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U.S. Supreme Court Upholds Plan Changes to Withdrawal Liability Assumptions

In a decision affecting multiemployer pension plans and participating employers, the U.S. Supreme Court held that the Employee Retirement Income Security Act of 1974 (ERISA) permits a multiemployer pension plan to change its actuarial assumptions for withdrawal liability *after* the withdrawal liability measurement date of withdrawing employers.[1]

Withdrawal Liability

Pursuant to Section 4201 of ERISA, underfunded multiemployer pension plans may assess withdrawal liability against participating employers that reduce or cease their participation in the plans. A withdrawing employer is obligated to pay the plan its withdrawal liability – *i.e.*, the employer's actuarially determined share of the plan's unfunded vested benefits. Withdrawal liability is calculated using a combination of employer and plan-specific data, in addition to the plan's actuarial assumptions. A key determinant is the discount rate assumption used by the plan.

ERISA imposes a timing element to a pension plan's determination and assessment of withdrawal liability. Although the triggering withdrawal events might occur during a plan year, ERISA deems the withdrawal to have occurred as of the last day of the previous plan year – *i.e.*, the "measurement date" as of which the employer's withdrawal liability is determined.

Case Background

Four employers that contributed to the IAM National Pension Fund withdrew from the fund in 2018. The IAM Pension assessed withdrawal liability as of the statutory

December 31, 2017, measurement date. While the employer and plan data used to compute withdrawal liability were ascertained as of December 31, 2017, the IAM Pension sought to use actuarial assumptions that had been changed during a January 2018 meeting of the trustees. Significantly, the IAM Pension lowered the discount rate from 7.5% to 6.5%, resulting in a substantial increase in the withdrawal liability for the employers. In one case, an employer's withdrawal liability increased from $1.8 million to $6.2 million as a result of the discount rate reduction. The employers contested the IAM Pension's use of the changed assumptions, arguing that the assumptions "in effect" as of the measurement date must be used.

In four resulting arbitrations, the arbitrators upheld the employers' challenges to the IAM Pension's change of assumptions after the measurement date. The IAM Pension, in turn, sought review of the arbitrators' decisions and successfully overturned them in consolidated cases at the district and appellate courts in Washington, D.C. The four employers, with the support of a conflicting U.S. Court of Appeals for the Second Circuit decision, challenged the D.C. Circuit Court ruling, and the U.S. Supreme Court granted certiorari.

U.S. Supreme Court Ruling

In a unanimous opinion delivered by Justice Ketanji Brown Jackson, the U.S. Supreme Court upheld the lower courts' decisions in favor of the IAM Pension. The Court based its decision on a statutory analysis of ERISA Section 4213(a)(1), finding that the statute did not support a prohibition against the IAM Pension applying actuarial assumptions that had been changed after an employer's withdrawal liability measurement date. The Court found that ERISA merely requires that the actuarial assumptions with respect to withdrawal liability be reasonable, and, as provided by ERISA Section 4213(a)(1), reflect "the actuary's best estimate of anticipated experience under the plan," irrespective of timing. In effect, the Court declined to read a timing requirement into the actuarial assumptions as of a withdrawing employer's measurement date.

Impact of Decision

As a practical matter, *M&K Employee Solutions* provides multiemployer pension plans with significant latitude to modify their actuarial assumptions, including the discount rate, after the withdrawal of an employer. The ruling further underscores the ERISA obligations of multiemployer pensions, together with plan actuaries, to establish and maintain actuarial assumptions in a reasonable manner, based on the actuary's best estimate of plan experience. After the ruling, employers seeking to challenge a plan's actuarial assumptions for withdrawal liability will only be able to assail the underlying reasonableness of the assumptions – generally, a challenging case to make – and not the timing of the adoption of the assumptions. With the ruling in mind, employers in multiemployer plans should evaluate potential future withdrawals with modeling that reflects the possibility of revised plan assumptions, particularly the applicable discount rate.

This blog was drafted by Daniel Lacomis, an attorney in the Spencer Fane Denver, Colorado office. For more information, visit www.spencerfane.com.

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[1] *M&K Employee Solutions LLC v. Trustees of the IAM National Pension Fund*, Docket No. 23-1209.

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