

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

EMPLOYEE BENEFITS
Professor Secunda

FINAL EXAM

Date: December 7, 2006

Time Allowed: 3 Hours

Instructions

1. This is an open book examination. You may refer to any materials.
2. Please "sign" the following pledge by writing your examination number on the line after the pledge. DO NOT write your name on this examination or on any bluebook.

By the act of submitting my examination, I do pledge, on my honor, that I have neither given nor received any improper assistance and that I will report any improper assistance given or received by others of which I am aware.

Exam No. _____

3. No examinations may leave the examination room. Return your examination to the front of the room at the end of the examination.
4. There are **THREE PARTS** to the exam, allotted equal time. Please be sure to do all parts of the exam, spending sufficient time on each.

GOOD LUCK AND HAVE A GREAT WINTER HOLIDAY!

DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED

THREE PARTS (100 Points Total)

PART ONE (One Hour; 35 points)

QUESTION ONE (7 points)

Hydrogen Enterprises sponsors the Hydrogen Enterprises Profit Sharing and 401(k) Salary Deferral Plan for its employees. The plan year commences on August 1st and ends on July 31st. New participants may enter the plan on August 1st or February 1st. The plan uses calendar years to determine years of service for purposes of vesting. Employees are eligible to participate in the plan after attaining age 21 and after having worked at the company for one year. The plan uses a cliff vesting schedule for both employer contributions to the profit sharing plan and for matching contributions to the 401(k) plan.

Adam Ant, age 50, starts working for Hydrogen Enterprises on January 1, 2000. He regularly works 40 hours per week for the first two years of his employment. On January 1, 2002, he leaves Hydrogen Enterprises to work for Helium Limited. He quits Helium and comes back to work for Hydrogen on January 1, 2004 and after working full-time as before, quits Hydrogen for good on January 1, 2006. At the time of his quitting, he has \$50,000 in his 401(k) account, \$10,000 in his employer matching contributing account, and \$1,000 in his profit sharing account.

- A. As of what date did Adam become a participant in the Plan?
- B. At the time of Adam's termination of employment on January 1, 2006, how many years of vesting service does Adam have?
- C. At the time of Adam's termination from employment on January 1, 2006, what is the amount of the non-forfeitable accrued benefit in his 401(k) account, his employer matching contribution account, and his profit sharing account?

QUESTION TWO (7 points)

The Flock of Seagulls Corporation (FOSC) sponsors the FOSC Defined Benefit Retirement Plan ("Plan") for its employees. Unfortunately, FOSC becomes financially distressed and does not believe it can properly fund the plan any longer.

- A. What steps should it take to terminate the plan and what type of benefits will the plan participants receive as a result of the termination?
- B. Does your answer change, if FOSC had terminated a defined contribution plan instead?
- C. What if rather than terminating the Defined Benefit Plan, FOSC decides instead to engage in a mass layoff of employees, such that 55% of participants under the

Plan have their employment terminated in order to save the company money? To what benefits under the Plan are the terminated employees entitled?

QUESTION THREE (7 points)

Under the terms of the Dead or Alive Company Health Benefits Plan ("Plan"), covered employees are not entitled to coverage for their children's immunization shots. However, in the summary plan description (SPD) of the Plan, such immunization benefits are listed as covered. Boy George, a participant in the Plan and relying on the language in the SPD, has his children immunized and submits a claim to the Plan. The claim is denied based on the language in the Plan.

- A. Assuming that Boy George is unsuccessful in bringing a denial of benefit claim under ERISA, under what other theory may he obtain the immunization benefits?
- B. From a policy perspective, how does awarding the benefits based on the SPD language further the policies and objectives of ERISA?

QUESTION FOUR (7 points)

The Bangles Limited ("TBL") sponsors a self-insured health care plan ("Plan") for its employees. The Plan imposes a twelve-month coverage exclusion for preexisting conditions. Five months prior to enrolling in the Plan, Belinda Carlisle, a new employee, is diagnosed and starts treatment for Type I diabetes. Prior to coming to work for TBL, Belinda had six months of coverage under the group health plan of her previous employer. She then had COBRA continuation coverage for two months, before she allowed it to lapse because of the expense. It is thirty days after her COBRA coverage elapses that Belinda enrolls herself in the TBL Plan.

- A. Can the Plan impose a preexisting condition coverage exclusion for medical treatment related to Belinda's diabetes?
- B. If Belinda becomes pregnant three months prior to enrolling in TBL Plan, can her pregnancy be subject to a coverage exclusion?

QUESTION FIVE (7 points)

Sugar Hill Gang Incorporated (SHGI) sponsors a defined benefit retirement plan ("Plan") for its employees. Rather than diversifying the plan assets to the extent required under ERISA, the plan fiduciaries invest all of the plan assets into two highly risky technology stocks. As a result, the Plan makes a return of 10% on its investments for the 2006 calendar year.

What type of claim do the participants of the Plan have against the plan fiduciaries and, if successful, what is the remedy?

PART TWO (One Hour; 35 points)

Human League Company (HLC) sponsors a participant-directed 401(k) plan ("401(k) Plan"), a money purchase pension plan ("MPP Plan") and a self-insured health benefit plan ("Health Plan") for its employees in Mississippi. The Plan Year for all plans is the calendar year. HLC carries stop-loss insurance with an attachment point of \$5,000 for its Health Plan. It appoints Howard Jones, its Vice President for Human Resources, to administer and manage the plans on a daily basis. The paperwork for the plans is handled by Simon LeBon, assistant to the Vice President. Unfortunately for HLC, legal issues develop with regard to each of the plans over the years.

With regard to the 401(k) Plan, Howard sets up the Plan so that it provides a menu of four different diversified plan investment options for employees. Although Howard prudently selects a diverse group of investment options with materially different return and risk characteristics, he does not consider the issue of mutual fund fees. As a result, he ends up selecting funds which have relatively high investment management fees and participants in the 401(k) Plan end up receiving less of an investment return on their retirement accounts.

Additionally, a few months after the 401(k) Plan is established, HLC wants Howard to amend the Plan to save the company money such that employees will no longer receive a 1:1 employer match on their 401(k) contributions and instead receive a 1:2 match. Howard asks Simon to prepare the amendment. After Howard approves the language of the amendment, Simon modifies the Plan, but no one informs plan participants about the amendment until 2 years later.

As concerns the Health Plan, an HLC employee, Bonnie Tyler, is injured in a bad car accident. She receives \$50,000 for her medical expenses from the Health Plan and then sues the other driver in the accident, and receives \$100,000 in a settlement. Bonnie takes that \$100,000 and places it in a separate investment account. The Plan seeks reimbursement for the medical benefits it paid to Bonnie based on a reimbursement clause in the Health Plan. Bonnie refuses to pay the Plan anything.

And as if all those employee benefit plan issues were not enough to make life miserable for any company, with regard to the MPP Plan, HLC hires Prince and the Revolution Securities (PRS) to select investments for the Plan. PRS sells interests in a cow ranch in Nevada to the MPP Plan for \$5 million and, not surprisingly, the investment turns out to be worthless. Needless to say, HLC and Howard are none too happy about this turn of events.

- A. Please discuss all of the employee benefit law claims that the various parties may have against one another. Regardless of how you come out on any of the claims, you **MUST** discuss what remedies are available to the parties if they are successful on their claims.
- B. Assume that Mississippi has a law which requires that stop-loss insurance coverage cannot have an attachment point less than \$10,000. Must HLC increase its attachment point to \$10,000?

- C. Assume for just this question that HLC has an insured Health Plan. Mississippi requires insurance companies who cover Mississippi employees to cover orthopedic surgeries and violation of this Mississippi mandated benefit law results in an employee being able to sue the insurance company under state law for three-times the value of the benefit denied. HLC's insurer, When In Rome Insurance ("WIRI"), refuses to provide coverage for Bonnie's orthopedic surgery that she needs after her car accident. Is Bonnie's claim against WIRI under Mississippi state law preempted?

PART THREE (One Hour; 30 points)

Comment critically on the following statement:

"Congress should amend Section 514(a) so that ERISA only preempts state laws that provide less protection for employee benefits. States should be free to experiment with employee benefit laws that provide more protection for employees, especially in the area of health care reform."

In your answer, you should discuss the following: What is the current state of employee benefits law doctrine in this area? Do you favor changing or retaining the present legal rules? What arguments support your position, and what is your response to the best argument that could be made in opposition? Integrate cases and policy arguments in supporting your answer.