MERGERS AND ACQUISITIONS
The Importance of the Transaction Structure
Why is the Transaction Structure So Important?

- Liabilities (risk);
- Scope of due diligence; and
- Integration of employees and benefit plans.
Two Basic Transaction Types

♦ Stock or Merger Transaction:
  ▶ Buyer purchases stock of the “target” company.
  ▶ Target merges with Buyer or a subsidiary of Buyer (“triangular merger”).

♦ Asset Purchase Transaction:
  ▶ Buyer purchases only assets (e.g., buildings and inventory) from Seller.
    ➢ May include some or all of Seller’s assets.
  ▶ Seller continues as a separate entity in which buyer has no ownership interest.
Effects of Stock Transaction

- Plans and employees automatically come along with the stock – no change in the “employer”.
- Buyer assumes all liabilities relating to Seller’s plans.
- Greater risk requires higher level of due diligence and stronger contract provisions (representations and warranties and indemnification).
- Potential for “seamless” integration of employees and benefit plans.
Asset Purchase

- Buyer does not normally assume Seller’s plans or plan liabilities.
- Buyer may agree to assume benefit plans as part of union negotiations or for other reasons.
- Employees will have a change in their “employer”.
- Risk is lower if plans are not assumed:
  - Buyer may still have to provide COBRA.
  - Risk of “successor employer” liability for unpaid contributions to multiemployer plans.
- Employee and benefits integration may be more complicated.
Special Considerations in Subsidiary Stock Acquisitions

♦ If stock of a subsidiary corporation (not the parent corporation) is being purchased, may be similar to an asset transaction.

♦ Will depend on whether the benefit plans are sponsored by the parent or the subsidiary:
  - Parent sponsors plans (similar to asset transactions).
    - Think of subsidiary stock as an asset being purchased.
  - Subsidiary sponsors plans (similar to stock transaction).
Other Important Considerations

♦ Union Employees:
  ■ **Stock Purchase:** collective-bargaining agreements ("CBAs") may restrict changes to benefit plans.
  ■ **Asset Purchase:** CBAs may be assumed; possible requirement to bargain good faith.

♦ Foreign Employees and Plans.

♦ Puerto Rico/Virgin Islands Employees.
The Role of the Acquisition Agreement

- Establish Transaction Structure.
- Representations and Warranties:
  - Disclosure of problems and liabilities; and
  - Foundation for indemnification.
- Indemnification.
- Pre-Closing Covenants:
  - May require pre-closing action for benefit plans:
    - e.g., termination of 401(k) plan.
- Post-Closing Covenants:
  - Benefits continuation; and
  - HR transition.
HR Transition Agreement

♦ Generally used in asset purchase or subsidiary stock purchase.
  ▪ Seller remains separate from Buyer after closing.

♦ Typical transition services:
  ▪ Payroll administration.
  ▪ Continued participation in Seller’s benefit plans:
    ➢ Multiple employer plan issues – amendment and testing.
    ➢ Insurers may refuse coverage if advance consent not obtained.
  ▪ Employee leasing:
    ➢ Seller continues to employ employees during a transition period.
    ➢ Issue is who is the common law employer.
Purpose of Due Diligence

- Identify potential liabilities and compliance issues:
  - The failure to identify certain issues may lead to an overstated purchase price and the assumption of unnecessary risks.
- Define a strategy for integrating the benefits and culture of the target.
Due Diligence Process

- Assemble the due diligence team.
- Determine the scope of the review to be performed.
- Create the due diligence checklist and provide the checklist to the target.
- Collect and organize all documents and information received.
  - Thorough due diligence also requires conducting interviews with the target’s HR personnel.
  - Certain information may be publicly available through the Department of Labor’s EFAST2 system or the Securities and Exchange Commission’s EDGAR database.
Due Diligence Process

- Review due diligence materials to ensure completeness and identify issues.
  - Depending on the responses or documents provided, additional questions may be generated or additional documents may be necessary.
- Prepare a due diligence report documenting what was reviewed, issues discovered and proposed resolutions.
HR professionals will need to be involved from the beginning of the due diligence process.

- To help assess liabilities.
- To prepare for the transition and develop employee communications.

The due diligence team may also include in-house attorneys, external legal counsel, accountants, actuaries and others.
Due Diligence Checklist

♦ Each transaction is unique and will require an individualized assessment.

■ The scope of work to be performed depends on several factors, most significantly:
  ➢ The type of acquisition; and
  ➢ The time frame within which the transaction must occur.

♦ The buyer should thoughtfully choose which items it includes (and which it excludes) in the due diligence checklist.
Assessing the Due Diligence

♦ The buyer will need to review the due diligence materials to determine the potential risks and costs associated with the target’s benefit plans.

♦ The benefits that receive the most attention during the due diligence process are:
  ■ Qualified retirement plans;
  ■ Executive compensation plans; and
  ■ Health and welfare plans.
Assessing the Due Diligence

♦ Qualified Retirement Plans:

▪ Ensure the plans have a current IRS determination letter.
▪ Review the current plan documents and amendments for compliance with current laws and regulations.
▪ Identify operational compliance problems.
  ➢ Problems not disclosed by seller will be difficult to identify.
▪ Evaluate fiduciary compliance.
▪ There is a greater risk for potential liabilities if the target sponsors a defined benefit plan or participates in a multiemployer plan.
Assessing the Due Diligence

♦ Executive Deferred Compensation Plans:
  ■ May be included in individual agreements or in plans that benefit a group of management employees.
    ➢ Determine whether the arrangements meet documentation and operational requirements under Section 409A.
    ➢ Identify any enhanced rights (including accelerated vesting of payment or right to severance) that may be triggered by change in control.

♦ Equity Plans:
  ■ Determine how target’s outstanding equity awards will be treated in the transaction.
Assessing the Due Diligence

♦ Health and Welfare Plans:

- Retiree medical plans warrant special attention because of the large liabilities they impose on their sponsoring employers.
- Severance benefits may be payable as a result of the transaction (even if employees are rehired by the buyer).
Administrative Coordination

- As the transaction progresses, additional information will be required from the target’s plan administrators and recordkeepers.
  - This information will involve more administrative detail, such as participant records and account balances.
- The availability of these records may indicate how carefully the Target has previously maintained the plans.
Qualified Retirement Plan Issues
Qualified Retirement Plan Considerations

- 401(k) Plan Transitions.
- Pension Plan Considerations.
- Multiemployer Plan Liabilities.
401(k) Plan Transitions

♦ Options for Seller’s 401(k) Plan:
  ■ Terminate the plan; or
  ■ Assume the plan:
    ➢ Maintain as a separate on-going plan,
    ➢ Maintain as a frozen plan, or
    ➢ Merge into the Buyer’s 401(k) plan.

♦ Choices may be limited if unions are involved.
Terminating the Seller’s 401(k) Plan

To terminate the seller’s 401(k) plan and distribute all accounts:

- **Asset Sale** – Buyer cannot assume seller’s plan.

- **Stock Sale** – Seller’s plan must be terminated prior to closing.
  - Corporate action must be taken before the closing.
  - Actual distributions may be made after the closing.
Terminating the Seller’s 401(k) Plan

♦ Advantages:
  - Protected benefits under the seller’s plan do not need to be preserved; and
  - Qualification issues with the seller’s plan will not taint the buyer’s plan.

♦ Disadvantages:
  - Limited options for a transition period;
  - Limited time to process loan rollovers before default; and
  - Loss of retirement assets.
Maintaining the Seller’s 401(k) Plan as a Separate On-Going Plan

♦ Advantages:
  - Opportunity for a transition period; and
  - Qualification issues with the seller’s plan will not taint the buyer’s plan.

♦ Disadvantages:
  - Testing issues after the 410(b)(6)(C) transition period:
    - Deemed to pass coverage test for year of acquisition and following year if (i) passed coverage test before acquisition, and (ii) no significant changes to the plan or the coverage of the plan.
  - Administrative issues with maintaining an additional plan (e.g., additional Form 5500 and audit).
Maintaining the Seller’s 401(k) Plan as a Separate Frozen Plan

♦ Advantages:
  - Opportunity for a transition period;
  - Qualification issues with the seller’s plan will not taint the buyer’s plan; and
  - No need for a frozen plan to satisfy the coverage test.

♦ Disadvantages:
  - Administrative issues with maintaining an additional plan (e.g., additional Form 5500 and audit).
Merging the Seller’s 401(k) Plan

♦ Advantages:
  - Opportunity for a transition period; and
  - Avoid administrative costs of maintaining a separate plan.

♦ Disadvantages:
  - Protected benefits under the seller’s plan will need to be preserved; and
  - Qualification issues with the seller’s plan may taint the buyer’s plan.
Pension Plan Transitions

- Considerations are similar to those for 401(k) plans, except:
  - A pension plan does not need to be terminated before closing to make distributions; and
  - The cost associated with terminating a pension plan can be considerably greater than those associated with terminating a 401(k) plan.
Pension Plan Liability

- Pension plan liability can be quantified in many different ways:
  - FTAP and AFTAP;
  - Financial Accounting (FAS 87); and
  - Termination funding.
Pension Plan Liability

♦ ERISA Section 4062(e) Liability
  - Triggered by (i) plant closing, and (ii) 20% or greater reduction in actively employed participants.
  - Liability based on percentage of funding shortfall calculated on a termination basis.
  - PBGC will negotiate either additional plan contributions or a letter or credit or other security arrangement.
  - Depending on “creditworthiness” of the plan sponsor, the PBGC may assess no liability.
Pension Plan Reporting Issues

♦ PBGC Reportable Events:
  - Active participant reduction;
  - Change in contributing sponsor or controlled group; or
  - Transfer of benefit liabilities.

♦ Form 5310-A:
  - Filed 30 days before a plan spinoff or merger.
Multiemployer Plan Withdrawal Liability

♦ Complete withdrawal or partial withdrawal:
  • Partial withdrawal generally means a 70% reduction in contributions, and it typically results from a reduction in force.

♦ Liability based on current funding level of the whole plan and the individual employer’s contributions relative to contributions by all employers.

♦ An asset sale will trigger withdrawal liability unless the buyer specifically agrees to assume the multiemployer plan.
Multiemployer Plan Underfunding

- “Critical status” (<65% funded) or “Endangered status” (<80% funded) – rehabilitation plan required.
  - Involuntary contribution rate increases.
  - Limits on benefit increases.
  - Limits on lump sum benefits.
  - Reduce or eliminate protected benefits (early retirement subsidies, disability benefits).
  - Reduce vested benefits.
Nonqualified Deferred Compensation
Section 409A Errors

♦ Target company may have many different types of arrangements subject to Section 409A.

♦ Arrangements may have never been drafted to conform to 409A or ensure exemption, or may have been operated improperly.

♦ If errors are identified, it may be possible to correct them.

♦ Timing may be very important, so it is best to identify any 409A errors early in the process.
Why are Section 409A Errors Important in an Acquisition?

♦ Because of the way 409A penalties work, the executives of the target company would be penalized.
  ■ These individuals may be valuable as part of the acquisition.

♦ Due to 409A plan aggregation rules, if even one arrangement is out of compliance, it could have far-reaching consequences.

♦ Most important arrangements to consider:
  ■ Employment agreements;
  ■ Traditional deferred compensation arrangements; and
  ■ Phantom stock.
Effect of Transaction

- Contractual funding requirements.
  - *For Example*: Some rabbi trust documents require additional funding upon a change in control.
  - May conflict with 409A funding restrictions (e.g., If there is an at-risk defined benefit plan).
- If there is a rabbi trust to fund the benefits, it may include protections preventing the company from accessing the funds (absent insolvency).
Effect of Transaction

- Restrictions on changing plans after the transaction;
- Would be stated in the governing documents:
  - The documents may require appointment of an independent 3rd party administrator.
  - Participant approval may be required for certain changes.
  - There may be restrictions on changing the trustee or other vendors.
  - There may be restrictions on terminating the plan or reducing benefits for a certain period after the transaction.
Effect of Transaction

♦ There may be provisions that enhance benefits automatically in the event of a change in control.
   ■ Immediate vesting;
   ■ Prohibition against forfeiture upon termination for cause; and
   ■ Special payment rights:
     ➢ Termination for good reason; and
     ➢ Accelerated payment upon separation following change in control.

♦ A plan may provide for automatic payment on a change in control.
Separation from Service Due to Transaction

♦ **Asset purchase** – buyer and seller can specify whether employees who transfer to buyer will be deemed separated from service:
  - All employees must be treated consistently;
  - Must be arms’ length transaction; and
  - Must state in writing.

♦ **Stock purchase** – have to look at facts to determine whether separation will occur.
Termination of Plans

- Special opportunity for plan termination if transaction qualifies as a 409A change in control.
  - Company must approve termination irrevocably within 30 days before or 12 months after the change in control.
  - All aggregated arrangements for all employees affected by the change in control must be terminated.
  - Plans must be liquidated within 12 months after action is taken to terminate the plans.
  - Decision belongs to the entity that would be liable for the plans immediately after the change in control.
Planning Ahead

♦ Understand what would happen under the employer’s own arrangements in the event of a change in control.

♦ Monitor 409A compliance and correct errors.

♦ Review 409A arrangements early as part of due diligence process.

♦ Consider separation from service and plan termination when negotiating the transaction.

♦ If the buyer, consider burdens imposed by any restrictions under seller’s plans.

♦ Prepare for ongoing administration if assuming plans.
Health and Welfare Plans
Overview

- HIPAA Privacy and Security Concerns.
- COBRA in a Nutshell.
- Flexible Spending Accounts.
- Retiree Benefits.
- GOTCHA Issues.
HIPAA Privacy and Security Concerns

♦ Seller may be asked to provide claims data from its medical plan to the buyer.
   
   *For Example:* Buyer may ask for participant names, dates of services and amounts of high dollar claims that exceeded the attachment point for stop loss in the prior two years.

♦ Privacy and Security Rules do not allow seller to transfer information directly to the buyer.

♦ Can the seller disclose?
Potential Disclosure Work-Arounds

♦ Use only de-identified protected health information.
♦ Obtain participant authorizations if identifiable information is needed (impractical unless data is just for a small number of individuals).

♦ Structure as a Plan to Plan Transfer:
  - Privacy Rules allow the medical plan to disclose PHI for its own health care operations.
  - Data is disclosed from one plan administrator to the other (or via business associate) to ensure that the buyer, in its role as employer, does not have access to the data to avoid a reportable breach.
  - Seller should obtain confidentiality agreement from buyer and ensure its privacy notice permits disclosures for health care operations.
COBRA in a Nutshell

♦ If the selling group maintains a group health plan after the sale, then the group health plan of the selling group must provide COBRA coverage to M&A Qualified Beneficiaries.

♦ An M&A Qualified Beneficiary is either:
  ■ A qualified beneficiary of the seller whose qualifying event occurred before the sale.
  ■ A qualified beneficiary whose qualifying event occurs in connection with the sale.

REMINDER: Sellers that maintain a group health plan after the sale must send COBRA Notices to M&A Qualified Beneficiaries whose employment terminates in connection with the sale even if these individuals are immediately hired by buyer and given health care coverage.
If the selling group does not maintain any group health plan after the sale, a group health plan of the buying group must provide COBRA coverage if:

- The buying group maintains a group health plan; and
- In the case of an asset sale, the buying group is a successor employer, (i.e., business operations associated with the assets purchased are continued by buyer without interruption or substantial change).

The parties may contractually allocate the responsibility to provide COBRA coverage. However, if the party that is contractually assigned the responsibility fails to perform, the party that has the obligation under the COBRA regulations remains responsible for making COBRA coverage available.
Flexible Spending Accounts (FSAs)

- Issues arise with transactions that take place in the middle of a plan year.
- What happens to employees’ FSA account balances?
FSA Options: Scenario 1

- Buyer creates or maintains a plan that offers an FSA. Seller and buyer agree that transferred employees will continue to participate in seller’s plan (assuming seller remains in business).

- Seller and buyer also agree that post-transfer FSA participation will be considered as if it were under the buyer’s plan; seller will continue administration of FSA, and the buyer will forward the deducted FSA contributions to the seller.

- Arrangement expires at the end of the plan year.

- No new elections may be made as a result of the sale.
FSA Options: Scenario 2

- Buyer either has or will establish an FSA plan.
- Buyer will treat the transferred employees as if they had been participants in the buyer plan for the entire year.
- Buyer’s plan must be amended to provide for this participation and to exclude employees who elect COBRA coverage under the seller’s FSA.
  - Amendment should also specify that the seller’s former employees are permitted under the buyer’s plan to seek reimbursements that are incurred at any time in the entire plan year.
- Account balances in the FSA are transferred at the closing of the transaction.
- This scenario can be applied to stock purchases as well.
- No new elections may be made as a result of the sale.
Retiree Benefits – Medical, Dental, Life Insurance

♦ Asset sale:

- Buyer rarely will agree to a transfer of the seller’s retiree healthcare obligations, especially with respect to employees who retired prior to the sale.

- With respect to active employees, buyers may be more willing to accept the transfer of such obligations, subject to a purchase price adjustment to reflect cost of providing coverage.
Retiree Benefits – Medical, Dental, Life Insurance

♦ Stock sale:
  - Absent a specific carve-out of liabilities to another seller-related entity, acquiring entity will become responsible for the liabilities.

♦ Contractual Limitations on Termination:
  - Generally retiree health plans are not subject to typical “vesting” provisions even for retirees who have already retired.
  - Buyer should review documents to make sure reservation of rights language is contained in the plan documents as courts have held that retiree benefits can contractually vest and cannot be terminated.
  - Special termination issues for retiree benefits provided pursuant to collectively bargained agreements.
Nondiscrimination Issues:

- Before finalizing a transaction, a buyer should determine the potential impact of including or excluding the employees of the acquired business in its benefit plans:
  - If buyer owns 80% or more of the acquired business after a stock sale, or if the transaction is an asset purchase, employees of the acquired business generally must be included when the buyer performs its nondiscrimination testing.
  - Transition relief may be available during a “transition period” which begins on the date of the closing of the transaction and ends on the last day of the first plan year following the transaction.
GOTCHA Issues

MEWA Issues:

- If after a sale, the buyer does not own 80% of more of the acquired business (clue is if buyer cannot put all of the seller’s employees into its retirement plan) there may be a potential MEWA issue.
Section 280G
(Golden Parachutes)
What is the Purpose of Section 280G?

✦ Discourage corporations from providing “excessive” change-in-control benefits to executives.

✦ If Section 280G is triggered:
  - Employee pays 20% excise tax on excess parachute payments.
  - Employer loses deduction on excess parachute payments.
What is an Excess Parachute Payment?

- Payment of compensation contingent upon a change in control of a corporation.
- Made to “disqualified individual”:  
  - Officers and certain highly compensated employees; and  
  - Employees who are 1% owners.
- If total payments equal or exceed 3 x the employee’s “base amount” (5-year average W-2 compensation) all amounts over 1 x base amount are “excess” parachute payments.
Examples of Parachute Payments

♦ Accelerated vesting of options, restricted stock and RSUs:
  ■ Special rules for valuing acceleration – factors in lapse of “service requirement” and earlier payment but not entire value.

♦ Severance Pay and Benefits:
  ■ Severance paid on termination within 1 year before or after a change in control is presumed to be a parachute payment.

♦ Accelerated vesting of SERP benefits.

♦ Tax Gross-Up Payments.
Example of Excess Parachute Calculation

♦ **Step 1**: Determining if the “3 x” threshold is exceeded:
  - 3 x Base Amount $900,000
  - Total Parachute Payments $910,000
  - Payment in Excess of 3x Base $10,000

♦ **Step 2**: Calculating the excess parachute payment:
  - Total Parachute Payments $910,000
  - 1 x Base Amount $300,000
  - Excess Parachute Payment $610,000
  - 20% Excise Tax $122,000
Impact of Excess Payment

- Cost of additional $10,000 payment over 3 x Base:
  - To Executive: $122,000 in excise taxes
  - To Company: $250,000 in lost deduction value
    (35% Federal/6% State)
What events constitute a Change in Control?

- Person or group acquires more than 50% of fair market value of voting power or outstanding stock.
- Person or group acquires more than one-third of total assets in a 12-month period.
  - Subsidiary stock is treated as an asset.
- Change in Control presumed to occur if:
  - Person or group acquires 20% or more of the total voting power during a 12-month period.
  - or -
  - Majority of the members of the board of directors are replaced within a 12-month period by members who were not endorsed by a majority of the prior directors.
Does Section 280G Apply to all Businesses?

♦ Only to corporations:
  - Including LLCs taxed as corporations under IRS “check the box” rules.

♦ Exceptions:
  - “S Corporations”:
    - No more than 100 shareholders (who generally must be individuals or trusts).
  - Corporations that could qualify as “S Corporations” but did not elect S Corporation status.
Exception for Shareholder-Approved Payments

- Corporation may not be publicly traded.
- Payments must be approved by 75% of the voting power of the corporation’s outstanding stock:
  - Stock owned by Disqualified Individuals is disregarded.
- Payment must be contingent on the shareholder vote.
Strategies to Address 280G Liability

♦ Gross-Ups:
  - Employer pays additional taxes incurred by the employee.
  - Can be extremely expensive, since gross-up itself is a parachute payment and is nondeductible.
  - Heavily disfavored by institutional investors and shareholder advocates.
  - Proxy disclosure of change-in-control payments will highlight cost of gross-ups.
**Example of Gross-Up Calculation**

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<th>Description</th>
<th>Amount</th>
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<td>Total Parachute Payments</td>
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<tr>
<td>3x Base</td>
<td>$900,000</td>
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<tr>
<td>Excess (&gt;1x Base)</td>
<td>$610,000</td>
</tr>
<tr>
<td>Initial 20% Excise Tax</td>
<td>$122,000</td>
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<tr>
<td><strong>Gross-Up Payment</strong></td>
<td><strong>$381,000</strong></td>
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<tr>
<td>(39.6% Federal 6% State/20% 280G/2.45%FICA)</td>
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<tr>
<td>Lost Deduction</td>
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<tr>
<td>Value of Lost Deduction</td>
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</tr>
<tr>
<td>(35% Federal/6% State)</td>
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<tr>
<td><strong>Total cost to Company to provide “last” $10,000 of Parachute Payments</strong></td>
<td><strong>$641,000</strong></td>
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</tbody>
</table>
Strategies to Minimize Impact of Section 280G

♦ Cutbacks:
  - Total parachute payments are contractually limited to 299% of Base Amount.
  - Excess payments must be automatically forfeited.
  - Cutback must be binding on executive before change in control occurs.
  - Cutbacks involving Section 409A deferred compensation is problematic – cannot alter payment timing.

♦ Modified Cutback:
  - Parachute payments are reduced only if the after-tax value of the payments to the executive will exceed the amount of excise tax.
Putting it Together in Practice
(Or some lessons learned)
Transaction Structure in Practice

♦ Understand “purpose” of the deal – Why are we buying this company?
  ■ “Buying” engineers vs. buying book titles:
    ➢ HR implications of each.

♦ Crucial decision: My plans or your plans?
  ■ Answer will depend on:
    ➢ Transaction structure;
    ➢ Purpose of the deal;
    ➢ Corporate culture(s);
    ➢ Timing; and
    ➢ Relative cost of the two plans.
Transaction Structure in Practice

♦ Asset deal vs. stock deal:
  - **Asset deal** (no plans + no liabilities) = More work now
  - **Stock deal** (existing plans + existing liabilities) = More work later
Employee Arrangements

♦ Retain key employees:
  ▪ Retention agreements and/or stay bonuses.
  ▪ Severance provisions in employment agreements:
    ➢ Be specific when drafting;
    ➢ Understand the cost;
    ➢ Watch 409A;
    ➢ Get releases.
  ▪ Equity – cash out (or not)
    ➢ Understand Target’s equity plan & grant agreement wording.
Employee Arrangements

♦ Develop communication plan for all assumed employees:
  ■ Adopt the mindset of an assumed employee and aim to reduce uncertainty and stress:
    ➢ Welcome the new employees (but don’t over promise).
    ➢ Answer as many questions as possible (e.g., will payday still be on Friday? What happens to my vacation days?).
Benefit Plans

- Factors that go into the “your plan or my plan decision”:
  - Transaction structure;
  - Deal purpose & relative bargaining power;
  - Corporate culture;
  - Timing; and
  - Relative cost/benefits of the plans:
    - Do a side by side comparison.

- Other strategies:
  - Transition services agreements.
  - Pick and choose (your medical plan, my 401(k) plan).
Benefit Plans

♦ Vacation:
  ■ Emotional issue.
  ■ Watch state laws.

♦ Other Issues:
  ■ 401(k) Loans.
  ■ Deadlines – insurance carrier notices, Form 5500s.
Records Retention

- Some important documents to gather during the “due diligence” phase:
  - Plan documents (with amendments);
  - Trust agreements;
  - Determination letters;
  - Summary Plan Descriptions;
  - Employee handbooks;
  - Insurance contracts and certificates;
  - Form 5500s;
  - Contracts with service providers;
  - Contracts with employees, including intellectual property assignment agreements; and
  - Employee demographic and personnel files.