Cash Balance Plan Ordered to Pay $18 Million for Improper Benefit Calculation

Tuesday, August 28, 2012

A cash balance pension plan must pay a certified class of plan participants $18,677,671 in additional plan benefits and prejudgment interest as a result of its failure to use a whipsaw calculation in determining lump-sum distributions of participants who terminated employment before their normal retirement age, the U.S. District Court for the Western District of Wisconsin ruled Aug. 24 (*Ruppert v. Alliant Energy Cash Balance Pension Plan,* W.D. Wis., No. 3:08-cv-00127-BBC, 8/24/12).

Judge Barbara B. Crabb adopted the participants' proposed judgment amount, rejecting the plan's arguments regarding how plan benefits should be calculated as “inconsistent with this court's previous orders.”

In an earlier decision, Crabb ruled that the plan must use an 8.2 interest rate to calculate participants' lump-sum distributions, adopting a compromise between the interest rates offered by competing expert witnesses (*Ruppert v. Alliant Energy Cash Balance Pension Plan*, No. 08-cv-127-bbc., 50 EBC 1929 (W.D. Wis. 2010) (2 PBD, 1/4/11; 38 BPR 63, 1/11/11). This decision came after Crabb's ruling that the plan's calculations violated the Employee Retirement Income Security Act (*Ruppert v. Alliant Energy Cash Balance Pension Plan,* 716 F. Supp. 2d 801, 49 EBC 1417 (W.D. Wis. 2010) (109 PBD, 6/9/10; 37 BPR 1356, 6/15/10). Previously, Crabb found that participants need not exhaust administrative remedies before bringing their claims against the plan (*Ruppert v. Alliant Energy Cash Balance Pension Plan,* 572 F. Supp. 2d 1063, 44 EBC 2189 (W.D. Wis. 2008) (166 PBD, 8/27/08; 35 BPR 2015, 9/2/08).

Whipsaw Calculations.

In 1996, the Internal Revenue Service issued Notice 96-8, which required cash balance pension plans to use a whipsaw calculation in determining lump-sum distributions to participants who terminate employment prior to their normal retirement age. Cash balance plans are required to determine the annuity payable at age 65 to which the participant is entitled under the plan and calculate the actuarial equivalent of that annuity in present dollars.

Cash balance plans are excused from including a whipsaw calculation only when the plan uses as its interest crediting rate the 30-year Treasury rate or a similar rate approved by IRS. Under such a calculation, when the projection rate is greater than the statutorily prescribed discount rate, the actuarial equivalent of the normal retirement benefit will be more than the notional account balance. In 2006, the Pension Protection Act amended ERISA to provide that whipsaw calculations would no longer be required from cash balance plans.

In 1998, Alliant Energy Corp. converted its traditional defined benefit plan to a cash balance plan. Participants accrued a “benefit credit” equal to 5 percent of their salary, together with the right to an interest credit equal to the greater of 4 percent or 75 percent of the rate of return generated for the calendar year. Participants accrued the right under the plan to receive future interest credits on their account balances through normal retirement age while accruing corresponding benefit credits. If an employee terminated employment and deferred distribution, the interest credits would continue to be credited to that employee's hypothetical account.

Lawrence G. Ruppert terminated his employment with Alliant before reaching the normal retirement age of 65. He requested that his benefits be paid in a lump-sum distribution. In calculating his lump-sum distribution, Alliant used the 30-year Treasury bond rate to both project forward and discount back to present value, even though the plan's crediting rate would significantly exceed the return on the 30-year Treasury bill.

Judgment Entered.

The court adopted the participants' proposed judgment of $18,677,671, finding that Alliant could not use a five-year rolling average to calculate the benefits of some class members because to do so would be “inconsistent with this court's previous orders.” Alliant also argued that it should be able to disregard a 2011 plan amendment in calculating the benefits of some participants, but the court rejected this argument as well, finding that it was based on Alliant's “misreading” of prior court orders.

The participants were represented by Eli Gottesdiener, Andrew P. Carter, and Steven D. Cohen of Gottesdiener Law Firm, Brooklyn, N.Y. Alliant was represented by Mark A. Casciari, Amanda A. Sonneborn, Ronald J. Kramer, Ronald L. Lipinski, and Samuel M. Schwartz-Fenwick of Seyfarth Shaw, Chicago.