

# Developments

October 6, 2003 to October 17, 2003

## HOT TOPIC

**Benefit Limits Announced for 2004.** The Internal Revenue Service ("IRS") announced cost-of-living adjustments to various dollar limitations that will apply to pension plans for 2004. Some of these limits are fixed by scheduled statutory increases. The new limits are:

Maximum annual defined benefit (Code § 415)	\$165,000
Maximum annual additions—defined contribution (Code § 415)	41,000
Annual compensation limit (Code § 417)	205,000
Key employee compensation	130,000
Highly compensated employee	90,000
401(k) elective deferrals	13,000
Catch-up contributions	3,000
Social Security OASDI Wage Base	87,900
IRA limit/catch-up	3,000/500

(IRS News Release 2003-122 (October 16, 2003).)

## IRS/DOL RULINGS, OPINIONS, ETC.

**Business Mileage Rate Increases for 2004.** The optional standard mileage rate for businesses to use in deducting automobile costs will increase from 36 cents to 37.5 cents per mile in 2004. In an effort to reduce recordkeeping burdens, the IRS announced taxpayers who use no more than four vehicles at the same time for business purposes may use the standard mileage rate beginning in 2004. Currently, taxpayers who use more than one vehicle at a time are not allowed to use the standard rate and must track the actual expenses for each vehicle. (Rev. Proc. 2003-76, 2003-\_\_IRB\_\_ (October 15, 2003).)

**Golden Parachute Regulations Corrected.** On October 14, the IRS issued corrections to the final regulations that apply to excess parachute payments triggered by a change in control of a company (see July 28-August 8, 2003 *Employee Benefits Developments*). The IRS added language to clarify that, while the regulations apply to payments contingent on a change in control occurring after 2003, taxpayers may rely on these final

regulations after August 4, 2003 for the treatment of any parachute payment.

**Employer Association Health Benefits Fund Creates MEWA.** A Department of Labor ("DOL") Advisory Opinion examined a proposed health benefits fund established by an employer association. These arrangements are used at times to facilitate the purchase of health care or other benefits for employees. While ruling the association could function as an employer under the Employee Retirement Income Security Act of 1974 ("ERISA") for the purpose of maintaining a health plan, the DOL noted the fund would be a Multiple Employer Welfare Arrangement ("MEWA") under ERISA. MEWA status can be important if the plan provides self-insured benefits. Self-insured MEWAs are subject to state regulation. New York, like many states, requires self-insured MEWAs maintain adequate reserves for claims and requires they pay into the state insurance fund used to rescue failed insurance companies. (DOL Adv. Op. 2003-13A, September 30, 2003.)

**California "Pay or Play" Health Insurance Law.** Three days before the recall vote, Gov. Davis of California signed into law a controversial bill (S.B. 2) requiring California employers to provide health insurance to employees or pay into a state fund designed to cover uninsured workers. In addition to the cost imposed on employers who do not presently provide health insurance, the law will challenge the scope of ERISA preemption. Under ERISA, states can regulate insurance but cannot pass laws regulating employee benefits. Numerous court decisions have addressed the line between permissible insurance regulation and impermissible benefits regulation. The new law will be the subject of legal challenge almost immediately. If it survives these attacks, the new law will go into effect in 2006 for large employers and 2007 for small employers. Hawaii has a similar law but has the distinction of having a special carve-out in ERISA's preemption rule. Hawaii has the highest proportion of its citizens covered by health insurance in the U.S. Many other states, as well as Congress, have explored ways to increase health insurance coverage. We will be watching the expected litigation to see whether the California law is preempted. (California S.B. 2 is available at: <http://www.leginfo.ca.gov>.)

**Defined Benefit Funding.** There has been considerable discussion lately about the status of funding in defined benefit plans. One problem that may be fixed is the interest rate used for lump sum distribution and for other purposes. Artificially low rates mandated by current rules have been criticized as providing inflated payments to participants and inaccurate funding calculations. On October 8, the House of Representatives approved H.R. 3108, the Pension Funding

Equity Act of 2003. This bill would replace the 30-year Treasury rate, used for funding and benefit purposes for defined benefit plans, with a long-term corporate bond rate. This bill has not yet been acted on by the Senate. Some of the other steps proposed include providing better disclosures on funding status, imposing higher standards to secure benefit improvements adopted by financially troubled employers, and timing relief on accelerated funding requirements imposed on some underfunded plans. (You can find the text of H.R. 3108 and its status in the Senate at: <http://www.senate.gov>.)

## CASES

### Are You Married? When Is a Legal Marriage Not Legal?

Here's a federal district court case where a pension plan participant legally separated, but did not obtain a divorce, from his lawfully wedded wife. Thirty years later the participant died. The pension plan denied this legal "surviving spouse" benefits under the plan—a result we might not have predicted. O.K., the whole story is a little more complicated. John and Susie were married in 1965. They got a legal separation in 1970 in Louisiana, but no divorce. Susie "remarried" in 1973 and John did, too, in 1984. John divorced "wife" #2 and "remarried" again in 2000. John died, and "wife" #3 won a case to obtain surviving spouse benefits from the plan. Susie was denied "surviving spouse" status. This is another case showing that courts are sometimes willing to overlook legalities in marriage to reach equitable results in pension cases. Susie and John might have made things easier for the rest of us, including their subsequent betrotheds, by getting that divorce before the next wedding. (*Central States, Southeast and Southwest Areas Pension Fund v. Gray*, No. 02-C-8381 (N.D. Ill., October 8, 2003).)

### Supreme Court Denies Stay of Cash Balance Plan

**Ruling.** The U.S. Supreme Court denied Xerox Corporation's application for a stay of the decision of the U.S. Court of Appeals for the Seventh Circuit, pending Xerox's appeal for Supreme Court review. In August, the federal appellate court held Xerox violated ERISA when it calculated cash balance pension plan participants' lump sum distributions without including interest that would accumulate by the time the participants reached age 65 (see July 28-August 8, 2003 *Employee Benefits Developments*). Accordingly, the Seventh Circuit ordered Xerox to compensate the participants for future interest credits Xerox failed to include in the participants' lump sum payouts. (*Xerox Corporation Retirement Income Guarantee Plan v. Berger*, U.S. No. 03A289, stay denied (October 7, 2003).)

**The Tobacco Companies Win One.** Plaintiff Medicare beneficiaries brought a class action suit against tobacco companies claiming a tobacco company that sets aside assets in anticipation of claims is a "self-insured plan" and should be the primary payer for services required to treat plaintiffs' tobacco-related illnesses. In rejecting the claim, the U.S. Court of Appeals for the Second Circuit held tobacco companies cannot be held liable under the Medicare Secondary Payer ("MSP") statute as "primary payers" for health care services needed to treat these illnesses. The MSP statute makes Medicare a "secondary" payer when another entity, a "primary payer," is required to pay under a primary plan for an individual's health care. In addition to giving the government a right to demand reimbursement from primary insurers that have a duty to pay for medical treatment, the statute provides a private right of action under which individuals may be awarded double damages against a primary plan that has wrongfully denied them payment for Medicare-financed care. (*Mason v. American Tobacco Co.*, No. 02-7923 (2nd Cir., October 2, 2003).)

### Health Plan Not Obligated to Pay Attorney Fees.

Wal-Mart's health plan had no obligation to pay a portion of the attorney's fees a plan participant incurred in her personal injury lawsuit, ruled the U.S. Court of Appeals for the Seventh Circuit (the same court holding for the tobacco company in the case above). The plan participant sustained injuries in an automobile accident, incurring \$17,000 in medical expenses. The Wal-Mart health plan paid the costs, but the plan provided Wal-Mart had the absolute right to recover 100% of the benefits it paid if the participant received a personal injury settlement. After the participant and her attorney reached a monetary settlement with the party responsible for the injuries, she offered to reimburse the plan less a deduction for the proportionate share of the attorney's fees. Wal-Mart refused and brought an action seeking a declaration it had no obligation to pay the attorney's fees. The federal appellate court held ERISA preempted the Illinois common fund doctrine, which would have required contribution, because the doctrine contradicted the terms of Wal-Mart's plan. (*Administrative Committee of the Wal-Mart Stores Inc. Associates' Health and Welfare Plan v. Hummell*, No. 03-1768, unpublished (7th Cir., October 7, 2003).)



## Employee Benefits Practice Group

Dianne Bennett  
716.848.1406  
[dianne\\_bennett@hodgsonruss.com](mailto:dianne_bennett@hodgsonruss.com)

Peter K. Bradley  
716.848.1446  
[pbradley@hodgsonruss.com](mailto:pbradley@hodgsonruss.com)

Anita Coles Costello  
716.848.1532  
[anita\\_costello@hodgsonruss.com](mailto:anita_costello@hodgsonruss.com)

Brigid Kane Hurley  
716.848.1751  
[bhurley@hodgsonruss.com](mailto:bhurley@hodgsonruss.com)

Richard W. Kaiser  
716.848.1494  
[rkaiser@hodgsonruss.com](mailto:rkaiser@hodgsonruss.com)

Peter M. O'Hara  
716.848.1719  
[pohara@hodgsonruss.com](mailto:pohara@hodgsonruss.com)

Eric R. Paley  
716.848.1586  
[epaley@hodgsonruss.com](mailto:epaley@hodgsonruss.com)

David A. Pratt\*  
518.465.2333  
[dpratt@hodgsonruss.com](mailto:dpratt@hodgsonruss.com)

Daniel R. Sharpe  
716.848.1402  
[dsharpe@hodgsonruss.com](mailto:dsharpe@hodgsonruss.com)

\* Independent Counsel

