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## Swerdlin's Newest Consulting Service

Swerdlin & Company now offers total employee benefits consulting which includes group health insurance.

For many years, group health insurance has been a necessary and expected part of an employee's benefit package. Employer-provided health insurance is often taken for granted today - employees feel they are entitled to their entitlements.

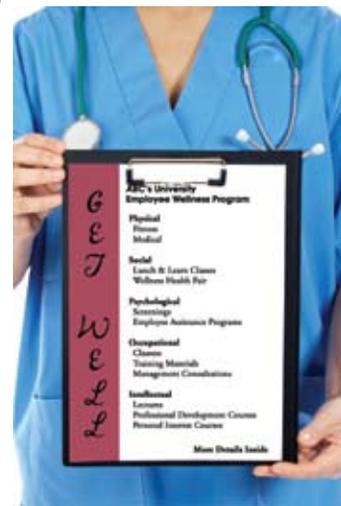
It all began very innocently in 1929 when a common-sense idea was spawned by a creative group of teachers in Dallas, Texas. They contracted with Baylor Hospital for room, board and medical services in exchange for a negotiated monthly fee. There was strength in numbers -- the well and sick contributed equally with the understanding that each would be covered if needed. As a result, group insurance emerged.

From what started as a creative idea to provide affordable medical care to everyone, it's now an expected employee benefit in addition to compensation. Despite its high level of importance, this benefit today can be compared to that of "clean

silverware in a restaurant." We are never excited to see it but greatly disappointed when we don't.

This universal expectation now collides with the ever rising cost of health care to create an effect no one anticipated - wage controls. No company would dream of dropping health care coverage, but employees have had to accept lower or no wage increases to help control costs.

If we can begin to see benefits differently, health care can again become a positive force in our business plans. Now is the time for a changing view of health care benefits.



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## Dorn's Corner



This quarter I want to talk about our egos and levels of consciousness. As I discussed last quarter, our ego plays an important part in the relationships within each of us.

My sources for this discussion are:

*A New Earth*, Awakening to Your Life's Purpose, by Eckart Tolle which covers the workings of our ego, and *Building a Values Driven Organization* by Richard Barrett which relates levels of personal consciousness with organizational consciousness.

When someone asks me who I am, I might answer:

- I'm Dorn Swerdlin,

- I'm a father, brother, husband,
- I'm an actuary,
- I'm an American,
- I'm a Georgia Tech graduate, or
- I'm a 61 year old man with gray hair.

But is the most fundamental "me" any of those things? I think not. I'm not my name, my relationships, nor my body. I'm also not my thoughts. Then who am I? According to Tolle, I am "consciousness," the one who is experiencing; the "silent witness." Our ego likes to trick us into thinking that *it* is us, and if we identify with our ego, without knowing about our "silent witness," then our ego *is* us.

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# Client of the Quarter



We are pleased to feature ERB Industries as our Client of the Quarter. We have administered their Employee Stock Ownership Plan (ESOP) for almost ten years.

In 1956, as a young man recently out of college, William B. Erb (Bill) purchased his first injection-molding machine to manufacture plastic products on a contract basis. In the 1970s, the Company purchased land in Woodstock, Georgia and built a manufacturing plant to produce safety helmets. As the service industry grew, Florence H. Erb (Florrie), Bill's wife, created Fame Fabrics to manufacture top quality aprons to give the Hospitality Industry a quality choice in uniform apparel. In 1991, ERB Safety and Fame Fabrics merged to become ERB Industries, Inc. Bill and Florrie Erb established an Employee Stock Ownership Plan in 1997, and today the company is 100% employee owned. The Company promotes an innovative culture where the employees' ideas are valued.

ERB was founded on its engineering expertise. Their internal engineering and scientific resources design new products through ongoing research and development. This allows ERB to design new products to adapt quickly to changing market demands.

ERB designs safety eyewear, safety vests and safety helmets as well as other plastic products. ERB produces their own customized tooling for manufacturing the safety helmets. The company is a vertical operation where safety helmet components are made internally rather than outsourced. ERB has streamlined their manufacturing environment by designing and creating proprietary machinery for manufacturing processes, which eliminates the need for outsourcing while also reducing labor costs.

Company logos are printed on 50% of all hard hats. Realizing the importance of their customer's corporate identity, ERB created a department with advanced pad printing

technology to print logos on safety helmets and eyewear.

With customers as their number one priority, all safety merchandise undergoes stringent testing. Sheila Eads, President of ERB, is an active member of the International Safety Equipment Association, participates on many committees and is a past board member. This organization writes and proposes product standards for the American National Standards Institute (ANSI).

Since 1997, ERB Industries has supported the Shepherd Center, an Atlanta-based catastrophic care hospital. ERB Industries very generously donates \$.50 from each order placed by customers. Additionally over 80% of the employees contribute from their weekly salaries, and volunteers also participate on the Shepherd Center's advisory board.

Bill Erb shares a vision with Saint Joseph's Hospital in Atlanta to be the leading Lung Cancer Program in the Southeast. He recently donated \$5 million in memory of his wife, Florrie, to create the Florence Hays Erb Cancer Center. This is the largest philanthropic gift in Saint Joseph's history and the first time a facility has been named in honor of a donor. This gift will provide expanded services for lung cancer patients and their families.

ERB Industries lives up to its Mission Statement every day:

"Develop and maintain long term customer relationships by providing exceptional value and service. Remain a good corporate citizen by maintaining a high level of professionalism and ethics."

For more information, check their website at [www.e-erb.com](http://www.e-erb.com). ■





## DOL Working Hard in the Atlanta Area to Ferret Out Fiduciary Breaches

*Swerdlin works with many ERISA attorneys. It is our pleasure to share the following article written by Ilene Ferenczy, an attorney in Atlanta who specializes in retirement plans.*

We have been retained recently by a few different clients in the Atlanta area to represent them in regard to an investigation by the U.S. Department of Labor (DOL) of their retirement plans. These clients have undergone a review process spanning several months, which has resulted in a lengthy letter from the DOL investigator as to possible charges of fiduciary breach or mismanagement of the plans by the fiduciaries. Some of these charges are quite unusual in nature, and many arguments can be made that the actions taken by the plan sponsor or administrator are not fiduciary breaches at all. Furthermore, many of the issues simply stem from the fact that small plans operate differently than large plans, and the concerns of the DOL seem inappropriate in a small plan setting. We have spoken with professionals elsewhere in the country, and it appears that the Atlanta regional office is more active about these issues than other parts of the country. Nonetheless, it is quite concerning, and plan sponsors and service providers everywhere should take notice.

While you may think that these examinations

involve only significant bad actors or large plans, our current experience reflects that the plans at issue are quite small (often only 3 - 5 employees) and are managed with various levels of attentiveness by the professional owners of the companies.

Issues that have arisen include:

- **Lack of proof of investment policies and procedures.** In our client's situation, the plan is trustee-directed and the owner of the company is the trustee. Therefore, an investment policy amounts to an instruction by the owner to himself.
- **Lack of written demonstration that the sponsor or trustee has engaged in periodic reviews of service providers to ensure that their services are effectively undertaken at a reasonable cost.** This situation involves a TPA who was paid by the company, not the plan. While it makes sense that the services should be monitored for effectiveness, the "reasonable cost" part is not an ERISA issue when the plan does not pay the fees.
- **Participant loans, particularly to the owners, that were not taken according to the participant loan program or were subject to default for failing to repay on a timely basis.** The DOL is

claiming in one situation that a business owner's failure to repay a participant loan timely is a fiduciary breach and, in another case, that a failure to take affirmative action to collect payments from a rank-and-file participant who was on extended paid leave due to sickness was a fiduciary breach. All loans at issue are directed investments of the participants' accounts.

- **Failure to document and obtain annual valuations of non-stock-exchange investments, such as limited partnerships and real property.** This issue particularly concerns the DOL because so many plan sponsors are cavalier about getting valuations and appraisals of their illiquid investments.
- **Failure to properly maintain the required fidelity bond.** Plan sponsors and administrators must be sure to be in compliance with bonding rules. Often, the failure to be sufficiently bonded requires the plan to be audited annually by a CPA.

Furthermore, the DOL is particularly frustrated when it takes the plan sponsor or trustees a long time to produce requested documents. Under benefit plan rules, a plan

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## What's Happenin'

Join us in welcoming two babies this quarter! Congratulations to Sharon and Hugh Kleiman on the birth of their daughter, Emily, in April and to Trey and Christina Stephens on the birth of their daughter, Sofia, in May.

We also celebrate two weddings this quarter. Congratulations to Valerie Simmons and her new husband, William Flynn, who were married in April. Congratulations also to Valerie's sister, Michelle Simmons, who married Zach Hall in May.

Kudos to Marjorie Cade on passing her Health and Benefits Life Insurance Test.

We congratulate Tim Bowen on his promotion to Team Leader of the Actuarial Team.

Dorn and Joanne Swerdlin, Connie Woodmansee, Dee Robbins and Susan Petirena attended the three day ESOP Association annual conference in Washington, D.C in May.

Also in May, Aaron Cox, Carol Friend, Emily Spencer, John Breier and Michele Gresham attended a Relius Users Group workshop in Biloxi.

We welcome new employees this quarter: D'Andre Green, Danielle Farmer, Mariana Ndonye, Miguel Colon-Ortiz and Tina Gilbert, all to the Daily Recordkeeping Team.

Anniversaries we celebrate this quarter: Dorn and Joanne Swerdlin, 28 years; Jayne Cormier,

22 years; Donna Martin, 15 years; Dee Robbins, 12 years; Karen Miracle, 9 years; Connie Woodmansee, 7 years; Barbara Sneed, 4 years; Jessica Kinmonth, 2 years; Dell Kubler and Rigbe Hailesellassie, 1 year.

Adrian Johnson writes an internal newsletter for our employees called the STAR Report in which she usually highlights one of our employees. In her most recent issue, Adrian spotlighted "The Earth" to spark our awareness of the problems facing our environment today. Swerdlin employees are helping the environment in small ways. We recycle paper and soda cans; we are trying to cut down on water usage; and we turn off lights and equipment whenever possible. ■

## DOL Working Hard

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sponsor has a legal obligation to provide information to the DOL when requested. In some cases, the DOL is alleging that the sponsors at issue violated ERISA for not having or providing records.

We bring this to your attention so that you can take steps before, during, and after you experience such an examination, to avoid expense and liability.

### Our Recommendations:

1. If you receive an examination notice from the DOL, work with a professional (TPA, lawyer, accountant) to produce the information requested and to identify areas where a problem might arise. The DOL takes these reviews very seriously; you should too.
2. If the DOL's examination produces a long letter of purported violations, get legal counsel to review the charges and to formulate a response. The DOL is not necessarily correct in its allegations. Nonetheless, you need a carefully crafted, legally based response.
3. On a preventative basis, be sure to:
  - Keep records of actions you take to hire and supervise service providers, so that you can demonstrate proper procedure. Procedure is paramount under the fiduciary rules, and demonstrating that you followed a proper procedure requires that you document the things that you do at the time that you do them.
4. Do not be argumentative or dismissive to the DOL examiner. Respond to the DOL's requests in a timely, responsive manner. If you do not know enough about the law to properly deal with the examination, get help from a professional. Remember: the DOL has the ability to file a lawsuit against you for a fiduciary breach, and it will do so if properly motivated.

If you have any questions about DOL reviews or your fiduciary obligations, you should contact your ERISA attorney. Ms. Ferenczy can be reached at 404.320.1100, ext. 102 or at [llene@ihflaw.com](mailto:llene@ihflaw.com). ■

**A** It depends on how they are being treated. If they are still eligible for other employee benefits, for example health insurance, or have been promised their jobs back in a short period of time, then they probably have not terminated and cannot be paid out of the plan.

**Q** The IRS is currently auditing our plan. We generally pay plan expenses out of the plan, so can we also pay the IRS audit expenses out of the plan?

**A** No. An IRS audit is performed to verify or disallow deductions that benefit the employer, so the employer must pay all expenses for this tax audit. ■



**Q** One of our participants who had an outstanding loan recently passed away. Who gets taxed and how do we report the defaulted loan on the Form 1099-R?

**A** The loan default is taxed to the estate of the participant – not to the beneficiary.

**Q** We recently laid off several employees who were in our plan. Can we distribute their account balances?

## Swerdlin's Newest Consulting Service

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Organizations are beginning to move their business focus from the cost of providing care (the end of the process) to the education and support for the well and chronically ill (the front of the process). Of course, we will never eliminate sickness or accidents, but health care data shows that costs are reduced through a culture of wellness and disease management. The only way to fundamentally reduce the cost of health care is to encourage changes in behavior. One good way to change behavior is to provide incentives for such change.

Swerdlin is working with clients to develop creative ways to help reduce these rising costs

More on this subject will continue in our next quarterly newsletter. ■



Welcome  
New Employees

*Bottom Row (left to right):* Tina Gilbert and Mariana Ndonge. *Middle Row:* Danielle Farmer. *Top Row:* D'Andre Green and Miguel Colon-Ortiz.

## Be Prepared

The motto of the Boy Scouts of America is “Be Prepared.” This motto is also appropriate for Employee Stock Ownership Plans (ESOPs) and the associated repurchase liability obligation.

How can an ESOP “be prepared” when its stock is not publicly traded? In order to ensure the necessary liquidity to make distributions, the IRS requires that ESOP companies “be prepared” to buy back the stock from terminating participants at fair market value. Also, ESOP plan sponsors must allow participants to begin diversifying a portion of their account balances when they have 10 years of plan participation and attain age 55.

In addition to the IRS, the following entities are now focusing on repurchase liability obligation:

- DOL auditors now require plan sponsors to adequately plan for their repurchase obligations;
- Valuation firms, which determine the market value of the stock, are now requesting a recent repurchase liability study; and
- The ESOP Trustee may also require this study as part of his fiduciary responsibilities.

A repurchase liability study is recommended before establishing an ESOP and before the plan

purchases additional significant quantities of stock. It is now recommended that this information be updated every two to three years, projecting five to ten years into the future.

Once the repurchase liability study is performed, the next important consideration is how to fund for this obligation. Some of these options include:

- Repurchase through cash flow from current operations;
- Create a sinking fund within the ESOP;
- Create a corporate sinking fund;
- Finance through the purchase of corporate-owned life insurance; and/or
- Finance through new debt obligations.

Let Swerdlin help with this repurchase liability obligation study. If your closely-held company sponsors an ESOP, please give us a call. ■



## EGTRRA! EGTRRA! Read All About It!

The IRS recently implemented new rules regarding the restatement of plans under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) legislation. The IRS has adopted a method that requires plans to be restated according to a “staggered” approach. Employers adopting “pre-approved” prototypes will usually need to restate their plans every 6 years. Employers adopting individually designed plans will need to restate their plans every 5 years.

Generally, a “pre-approved” plan, sponsored by a company such as Swerdlin, is a document that is reviewed and approved by the IRS before it is adopted by any employer. These plans are generally referred to as prototype or volume submitter plans.

Swerdlin & Company received approval for their defined contribution prototype and volume submitter plans on March 31, 2008. Our intent is to restate these plans during 2008 and 2009 prior to the deadline of March 31, 2010.

The defined benefit pension plan prototypes are still under review by the IRS. Employers will be required to restate these plans in 2011 and 2012. These prototype plans will also be on a 6-year cycle beginning with the effective date of the restatement.

“Individually designed” plans are subject to the 5-year restatement cycle. These are types of plans that do not fit on a “pre-approved” plan document. Examples are Employee Stock Ownership Plans, cash-balance defined benefit plans, and more complex plans often sponsored by unions or large corporations. The 5-year restatement cycle is not based on the type of plan (defined contribution or defined benefit); rather, the plan cycle is generally based on the last digit of the Employer Identification Number (EIN).

Over the next several months, it may be a good idea to review your plan design with your Client Manager. New developments in pension legislation may offer you more flexibility and new options to consider when restating your retirement plan. ■

## Dorn's Corner

*continued from page 1*

Barrett talks about seven levels of consciousness. His chart on page 6 compares our focus in life with the several stages of personal consciousness.

The first three levels are ego based and serve our basic needs. In the fourth level we transform from self-interest and external focus and begin to look inward and take responsibility for creating our lives. After this transformation, we have evolved to expand into Levels 5 through 7.

The ego wants:

- To own everything
- Certainty
- To compare itself to others and be superior
- To complain and resent
- To control
- More of everything

When someone cuts you off on the road, you get angry because your ego thinks it *owns* the road. If we identify with our ego and don't

*continued on page 6*

recognize that it is *not* us, the ego runs our life and suffering results. The ego will never have enough money, relationships, power, stature, etc. The ego is very clever and wants us to believe that *it is us* so as to maintain control.

The transformation in Level 4 of Barrett's chart is where we begin to see that we are not our ego, and begin to see it as a separate entity within us. If consciousness remains in the first three levels, only our self interests are sought, and creativity and true meaning are missing.

Barrett also develops consciousness levels for an organization. Any organization is made of people who live at the various levels of consciousness and together they generate

a level for the group. The consciousness of the leader(s) most significantly impacts the consciousness level of the organization.

The chart below from his book shows the seven levels of organizational consciousness.

As in personal consciousness, the first three levels focus on self interest. If the focus is only on short-term profits, the company will do anything to make a profit, including harming employees, the environment, competitors, and the general public. Unfortunately many companies operate only from these first three levels.

On the other hand, if the organization focuses exclusively on the last three levels, there is a lack

of the basic business skills to operate effectively – and this could prevent the organization from being grounded. The trick, therefore, is to balance the company's focus by operating from the "full spectrum of consciousness."

In the last column of the chart, Barrett describes how to master each level of consciousness.

At Swerdlin & Company we've been successful at Levels 4 and 5 in developing our culture. We are constantly working on improvements at Level 3 to enhance our internal accountabilities.

Where is your company's level of consciousness? It could be interesting and productive to find out.

As usual, signing off 'til next quarter. ■

level	motivation	personal consciousness	organizational consciousness	how to master
1	Survival	Satisfying our physical needs	Pursuit of profit and shareholder value	Focus on financial stability and employee safety
2	Relationship	Feeling safe, respected, and loved	Relationships that support the organization	Focus on open communication, respect for individuals, and customer satisfaction
3	Self Esteem	Feeling a sense of personal self-worth	High-performance systems and processing	Focus on performance, results, and best practices
4	Transformation	Finding freedom by letting go of our fears about survival, feeling loved, and being respected by our peers	Continuous renewal and learning	Focus on adaptability, innovation, employee empowerment, and continuous learning
5	Internal Cohesion	Finding personal meaning in existence	Development of a strong cohesive culture	Develop a cohesive culture based on shared visions and values that create an increased capacity for collective action
6	Making a Difference	Making a positive difference in the world	Strategic alliances and partnerships	Build strategic alliances with like-minded partners, providing mentoring and coaching for their managers and leaders, and embracing environmental stewardship
7	Service	Leading a life of self-less service	Service to humanity	Focus on social responsibility, ethics, global thinking, and keeping a long-term perspective on their business and its impact on future generations

### Shaping Your Benefits World

Knowing the complexities and understanding the choices and options available in the benefits world shouldn't be a focus of your job; it's a focus of ours. We help you shape your benefits program to better meet the needs and goals of your company and your employees. Swerdlin & Company is the only resource you need to answer all of your benefit questions. Our job is to make yours easier!



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