

MEMO# 2091

August 3, 1990

ERISA FIDUCIARY LIABLE FOR COMPENSATORY DAMAGES

-1- August 3, 1990 TO: INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 36-90 INVESTMENT ADVISER MEMBERS NO. 40-90 PENSION MEMBERS NO. 32-90 RE: ERISA FIDUCIARY LIABLE FOR COMPENSATORY DAMAGES

The United States Court of Appeals for the Sixth Circuit recently held that an ERISA plan fiduciary can be held liable for extracontractual damages under ERISA section 502(a)(3). The case involved a bank which acted as trustee of a participant's pension plans. The bank neglected to distribute all of the participant's plan assets in a single calendar year, contrary to the participant's instructions. As a result, the participant was denied rollover treatment for the distribution occurring in the second year. The participant claimed damages equal to \$375,430 attributable to the lost benefits which would have resulted had he been able to defer taxes on the distribution and compound future earnings on the undiminished principal in an IRA. The trial judge dismissed the participant's case on the legal finding that extracontractual damages are not recoverable under ERISA section 502(a). ERISA section 502(a)(3) provides for an award of "appropriate equitable relief" for acts or practices that violate any provision of ERISA or the terms of a retirement plan. The appeals court stated that other court decisions denying extracontractual damages for claims under ERISA section 502(a) were based on claims of punitive damages or compensatory damages for emotional distress. This case was distinguished from such cases because, although the bank distributed all the money to which the participant was entitled, the bank distributed the funds contrary to his instructions, directly causing a severe diminution in their value. Thus, "by negligence or an impermissible purpose," the participant was deprived of a benefit to which he was entitled under his plans, thereby violating provisions of the plans and ERISA. The decision of the trial court was reversed and the case was remanded for further proceedings. -2- -1- A copy of the court's opinion is attached. We will keep you informed of related developments. W. Richard Mason Assistant General Counsel Attachment

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