

NEW WAVE OF PENSION PLAN LITIGATION

Several lawsuits have been filed in recent months against pension plan sponsors and fiduciaries over the actuarial assumptions used in some common pension plan calculations. The defendants in these lawsuits are some large pension plan sponsors and the fiduciaries of their pension plans. The plaintiffs are retired plan participants and beneficiaries asserting violations of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), based largely on their plans’ continued application of interest rates and mortality tables that date back to the 1970s and 1980s.

A defined benefit pension plan typically provides for monthly payments to a plan participant commencing after the participant’s retirement and continuing for a specified period (such as the participant’s lifetime) in a dollar amount derived from a formula prescribed by the pension plan document. This pension formula often takes into account the participant’s compensation history and years of service.

In the case of a married participant, the annuity that is the stream of monthly pension payments derived directly from the pension formula is often converted to a joint and survivor annuity extending for the combined lifetimes of the participant and his or her spouse. That joint and survivor annuity represents the “actuarial equivalence” of the annuity payments derived from the plan’s pension formula. Because the joint and survivor annuity is payable over two individuals’ lifetimes, its monthly payments will be smaller than those of an annuity payable over only the lifetime of the participant. Actuarial equivalence for the purpose of converting a pension plan annuity from one annuity form to another ordinarily is based on interest rate and mortality assumptions prescribed by the governing pension plan document.

The plaintiffs in these lawsuits contend that ERISA requires that all the optional forms of annuity available under a pension plan be actuarially equivalent based on interest rate and mortality assumptions that are “reasonable.” Pointing to life expectancies that are longer today than when the actuarial assumptions at issue were established, due to overall healthier lifestyles and medical advances, the plaintiffs assert that the continued application of interest rate and mortality assumptions from decades ago violates ERISA on the grounds that those assumptions are no longer reasonable. The plaintiffs identify actuarial assumptions used in other contexts, such as for the pension plans’ calculation of lump sum distributions and for the plan sponsors’ own financial accounting purposes, as reasonable assumptions that would result in annuities more favorable to the plaintiffs than the annuities derived from outdated assumptions the plans use for annuity conversions.

The plaintiffs in these lawsuits are seeking class action certification and, among other relief, annuity recalculations that would produce higher monthly pension payments. The plaintiffs also are asserting breach of fiduciary duty claims against the pension plan fiduciaries for their role in administering pension plans in a manner that the plaintiffs allege violates ERISA.

The defendants dispute whether there is any “reasonableness” requirement under ERISA applicable to the actuarial assumptions challenged by the plaintiffs, and they argue that their pension plans’ mortality assumptions remain acceptable under Treasury Department regulations. The defendants also argue that the breach of fiduciary duty claims asserted by the plaintiffs are duplicative of their other claims.

These lawsuits are in their early stages and it is difficult to predict their outcomes, but successful class action litigation in these lawsuits could result in substantial costs to the defendants. Employers sponsoring defined benefit pension plans should review with their pension actuaries and attorneys whether changes need to be made to the actuarial assumptions used in their pension plans.

We will be following this new wave of pension plan litigation closely. Please contact the Thompson & Knight attorney with whom you regularly work or any of the employee benefits attorneys listed below if you have any questions regarding this litigation.

CONTACTS:**Sharon M. Fountain**

214.969.1518

Sharon.Fountain@tklaw.com**Russell G. Gully**

214.969.1511

Russell.Gully@tklaw.com**Jason Patrick Loden**

214.969.1556

Jason.Loden@tklaw.com**Jessica S. Morrison**

817.347.1704

Jessica.Morrison@tklaw.com**Neely P. Munneryn**

214.969.1585

Neely.Munneryn@tklaw.com

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