

MEMO# 2231

October 2, 1990

CIRCUIT COURT HOLDS ERISA PLAN ASSETS EXEMPT FROM BANKRUPTCY ESTATE

October 2, 1990 TO: PENSION MEMBERS NO. 36-90 RE: CIRCUIT COURT HOLDS ERISA PLAN
ASSETS EXEMPT FROM BANKRUPTCY ESTATE

The United States circuit court for the Fourth Circuit (Maryland, Virginia, West Virginia, South Carolina and North Carolina) recently held that qualified pension and profit sharing assets are excluded from a debtor's bankruptcy estate because they are assets restricted under "applicable non-bankruptcy law." Section 541(c)(2) of the U.S. Bankruptcy Code provides that a restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable for purposes of the Bankruptcy Code. The fourth circuit determined that the Employee Retirement Income Security Act of 1974 ("ERISA"), which requires retirement plan trusts to prohibit the assignment or alienation of plan assets, protects the plan accounts of bankrupt participants under Section 541(c)(2) of the Bankruptcy Code. The case is significant because the court declined to follow the conclusions of many other circuits which interpret the term "applicable non-bankruptcy law" to refer exclusively to state spendthrift trust law. Such decisions protected assets in retirement plans only if such plans would meet the requirements of enforceable state spendthrift trusts, regardless of ERISA's anti-alienation provisions. The fourth circuit's ruling "ensures that the security of employee retirement benefits will not depend on the particularities of state spendthrift trust law." The court's decision was influenced by the fact that payment of retirement plan assets to a debtor's bankruptcy trustee would disqualify the plan under the tax code and ERISA. A copy of the court's opinion is attached. We will keep you informed of related developments. W. Richard Mason Assistant General Counsel Attachment