



TOPIC:

**Supreme Court Decision in Heinz Limits Plans' Ability to Apply Expanded Definition of Disqualifying Employment to Current Pensioners**

**EXECUTIVE SUMMARY:**

ON JUNE 7, 2004 THE SUPREME COURT OF THE UNITED STATES ISSUED ITS DECISION IN THE CASE OF HEINZ V. CENTRAL ILLINOIS LABORERS' PENSION FUND . THAT DECISION HELD THAT ERISA'S ANTI-CUTBACK PROVISIONS "...PROHIBIT A PLAN AMENDMENT EXPANDING THE CATEGORIES OF POSTRETIREMENT EMPLOYMENT THAT TRIGGERES SUSPENSION OF THE PAYMENT OF EARLY RETIREMENT BENEFITS ALREADY ACCRUED." THIS ISSUE OF *MULTI-ELERT* IS INTENDED TO ADVISE YOU OF THAT DECISION, IDENTIFY A NUMBER OF QUESTIONS RELATED TO ITS PRACTICAL APPLICABILITY FOR PLANS THAT HAVE AMENDED THEIR SUSPENSION OF BENEFIT RULES, AND TO ASK FOR YOUR HELP IN IDENTIFYING OTHER ISSUES THAT YOU WOULD LIKE TO SEE CLARIFIED IN MEETINGS WE EXPECT TO HAVE IN THE NEAR FUTURE WITH REPRESENTATIVES OF THE IRS AS THEY WORK THROUGH THEIR INTERPRETATION OF THIS DECISION.

PURPOSE:

INFORMATIONAL - AND TO ASK FOR YOUR HELP IN IDENTIFYING ADDITIONAL QUESTIONS REQUIRING CLARIFICATION BY THE IRS AS THEY ATTEMPT TO ISSUE GUIDANCE TO PLANS ON ITS IMPLICATIONS.

CATEGORY:

COURT DECISION

ISSUER:

SUPREME COURT OF THE UNITED STATES

TARGET AUDIENCE:

TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS

INPUT REQUESTED:

PLEASE FORWARD ADDITIONAL SPECIFIC QUESTIONS REGARDING HOW THIS DECISION MAY IMPACT YOUR PLAN

NCCMP DEADLINE:

**JULY 2, 2004**

FORWARD COMMENTS TO:

[Multi-Elert@nccmp.org](mailto:Multi-Elert@nccmp.org)

REFERENCE:

**VOL.4, ISSUE 3**

FOR ADDITIONAL BACKGROUND SEE:

**ERISA SECTIONS 203(a)(3)(B) AND 204(G); IRC 411(d)(6) [REGS]; AND ATTACHED FILES CONTAINING THE HEINZ DECISION AND THE AMICUS BRIEFS FILED BY THE NCCMP AND JOINED BY NUMEROUS CONSTRUCTION INDUSTRY INTERNATIONAL UNIONS AND EMPLOYER ASSOCIATIONS IN SUPPORT OF THE CENTRAL ILLINOIS LABORERS' PENSION FUND**

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## U. S. Supreme Court's Decision in Heinz Raises New Questions for Plans that were Amended to Expand the Definition of Disqualifying Employment

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**I**n a 9 – 0 decision handed down on Monday, June 7, the U. S. Supreme Court ruled that plans may not expand “the categories of employment that triggers [sic] the suspension of early retirement benefits already accrued.” This issue of *Multi-Elert* will examine the implications of this decision for plans that were previously amended to expand their definition of disqualifying employment and identify some of the questions that Trustees and plan professionals will face as they determine the impact of *Heinz* for their plans.

### **Background:**

Thomas Heinz and Richard Schmitt, Jr. retired at age 39 from covered employment in 1996 under the provisions of the Central Illinois Laborers' Pension Fund's liberal, 30-year service pension. In fact, the service pension provided for full, unreduced benefits that were not actuarially reduced to account for payments that began at an early age and which would continue for a longer period. At that time, the rules defining disqualifying employment for purposes of suspension of benefits prohibited employment before age 60 in a job classification of any type specified and covered in a collective bargaining agreement or in any occupation or job classification where contributions were to be made to the Fund pursuant to a written agreement. Under this definition, Heinz and Schmitt retired, accepted jobs as construction supervisors and received their full, unreduced pension benefits.

In 1998, when faced with a high rate of early retirement that was causing actuarially significant losses to the plan, the Trustees amended the Plan to expand the definition of disqualifying employment for employees who retired before age 53 to include work “in any capacity in the construction industry.” The amended definition applied to early retirement benefits that accrued before the amendment for participants who retired before age 53. The Trustees found that the new definition applied to Heinz' and Schmitt's employment as construction supervisors and suspended their pension payments. Heinz and Schmitt filed suit in the U. S. District Court claiming that the suspension of their pension payments was in violation of ERISA §204(g) and furthermore that it was both arbitrary and capricious.

The District Court found in favor of the Plan, but Heinz and Schmitt appealed. On appeal, the Seventh Circuit ruled for the first time that a multiemployer plan's amendment to its suspension of benefit rules, which retroactively expanded the definition of pre-normal retirement age “disqualifying employment,” was a cutback of an accrued benefit. The two judge majority held that such an amendment has the effect of eliminating or reducing an early retirement benefit in violation of ERISA 204(g)(2)(A). In its opinion, the court expressly acknowledged its holding was in direct conflict with the Fifth Circuit's decision in *Spacek v. Maritime Association* (134

F.3d 283 (5<sup>th</sup> Cir. 1998), which held that a plan amendment that retroactively expands disqualifying employment prior to normal retirement age is not a cutback of an accrued benefit.

In February 2003, the Fund petitioned the U. S. Supreme Court for a review of the Seventh Circuit's decision in *Heinz*. Due to the significance of the issue for many multiemployer plans throughout the country, the NCCMP filed an *amicus* brief in support of the Fund's petition for several compelling reasons. First, the *Heinz* decision directly contradicted the ruling of the Fifth Circuit. Second, such conflict ran contrary to the well established principle that ERISA was established in large part to enable plan sponsors to establish and maintain a uniform administrative approach to the distribution of benefits, which would be impossible if the plans are subject to different legal requirements in different parts of the country. Finally, the holding in *Heinz* directly contradicts the IRS' interpretations as evidenced in its guidance to field examiners which states that an amendment to expand the definition of disqualifying employment under ERISA's suspension of benefits provision is not a cutback of an accrued benefit.

From a practical perspective, the NCCMP was also concerned about the numerous multiemployer plans that had amended the definition of disqualifying employment from time to time to address the needs of their specific industry by loosening restrictions in times of skilled labor shortages, and tightening them to address the actuarial concerns for plans when early retirees returned to work beyond the end of the labor shortage. For these plans, the NCCMP was concerned that the *Heinz* decision would have a direct impact on how trustees administer their plans in the future and that it would even expose such plans to unforeseen liabilities in the event a class of participants was to challenge the lawfulness of a prior amendment which retroactively expanded the scope of disqualifying employment.

In large part due to the *amicus* brief filed by the NCCMP, and a concurring position filed by the U.S. Solicitor General, the Supreme Court granted certiorari in *Heinz*. Briefs<sup>1</sup> were filed by the parties, and an additional *amicus* brief on the merits was filed by the NCCMP and joined by a broad coalition of labor and management groups. These briefs were enhanced by oral arguments on April 19, 2004. On June 7, 2004, the Court issued its opinion.

## **The Issue**

ERISA § 203(a)(3)(B) authorizes a pension plan to suspend the payment of benefits for the period that a participant leaves retirement to return to the workforce in certain capacities. Notwithstanding this authority, ERISA's "anti-cutback" rule (Section 204(g)) forbids plan amendments that decrease previously accrued benefits and reduce early retirement benefits. The question presented in *Heinz* is whether a pension plan amendment regarding early retirees' disqualifying employment that is authorized under the suspension provisions is nonetheless forbidden by the anti-cutback provisions to the extent it applies to previously accrued benefits.

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<sup>1</sup> Electronic copies of the briefs filed by the parties as well as the NCCMP's *amicus* brief are attached. Groups joining the NCCMP included the Laborers' International Union of North America, the Mechanical Contractors Association of America, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, the Sheet Metal and Air Conditioning Contractors National Association, the Sheet Metal Workers' International Association, the National Electrical Contractors Association and the International Brotherhood of Electrical Workers.

## The Opinion

As noted above, the Court determined that “*ERISA prohibits a plan amendment expanding the categories of postretirement employment that triggers [sic] suspension of the payment of early retirement benefits already accrued.*” It noted that “[t]he anti-cutback provision is crucial to ERISA’s central object of protecting employees’ justified expectations of receiving the benefits that they have already been promised.” Accordingly, the Court found that “[t]he right to receive certain money on a certain date may not be limited by a new condition narrowing that right.” It reasoned that “*Heinz accrued benefits under a plan allowing him to supplement his retirement income, and he reasonably relied on that plan’s terms in planning his retirement. The 1998 amendment undercut that reliance, paying benefits only if he accepted a substantial curtailment of his opportunity to do the kind of work he knew. There is no way that, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz’s pension rights and reducing his promised benefits.*”

It concluded that ERISA’s provision that says “*...the right to an accrued benefit ‘shall not be treated as forfeitable solely because the plan ‘suspends benefit payments when beneficiaries like respondents are employed in the same industry and the same geographic area covered by the plan-is irrelevant to the question here. Section 203(a) addresses the entirely distinct concept of benefit forfeitures. And read most simply and in context, §203(a)(3)(B) is a statement about the terms that can be offered to plan participants up front, not as an authorization to adopt retroactive amendments.*”

With respect to how this decision might be applied retroactively to plans that had previously amended their definitions, the Court expressly noted that nothing in their opinion “*requires the IRS to revisit the tax-exempt status in past years of plans that were amended in reliance on the agency’s representations in its manual by expanding the categories of work that would trigger suspension of benefit payments as to already accrued benefits.*” Noting that the Code gives the Commissioner discretion to decline to apply decisions of the Court retroactively, it stated that “[t]his would doubtless be an appropriate occasion for exercise of that discretion.”

Finally, four of the Justices added a concurring opinion “*based on the assumption that [the majority opinion] does not foreclose a reading of the Employee Retirement Income Security Act of 1974 that allows the Secretary of Labor, or the Secretary of the Treasury, to issue regulations explicitly allowing plan amendments to enlarge the scope of disqualifying employment with respect to benefits attributable to already-performed services.*”

## Implications

Obviously, the implications of this decision will vary for each plan, depending on whether and when the plan adopted and/or amended language regarding its suspension of benefits provisions. How this decision applies to your plan(s) is a question that should be directed to your own fund counsel. In order for him or her to guide you, however, there remain a number of questions that need to be addressed by the IRS and the DOL and still others that will remain subject to additional litigation. Many of the questions that need to be addressed by the IRS appear in the NCCMP’s comments regarding recent proposed regulations under IRC § 411(d)(6) (attached). The questions submitted to IRS raise these issues for purposes of plan qualification. For purposes of participant claims under ERISA Title I, the answers may turn out to be different. In

addition, the answers to these questions will vary depending on the statute of limitations in the plan's jurisdiction and the nature and timing of the plan's amendment expanding suspension of benefits. The questions for purposes other than plan qualification would include:

- When must an amendment rescinding expanded suspension of benefit provisions be adopted?
- May such an amendment be effective prospectively for retirement or suspension after the date of its adoption or must it be effective retroactively?
- If retroactively, how far?
- If the amendment must be retroactively effective, must benefits be automatically adjusted by the plan to reflect benefits previously suspended under the rescinded plan provisions?
- If retroactive payments are made to participants, must interest be included? At what rate?
- Must participants file claims with the plan for an adjustment before going to court and are such claims subject to the plan's claims and appeals procedures?
- Are the answers to these questions for plans administered in the Fifth and Sixth Circuits different than for plans administered elsewhere because of the prior decisions in those Circuits permitting amendments such as the one rejected in the decision of the Supreme Court?
- May plans decide not to apply the suspension rules in a given case even though the participant is working in disqualifying employment? Must the plan expressly permit this? May the plan provisions permit this?
- Could the failure of the plan to enforce its suspension provisions be considered a plan amendment expanding the right to work post-retirement and subsequent enforcement a cutback of this right?
- May the plan be amended to expand suspension of benefits in the future?
- May a future amendment prohibit work as a supervisor?
- May a future amendment permit temporary withholding of benefits for non-203(a)(3)(b) service prior to normal retirement age if the benefit is recalculated to give back the value of benefits temporarily withheld when the participant re-retires?
- May the plan enforce existing provisions for suspension or temporary withholding of non-203(a)(3)(b) service that were in effect when a participant's service accrued?
- Is a notice of reduction of future benefit accrual under ERISA § 204(h) required in advance of such amendment?

- May a plan adopt a new benefit form (or variation of a current form) with strict suspension of benefits rules that apply to all service of a participant selecting that form of benefit or variation?

These and other questions will be posed to the appropriate agencies over the next few weeks. We invite you to submit any additional questions that you or your fund may find necessary to implement the *Heinz* decision so that the IRS has a full picture of the issues that require attention as they formulate their guidance in this matter. Please forward any such questions and/or comments no later than July 2, 2004 to the NCCMP by e-mail at [nccmp@nccmp.org](mailto:nccmp@nccmp.org). We will advise you of the results of our discussions as they become available.

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*As with all matters concerning interpretations of the law and / or regulations applicable to multiemployer plans, Plan trustees and sponsors should rely on their own attorneys and other professional advisors for advice on the meaning and application of the Heinz case for their particular funds.*

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*If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact Randy G. DeFrehn, Executive Director, NCCMP, by phone at (202) 737-5315, or by e-mail at [rdefrehn@nccmp.org](mailto:rdefrehn@nccmp.org).*

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