MASSACHUSETTS Lawyers Weekly

Judge tosses ERISA class action over retirement pay

'Unreasonable' annuity calculation didn't violate statute

By: Eric T. Berkman March 18, 2022

Before he retired, the plaintiff worked for Mass General, which ultimately became part of Partners Healthcare, the defendant plan sponsor.

A U.S. District Court judge has ruled that a defined benefit pension plan — which used allegedly outdated actuarial assumptions to calculate an "actuarially equivalent" benefit for participants electing an alternative to a single life annuity — did not violate ERISA.

Section 1054(c)(3) of ERISA mandates that any retirement benefit that is not a single life annuity, or SLA, at the normal retirement age be the "actuarial equivalent" of such an annuity.

In other words, if a plan participant selects an alternative type of benefit, such as an SLA taken before normal retirement age or a married participant choosing a joint and survivor annuity, or JSA, the present theoretical value of each benefit choice must be equal.

Here, the defendant plan sponsor, Partners Healthcare, used a mortality table from 1951 and a 7.5 percent interest rate to calculate early retirement and JSA benefits.

Plaintiff Scott Belknap, a Partners employee who retired early and chose a JSA rather than an SLA, alleged in a putative class action that Partners' use of allegedly outdated actuarial data resulted in him receiving a decreased benefit.

He further argued that an actuarial equivalent benefit as contemplated by §1054(c)(3) was one based on "reasonable" actuarial assumptions, not outdated ones, and thus Partners violated ERISA by using such data.

Judge F. Dennis Saylor IV disagreed, granting summary judgment to Partners.

"On its face, § 1054I(3) contains no reasonableness requirement. It provides only that a retirement benefit taken in some other form or at some other time 'shall be the actuarial equivalent' of an SLA commencing at normal retirement age," Saylor wrote, adding that based on testimony from the plaintiff's own expert, it did not seem to be

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Statutory interpretation

Attorneys for the parties could not be reached for comment.

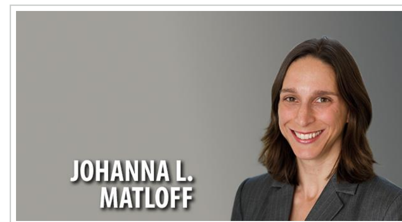
But Boston ERISA lawyer Stephen Rosenberg described cases such as *Belknap*, which focus on attacking actuarial data and assumptions that plans are using, as a trending area for the plaintiffs' class action bar.

Rosenberg also noted that the decision did not address the issue of whether a plan sponsor can use any actuarial data it wants, no matter how unreasonable — and he suspects it cannot.

"Separately, ERISA imposes fiduciary duties on plan sponsors, and I would think that, at some point, if you're relying on actuarial data that is really unreasonable to use, it becomes a breach of fiduciary duties," he said. "That's the limitation on what a plan sponsor can do that is missing from the decision. … If you're so outdated that it would be unreasonable, that's the window for a future claim."

"If Congress intended for ERISA to dictate the particulars for determining actuarial equivalence, it could have and would have done so."

— Johanna L. Matloff, Boston



Johanna L. Matloff, an ERISA litigator in Boston, described the case as an example of how ERISA leaves the particulars of the benefit arrangement to the plan or plan sponsor.

"If Congress intended for ERISA to dictate the particulars for determining actuarial equivalence, it could have and would have done so, and that's what the court was getting at," Matloff said. "There's also an integrity to the decision. The court did a good job of looking at all the different sources and explaining why they don't read a requirement into the statute."

New Orleans employee benefits lawyer Robert Rachal, who has significant experience with issues like the ones in *Belknap*, said the decision is particularly helpful in light of a split of legal authority on the matter.

"This is the first one decided on summary judgment, which means it was decided in this case after expert discovery, including expert reports and testimony of actuaries," Rachal said. "And because of this grant of summary judgment to the defendants, it's likely to be the first where we can get an appellate ruling that could possibly clear the split of authority. Of course, the only way to get a final ruling would be for the U.S. Supreme Court to ultimately rule on the issue or for the IRS to come up with some guidance."

Meanwhile, Rachal continued, if the decision is followed, it gives plans and employers who provide them "some certainty where they need it."

At the same time, Boston attorney Jonathan M. Feigenbaum, who represents plaintiffs in ERISA cases, noted that despite Saylor's strict application of the statute as written, courts have inserted other requirements into ERISA not found anywhere in the statute.

For example, he said, administrative exhaustion prior to filing suit has become a "bedrock requirement" of ERISA despite numerous court rulings acknowledging that it is court-created and not imposed by statute or contract.

Feigenbaum went on to say that imposing a reasonableness requirement is not a stretch under ERISA when taking into account the statute's purpose of offering employees enhanced protection for their benefits.

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'Outdated' actuarial assumptions

Under the Partners plan at issue, the normal retirement age is 64, and the normal benefit is an SLA based on the participant's account balance, paid out monthly from retirement until death.

Participants can also opt for a joint and survivor annuity that starts when the participant retires and ends when the participant and his or her spouse have both died.

The plan also allows participants to retire early beginning at age 55 and collect early retirement benefits as an SLA or a JSA, among other benefit forms.

Partners allegedly uses typical and up-to-date actuarial assumptions to calculate the value of all benefit forms — SLAs and non-SLAs alike — for purposes of preparing its financial statements.

But Partners also allegedly uses different interest and mortality rates to calculate the actuarial equivalence of non-SLAs and early retirement benefits. Specifically, Partners apparently uses a 7.5 percent interest rate and an adjusted 1951 mortality table.

Belknap worked for Massachusetts General Hospital, which ultimately became part of Partners, until he took early retirement in 2016 at age 62.

He opted for a 50-percent JSA but alleged in a putative class action filed in 2019 that Partners reduced the value of his annuity by using outdated actuarial assumptions.

In particular, Belknap alleged that had Partners used the 3.7 percent interest rates used to calculate its financial statements for the year ending Sept. 30, 2016, as well as the mortality table provided by the U.S. Treasury Department for 2016, his monthly payment would have been $33 higher.

Partners' use of the 7.5 percent interest rate and 1951 table, Belknap claimed, reduced the present value of his benefits at the time of his retirement by nearly $6,000.

In his complaint, Belknap asserted that the methodology violated §1054(c)(3) because it used "unreasonable" actuarial assumptions whereas that particular provision of ERISA implicitly mandated reasonable assumptions in order for a benefit to be actuarially equivalent.

After a period of expert discovery, Partners moved to dismiss for lack of standing, but after supplemental briefing and submission of expert affidavits, Saylor converted the motion to one of summary judgment.

Strict interpretation

Strictly construing the text of the statute, Saylor noticed that the relevant provision contained no express reasonableness requirement, nor did it say anything about how actuarial equivalence is to be calculated.

He also noted that the U.S. Supreme Court is reluctant to tamper with the ERISA enforcement scheme by extending remedies not specifically authorized by its text.

"Such reluctance is particularly warranted here," the judge said, emphasizing that Congress could have incorporated an express reasonableness requirement had it wanted to, since it did so for

Belknap v. Partners Healthcare System, Inc., et al.

THE ISSUE: Did a defined benefit pension plan that allegedly used outdated actuarial assumptions to calculate an "actuarially equivalent" benefit for participants electing an alternative to a single life annuity violate ERISA?

DECISION: No (U.S. District Court)

LAWYERS: Mark G. Boyko of Bailey & Glasser, St. Louis; Gregory Y. Porter and Alexandra L. Serber, of Bailey & Glasser, Washington, D.C.; Robert A. Izard, Mark P. Kindall and Douglas P. Needham, of Izard, Kindall & Raabe, West Hartford, Connecticut (plaintiff) Jeremy Blumenfeld of Morgan, Lewis & Bockius, Philadelphia; Deborah S. Davidson of Morgan Lewis, Chicago; Keri L. Engelman and Siobhan E.

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he emphasized that they were doing so in the context of lump-sum distributions, for which ERISA has an express reasonableness requirement.

Meanwhile, opinions directly addressing the issue with respect to annuities relied on authority relating to lump-sum benefits or other ERISA provisions not relevant to annuities, the judge continued.

"Under the circumstances, the Court cannot conclude that the calculation of actuarial equivalence under § 1054(c)(3) of ERISA requires the use of 'reasonable' assumptions, particularly when the plan itself specifically requires the use of particular actuarial assumptions," Saylor concluded. "It therefore follows that the calculation of plaintiff's retirement benefit here did not violate ERISA."

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