

MEMO# 2456

January 11, 1991

COURT FINDS NO ERISA FIDUCIARY VIOLATION RESULTING FROM 1987 MARKET BREAK

January 11, 1991 TO: PENSION MEMBERS NO. 1-91 INVESTMENT ADVISER MEMBERS NO. 2-91 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 2-91 RE: COURT FINDS NO ERISA FIDUCIARY VIOLATION RESULTING FROM 1987 MARKET BREAK

_____ The United States Court of Appeals for the Seventh Circuit recently held that a pension plan investment manager did not violate its fiduciary duties under ERISA when its balanced mutual fund suffered losses as a result of the market break in October 1987. The case involved participants in a plan funded by a group annuity contract which allowed participants the right to direct the investment of their retirement account. The participants directed the investment of their assets in a balanced fund which was designed to provide high returns while avoiding the volatility associated with pure equity funds. The participants claimed the fund was not sufficiently "balanced" and the losses incurred by the 1987 market break were compensable by the investment manager under ERISA's fiduciary provisions. The court rejected the argument that the balanced fund's investment strategy was imprudent and further held that the plan's participants received ample disclosure regarding the composition and investment strategy of the fund. The prospectuses and plan reports gave the adviser broad discretion in deciding the mix of investments in the fund. The court also noted the absence of any evidence that the adviser invested imprudently in light of prevailing market conditions in 1987 and, thus, could not be found to have breached its duty of care under ERISA. The court repeated the axiom that pension plan investments are not necessarily imprudent merely because the pension fund loses money. A copy of the court's decision is attached. We will keep you informed of related developments. W.
Richard Mason Assistant General Counsel Attachment