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Capitol Account

Washington, DC

January/February 1994

Senator Mikulski Delivers Rousing Speech Endorsing Securities Litigation Reform

A Democratic senator from the state of Maryland delivered a rousing endorsement of securities litigation reform legislation at the AICPA Federal Key Person Coordinators' Conference at the end of January. Senator Barbara Mikulski credited her AICPA Key Person with convincing her of the need for securities liability reform and exhorted other CPAs to become involved with their elected officials.

Of her Key Person, Larry Kamanitz, Senator Mikulski said, "...He embodies the Key Person Program...Larry has been my friend; Larry has been my advisor; Larry has often helped me avoid unintended negative consequences of legislation."

Senator Mikulski said she met with Kamanitz and representatives of the Maryland Association of CPAs to talk about the liability issue. (*Related story, page 3.*) "...They gave me case examples of what it would mean to sectors of the Maryland economy," she noted. "They also gave me examples of what it would mean to Maryland businesses that are so important in terms of generating new jobs...As I listened, I found out that accountants are being lumped into these securities lawsuits that are filed at the courthouse just hours after a change occurs in the stock price," she said. "I am absolutely opposed to this race to the courthouse mentality...Know that I came to this position...because I listened to you...," she added.

Senator Mikulski said she has had a "long conversation" with Senator Christopher J. Dodd (D-CT), the chairman of the Senate Securities Subcommittee, about the legislation he is developing to reform our nation's securities litigation system (*Capitol Account*, Nov./Dec. 1993), and that she supports his efforts. A social worker turned politician with a consistently liberal voting record, Senator Mikulski describes herself as "a born-again do-gooder." Such an individual



Senator Barbara Mikulski (D-MD)

might more commonly be expected to align with consumer advocate Ralph Nader, who vehemently opposes securities litigation reform legislation. Senator Mikulski's affiliation with Senator Dodd offers him a strong ally from the
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A
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AICPA

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left wing of his party and broadens the base of support for his effort.

CPAs' Role is to Build Support

Senator Pete Domenici (R-NM), who is a long-time supporter of securities litigation reform legislation and who is collaborating with Senator Dodd to produce a bill, reinforced the points made by Senator Mikulski. "Frankly," he told the Washington, D.C. audience, "I think...CPAs...ought to get to know their representatives...You can't lobby, you can't get anything done unless you have an entree, and the best entree is to know them...It means you might want to get a little bit involved in politics...You ought not be embarrassed about that. All other interest groups do it...So you ought to be part of that too."

Senator Domenici said that he and Senator Dodd will have a bill "ready pretty soon" to "rectify" the problems associated

with the present securities litigation system. Furthermore, he said he thinks the public and Congress "have begun to understand" those problems. He warned the audience not to expect such understanding to lead to an easy fix. The role of CPAs and other affected groups in the litigation reform fight, he said, is to "join in helping us build fire and enthusiasm and interest among legislators nationally...."

Lessons for the Profession

Both senators emphasized that it is imperative to have constituents lobby their own legislators in order to win votes. The speech Senator Mikulski delivered is a striking example of how effective Key Persons can be, as well as a powerful lesson that no elected official should be "written off" in the campaign to achieve securities litigation reform—or in any other legislative battle. The superb job Kamanitz and other Maryland CPAs



Senator Pete Domenici (R-NM)

did in explaining the economic consequences of these lawsuits to vital sectors of Maryland's economy, as well as the accounting profession, illustrated the flaws of the present system in such a way that Senator Mikulski was persuaded to support the profession's position.

AICPA Enters Health Care Debate; Urges Accountability of Costs

As a first step in joining the national health care debate, the AICPA commended Congressional Budget Office Director Robert Reischauer's recommendation to Congress that health care reform costs be included in the federal budget. The Institute cited the critical need for accountability and public disclosure of all health care costs as the reason for its endorsement of Reischauer's position.

"While other methods for full and fair disclosure may exist, the conventional way to ensure such accountability is to require that all health care expenditures, either undertaken or mandated by the federal government, be shown in the federal budget," stated Woodrin Grossman, chairman of the AICPA Health Care Reform Task Force, in a statement issued following the testimony.

"While the Congressional Budget

Office has concluded that payments to health alliances are 'government receipts,' we believe the real issue is that Americans are entitled to an annual accounting of health care dollars and that all costs and revenues must be made plain to the public," he said. Grossman added that the Institute has neither endorsed nor opposed any of the health care reform plans pending before Congress.

Following issuance of the press release, the AICPA was invited to attend a meeting at the White House with other professional organizations for an explanation of the Clinton health care plan by the President's staff. The Administration officials were receptive to suggestions from those attending the meeting and encouraged an ongoing dialogue in the months ahead as the plan works its way through Congress. CBO Director Reischauer has also invited the AICPA to meet with him on February 18.

Fair Labor Standards Act Subject of Institute Focus

The AICPA is currently reviewing proposed Fair Labor Standards Act (FLSA) legislation and regulatory actions that address the needs of CPAs. The AICPA is focusing on uncertainties raised by recent U.S. Department of Labor (DOL) enforcement actions and mixed court rulings on the FLSA as it relates to professionals, including CPAs.

The FLSA, passed in 1938 to protect hourly employees, includes an exemption for professionals and certain of their employees. (Loss of the professional exemption entitles the affected employees to seek compensation for all the "overtime" worked during the past two years,

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Insights from Mikulski's Key Person

In the question and answers below, Larry Kamanitz, a Baltimore CPA and Senator Barbara Mikulski's (D-



MD) Key Person, provides insight about how he helped persuade the senator to support securities litigation reform legislation.

Q—What did you know about Senator Mikulski's position on securities litigation reform legislation before you met with her?

A—*I really wasn't certain of the senator's position. I had been keeping her and her staff up to date on the issue, utilizing information sent to me from the AICPA. I considered this to be an educational process. While I did not inquire about her position before meeting with her, I suspected she was leaning against reform.*

Q—What did you think your chances

were of convincing Senator Mikulski that our nation's securities litigation system needs to be reformed?

A—*I believed my chances were fairly good. I knew that once she studied the issues and weighed the cost of litigation to our economy that she could support us.*

Q—How did you prepare for your meeting with Senator Mikulski?

A—*I made sure that I was conversant on all data previously sent to her. Senator Mikulski is an extremely bright person. She is inquisitive and is constantly probing. Making a casual statement in front of the senator will elicit questions from her such as "Why?," "How would you do it?," and "What is a better way?" I knew that it would require more than emotional pleas and general statements of fairness to win the senator's support. Additional input from the Maryland Association of CPAs and from a meeting with managing partners of the large firms also was helpful.*

Q—What was your most effective argument in persuading Senator Mikulski

of the importance of this legislation?

A—*The cost of runaway litigation on the creation and retention of jobs. Senator Mikulski's speech at the AICPA Key Person Coordinators' Conference (Related story, page 1) made clear that her concern about this issue is much broader than the effect on the CPA profession. She is concerned about the impact of these securities suits on Maryland's future growth because she sees the state's growth as being dependent upon the creation and expansion of the bio-tech industry.*

Q—What is your advice to other AICPA Key Persons as a result of this experience?

A—*Don't count anyone out. I have always believed that when you're dealing with intelligent people, and the facts are on your side, if you take the time to educate them, your chances of winning will be good. Don't meet with your elected official demanding results without having taken the time to develop the issues with your member.*

AICPA Gives Congress Its Views on FASB Stock Option Proposal

All Members of Congress got a letter from the AICPA in early February explaining why the Accounting Standards Executive Committee (AcSEC) opposes the Financial Accounting Standards Board's (FASB) proposal on accounting for employee stock options (*Capitol Account*, Nov./Dec.).

Accounting for stock-based compensation is an issue that AcSEC has "struggled with" for many years the AICPA said in its letter to Congress.

"Since stock options are nontransferable and cannot be traded on any market, there is no objective market value that can be readily determined for them," the AICPA said. "Models that attempt to

assign a value to a stock option given to an employee are based on numerous assumptions and projections, and are of such a nature that AcSEC believes they are too complex and unreliable," the AICPA told Congress. The letter noted that although many amounts appearing in financial statements do, in fact, represent estimates and judgments, they are reasonably reliable. However, the letter continued, "the majority of the members of AcSEC do not believe that any of the existing stock-option pricing models meet the criterion of reasonable reliability."

In addition, the letter told Members of Congress, "AcSEC has reconsidered its own earlier proposal of the 'minimum value,' and a majority of the members

believe that it cannot be considered an adequate substitute for a reliable measure of 'fair value.'"

In light of the fact that a number of bills are pending in Congress on both sides of FASB's proposal, the AICPA also emphasized to Congress that it "continues to fully support" FASB's role in the setting of accounting standards for the private sector.

The public debate on accounting for stock options will continue. FASB has scheduled public hearings on its proposal in March. No final decision by FASB is expected until the end of this year, after this Congress adjourns. Any Congressional action, therefore, may be deferred until after the 104th Congress convenes.

Take Advantage of Congressional District Work Periods

Listed below are this year's dates of when the House of Representatives and Senate have scheduled district work periods. Please consider setting up a meeting with your Member of Congress during one of these times when he or she will be at home.* Maintaining a regular relationship with your Member of Congress is critical to your effectiveness as a Key Person.

March 28-April 10.....Easter District Work Period
May 27-June 7.....Memorial Day District Work Period
July 1-10.....July 4th District Work Period
August 15-September 6.....August/Labor Day District Work Period
October 7.....Target Adjournment

***Scheduling Tip--Request your meeting early and be prepared to be flexible. The above schedule is subject to revision depending upon the workload of the House and Senate.**

INSTITUTE, continued from page 2 and may result in additional fines and penalties.) In recent years, we have seen challenges to the exemption by DOL regional and field offices that could impact ways firms are addressing workload compression problems, as well as family leave and flexible workplace issues.

The challenges are based on certain management practices commonly used by professionals. For example, granting unpaid leave to employees for less than a full day, compensatory leave policies, maintenance of time sheets to ensure accurate client billing, and payment of overtime to salaried employees.

Further complicating the situation is the different enforcement emphasis that various DOL field offices have displayed and the fact that court rulings are split over the handling of these issues.

Bills have already been introduced in the House of Representatives and Senate that seek to amend the FLSA. They would overturn DOL interpretations and court rulings relating to the minimum wage and overtime exemption for employees subject to certain compensation and leave policies and other management practices.

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American Institute of Certified Public Accountants

1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

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