

## Medical Benefit Changes

Dan Gallagher

**W**e want to share the results of months of extensive legal review of the 1-1-95 Manville retirees medical coverage changes.



- The review covered three groups:
- Those who retired prior to 1-1-79
  - Those who retired between 1-1-79 and 1-1-89, *excluding* 1982 "window" retirees
  - 1982 "window" retirees

### Pre-1-1-79 Retirees

It appears that Manville had no booklet or other written document which reserved its right to amend, modify, terminate, suspend, or withdraw the medical benefit plan or benefits in effect prior to 1-1-79. Those in this group have a strong case to insist that medical benefits continue without modifications to the deductible, co-pay, or other provisions that would cause you to pay more for medical care or would reduce the coverage. This, in fact, was one of the options given to this group, effective 1-1-95.

A word of caution from our legal counsel. You should be diligent in reviewing the forms you receive from Manville each year. Strike through any language acknowledging the right of Schuller to change your benefits.

### 1-1-79 To 1-1-89 Retirees, Excluding 1982 "Window" Retirees

The booklets and other written documents covering this group reserved the right of Manville to amend, modify, terminate, suspend, or withdraw the medical benefits in effect during this period. A 1995 U. S. Supreme Court unanimous decision (*Schoonejongen vs. Curtiss Wright*) upheld a company's right to make cost or benefit changes to its retiree medical plan, if it had similar

qualifiers in booklets or other documents. So, the basis for legal challenge to changes affecting this group is not favorable at this time.

When the retiree plaintiffs in the Curtiss Wright case won in lower court and were upheld in Appeals Court, we were hopeful that the case would provide legal opportunity for this group of Manville retirees. The unanimous Supreme Court decision overturned the lower court decisions, throwing cold water on those hopes.

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### 1982 "Window" Retirees

A Michigan District Court decision in the case of Sprague vs. General Motors may provide "window" retirees with a cause for action to keep benefits at the level when they retired, if certain criteria are met.

In the Sprague case, the employer agreed to provide a specific group of employees with health care at no cost in exchange for their early retirement under a "window" program. The Court held that the signed agreements to take early retirement constituted binding bilateral contracts, even though these agreements did not contain all of the terms of contract between the retiree and the employer. There is, of course, much more to the case, but these are the highlights which may give Manville's "window" retirees an opportunity to challenge past or future changes.

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Although the Sprague case is good law, no similar case exists in the 10th Circuit (Denver) nor has the U. S. Supreme Court spoken on the issue.

However, things can change, as you'll see in the following article about actions in congress.

We are trying to meet with Manville management to discuss the "window" retirees' situation. We will determine the alternative courses of action resulting from this discussion.

### Two Last Points

(1) Although ERISA contains no specific statute of limitations, a court case may borrow from state law. Any retirees pursuing legal remedy should do so on a timely basis. The statute of limitations in Colorado is three years, or 1-1-98 in this case.

(2) The individual rights of any retiree could be modified by any written agreements with the Company.

We hope this summary sheds some light on legal options you may have, past or future. If you have any questions, please contact us.

## Actions in Congress Favoring Retirees

Ed Bettinardi

**R**ecent actions in Congress indicate support for Retiree Health Care issues. Legislators have introduced several bills, initiated by a retiree health care cancellation at the John Morrell & Company meat packing firm in South Dakota.



### Background

Without warning, John Morrell & Company sent a letter to its 3,000 retirees on January 24, 1995 stating that their health insurance plan was being terminated a week later at midnight January 31, 1995. This included all hospital, major medical, prescription drug coverage, Medicare supplemental insurance, vision care, and life insurance coverage. This

happened shortly after the retirees accepted lower pension benefits in return for the promise of lifetime health benefits.

**Legislation**

On March 22, 1995, Senator Daschle introduced bill S588, and Representative Johnson introduced bill HR1293, *Retiree Health Benefits Protection Act*. The house bill proposes that if a company cancels or reduces its health benefits for retirees, and any participant or beneficiary starts legal action to maintain those benefits, the company must continue to provide the benefits while that action is pending in court. It also proposes that an employee representative of any retired employee or the employee's spouse or dependents may bring an action and may appear in such action on their behalf.

... the company must continue to provide the benefits while that action is pending in court.

On May 18, 1995 Senator Pressler introduced S827, *To amend the Internal Revenue Code of 1986 to limit an employer's deduction for health care costs of its employees if the employer fails to honor its commitment to provide health care to its retirees*. This bill proposes limiting the employer's deduction of health care expenses for officers and employees of the company to 25% of the otherwise regular deduction.

On August 2, 1995, Sen. Daschle and Rep. Johnson introduced bill S1107/HR 2168, *Retiree Continuation Coverage Act of 1995*. This bill modifies COBRA legislation to permit early retirees who lose their employer-provided health benefits to purchase COBRA continuation coverage until they become eligible for Medicare. Currently COBRA requires employers to offer at least 18 months of continuation coverage. Under this bill, a retiree could purchase coverage until eligible for Medicare benefits. The retiree would pay 102% of the applicable premium. However, coverage would be guaranteed under

the former employer's lower group insurance rate.

**Supreme Court**

The Supreme Court recently decided not to hear the Morrell case (John Morrell & Co. v. United Food and Commercial Workers) thereby eliminating any possibility for a judicial remedy for the Morrell retirees.

**What Can We Do?**

It may be beneficial for each of us to start active correspondence with Senators and Representatives asking for support of the legislation introduced thus far and for new legislation directed toward preventing further employer abuses of retirees.

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**Where Do We Go from Here?**

**Fern Bengtson**

There were no newsletters this spring and summer, pending the outcome of the Curtiss-Wright vs. Schoonejongen case, subsequent opinions from attorneys and the Board's attempts to meet with company officers.

Your Board of Directors continues monitoring all phases of retiree benefits and will attempt to maintain communications with company officers who are responsible for retiree benefits. Future newsletters will be issued when significant and informative issues can be offered. There will be no dues unless the need arises.

The Board of Directors and Regional Representatives of the organization continue as currently structured. We are a clearinghouse for your questions, and your comments are always welcome. If you would like any issues addressed in the newsletter, just let us know.

Thank you for your participation.

**Schuller Organizational Changes**

In August, Schuller announced that Dick Kashnow had resigned as President of Schuller International to become Chairman, CEO and President of Raychem Corp.

Tom Stevens assumed the responsibility of President and CEO for Schuller International and we understand Ron Hammonds has transferred from Riverwood and is now Sr. V. P. Human Resources. Mary Rhinehart has a new position reporting to Ron Hammonds as V. P. Compensation and Benefits, and Ann Henley, Director of Benefits, reports to Mary.

**Association's Annual Meeting**

**Bill Snyder, Secretary**

The annual meeting of the Manville Retirees Association will be in the Community Meeting Room at the Littleton Center, 2255 W. Berry Ave., Littleton, CO at 2:00 pm on Thursday, November 9, 1995. There is no business planned other than election of officers and directors. All members are invited.



The nominating committee consisting of Carl Vander Linden, chairperson, Nate Henn, Joel Krass, Chuck Swanson and Tom Van der Veer, nominated the following, who agreed to serve two year terms:

- John Leasher      Director & Vice President
- Barney Coleman      Director & Treasurer
- Bob Feeney      Director
- Roy Hillmer      Director
- Al Moore      Director

There were no write-in nominations, so the elections are uncontested and there is no need for the added expense of ballots.

The annual meeting was delayed for several reasons. The primary reason was a mix-up with the accounting firm who prepared our

annual statement (page 3). We decided not to have a full audit because that would have cost several thousand dollars.

**Please return your Proxy Statement (tear-off slip at the end of the newsletter) so we have sufficient votes to hold the annual meeting. This will avoid another mailing with attendant costs.**

**Response from Manville Directors**

On December 13, 1994, MRA President Dan Gallagher wrote each member of the Manville Board of Directors. A copy of this letter was in our last newsletter. Dan received the following response from Dick Von Wald.

*Dear Mr. Gallagher:*

*The Members of our Board have received your letter dated December 13, 1994. Due to the nature of this letter, we thought it appropriate to respond on behalf of the entire Board of Directors.*

*We understand the concerns you have expressed. The Company's decision to make changes in the retiree medical plans was made only after serious examination and input from a wide variety of sources. This process included input from a retiree survey, several retiree focus groups, and competitive industry information. In addition, contrary to the assertion in your letter, several of the Company's officers and managers have communicated with the directors of the Retiree Association. I assure you that the Company and its Board considered the interests of all stakeholders, including our shareholders, retirees, and employees in approving these changes.*

*Manville Corporation and Schuller International must continue to be competitive in a changing marketplace for the long-term. Modifying the retiree medical plans, as implemented for 1995, is*

*only one of many steps the Company has taken to accomplish this goal.*

*While no one can predict with certainty what the future holds, we assure you that the Company and the Board will do its best to balance the interests of all our stakeholders in the ensuing years.*

*Sincerely*

*Richard B. Von Wald  
Senior Vice President, General Counsel and Secretary*

*cc: Manville Board of Directors, R. Kashnow*

**Changes in Retiree Health Benefits for 1996**

Ann Henley, Director of Benefits for Schuller International will speak at a Denver retiree luncheon on October 19. She will tell us what she can about a pilot program for the Denver area retirees. There will be an HMO option for 1996 for all Denver retirees, both over and under age 65. Everything may not be set by the luncheon date, but Ann says she will have a lot to tell us about the coming changes.



John M. Hanson & Company, P.C.  
Denver, Colorado  
June 6, 1995

<b>Assets, Liabilities, Members' Equity</b>	
Current Assets	
Cash	\$ 76,953
Members' Equity	\$ 76,953

<b>Revenue, Expenses, Members' Equity</b>	
Year Ended December 31, 1994	
Revenue	
Member assessments, net	\$ 7,038
Income tax refund	203
Interest income	<u>2,386</u>
	\$ 9,627

Operating expenses	
Legal	576
Liability insurance	3,404
Miscellaneous expense	50
Newsletter	6,606
Office supplies	26
Postage & telephone expense	207
Professional fees	350
Publications	773
Taxes	<u>266</u>
	12,258
Deficiency in revenue over expenses	(2,631)
Member equity, beginning of year	79,584
end of year	\$76,953

**Annual Statement**

**Compilation of Financial Statements**  
Manville Retirees Association  
December 31, 1994

We have compiled the accompanying statement of assets, liabilities and members equity-cash basis as of December 31, 1994, and the related statement of cash revenue, expenses and members equity-cash basis for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

