2nd Circ. Won't Revisit Benefit Math In Colgate ERISA Suit

By Grace Elletson · Listen to article

Law360 (April 4, 2025, 7:28 PM EDT) -- The Second Circuit refused Friday to rethink the methodology Colgate-Palmolive must use to recalculate retirement benefits for pensioners who said they were underpaid to the tune of $300 million, saying the issues raised by the company had already been decided.

A three-judge panel denied the consumer products company's appeal in the Employee Retirement Income Security Act suit challenging a lower court's order outlining how it must redo benefits for retirees who said their lump-sum payouts came up short.

The panel said the rates at issue have already been settled by an August 2020 lower court order siding with the certified class of 1,200 pensioners, finding their plan's terms showed they were owed more money, and a March 2023 order from the Second Circuit affirming the win.

"Defendants have raised this new argument too late," the panel said. "This contention was squarely 'ripe for review' when this court considered defendants' sophisticated arguments concerning the applicable projection rate the first time around, and we are not inclined to entertain it now."

The plan members claimed in their 2016 suit that Colgate shorted workers on benefits through errors caused by a 2005 amendment to the plan. The panel recounted that in 1994, the company amended its pension plan to convert it from a final average-pay plan into a cash-balance plan, retroactive to 1989. Under the earlier version, workers would receive benefits only in the form of a monthly annuity beginning at the normal retirement age of 65.

But under the cash-balance plan, which gave participants an accrued benefit in the form of a hypothetical cash balance in a personal retirement account, Colgate allowed them to collect a lump sum or an annuity. For those who had already accrued benefits under the pre-1898 plan, Colgate allowed them to access their grandfathered benefits while also accruing PRA benefits under the new plan. They would receive whatever the larger amount was at retirement.

But the new structure disadvantaged those who elected to receive a lump sum payment if their grandfathered annuity was larger than their PRA benefits, causing PRA lump sum payments not to be actuarially equivalent to a PRA annuity, while the PRA lump sums would be worth less than a winning grandfathered annuity, the panel said.

To address these concerns, Colgate amended the plan in 2005 by granting a residual annuity benefit to any participant who chose a lump sum payment and was owed more money than the benefit they accrued under the plan's terms. The parties contested the proper calculation for the residual annuity, which centers on Colgate's appeal of the lower court's April decision ordering the company to recalculate the residual annuities and pay corrected amounts.

But the company argued on appeal that the district court should have greenlighted its application of a pre-retirement mortality discount when reducing a residual annuity from age 65 to an earlier age — in cases when plan members retired before the normal retirement age. It argued that the discount takes into account the possibility that a plan member might die before they reach retirement age, an issue the company said the courts did not address in earlier rulings.

The panel said this isn't the case. The plan members said in their complaint that Colgate improperly used this discount, and the lower court sided with them on the issue, the panel said. It added that Colgate failed to argue, "as they do now," that the mortality discount calculations are subject to different analyses, but stressed that the company failed to oppose the plan members' motion for summary judgment on the issue at all, prompting the lower court to hand them a win on the claim.

Even after considering the merits of the plan members' claim, the panel said the lower court still found that the application of the discount was nonsensical. That's because applying a pre-retirement mortality discount to a retirement benefit that doesn't go down if a participant dies would result in a lump sum that is not actuarially equivalent to the annuity it aimed to replace, the lower court said.

The company's arguments concerning projection rates used to convert the hypothetical PRA cash balance into a single life retirement age annuity similarly fail, the panel said. The proper rates were already settled by the district court and affirmed on appeal, the panel said, adding that the company raised new arguments about the rate only after the appeal.

Counsel for the plan members declined to comment. Representatives of Colgate did not immediately respond to requests for comment.

U.S. Circuit Judges Robert D. Sack, Beth Robinson and Myrna Pérez sat on the panel.

The plan members are represented by Leon Dayan of Bredhoff & Kaiser PLLC and by Eli Gottesdiener of Gottesdiener Law Firm PLLC.

Colgate-Palmolive is represented by Robert S. Newman, Robert Allen Long Jr. and Lauren Willard Zehmer of Covington & Burling LLP.

The case is McCutcheon v. Colgate-Palmolive Co., case number 24-1419, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Kellie Mejdrich and Emily Brill. Editing by Nick Petruncio.

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