



## President's Message



It is my sincerest hope that this Spring Newsletter finds you, your family and loved ones safe and healthy. SARS-COV-2 has changed our lives. As the country and the larger world struggles with a global health crisis not seen since 1918, we look towards better days ahead. As we do so, let's pause and remember aspects of our lives for which are grateful. I'll go first.

I'm grateful for my fellow Board members. Many just as busy as myself, have found time, despite this health crisis to devote themselves to this Chapter's continued success this past March and April. Thanks to the focused efforts of our Chapter administrator, Marti Hack, our Breakfast Programs continue without interruption. While we are not able to meet at Andrei's, we get together electronically. The learning and exchange of ideas carries on as do your access to CE credits. Crisis or not, the Chapter thrives thanks to a swelling rank of members and a committed group of sponsors.

The word gratitude itself derives from the Latin gratia meaning grace, graciousness or gratefulness. As a non-denominational and non-partisan newsletter, I'll leave matters of grace and public graciousness to each of you. As for gratefulness, let me focus on three things: (1) our profession; (2) our Chapter; and (3) our home here in Southern California.

The health experts tell us that sunshine, and the vitamin D that is then produced, is perhaps the best medicine as we try to stay safe in uncertain times. I can think of no better place to get some sunshine every day than here in Southern California. As I write this President's Message on Mother's Day weekend, the Northeast and parts of the Midwest are dealing with snow or freezing rain. Not us. Here in Orange County it is sunny days all around. Please join me in getting outside for a walk or run, to toss a ball or a frisbee, or just to sit out back on your patio with a good book or your preferred reading material.

Qualified retirement plans and the assets that have been committed to their trusts have taken their place at the forefront as Congress attempts to meet the financial crisis presented by the coronavirus. Our clients and their participants need our expertise and talents as navigate the best path forward. We are not first responders, but we do have a role to play – to provide advice to each client on how best to balance the desire to protect and preserve qualified retirement plan assets and to allow some portion of those assets to be best utilized for participants most directly affected by COVID-19. This balancing has left me, since early March, busier than almost ever before professionally. And I'm grateful. Grateful to have a job that is, or at least appears to be safe and secure. Grateful that my professional energies have a place to be directed.

Stay safe, stay healthy and I will see on the other side. Hopefully, and as the song goes, to see you again in September.

All the very best,  
  
Hitz Burton, Partner, Aon  
Orange County Chapter President



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## Board Member Profile



**Name:** Andy Hermann  
**Company:** Empower Retirement  
**Title:** Regional Sales Director  
**Years in the Industry:** 25  
**First “real” job:** Financial Analyst for The Gap  
**Education:** Bachelor of Science, California Poly San Luis Obispo

### Business Background

**Nature of your work:** Retirement Plan Sales/Consulting

**How you got into the field:** Started with CIGNA Retirement in 1990 as a service representative

**What you like about the field:** Interacting with good people and focusing on developing professional and personal relationships.

**Why did you join the WP&BC?:** I changed sales territories a little over two years ago and saw WP&BC as a good way to meet industry professionals.

### Personal Background

**Ways you spend free time:** Being active and outside with family and friends, watching and playing any kind of sports, going on vacation, being a referee, and occasional bourbon tasting.

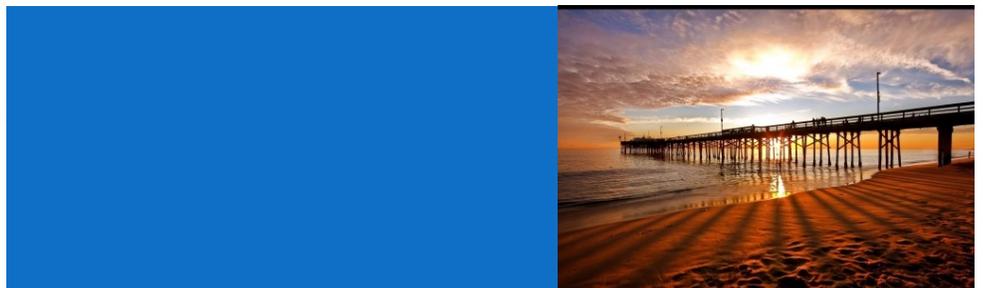
**Guiding philosophy:** Five minutes early is on time and on time is late.

**Favorite charity:** We Care/Los Alamitos, a local food bank that my wife is very involved with.

**Last book read:** “Showtime” about the Lakers dynasty

**Restaurant recommendation:** Din Tai Fung

**What will you do when you retire?** Referee, Coach, Travel, being a cool Grandpa and spoil my grandchildren





Sherrie Boutwell  
Partner  
Boutwell Fay, LLP

## Every Breakdown is an Opportunity for a Breakthrough: Rethinking Retirement Plans After COVID-19

Every cloud has a silver lining – or so the saying goes. As we ride out the COVID-19 storm, that may be hard to see, but the sun is still there, and it will come out again. This article focuses on the changes that are occurring now and how we, as an industry, can harness those changes to create some silver linings in the future of employer-based retirement plans.

### The Eye of the Storm

Like many storms, COVID-19 started brewing rather inconspicuously, in another country and far from our shores with a report of unusual pneumonia cases in China on December 31, 2019. The first known case in the US occurred just 21 days later and on January 31, 2020, the US declared a public health emergency and ordering quarantines of visitors returning from China – the first time that step had been taken in 50 years. 26 days later the first case of community spread in the US was announced. By March 19, the US had 10,000 cases.

As I write this a month later, the US has 1,400,377 known cases and 82,230 US citizens have died from the disease. Nearly every state has a “stay at home” order in place and 26 million people have filed new unemployment claims in just the last five weeks. After hitting record highs in February 2020, during March 2020 the stock market crashed. On Monday, March 9, 2020, the Dow Jones Industrial Average (DJIA) set a new record for the highest number of points dropped in one day and then that was followed by additional jaw dropping point drops on March 12 and March 16. At the same time, oil prices also plummeted. The markets have recovered a bit since then, largely due to unprecedented stimulus from the federal government. People are getting used to the “new normal”: panic buying seems to have settled down, remote work from home and virtual online meetings with dogs barking and babies crying in the background are now accepted (even embraced) and an exotic feline king reigns supreme in the ratings.

### Silver Linings

In spite of it all, there are some silver linings:

- 1. New Bipartisanship.** Amazingly, Congress was able to put aside their differences and almost immediately passed two stimulus bills, which were signed into law. On March 18, 2020, Congress passed the Families First Coronavirus Response Act (“FFCRA”) and on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). Regulatory agencies responded by working with the benefits community and promptly issuing guidance. This was on top of the SECURE Act that had

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passed in December of 2019. This has been a sea change in a short time period and most large record keepers and other service providers met the challenge – they worked hard to learn and implement these substantial changes almost immediately, while at the same time converting to remote work and trying to find toilet paper in stock.

**2. Focus on Financial Wellness.** Although employers and the retirement plan industry have been focusing on financial wellness for some time now, with the average family still living paycheck to paycheck, and in spite of one of the best economies in history, the message had clearly not gotten through. Now, a whole generation just experienced in a real (and hopefully behavior modifying) way the need for emergency savings and long term savings that can also be tapped in an emergency.

The CARES Act offers an opportunity for a fundamental change in the purpose for which defined contribution plan funds are held: instead of being locked up until retirement, the CARES Act allows certain plans to be amended to permit participants affected by the virus to take immediate, no penalty, in-service distributions with generous pay back terms, expand the availability of participant loans, suspend repayment of existing participant loans and suspend required minimum distributions (“RMDs”). Of course, one cannot take a COVID-19 distribution or loan (or forego an RMD) unless one has some retirement funds saved in the first place.

The CARES Act also authorizes employers to help employees pay off some student loan debt in a tax favored manner through a 127 plan and makes a number of changes to health plan rules as well.

This “double duty” approach to use of retirement plan funds first, as a basic emergency savings account, and second as a long term path to increased retirement savings is also reflected in the CalSavers and other state level approaches to mandatory auto-enroll retirement plans sponsored by various states. Under that program, the first \$1,000 contributed to a Roth IRA is first deposited into a money market account so that those funds are available in an emergency. A federal district court just upheld that program as not being preempted by ERISA for the second time.

As a practitioner, it has been interesting to see how plan sponsors decide whether to offer COVID-19 distributions (which are optional with the plan sponsor) in their plans. Some employers feel an acute need to help get funds to laid off or furloughed employees while others (especially those in “essential businesses”) are concerned that these opportunities will be abused or that employees will be cashing out just as the market is at bottom.

**3. Participants Hold the Line.** In spite of the crazy volatility in the financial markets, most 401(k) participants are holding steady<sup>3</sup> rather than reacting emotionally. From an optimistic viewpoint, this may reflect both the

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<sup>1</sup><https://www.calsavers.com/> (as visited on April 25, 2020)

<sup>2</sup>Howard Jarvis Taxpayers Association, Jonathan Coupal, And Debra Desrosiers V. The California Secure Choice Retirement Savings Program and John Chiang, In His Official Capacity As Chair Of The California Secure Choices Retirement Savings Investment Board, No. 2:18-Cv-01584-Mce-Kjn, United States District Court, Eastern District California (March 10,2020)

<sup>3</sup>See: <https://www.napa-net.org/news-info/daily-news/401k-investors-largely-staying-course-during-pandemic> (visited on April 25, 2020).

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advantage of participant education over the last 20 years as well as optimism on the part of participants that this is temporary and acute situation that does not accurately portray the strength of the US economy or its people.

### Here Comes the Sun

So how can we in the retirement plan industry turn this “breakdown” into a “breakthrough”? Here are some ideas for how to make that happen:

- 1. Get ready for the next “disaster.”** This was not the first disaster, nor will it be the last disaster to hit the world. The good news is that the retirement plan industry has shown remarkable resiliency through it all, but that could change, if for example, there was a widespread loss of power or internet services that lasted more than a few hours. We all now have an opportunity to prepare for “the next one.”
- 2. Be prepared to rebuild.** Participants who withdraw retirement funds now will have to work harder in the future to be financially prepared for retirement. Retirees who had counted on growth in the market (or even just no losses in the market) will also need to adjust. And employers are likely to cut back on their own contributions in the short term, exacerbating the problem.
- 3. Get prepared for more remote work/cybersecurity needs.** Working at home was already a trend, one that is likely to accelerate. And that transition brings a whole new level of risk, especially in the area of cybersecurity. Because there is huge amount of money in retirement plans and so much of the financial services business is now conducted online, this industry will always be a target for cybercriminals. And where there are cyber breaches there may also be fiduciary breaches.

At least two cases have now been filed recently alleging breach of fiduciary duty for cybercrimes. In the first, the plaintiff alleged that the plan fiduciaries breached their duties of loyalty and prudence by allowing the plan to make unauthorized distributions of plan assets; failing to confirm authorization for distributions with the plan participant before making distributions; failing to provide timely notice of distributions to the plan participant by telephone or email; failing to identify and halt suspicious distribution requests, such as requests for multiple distributions to accounts in different banks; failing to establish distribution processes to safeguard plan assets against unauthorized withdrawals; and, importantly, failing to monitor other fiduciaries’ distribution processes, protocols, and activities; and related acts and omissions.<sup>4</sup> In the second case, similar allegations were made, with the added twist that the hacker appears to have had access to the participant’s email and contacted the plan service provider’s call center twice by phone.<sup>5</sup> In a separate investigation, the Department of Labor has now filed a lawsuit against the plan’s service provider to compel production of documents related to this incident.<sup>6</sup> And, state laws, such as California’s new privacy law for consumers<sup>7</sup> may also need to be considered – state laws such as California’s may not be preempted by ERISA, depending on the type of claim.

Plan fiduciaries will want to work with competent advisors to: (1) review service contracts for cybersecurity concerns, (2) review insurance coverage for cybersecurity losses; and (3) establish prudent processes and procedures to monitor service providers in order to prevent losses from cybercrimes.

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<sup>4</sup>See, *Berman v. Estee Lauder*, No. 3:19-cv-06489, ND CA (filed in October 2019).

<sup>5</sup>See, *Bartnett v. Abbott Laboratories et al.*, No. 2020 CV 2127, (N.D. Ill. filed April 3, 2020).

<sup>6</sup>See, <https://www.pionline.com/courts/labor-department-seeks-compel-align-erisa-probe> (as visited on April 25, 2020).

<sup>7</sup>California Consumer Privacy Act, AB-375 (effective January 1, 2020).

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**4. Appreciate, Appreciate, Appreciate.** “You don’t know what you’ve got ‘til it’s gone” has never been more true. Of course, our hearts go out to everyone who has lost a loved one in this pandemic. And even for those of us who have not, now is the time to appreciate what we have and work to preserve it. When I was in law school in the early 1980s, the young family living next door were from then communist Romania. I can remember their absolute wonder and joy at our modern supermarkets where you could buy all of your groceries in one place and without standing in multiple lines on multiple days. (Okay, it did feel like that here for a couple of weeks). My neighbor would walk across the street to the market and just stand in the aisles, taking in the sheer joy of a US supermarket—a feeling I only now understand.

Let me close my saying how much I appreciate all of you, my colleagues in this industry, our wonderful Western Pension & Benefits Council, and of course our brave essential workers. Stay safe and let’s all work together to turn this breakdown into a breakthrough.

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### WP&BC Orange County Statement of Purpose

The Orange County Chapter of the Western Pension & Benefits Council promotes an exchange of information and ideas among employee benefits professionals. Our members include ERISA attorneys, CPAs, third party administrators, investment industry benefits specialists, actuaries, benefits consultants and plan sponsors’ in-house benefits professionals.

Through the monthly breakfast forum presentations and periodic technical lunch forums, the Orange County Chapter provides a forum for dialogue between its members. These meetings encourage full audience participation and exchange of practical solutions to technical issues. Benefit professionals lead the meetings, with an emphasis on topics reflecting current benefit trends and regulatory guidance.





## 2020 Nominating Committee Report to the Members

The Nominating Committee nominated the following Members to serve as Officers of the Organization for the 2020-2021 and 2021-2022 fiscal years (July 1, 2020 through June 30, 2022):

Shannon Main:	President
Tom Drosky:	President-Elect
Hitz Burton:	Past President
Curtis Farrell:	Secretary
Mark Murphy:	Treasurer

The Nominating Committee nominated the following Member to serve on the Board of Directors as a Lifetime Member effective July 1, 2020 until such Member decides to retire from the Board of Directors:

Stuart Hack:	Lifetime Member
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The Nominating Committee has nominated the following Members to serve on the Board of Directors for the 2020-2021 and 2021-2022 fiscal years (July 1, 2020 – June 30, 2022):

Kathleen Bass:	Director at Large (Newsletter Chair)
Tom Drosky:	President-Elect
Alison Fay:	Director at Large
Samantha Graboff:	Director at Large (Webinars Chair)
Mindi Marburger:	Director at Large (Programs Co-Chair)
Peter Stephan:	Director at Large (Membership Chair)
Margaret Martinazzi:	Director at Large
Andrew Hermann:	Director at Large

The following Members will continue to serve on the Board of Directors for the Organization for the remainder of their two-year terms that began July 1, 2019 and which end June 30, 2021:

Curtis Farrell:	Secretary
Hitz Burton:	Past President
Mark Murphy:	Treasurer
Kris Krikorian:	Director at Large (Sponsorship Chair)
Shannon Main:	President

The following Members will serve on the Board of Directors for the Organization for the remainder of the two-year term of Aubrey Silva and Marilyn Thompson that began July 1, 2019 and which ends June 30, 2021 respectively as follows:

Cindi Grossinger:	Director at Large
Michael Flatebo:	Director at Large (Programs Co-Chair)

Members may nominate a slate of Officers and Directors, subject to the following Bylaw provision:

**Article III, Section 6.(c) Election Procedure – No Membership Nominations.** If no slate of nominees by petition of the corporation membership has been received by the secretary of the corporation by May 1, the Board shall vote on the slate of nominees presented by the corporation's Nominating Committee. The slate of nominees shall be deemed elected to their respective positions and offices for terms beginning the following July 1 if approved by a majority vote of the Board. Notice of such elections shall be provided to each member of the corporation by mail or by electronic transmission by the corporation.



**Orange County Chapter  
of  
WP&BC  
Donates \$5000.00 to  
Local Food Bank**

Due to the current healthcare crisis our last few monthly breakfast forums have been delivered to you as webinars. The webinar format has reduced the Chapter's monthly expenses and created a short-term surplus. Recognizing that our members, whether Individual or Gold Members, Corporate or Sponsors have pre-paid for Breakfasts, it was the unanimous decision of the Board of Directors to donate \$5,000 to those in need within Orange County. The designated recipient of those funds is the Orange County Food Bank, which currently offers a dollar for dollar match.

The Food Bank's aim is to make a positive impact in people's lives by helping them meet basic needs and strengthen their support system. The OC Food Bank works with nearly 400 local charities, soup kitchens, and community organizations to end hunger and malnutrition. The OC Food Bank provides donated food, USDA commodities, and purchased food to non-profit agencies in Orange County that serve low-income families and individuals. Annually, the OC Food Bank is able to distribute more than 20 million pounds of food.

We want to thank you, our members, for your sustained support of the WP&BC—Orange County Chapter. Without you, we could not in turn help those within our community when they need it most.



**Marilyn Thompson, Partner, Windes**, is retiring from the Chapter Board of Directors and we want to express our profound gratitude for her significant contributions to, and support of, our organization. Marilyn has served on the Orange County Chapter Board of WP&BC for 6 years and has been a member for 16 years. Marilyn has provided strong leadership to our organization in the area of Programs which has enabled us to continue to thrive. Best wishes in all your future endeavors, Marilyn!

## Upcoming Programs

All Breakfast Forum Meetings will be held at

**Andrei's Restaurant**

**2607 Main Street, Irvine, CA 92614**

\* Due to the COVID-19 health crisis, Breakfast Forum meetings will not be held at Andrei's through May 2020 and will be available as an Online Webinar only.

<p>5/21/2020 *Online Webinar</p>	<p><b>Online Webinar:</b> <a href="#">The Emerging Cybersecurity Risks Due to COVID-19</a></p>	<p><b>Cesarius Yakub</b>, Senior Manager with <b>PwC's Cybersecurity, Privacy &amp; Forensics</b> Advisory practice</p>
<p>5/28/2020 Online Webinar</p>	<p><b>Online Webinar:</b> <a href="#">More Strange But True Tales of 403(b) Plans</a></p>	<p><b>Evan Giller</b>, JD, Boutwell Fay <b>Robert Toth</b>, JD, Toth Law <b>Ann Jonas</b>, JD, Fidelity Investments</p>
<p>Available Through June 30, 2020 Recorded Webinars</p>	<p><b>Recorded Webinars:</b> Click on the desired Recorded link below for more information and to Register.</p> <ol style="list-style-type: none"> <li><a href="#">1. CARES Act</a></li> <li><a href="#">2. ERISA Litigation Hot Issues</a></li> <li><a href="#">3. Best Practices for Changing Record keepers</a></li> <li><a href="#">4. Share Class Wars</a></li> <li><a href="#">5. Recent Developments in the Supreme Court, SECURE Act and ERISA Claims</a></li> <li><a href="#">6. Cash Balance Plans</a></li> <li><a href="#">7. Compensation for Self Employed</a></li> <li><a href="#">8. A Deep Dive into RMDs</a></li> </ol>	<p>Earn CE while sitting at home!</p> <p>Courses offer 1 or 2 CE of the following AIF, ASPPA, CEBS, NIPA, CFP, ERPAs, JBEA, CPAs (CA &amp; OR), MCLE , NIPA</p>

Our slate of speakers and topics is subject to change throughout the year. To find the most current information about upcoming meetings, visit [www.WPBCOrangeCounty.org](http://www.WPBCOrangeCounty.org), then select "Events."

**Breakfast Forums** are held at Andrei's Restaurant, address above. Registration is \$75 per person, with discounts for members and early registration. Your registration fee includes a full breakfast buffet and hosted valet parking. Check-ins begin at 7:30 am, breakfast and networking until 8 am. Presentations typically end at 9:40 am. Members may bring one guest for free.

**Technical Lunch Forums** are held at the American Funds Campus in Irvine. Registration is \$65 per person, with discounts for members. Your registration fee includes a full lunch and parking. Check-ins begin at 11:30 am and typically end at 1:40 pm. Walk-ins cannot be accommodated.

**Recorded Webinars** are sponsored by the WP&BC Governing Board. Registration for a 100 minute session is \$65.00 for members and \$90.00 for non-members. [Click here](#) to see the upcoming Webinars.



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