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Pension Plan News & Views

Straight from the Pandora's Box of pension plan puzzles comes a Supreme Court decision that once again, makes life more interesting.

Does the bankruptcy protection of ERISA include the owner's personal balance in the company profit sharing plan?

The answer can be found in the question: When is a working owner of a business not an employee of the business? The short answer is: When there are no other common law (non-owner) employees in the pension/profit-sharing plan.

If that strikes you as peculiar, read on!

In a Supreme Court decision made earlier this month, the court held that an owner-employee DOES qualify as a participant, IF there were non-owner participants in the profit sharing plan. (Being eligible for ERISA protection exempts one's plan balance from creditors.) Interestingly, in the Yates's case, this allowed a $20,000 loan repayment to the plan to stand, despite it occurring three weeks prior to Dr. Yates' declaring bankruptcy.

The courts have been split on the topic. There have been a number of cases in the past where the sole owner-employee was not subject to ERISA at all, even if there were other non-owner employees. There have also been cases that reached a different conclusion.

We might now consider this issue to be resolved, however, other questions remain open:

What if there are no common law (non-owner) employees at a given point in time? What if there are occasional non-owner employee participants and occasions when there are only owner participants? Does a plan pop in and out of ERISA? If a plan terminates, paying out the non-owners first, do then the owner-participants lose their ERISA protection once they are the only ones covered? And, how does this apply to non-qualified plans.

One commentator has called this the worst of both worlds. If you are interested in discussing how this new profit sharing decision pertains to you, please give us a call.

Sandra Heusinkveld
sandra@fpperspectives.com

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Future Finances' Market Update
By Max Larsen

Monday, March 29, 2004

As great as it was, last Thursday's rally (which netted the Dow and Nasdaq their largest percentage gains since October and July, respectively) was not good enough to end the two-week, 3.9% - 5.3% losing streak for all of the major indexes.

So what is causing this correction to continue? It certainly isn't the economic indicators - they still look strong. It boils down to the magic word of the week: GEOPOLITICS (n: a combination of political and geographic factors relating to a state). It seemed every newspaper was talking about "geopolitical" factors. It started last Monday, when Israel assassinated a Palestinian leader and continued with Taiwan's controversial presidential election. It seemed to reignite the same fears associated with the Spanish terrorist bombings two weeks ago.

It seems investors had too little economic news but too much political news to digest. Even on our domestic "geopolitical" front we saw Richard Clarke on "60 Minutes" (and every other show for that matter) drop a bomb on the Bush administration when he claimed Bush has done "a terrible job" battling terrorism. He also said Bush was largely responsible for 9/11 since he didn't take previous terrorism intelligence seriously. I have to chime in on this one. First, Clarke is trying to sell a book. Second, he may be a little bitter about being demoted. Finally, I don't believe anyone in the past three (maybe four) administrations is blameless. Hindsight is a wonderful thing - it makes us all look like geniuses. Unfortunately, anytime a President, regardless of party affiliation, is preemptive and proactive they are trounced upon by the opposing side. It's a thankless job, and I still have to wonder why anyone would subject themselves to it.

This upcoming week will finally give investors some economic news to focus on. In the first few days, I expect more of the same volatility, politics and terrorism concerns. By the end of the week, there will be two key economic reports demanding attention. First, the March ISM Index (national manufacturing survey) will be released on Thursday. This report can probably do more harm than good since it would be very difficult for this index to get any stronger. If the ISM can maintain 60 (consensus 60.5) it would be good news and consistent with about 6% GDP growth (which is fantastic!).

Secondly, the March employment data is due on Friday, April 2. This report will be nothing less than HUGE! If the payroll growth figure is again anemic, then two major developments could unfold. First, it would prove the dip in February's data wasn't entirely due to bad weather in February, which I believe caused the dip. Instead, it would indicate we're still in the jobless recovery stage. This would obviously be a major setback for the consumer segment of the market, which accounts for two-thirds of the market. Second, the Bush administration would take on even more media heat than it already has, and the Democrats would no doubt gain serious traction off the administration's failure to create enough jobs. As a result, the stock market would likely hobble into earnings season.

However, if the payroll figures surprise to the upside, watch out - the market could easily hit a new high in April. The payroll consensus calls for a gain of 100K, but some economists think it will be closer to 200K. Anything above 200K would no doubt rally the market in a big way. Moreover, it would force the media and investors to focus on the economy and Q1 earnings.

That's enough jabbering for one day. I'll see you next week, and if the stars all line up - we'll be celebrating the good economic news.

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Sandra Heusinkveld, President
Financial Planning Perspectives, LLC
1333 Clubview Blvd. North
Columbus, OH 43235
614-785-0156 tele
614-485-0176 fax
sandra@fpperspectives.com
www.fpperspectives.com

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