

## Publications

# Proposed Settlement Agreement Reached in Actuarial Equivalence Lawsuit

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Earlier this month, a group of retired employees of Citgo Petroleum Corporation filed a motion for settlement of their lawsuit claiming they were harmed by their pension plan's use of unreasonable actuarial assumptions. The proposed settlement agreement calls for Citgo to increase plan benefits by \$10 million, which would be spread among 1,743 members of the class. The agreement also calls for \$4.75 million in attorney fees and expenses. The United States District Court for the Northern District of Illinois granted preliminary approval of the settlement agreement on October 4. As discussed below, a number of defined benefit plans have been subjected to similar class action lawsuits related to the plan's actuarial assumptions, and the Citgo settlement is a noteworthy development for plan sponsors that are tracking those cases.

## Background

Qualified pension plans generally provide benefits in the form of single life annuities that are payable to retired participants over their lifetimes. Plans are also generally required to offer joint and survivor annuities, in which a specified percentage (generally between 50% and 100%) of the amount that the retired participant was receiving continues to a surviving spouse after the death of the participant. On average, joint and survivor annuities are paid out over a longer period of time than single life annuities. To reflect this fact, most plans provide that the monthly benefits payable as joint and survivor annuities are lower than the corresponding monthly single life annuity benefits.

The Citgo case is one of a number filed in recent years in which plaintiffs argue that ERISA requires that pension plans calculate joint and survivor benefits using reasonable actuarial assumptions, and that their benefits were impermissibly low due to the use of unreasonable actuarial assumptions. The complaint in this case was originally filed on August 3, 2021, and it alleged that participants who received joint

and survivor pensions were harmed by the plan's use of an 8% interest rate and the 1971 Group Annuity Mortality Table to calculate the amounts of those pensions.

The Citgo pension plan was amended effective in 2018 to calculate joint and survivor annuities using updated actuarial assumptions, which the complaint does not identify, but describes as "comparable to those reflected in 26 U.S.C. § 417." Code section 417(e) prescribes the assumptions that plans must use to calculate lump sum benefits, and those assumptions are updated annually based on corporate bond yields and mortality tables chosen by the Internal Revenue Service. The complaint alleges that the 2018 update to the assumptions demonstrates that the prior assumptions were unreasonable, and seeks to have the assumptions set forth in the 2018 update applied to participants who commenced their benefits prior to 2018.

On February 22, 2022 the court denied Citgo's motion to dismiss, rejecting the argument that ERISA does not impose a reasonableness standard on the actuarial assumptions that plans use to calculate joint and survivor benefits. This decision was noteworthy because less than a month later, the United States District Court for the District of Massachusetts dismissed a similar lawsuit that had been filed against Partners Healthcare Systems, Inc., having reached the opposite conclusion (i.e., that ERISA does *not* impose a reasonableness standard on the assumptions). The court denied most aspects of Citgo's motion for summary judgment on May 6, 2024, and certified the class on June 7, 2024.

## Summary of Settlement

Similar to other recent settlements of actuarial equivalence cases, the proposed settlement in this case awards a fixed dollar amount, and contains a formula that spreads this amount across the class in the form of increases to each class member's benefit. The benefit increases are calibrated such that, in the aggregate, they have a present value of exactly \$10 million. The proposed Citgo settlement allocates the increases to participants based on the amount of alleged loss to each. For this purpose, the alleged loss is the present value of the difference between (a) the benefit payable under the term of the plan, and (b) the benefit that would have been payable had the post-2018 assumptions been used to calculate the joint and survivor adjustment. The settlement class consists of pension plan participants who elected joint and survivor benefits, or are receiving pre-retirement survivor benefits, and commenced those benefits on or after January 1, 1995 and before January 1, 2018.

## Groom Takeaways

The total alleged damages in this case were estimated to be approximately \$31 million, highlighting the substantial ongoing risk defined benefit plan sponsors can face even if they have already transitioned to using actuarial factors plaintiffs' lawyers deem reasonable. And in reaching settlement, Citgo joins a long line of plan sponsors who have decided not to go to trial in an area of law where no case has reached a decision on the merits.

In this era of uncertainty, plan sponsors face complex financial considerations—not only once they have been sued, but also when assessing how to mitigate their litigation risk. Groom continues to monitor these lawsuits and is available to assist plan sponsors in analyzing their risk. Sponsors with any questions about actuarial equivalence litigation are encouraged to contact the authors of this article ([Mark Carolan](#), [Mark Lofgren](#), or [Joshua Shapiro](#)) or any of our Groom attorneys.