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Big Win for Employer in Actuarial Equivalence Case – Class Certification Denied

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The U.S. District Court for the Northern District of Texas dealt a major blow to the putative class action *Torres v. American Airlines, Inc.*, finding that the four named plaintiffs are not adequate class representatives for the claims alleging that the actuarial assumptions used by the American Airlines' pension plans were unreasonable. The court denied class status because it found that the claims, if successful, would actually harm some absent class members. The decision is a significant victory for American Airlines and may lay out a helpful roadmap for other employers facing similar claims.

The plaintiffs had claimed that monthly payment amounts for pension plan participants whose benefits were paid under joint and survivor annuities or other optional forms of benefits were less than the value of their single life annuity benefit. This allegedly resulted in a violation of ERISA's requirement that all optional forms of benefits be "actuarially equivalent" to the participant's accrued benefit normally paid as a single life annuity. As is typical for most pension plans, actuarial equivalence calculations are made using interest rate and mortality assumptions, as specified in the plan document. The plaintiffs primarily targeted the plans' use of an allegedly outdated mortality table—the weighted UP-1984 table—to convert a single life annuity to other benefit forms. The plaintiffs brought claims under ERISA section 502 for declaratory relief, reformation of the plan and payment of benefits, and fiduciary breach. On August 7, 2019, the District Court denied a motion to dismiss by American Airlines and its fiduciary committee (together, "AA"). On December 2, 2019, the plaintiffs sought class certification.

The claims made against AA are very similar to those in the other actuarial equivalence lawsuits currently pending against sponsors and fiduciaries of other large pension plans. Of all the pending lawsuits, this is the first in which a court has opined on the issue of class certification.

Plaintiffs Argued Class Certification Requirements Are Met

The plaintiffs filed a motion seeking to certify a class that includes participants and beneficiaries who receive (a) a joint and survivor annuity ("JSA"), (b) a preretirement survivor benefit ("QPSA"), and (c) benefits for life with a guaranteed payment for a specified number of years, regardless of how long the participant lives (known as a certain-and-life annuity, or "CLA"). Each of the named plaintiffs receives one of these forms of benefits.

Plaintiffs argued that they had satisfied the standards set forth in Federal Rule of Civil Procedure ("FRCP") 23 for representing a class. Generally, those requirements are: (1) the class members must be so numerous that joinder of all members is not practical, (2) there must be factual or legal questions that are common to the class, (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class, and (4) the named plaintiffs must adequately and fairly represent and protect the interests of the class members. Plaintiffs generally argued that each member of the proposed class received less benefits due to the plans' use of unreasonable actuarial assumptions—primarily the UP-1984 mortality table—and therefore, class certification was appropriate under FRCP 23.

AA Opposed Class Certification Due to Plaintiffs' Inadequate Representation

In its response opposing class certification, AA challenged the ability of the named plaintiffs to adequately and fairly represent the class members—one of the requirements under FRCP 23—due to a conflict of interest among the named plaintiffs and the absent class members they sought to represent. The conflict of interest exists, AA argued, because (1) absent class members who receive "Late Retirement Benefits" under the plans would receive reduced benefits if the plaintiffs were successful on their claims, and (2) there is a varying impact of discount rates on different forms of benefits such that it is impossible for plaintiffs to advocate for use of a single interest rate.

1. Late Retirement Benefits

First, AA argued that absent class members who receive Late Retirement Benefits—benefits taken when an employee begins his or her benefit after normal retirement age—would actually be harmed by reformation of the plans to provide for use of a more recent mortality table. This is because calculation of Late Retirement Benefits involves an adjustment of the participant's monthly benefit to account for the expectation that the participant will receive fewer installments of monthly benefits than the participant would have received if he or she retired at normal retirement age. Critically, under the terms of the plans, that adjustment utilizes the same mortality table challenged by the plaintiffs. If the plaintiffs' desired mortality table were to be used, participants receiving Late Retirement Benefits would suffer a *decrease* in benefits, not the benefit increase that would be experienced by plaintiffs and others who retired at or before normal retirement age.

The plaintiffs' expert dealt with this issue by using the updated mortality table for conversion of JSAs and other optional forms of benefits, but using the UP-1984 table for conversion of Late Retirement Benefits. The plaintiffs argued that ERISA does not require the use of "reasonable" assumptions for arguably subsidized benefits like Late Retirement Benefits, and the plaintiffs were not challenging the use of the plans' assumptions for this purpose.

2. Discount Rates

Second, AA argued that a conflict of interest exists because, under the plaintiffs' theory, the plans' interest rate assumption of 5% would also need to be updated to reflect current discount rates (which are generally lower than the rates used by the plans). The plaintiffs' expert acknowledged that there is a range of appropriate discount rates that may be used, and AA argued that the named plaintiffs cannot advocate for use of one reasonable interest rate over another reasonable interest rate without harming fellow class members. This is because the discount rate has varying impacts on different forms of benefits; for example, a JSA benefit generally decreases with a lower interest rate, while a CLA benefit generally increases. In other words, the use of a lower interest rate arguably would benefit a participant or beneficiary receiving a CLA and harm a participant or beneficiary receiving a JSA.

Court Decision

The District Court agreed with AA that the plaintiffs cannot adequately represent putative class members. First, the court found a conflict of interest between the named plaintiffs and the absent class members receiving Late Retirement Benefits. This, the court found, renders the plaintiffs unable to adequately represent the class. The court further agreed with AA that, due to that conflict, a class action would not be appropriate because the relief sought by the named plaintiffs would not be appropriate for the class as a whole. Significantly, the court rejected the plaintiffs' suggestion that the court resolve the issue by reforming the plan to apply two different mortality tables to the two different groups of benefits. The court explained that it was not willing to override the plan sponsor's decision to use a single mortality table because to do so would undermine ERISA's principal function of protecting contractually defined benefits. The court also noted that the plaintiffs did not explain how the plan could continue to use an outdated mortality table for any purpose if the table were in fact inadequate.

Finally, the court agreed that a conflict among the plaintiffs exists with respect to the appropriate interest rate, as the plaintiffs could not advocate for a particular interest rate without compromising the interest of some of the proposed class members.