

# The Ambachtsheer Letter

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## CORPORATE DB PLANS, LDI STRATEGIES, AND THE DOL

### DOSE OF DUTCH COURAGE NEEDED

*“...pension attorneys said there has been a lingering concern that LDI strategies could be perceived as a violation of ERISA...”*

Pensions&Investments  
October 16, 2006

#### A New DOL Opinion Letter

The U.S. Department of Labor (DOL) has issued an opinion letter which gives its blessing to the use of liability-driven investment (LDI) strategies by corporate pension plan sponsors. The letter states that plan sponsors may consider the risks embedded in pension liabilities when designing investment strategies. Specifically, DOL's Louis J. Campagna, chief, division of fiduciary interpretations, writes: "...a fiduciary would not violate their duties under ERISA solely because the fiduciary implements a strategy for a plan that takes into account the liability obligations of the plan and the risks associated with such liabilities..."

However, ERISA attorneys warn that even with such a letter, corporate DB plan fiduciaries can't be too careful. The cited P&I article quotes a Richard 'Brick' Susko, with New York attorneys Cleary, Gottlieb, Steen, and Hamilton, offering the opinion that while LDI strategies could be OK, "it would be problematic if the plan undertakes the strategy solely because the chief financial officer determines that it is in the best interests of the employer". So apparently, it is not the economic impact of an LDI strategy that matters, but the corporate intent behind its deployment.

Our first thought when we began to read the cited article was that our friends at P&I made up the DOL opinion letter story as a Halloween prank, with 'Brick' a fictional character. However, we began to have second thoughts when we turned to page 38 to finish reading the article, and saw the photo of a smiling 'Brick' looking back at us. Apparently, this was meant to be a serious story, in which case it deserves a serious reaction. Taken seriously, this new development offers yet another graphic illustration of the dysfunctional roles pension legislation, the DOL, and the ERISA attorney community have played, and continue to play, in the management and regulation of corporate DB plans in the USA.

This *Letter* comments on the intellectual bankruptcy behind the current U.S. situation, and offers a re-written version of the DOL opinion letter that would be far more constructive.





\* Disclosure: this opinion letter was written by Keith Ambachtsheer, and not by the U.S. Department of Labor.

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