MEMO# 4843

June 7, 1993

U.S. SUPREME COURT HOLDS NONFIDUCIARIES NOT LIABLE FOR MONEY DAMAGES FOR KNOWING PARTICIPATION IN FIDUCIARY BREACH UNDER ERISA

June 7, 1993 TO: PENSION COMMITTEE NO. 19-93 RE: U.S. SUPREME COURT HOLDS NONFIDUCIARIES NOT LIABLE FOR MONEY DAMAGES FOR KNOWING PARTICIPATION IN FIDUCIARY BREACH UNDER ERISA _____
Attached is a copy of the U.S. Supreme Court's recent decision in Mertens v. Hewitt Associates, in which the court held that a nonfiduciary who knowingly participates in a breach of fiduciary duty under ERISA cannot be held liable for losses that an employee benefit plan suffers as a result of the breach. The lawsuit was filed by a class of former employees of Kaiser Steel Corporation. When Kaiser phased out some of its operations, a large number of participants took early retirement. Hewitt, the retirement plan's actuary, did not change the plan's actuarial assumptions to reflect the additional costs triggered by the retirements. As a result, the plan was not adequately funded, and the former employees received only the benefits guaranteed by the Pension Benefit Guaranty Corporation. The former employees sued the fiduciaries of the plan for breach of their fiduciary duties and ERISA, and sued Hewitt for money damages on the theory that Hewitt, a nonfiduciary, knowingly participated in the plan fiduciaries' breach. In its decision, the Supreme Court noted that it did not address whether Hewitt's action (or inaction) violated ERISA, but rather whether money damages would be available if such a violation had occurred. The Court determined that the reference in section 502(a)(3) of ERISA to "appropriate equitable relief" precludes awards for money damages. We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachment