Publications

New ERISA Class Actions Claim Underpayment of Pensions Due to Unreasonable Actuarial Factors

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Four recent lawsuits, filed in the last few weeks, have targeted large corporate pension plans for using what the plaintiffs claim are unreasonable actuarial equivalent factors, including "outdated" mortality tables, when calculating plan benefits payable in various annuity forms of distribution or at early retirement. Plaintiffs allege that this practice has caused participants and survivor annuitants to receive lower payments than required under ERISA. The similarities in the complaints – and the fact that the same two law firms filed all of the complaints – suggest that additional lawsuits against other large pension plan sponsors may soon follow.

The putative class actions were filed by current or retired employees of American Airlines, Inc., Metropolitan Life Insurance Company, PepsiCo, Inc. and US Bancorp (the companies' benefits committees were also named as defendants). The suits focus on the joint and survivor annuities and/or early retirement benefits that are available in these corporations' defined benefit plans. These annuities provide reduced benefits to retired participants while they are alive, in exchange for the continuation of pension payments to the participants' spouses following the deaths of the participants. The plaintiffs allege that the pension plans used actuarial equivalence factors that were decades old to calculate the payment amounts under the various alternative joint and survivor annuities and, in one case, early retirement benefits. Two of the cases focus on the specific mortality table designated in the plan document for this purpose (in one case, the table was from 1971, and in another, the table was from 1984). "Older mortality tables predict that people will die at a faster rate than current mortality tables," the plaintiffs allege, thus causing the reductions applied to participant benefits to be overstated.

The complaints acknowledge that the plans' stated mortality and interest assumptions "must be viewed together to determine if they produce a reasonable, and equivalent, benefit." In the cases where the targeted plans had a fixed interest rate (e.g., 5%), the complaints indicate that the stated rate, by itself, was reasonable, but, taken together, the mortality and interest rates are unreasonable. The complaints do not indicate at what point the combined factors first became unreasonable. While mortality tables and interest rates have been updated under federal pension law over the years for various pension plan purposes, such as minimum funding and minimum lump sum payment calculations, there have been no required updates in the context of these joint and survivor annuity calculations.

The complaints include claims that the plan fiduciaries breached their ERISA fiduciary duties by relying on those allegedly outdated mortality tables, because they have "unreasonable conversion factors that do not provide for actuarially equivalent options," resulting "in participants and beneficiaries illegally forfeiting and losing vested benefits." The lawsuits also include two additional counts for declaratory and equitable relief, and for reformation of the plans and recovery of benefits pursuant to ERISA § 502(a).

The lawsuits address a relatively unexplored area concerning ERISA's standards for the proper method of calculating joint and survivor annuities and early retirement factors under defined benefit plans. ERISA requires that such annuities must be "the actuarial equivalent of a single annuity for the life of the participant."[1] Treasury regulations provide that actuarial equivalence must be based on "consistently applied reasonable actuarial factors."[2] Many older pension plans still utilize factors that were adopted decades ago. This practice maintains the original design of the plan and may be consistent with a general desire not to make changes, especially for pension plans with traditional benefit formulas that have been frozen or phased out in favor of a different retirement program for the current workforce.

Given the lack of guidance in this area, the unsettled nature of the "reasonableness" standard, and the interplay of fluctuating interest rates with gradual changes in mortality rates, it is difficult to predict how the courts will view these issues. For the many remaining corporate sponsors of older pension plans, these cases may present a new area of potential legal exposure.

The cases are:

- *Masten, et al. v. Metropolitan Life Insurance Company, et al.*, 1:18-cv-11229 (S.D.N.Y Dec. 3, 2018),
- *Martinez Torres, et al. v. American Airlines, Inc., et al.*, 4:18-cv-00983 (N.D. Tex. Dec. 11, 2018),
- *DuBuske, et al. v. PepsiCo, Inc., et al.*, 7:18-cv-11618 (S.D.N.Y. Dec. 12, 2018),
- *Smith, et al. v. U.S. Bancorp, et al.*, 0:18-cv-03405 (C.D. Minn. Dec. 14, 2018).

[1] ERISA § 205(d)(2)(A)(ii)

[2] Treas. Reg. § 1.401(a)-11(b)(2)