getting them to stick to the plan, however, might be even more important. Whatever formula advisors use with clients, they must stress the importance of helping clients stick to the policy. Keeping clients on track is so crucial, that some advisors use a visual report card for client meetings, with a green thumbs up or big red circle with an "x" to show whether the clients have spent within their budget for the year. Not only does a clear withdrawal plan help clients spend within their means, but it also draws a more concrete link between spending priorities and needed tradeoffs. An advisor might remind clients, for instance, that they had chosen to spend less on leisure in order to help pay for a grandchild's education. Another way planners can help clients stick to goals: a separate carve-out for discretionary spending on entertainment, travel and unexpected expenses. In setting aside an amount for discretionary spending, clients avoid fudging their withdrawal policy to meet an unexpected cost. One advisor tells clients that a sustainable safe withdrawal policy amounts to "bulletproof" armor. So when clients deviate from the plan -- even when they say, "it is just a little this one time" -- it is like a chink in that armor, which can damage the portfolio and threaten the client's retirement. One never knows if something may hit right at that chink.

4. WHAT IS MOM WORTH?: With Mother's Day just around the corner, we ask that annual question. At-home Mom: \$113,568 -- base salary (40 hours) equals \$37,549, overtime (54 hours) comes in at \$76,037. Working mothers spend 40 hours a week at the office, then come home and perform an average of 58 hours per week on household and child care duties. Base salary (40 hours) is \$40,260, overtime (54 hours) amounts to \$27,176 -- total \$67,436. (Of course, Mom's actual working salary must be added in to determine total compensation.) This good stuff comes from salary.com.

5. NINE BUZZ WORDS TO AVOID: Onwallstreet.com asked a few financial advisors for buzz words they thought confused clients, and to offer alternative phrases where possible. (Of course, we are not talking about old standards like adding alpha, yield curves, basis points and efficient frontiers.) Ready or not, here they come:

- **Volatility.** Volatility does not mean much to a client. Better to say “the inevitable ups and downs of the market.”
- **Equities.** Equities tend to confuse people. Use “stocks” because that is a term clients have grown up with and can understand.
- **Active & Passive Management.** Active & Passive Management are confusing. The word active implies that investment manager is positively engaged with the portfolio, working for you, while passive suggests a manager who is disinterested and perhaps even lazy. Try “going to data here allows a review of historical active versus passive performance.”
- **Cap.** Cap is overused and rarely understood. It makes advisors sound like they are selling and fitting headwear. Better to say it is a measure of the number of a company's outstanding shares multiplied by the share price, a way to classify companies by size.
- **Mutual Funds & ETFs.** Mutual Funds & ETFs are becoming more commonplace, but simply do not quite convey the concept. Explaining that mutual funds and ETFs are not investments themselves, but just vehicles with which to access multiple stocks at one time.
- **Correlation.** Correlation is especially confusing in context of references to non-correlated asset classes. How about just say “we invest in a variety of different funds that tend to do well at different times?”
- **SIMPLE IRA & 401(k).** Simple IRA & 401(k) are anything but simple. They do not follow same guidelines as an IRA or a 401 (k).
- **Standard Deviation.** Standard Deviation -- forget it, maybe just say “risk.” Just show a distribution of quarterly returns in order to demonstrate graphically what historical returns have been.
- **IRA, REIT, RIA, ETFs, etc.** IRA, REIT, RIA, ETFs, etc. are the advisor's alphabet soup. The best suggestion is to avoid the acronym trap, and explain what each stands for.

Here is one out favorite acronyms, admittedly completely inapposite to

the subject matter: LSMFT (loose suspenders mean falling trousers).

6. A HISTORY OF THE CONSUMER PRICE INDEX: From businesses to government agencies to senior citizens, groups with often competing aims and desires use the Consumer Price Index. In attempting to satisfy their disparate needs, the Bureau of Labor Statistics frequently is challenged to produce a statistic that is both timely and accurate. A featured article in *The Monthly Labor Review* from Bureau of Labor Statistics explains both how and why the Bureau has come to produce a family of Consumer Price Indexes to address the challenge. Of all the economic statistics produced by the U.S. federal government, none has a direct impact on the lives of everyday Americans quite like the Consumer Price Index. Numerous government programs, such as Social Security benefits, are adjusted on the basis of changes to the CPI. Countless contracts -- whether business agreements, government obligations, leases, or court orders -- also utilize the CPI, to adjust the dollar amounts associated with these items. For some, the CPI seems to be a rather difficult and abstract thing to understand. Others view the index with suspicion, a statistic produced by the recondite, esoteric labors of government economists and statisticians. The truth, however, is that the ideas, history, and workings of the CPI are neither too difficult nor too secretive for the layperson to comprehend. The article presents a history of the creation and evolution of CPI: a history of both how the Bureau of Labor Statistics has gone about measuring the change in cost of purchasing some mix of consumer goods and services, and how the CPI has been used over approximately the previous 100 years. The article demonstrates that the CPI has never existed in isolation of the day's events. Rather, events of the time almost always demanded active engagement from the Bureau, and input from business groups, unions, and the public has influenced the evolution of the CPI in important ways. For those who are already knowledgeable, the article recounts the backdrop to recent and past methodological decisions, providing the why along with the how pertaining to those decisions. Interweaving the technical history of the CPI with the context of the broader political economy elucidates a far more compelling account than does covering the methodological history in isolation. The story begins in the late 19th century, proceeds through World War I, the New Deal, World War II, the postwar era, the 1960s and 1970s, and closes with events that took place from the

1980s through 2004. Throughout it all, the Bureau is seen to be a responsive, often proactive, sometimes passive agency that established and still holds forth the CPI as a vital, evolving statistic. The precursor to the modern CPI began with data published in 1919 for 32 major shipbuilding and industrial centers. The data were estimated to go back to 1913; an index for the United States was first published in 1921. The fact that the Bureau was able to estimate data back to 1913 suggests that the collection of data on retail prices and consumer expenditures began far earlier than publication of information on shipbuilding and industrial centers in 1919. Indeed, the groundwork that laid the foundation for the modern CPI began nearly at the very beginning of the establishment, in 1884, of a federal bureau to collect information upon the subject of labor, its relation to capital, the hours of labor, the earnings of laboring men and women and the means of promoting their material, social, intellectual, and moral prosperity. Boy, that's exciting stuff.

7. FLORIDA DIVISION OF RETIREMENT 35TH ANNUAL POLICE OFFICERS' AND FIREFIGHTERS' PENSION TRUSTEES' SCHOOL: The 35th Annual Police Officers' and Firefighters' Pension Trustees' School will take place on May 12-14, 2014. You may access information and updates about Trustees' School, including area maps, a copy of the program when completed and links to register at the Aloft Tallahassee Downtown. Please continue to check the website for updates regarding the program at www.myflorida.com/frs/mpf. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this unique, insightful and informative program.

8. ADULT TRUTHS: Even under ideal conditions people have trouble locating their car keys in a pocket, finding their cell phone, and Pinning the Tail on the Donkey -- but I bet everyone can find and push the snooze button from 3 feet away, in about 1.7 seconds, eyes closed, first time, every time.

9. TODAY IN HISTORY: In 1958, U.S. President Eisenhower orders National Guard out of Central High School, Little Rock, Arkansas.

10. KEEP THOSE CARDS AND LETTERS COMING: Several

readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

11. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

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