Hodgson Russ LLP ATTORNEYS

PLAINTIFFS WIN EARLY BATTLE IN NEW WAVE OF PENSION LITIGATION OVER ACTUARIAL EQUIVALENCE

Hodgson Russ Employee Benefits Newsletter
August 1, 2019

A number of prominent companies that sponsor defined benefit pension plans are having to defend lawsuits commenced in the past several months that allege that the actuarial assumptions used to determine optional forms of benefit or early retirement benefits are outdated. As a result of using outdated actuarial assumptions, plaintiffs in this recent wave of lawsuits allege that plan benefits are being paid that are not actuarially equivalent to the annual monthly benefit (typically expressed a single life annuity) payable at normal retirement age. Plaintiffs in these cases generally are looking to be paid the differential between the plan benefit determined using the plan's stated actuarial assumptions (i.e., interest and mortality assumptions) which may not have been updated for several years, and the plan benefit determined using more current assumptions.

U.S. Bancorp is one of the employers with a defined benefit pension plan that is facing an actuarial equivalence lawsuit. Plaintiffs in the case allege the early commencement factors (ECFs) used by the plan to determine benefit amounts payable upon early retirement are not reasonable and do not produce a benefit that is actuarially equivalent to the benefit payable at age 65, which plaintiffs assert violates ERISA. Defendants in the case made a motion to dismiss the case. In a ruling that appears to be the first substantive decision made by a court handling these actuarial equivalence cases, the District Court of Minnesota denied the defendants' motion to dismiss – that will allow the plaintiffs in the U.S. Bancorp case to move forward with their claims.

In its Memorandum and Order, the court reviewed a number of claims made by the plaintiffs in the complaint, as well as the defendants' arguments in favor of dismissing the case. Ultimately, the court was not persuaded that the case against the defendants should be dismissed. With respect to the plaintiffs' claim that early retirement distributions must be the actuarial equivalent of the accrued benefit at normal retirement age, the defendants argued the plaintiffs' claim effectively arises under Treasury regulations that do not provide a private right of action. The court rejected that argument because the regulations merely provide guidance and do not form the statutory basis for the relief sought by plaintiffs.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

The defendants also asserted the plaintiffs are attempting to argue that ERISA imposes some “reasonableness” requirements with respect to the assumptions used to determine actuarial equivalence and that no such requirement exists. The court disagreed with the implication of the defendants’ argument (i.e., that there are no underlying requirements for calculating and applying the ECFs), and pointed to case law that suggests there are standards for determining actuarial equivalence. The court pointed in particular to the valuation rules of Section 417(e) of the Internal Revenue Code. The court ruled that plaintiffs alleged a plausible claim that the ECFs do not meet those valuation standards and therefore failed to provide plan participants with an actuarially equivalent benefit.

The court also ruled that the plaintiffs had stated a plausible claim for improper forfeiture of an accrued benefit. Distributions of early retirement benefits that are less than the actuarial equivalent value of the accrued benefit at normal retirement can constitute an impermissible forfeiture of accrued benefits. The case will be allowed to proceed so that a determination can be made as to whether benefits paid to plan participants are actuarially insufficient.

Finally, the plaintiffs’ complaint included a claim that the employer breached its fiduciary duty because the employer failed to monitor the benefits committee it appointed, which effectively allowed the committee to approve benefit payments that violated ERISA’s actuarial equivalence requirement. The defendants sought to have that claim dismissed on the basis of an insufficient pleading, and the court ruled that the facts alleged by the plaintiffs are sufficient to support the failure-to-monitor claim.

The decision not to grant early dismissal in the U.S. Bancorp case is no doubt of great interest (and perhaps some early disappointment) to the other prominent companies, including Pepsi, MetLife and Anheuser-Busch, who already are facing similar lawsuits. But the developments in this and other cases should be noted by all sponsors of defined benefit plans because early successes by plaintiffs in these cases might inspire plaintiffs’ attorneys to commence other similar lawsuits. Sponsors of defined benefit pension plans will want to monitor developments in this area and may wish to begin reviewing their plans’ definitions of actuarial equivalence for potential vulnerabilities. *Smith v. U.S. Bancorp* (D. Minn. 2019)

If you received this alert from a third party or from visiting our website, and would like to be added to our Employee Benefits mailing list or any other of our mailing lists, please visit us at: https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html.