



## WORTH KNOWING

## GICs Suit Revisited

**Who:** Herbert Hutton, U.S. District Court judge for Eastern Pennsylvania in Philadelphia.

**What:** Hutton, 59, will preside over the trial of an employee lawsuit against \$6.4 billion Unisys, a case he had decided with a summary judgment in Unisys' favor in 1995. Workers claim the company acted imprudently when it offered a particular group of guaranteed investment contracts (GICs) as an investment option in its

defined contribution (DC) plan and didn't disclose the risks to employees.

**When:** A trial date should be drawn within the next few months.

**Why:** The boundaries of corporate responsibility for DC plans have remained murky, making Hutton's decision in the Unisys case a potential landmark.

Through the end of the 1980s, Unisys offered its DC plan participants several investment options, including an Insurance Contract Fund that, along with Unisys' fixed-income plan, ploughed \$213 million into GICs issued by Executive



Judge Herbert Hutton

Life Insurance Co. of California. Executive Life declared insolvency in the early 1990s.

When the DC plan lost money, employees sued, charging that Unisys had breached its ERISA fiduciary responsibilities by, among other things, failing to provide adequate disclosure. Unisys defended itself by stating

that under ERISA it would not be liable in circumstances where participants exercised control over their own accounts, and that employees had six other funds from which to choose. Hutton granted Unisys' motion for summary judgment on those grounds. An appeals court noted that the facts of the case were not so clear-cut and ordered a new trial.

Lawyers generally say Hutton is experienced in securities fraud and bankruptcy cases, and is even-handed. The Almanac of the Federal Judiciary quotes one civil litigator as saying, "He's defense-oriented, but he's very shy about controversial rulings and doesn't want to be appealed." ♦ William Freedman

## New Treasurers Group Started

Five treasury professionals in the San Francisco area have created a new forum for treasurers and assistant treasurers in charge of day-to-day treasury operations, the Treasury Executive Network (TEN). The new group will meet nine times a year and hold its first meeting in September.

"There are several treasury groups in San Francisco," says Joan Varrone, treasurer of Watkins-Johnson in Palo Alto. "What is missing is a forum for the people who make operational decisions. Usually this includes assistant treasurers at large companies and treasurers at small to medium-sized companies."

The idea for TEN surfaced about six months ago when five treasury pros canvassed more than 80 of their colleagues, who endorsed both the concept and the format. TEN's founders include Mical Brenze, assistant treasurer of Raychem; Lih Qung, assistant treasurer of National Semiconductor; Marsha Prentiss, treasurer of Hitachi Data Systems; JoAnne Tillemans, president of Avalon International Strategies; and Varrone.

For information on the group, contact Varrone at 415-813-2768, or e-mail her at joan.varrone@wj.com. —Poria Richardson

## PENSIONS

## Are 401(k) Plans Overprotected?

CORPORATE TREASURERS WHO WORRY that 401(k) assets could be stolen, misappropriated or lost in bankruptcy proceedings can now buy special insurance to protect against these risks. But treasurers and corporate plan sponsors aren't overly impressed so far since other types of policies cover a good part of this risk already.

Fiduciary & Benefit Investors Corp. (FBIC), a consortium of underwriter Zurich-American Insurance Group, wholesaler Tri-City Brokerage, and vendor Kemark Marketing, has come out with a surety bond to guarantee a 401(k) plan's assets in the event of theft, misappropriation and insolvency. The product comes in response to former Labor Secretary Robert Reich's initiative against misappropriation of retirement plans. "We did a Lexis-Nexis search and came up with 600 hits [regarding 401(k) money disappearing]," says Paul McKeon, president of both FBIC and Kemark.

That figure may seem puny out of the 240,000 plans in the U.S., but McKeon says "even if 1% [of 401(k) sponsors] are potentially a problem, that's a

\$10 billion problem." FBIC will underwrite the risks for one cent on the dollar, which on \$10 billion means a cool \$100 million in premiums.

Treasurers so far say that FBIC's product may be redundant. "We have fiduciary liability insurance that would cover it," says Peter Noll, acting treasurer for \$6.4 billion Unisys, a company currently in ERISA litigation. "I'm not sure what [a 401(k) bond] would add to a general fiduciary liability policy."

While both types of insurance cover theft or misappropriation, McKeon says the bond has the added advantage of ensuring payout should the plan sponsor become insolvent. What's been the response to the product? "Pretty good," he says. "We're getting a lot of calls from broker-dealers."

Corporate plan sponsors haven't exactly rushed to sign up since the product was introduced about a month ago. Specialty surety manager Patrick Evans concedes that Zurich-American has yet to underwrite a single FBIC bond. ♦ William Freedman

A surety bond protects assets in case of misappropriation.