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One Actuarial Equivalence Lawsuit Bites the Dust, Another Lives to Fight Another Day

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On March 4, 2022, the United States District Court for the District of Massachusetts dismissed a putative class action alleging that a plan used outdated, and therefore unreasonable, actuarial assumptions when making benefits calculations. Plaintiff Scott Belknap ("Belknap"), a former employee of defendant Partners Healthcare System, Inc., now known as Mass General Brigham, Inc. ("Partners"), alleged that Partners violated ERISA provisions by incorrectly calculating early retirement and optional forms of benefits under the company's defined benefit pension plan ("Plan"). Specifically, the Plan provides that early retirement and optional forms of benefits (other than lump sums) are calculated using specific actuarial assumptions: a 7.5% interest rate and a modified version of the 1951 Group Annuity Mortality table. Belknap argued that ERISA requires the use of reasonable, *i.e.,* "current", actuarial assumptions and alleged that these actuarial assumptions are outdated and, therefore, are unreasonable and not permitted under ERISA. Belknap, who himself retired early in 2016 with a joint-and-survivor annuity, alleged that if 2016 current assumptions were used, his monthly retirement benefit would increase by $33.48, to $821.42.

In earlier proceedings, the court allowed the parties to submit additional information as to the meaning of "actuarial equivalence" in this context, and both parties submitted expert affidavits and supplemental briefs on this issue. Then, Partners moved to dismiss the complaint for failure to state a claim, which the court converted into a motion for summary judgment. Partners argued that actuarial equivalence is governed by the definition contained in the plan document, irrespective of whether the assumptions required by the plan are "reasonable" or "current."

The court agreed with Partners, holding that nothing in ERISA requires the use of "reasonable" or "current" actuarial assumptions when calculating optional forms of benefits such as a joint-and-survivor annuity. Specifically, the court noted that ERISA Section 204(c)(3) on its face "says nothing about how actuarial equivalence is to be calculated; it does not specify what inputs to use, nor does it explicitly require them to be 'reasonable' – either individually or in the aggregate." Given that reasonableness and

other specified actuarial factor requirements appear elsewhere in the statute, the court concluded that the omission of any such actuarial requirements in this context was intentional.

The court also considered the question of whether the term actuarial equivalence "has an accepted or ordinary meaning among experts in the field, and that it includes a 'reasonableness' component", and concluded that it does not. Additionally, the court held that, absent a statutory definition, regulatory guidance, or governing case law, actuarial equivalence is governed by the terms of the Plan. Importantly, the court found that the Plan calculated Belknap's benefit using the actuarial factors specified in the plan document.

In granting Partners' motion to dismiss, the court noted its disagreement with other courts that have held that ERISA's actuarial equivalence requirement includes a reasonableness requirement for the actuarial assumptions. The court further reasoned that its holding was not necessarily "unfair" because pension plans are private arrangements, and "not part of a government social welfare program" put in place to protect participants from economic or social fluctuations and changes.

The court also noted various concerns if it were to hold otherwise: what would happen if life expectancy decreases, as it did in 2020 as a result of the COVID-19 pandemic; what would happen if there is a period of hyperinflation and the plan's stated interest rate becomes unduly low; how often would updates be required to a plan's assumptions and would those changes always be beneficial to all retirees? The court seemed to contend that these uncertainties supported its conclusion that it did not have the power to create new requirements in this area and that Congress could enact legislation to do so if it believes that to be appropriate.

We note that Partners separately filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), for lack of standing, arguing that Belknap was not injured by the Plan's use of the allegedly outdated actuarial assumptions because use of "current" assumptions would have *decreased* Belknap's monthly benefit, not increased it. The district court denied the motion, holding that the plaintiff had sufficiently plead an injury in alleging his benefit would increase if "reasonable" assumptions were used.

Separate Ruling: District Court Refuses to Dismiss CITGO Actuarial Equivalence Suit

On February 22, 2022, the United States District Court for the Northern District of Illinois refused to dismiss the class action actuarial equivalence lawsuit against CITGO. Unlike the Partners ruling, the CITGO court stated that "it cannot possibly be the case that ERISA's actuarial equivalence requirements allow the use of unreasonable mortality assumptions." The court went on to say that "[o]nly accurate and reasonable actuarial assumptions can convert benefits from one form to another in a way that results in equal value between the two." Noting that the CITGO plan's assumptions may or may not be reasonable, the court found sufficient basis to proceed with the case, and denied CITGO's motion to dismiss.

Groom Takeaways

The case against Partners was one of the earliest actuarial equivalence lawsuits filed in the wave that began in late 2018 and, prior to its dismissal, one of several cases yet to be decided or settled. Importantly, the court's reasoning in dismissing Belknap's claims is unique as compared to courts that have dismissed other actuarial equivalence claims on different grounds (e.g., failure to sufficiently allege injury (*Eliason v. AT&T*), failure to exhaust administrative remedies (*Brown v. UPS*)).

A notable difference between the CITGO case and the Partners case is how much experts have been involved at the time of the rulings. Indeed, the CITGO court had not yet received testimony from actuarial experts, while the Partners court, in converting the motion to dismiss to a motion for summary judgment, received testimony from actuarial experts from both sides of the case. As more cases move to the summary judgment or trial phase, expert testimony may factor into the outcome of these lawsuits on this highly technical issue of actuarial equivalence under defined benefit pension plans.

We will continue to monitor these lawsuits. Sponsors with any questions about actuarial equivalence litigation are encouraged to contact the authors of this article, Mark Carolan, Katherine Kohn, Mark Lofgren, or Joshua Shapiro, or any of our Groom attorneys.

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