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Must ERISA Actuarial Equivalence Be "Reasonable"?

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The U.S. District Court for the District of Massachusetts recently diverged from other decisions interpreting the term "actuarial equivalent" in an Employee Retirement Income Security Act (ERISA) class action, finding that the term did not contain a reasonableness requirement.

Former Partners Healthcare System Inc. employee Scott Belknap retired early from Partners at age 62 and receives a joint and survivor annuity, which covers both him and his spouse. Under Partners' benefit plan, participants can choose a single-life annuity, which provides a series of monthly payments until the participant's death, or a joint and survivor annuity, which provides continuing benefits to the surviving spouse but at a reduced level. The plan also specifies the assumptions to be used for determining a reduced level that would be "actuarially equivalent" to a single-life annuity.

Under ERISA Section 1054(c)(3), a joint and survivor annuity paid beginning at early retirement must be the "actuarial equivalent" of a single-life annuity paid beginning at normal retirement age. Belknap alleged that Partners reduced the value of his annuity payments by using an outdated 1951 adjusted mortality table and inflated interest rates to calculate payouts, which he alleged was unreasonable and not actuarially equivalent to single-life annuities in violation of ERISA.

Because the plain language of Section 1054(c)(3) does not contain a reasonableness requirement, Belknap argued that the term "actuarial equivalent" either requires or implies a reasonableness standard. The court rejected this argument. The court emphasized that if Congress had intended Section 1054(c)(3) to require reasonableness assumptions or standards, it would have included the language as it had done in several other sections of ERISA. The court also rejected the interpretation of actuarial equivalence found in other regulations, as the regulations did not apply to annuities, and found several other federal decisions involving actuarial equivalence unpersuasive. Further, based on expert testimony in the case, the court determined that the term actuarial equivalence did not imply or require reasonable actuarial assumptions. In fact, both of Belknap's experts testified that if a plan

defines actuarial equivalence — like the Partners' plan did — actuaries should use the plan's stated actuarial assumptions to calculate the benefit.

Having determined that there was no requirement that an actuarially equivalent benefit must be based on reasonable actuarial assumptions, the court held that the plan did not violate ERISA and granted summary judgment in favor of Partners.

This decision stands in contrast to another recent decision from the U.S. District Court for the Northern District of Illinois, which denied dismissal of an actuarial equivalence class action lawsuit against Citgo Petroleum Corp. Similar to the *Partners* case, the plaintiffs in the *Citgo* case asserted violations of ERISA based on the plan's use of outdated mortality assumptions to calculate their benefits, which they claimed was unreasonable and reduced their benefits to less than the actuarial equivalent of their protected benefits expressed as a single-life annuity at their retirement date. In response to the defendant's argument that Section 1054(c) did not contain a reasonableness assumption, the court noted that "it cannot possibly be the case that ERISA's actuarial equivalence requirements allow the use of unreasonable mortality assumptions." The court noted 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." The court explained that if it were otherwise, ERISA's actuarial equivalence requirement would be rendered meaningless. Because there was a dispute regarding whether the plan's mortality assumptions were accurate, the court denied Citgo's motion to dismiss.

The *Partners* and *Citgo* cases, while at procedurally different stages, demonstrate a significant unsettled area in ERISA litigation. Carlton Fields is monitoring these ERISA issues and will report on developments in subsequent issues.

Authored By

Todd M. Fuller

Brooke Patterson

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