RECENT COURT DECISIONS

Contributed by

Frank P. Darr
The Ohio State University

PBGC's Restoration Authority Defined

Pension Benefit Guaranty Corp. v. LTV Corp., 58 U.S.L.W. 4831 (U.S. June 18, 1990).

The Supreme Court concluded that the Pension Benefit Guaranty Corporation (PBGC) could restore a terminated plan to an employer if it found the employer used the government insurance to subsidize its subsequent benefit plan. Under provisions of the Employee Retirement Income Security Act (ERISA), the PBGC administers a mandatory government insurance program for defined-benefit pension benefits. Employers of ongoing plans cover the cost of the insurance through premiums paid to PBGC. If a plan covered by PBGC insurance terminates without sufficient assets to cover vested benefits, PBGC will take over the plan assets and cover any nonforfeitable benefits (with some limitations) that the assets of the terminated plan do not cover. Except for those plans created by union contract, an employer may terminate any plan voluntarily if it is fully funded. It may terminate an underfunded plan if it can demonstrate that the liability of PBGC will increase if the plan is permitted to continue. PBGC may terminate a plan, including one subject to a union contract, if it finds the plan is not adequately funded. PBGC may also restore a plan to the employer if the PBGC "determines that [the] action to be appropriate and consistent with its duties" under ERISA. If the PBGC restores a plan, the employer assumes full responsibility for unfunded vested liabilities.

In 1986, LTV filed for reorganization under federal bankruptcy law, in part because its two union and one nonunion pension funds were underfunded by $2.3 billion. LTV requested PBGC to terminate the union plans, and under the assumption that the amount of liability would increase if the plans remained in place, PBGC agreed. The plans were terminated in January 1987.

While in bankruptcy, LTV entered into new benefit plans with the unions. The new plans picked up the shortfall in the pension coverage benefits provided by PBGC under the terminated plans. PBGC then indicated LTV's action was ground for restoration since PBGC was not a subsidy for shifting

pension liability to other employers through insurance premium increases. PBGC also noted that there was substantial improvement in the steel industry that indicated the liabilities associated with the terminated plans would not be as great as originally projected.

Based on these assumptions, PBGC issued a notice of restoration in September 1987. LTV did not comply with the restoration decision. In a suit to force compliance, both the district court and the Second Circuit Court of Appeals concluded that PBGC's decision to restore the plans to LTV was arbitrary. The Supreme Court, however, upheld the action.

First, the Supreme Court rejected the argument that the PBGC should have considered other effects of its decision such as the impediments it might place on collective bargaining or the bankruptcy. The court concluded that the PBGC need consider only the purposes and policies ERISA was designed to protect. If other policies were made a part of the decision as a general rule of administrative law, many decisions would be open for review.

Second, the court held that it was reasonable for the PBGC to consider LTV's provision of benefits to cover the PBGC shortfall in making its decision to restore the plans. The court noted that there was no clear congressional intent to prevent this consideration. Moreover, the interpretation was consistent with the purposes of the statute to continue plans if possible and to maintain low insurance premiums of other employers.

Calculation of Withdrawal Payment Under Multiemployer ERISA Plan

Masters, Mates and Pilots Pension Plan v. USX, 900 F.2d 727 (4th Cir. 1990).

The Fourth Circuit found that a conservative calculation of plan assets for determining withdrawal liability was reasonable. USX partially withdrew from the Masters, Mates and Pilots Pension Plan due to its declining labor force. As a result of the withdrawal, it was required to fund any vested but unfunded benefits under the 1980 amendments to ERISA. The plan calculated a payment using a 6.5 percent interest rate and a five year average of the value of the fund. USX challenged the calculation on the basis that the two assumptions caused it to pay substantially more than was necessary to fund the vested benefits. The Fourth Circuit Court of Appeals rejected USX's appeal.

The court first found that the use of a five year average value for the stock portfolio was not unreasonable. The court noted that the proper approach for establishing the current value of the fund depended on one's view of the meaning of the current value of a stock portfolio and there were several reasonable methods for valuing it. The statute, however, did adopt one particular economic view point. Since the use of an average ameliorated the effects of short term price distortions, the court found that there was a reasonable basis for using it and rejected USX's claim that its use was arbitrary.

Second, the court upheld the use of a 6.5 percent interest rate to calculate the present value of the future vested benefits. Though the plan had had higher returns, it used the lower figure in its calculations for several years.

Further, the court found that USX failed to rebut the statutory presumption that the calculation was reasonable.

Coverage of Autism as a Medical Claim

Kunin v. Benefit Trust Life Insurance Co., 898 F.2d 1421 (9th Cir. 1990).

In this case, the court of appeals held that autism was not a mental illness within a coverage limitation. After Kunin incurred $50,000 in medical claims for the treatment of his child's autism, he filed the claims with his employer's group insurer. The insurer granted coverage under the policy but recognized only $10,000 in claims because of a provision in the group plan limiting its financial liability for "mental illness." Since the plan was covered by ERISA, Kunin challenged the determination of the insurer on the basis that the denial of complete coverage was arbitrary. The trial court found for Kunin and the Ninth Circuit Court of Appeals agreed.

Finding that the action of the insurer was unreasonable, the court stressed three facts. First, the insurer did not consult with specialists in making its determination that autism was a mental illness. Second, the insurer did not discuss the child's condition with the family's treating physicians. Third, testimony overwhelmingly demonstrated that autism resulted from physical conditions rather than behavioral problems. Thus, the court concluded that the evidence demonstrated that the insurer's characterization of autism as a mental illness was unreasonable.

The court also held that the limitation of coverage should be strictly construed against the insurer. The policy did not define the term "mental illness." The failure to define left the term ambiguous. Since the policy provision concerning mental illness operated to limit recovery, the court applied the general rule that the construction of limitations should be construed against the exclusion of coverage.

Medicare Reimbursement

American Hospital Association v. Sullivan, 1990 U.S. Dist. Lexis 6306 (D.D.C. 1990).

Several hospital associations successfully sued the secretary of Health and Human Services to enjoin changes in Medicare payment rules that required hospitals to accept government payments even when private insurance was available. HHS adopted the rule change to avoid a perceived conflict between two statutory provisions. One provision prohibited a plan provider such as a hospital from accepting payment on behalf of a Medicare patient except from Medicare. A second statute directed the provider to seek payment from an insurer if insurance covered the same charge. HHS took the position that all claims be presented to it and that the providers accept the Medicare fixed rate under its Prospective Payment System. If implemented, the rule change reduced hospital income by $17 million because Medicare payments do not cover the full cost of treatment.