Legal Update Article

What Manufacturers Sponsoring Pension Plans Should Know About Class Actions Challenging Plan Assumptions

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An enduring wave of novel class actions challenging the actuarial assumptions used to calculate certain pension benefits has prompted many sponsors of defined benefit pension plans to evaluate their plan's terms for calculation various forms of benefits. In total, nearly 30 cases have been filed to date. Several of these suits are against manufacturers.

Defined benefit pension plans offer a fixed benefit to retirees that is determined through formulas set forth in the plan's documents. The Employee Retirement Income Security Act (ERISA) requires that pension benefits be expressed as a single life annuity; however, alternative forms of benefit distributions (*e.g.,* joint and survivor annuities, term certain annuities) are often, and in some cases, required to be available.

While ERISA and the tax code mandate certain assumptions when calculating a lump-sum payout, ERISA does not mandate or describe the specific actuarial assumptions that must be used to convert between other forms of benefits. Rather, ERISA only requires generally that each form of benefit be the actuarial equivalent of the single life annuity. Therefore, plan sponsors typically set the assumptions used in the plan document itself. The assumptions used are usually a mortality assumption and interest rate or some type of conversion factor comprised of such assumptions.

The "actuarial equivalence" cases allege that plan sponsors or fiduciaries violate ERISA by adopting unreasonable actuarial assumptions. They assert that the underlying assumptions are based on obsolete information from the 1950s-80s. That information does not suit modern mortality and interest rates, they claim; and, as a result, certain retirees receive less than they are owed.

On the merits, plan sponsors have responded that ERISA does not prescribe any kind of reasonableness requirement when mandating that actuarial assumptions be used. Plan sponsors also have noted that ERISA does not impose an ongoing duty to monitor or update the assumptions stated in the plan. (Even though Congress had the authority to do so and actually did so in other contexts in the statute, such as when it mandated certain conversion factors for lump-sum distributions.)

Courts are split on the issues. Some courts have found it inappropriate to read implicit requirements into ERISA and thus eschewing a reasonableness requirement. Some courts have found that Congress must have implied that the assumptions used are to be reasonable.

A consensus from the courts should not be expected in the immediate future. Although these cases first appeared in late-2018, most cases have made it past defendants' early bids to dismiss at the pleadings stage. Many have settled, leaving few courts in a position to weigh in on the merits of what ERISA requires at this point.

Manufacturers that sponsor defined benefit plans should monitor these cases as they mature and consider whether to analyze their pension plan's conversion formulas and assumptions. Ultimately, the design of the plan's conversion assumptions will depend on the various employer- and plan-specific factors. A review of those factors will position sponsors to assess their litigation risk and whether any mitigation efforts would be beneficial.

Please contact a Jackson Lewis attorney if you have questions or need guidance.