

**MEMO# 5430**

December 29, 1993

## **SUPREME COURT DECISION INCLUDES CERTAIN INSURANCE COMPANY GENERAL ACCOUNTS IN DEFINITION OF PLAN ASSETS UNDER ERISA**

December 29, 1993 TO: PENSION COMMITTEE NO. 41-93 RE: SUPREME COURT DECISION INCLUDES CERTAIN INSURANCE COMPANY GENERAL ACCOUNTS IN DEFINITION OF PLAN ASSETS UNDER ERISA \_\_\_\_\_ Attached is a copy of the recent Supreme Court decision in John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank, which examined the status of a group annuity contract under section 401(b)(2) of ERISA. This section of ERISA carves out from plan asset status the assets of the general account of an insurer if an ERISA plan purchases a "guaranteed benefit policy." The group annuity contract at issue in John Hancock contained both guaranteed and nonguaranteed features, and the Court concluded that each component of the contract must be examined in order to determine its status as a "guaranteed benefit policy" under ERISA. The Court stated that a component of a contract fits within this exclusion only if it allocates investment risk to the insurer, and held that the Hancock contract's "free funds" -- those funds in excess of those that had been converted into guaranteed benefits -- were plan assets under ERISA. We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachment