THE NATIONAL LAW REVIEW

Piling On: Corporations Support the New York Times in Multiemployer Pension Calculation Dispute

Tuesday, February 19, 2019

Article By
Maureen O'Brien
Diane M. Morgenthaler
Richard J. Pearl
Erin Steele
McDermott Will & Emery
Employee Benefits Blog

Labor & Employment
Litigation / Trial Practice
2nd Circuit (incl. bankruptcy)
New York

Several large employers are disputing how much money the *New York Times* owes a union multiemployer pension fund. Recently, six companies—including US Foods Inc. and United Natural Foods Inc.—filed an *amicus* brief supporting the *New York Times* in its case before the US Court of Appeals for the Second Circuit. Ruprecht Co., an Illinois meat processor, also filed its own brief in support of the *New York Times*.

Under the Employer Retirement Income Security Act of 1974 (ERISA), when determining an employer's withdrawal liability, the actuarial assumptions and methods must "offer the actuary's best estimate of the anticipated experience under the plan." The underlying issue, in this case, involves an actuarial method called the "Segal Blend," which often is used to value unfunded vested benefits and calculate withdrawal liability (an exit fee) from a union multiemployer pension plan. Under the Segal Blend, the actuary blends the multiemployer plan's assumed interest rate on investments with a lower interest rate used by the Pension Benefit Guaranty Corporation for terminating plans. Many multiemployer pension plans commonly use the Segal Blend to calculate an employer's unfunded liability and payment upon exiting the multiemployer plan (known as "withdrawal liability"). These large employers claim that using the Segal Blend results in an artificially lower interest rate, which in turn results in larger employer withdrawal liability and larger amounts an employer must pay to exit the multiemployer pension plan.

The suit claims that using the Segal Blend does not reflect the actuary's best estimate of the anticipated experience under the multiemployer plan and violates ERISA. The listed companies object to the use of the Segal Blend, arguing that the calculation fundamentally undermines ERISA and allows multiemployer pension funds to impose disproportionately large liability on employers leaving the fund (while avoiding strict judicial review). The legal briefs note that multiemployer plans have an incentive to inflate the amounts owed by withdrawing employers and that this is easy to do by altering the calculation method with the Segal Blend. In this case, the employers allege that the artificially deflated interest rate under the Segal Blend does not reflect the multiemployer fund's anticipated experience. Rather, the companies claim that the interest rate for the withdrawal liability calculation should be the same interest rate used by the actuaries to determine the multiemployer plan's required minimum funding.

On the other side of the case, several groups have filed briefs supporting the multiemployer fund's calculation, including the Segal Group, Inc. (creator of the Segal Blend), the federal pension insurance agency, and an interest group representing multiemployer pension and welfare plans. Given both the large liabilities at issue in this case and the general funding crisis for many multiemployer pension plans, the Second Circuit's decision could have a wide-reaching impact on the financial health of all multiemployer plans.