

## Benefits Orgs. Back AT&T In Suit Over Pension Risk Transfers

By **Grace Elletson**

Law360 (December 18, 2024, 6:42 PM EST) -- A trio of retirement benefits organizations urged a Massachusetts federal judge to toss a suit claiming AT&T violated federal benefits law by offloading \$8 billion in pension obligations into risky annuities, arguing that the case is a cash grab based on speculative claims.

The ERISA Industry Committee, the American Benefits Council and the Committee on Investment of Employee Benefit Assets filed an **amicus brief** Tuesday in support of AT&T Inc.'s December bid to toss the suit brought by retirees who claimed the company violated the Employee Retirement Income Security Act. The organizations, which represent and advocate for privately sponsored employee benefit plans, said the case lacks teeth and could cause a slippery slope for plans that purchase annuities through legal means if allowed to move forward.

"Should meritless claims like these advance beyond swift dismissal, there is significant risk the floodgates would burst open to plaintiffs' firms looking for a payday," the organizations said. "This would be devastating to plan sponsors and, in turn, to the participants who rely on them for jobs and benefits."

The groups said the suit **brought against AT&T in March** is part of a growing trend to attack pension risk transfers that allow employers to secure certainty over the future expenses of their pension benefit plans, by purchasing annuity contracts where participants are paid the same benefits on the same timeline, only by an insurance company. "Opening the door" to litigation on the matter would significantly disincentivize employers from providing retirement plans, the groups said.

The retirees leading the suit against AT&T have only put forward "conclusory" assertions that the company improperly offloaded \$8 billion in pension liabilities when it purchased annuity contracts from Athene, the organizations said. In doing so, they said the retirees are asking the court to assume that Athene was a bad choice because of its reputation as a "riskier" annuity provider than others based on "hypothetical, future circumstances," not because they have been denied any benefits.

"If plaintiffs' allegations here are sufficient to survive a motion to dismiss, the same basic allegations could be used to challenge every pension risk transfer transaction," the groups argued.

The organizations argued that the retirees haven't shown they experienced any harm through the pension risk transfer beyond their concerns that their benefits will be paid out by an insurance company rather than a benefit plan governed by ERISA. The federal benefits law does not block benefit plans from transferring their pension obligations to an insurance company, the organizations said, adding that ERISA expressly allows for the transfers.

The risks the retirees point to in their suit are inherent to every pension risk transfer, the organizations said; therefore, they haven't stated any valid claims under ERISA to keep their claims in court. The groups added that annuity providers are subjected to strict insurance regulations, which are often more intensive than the oversight mandated through pension regulations.

Dating back to the 2008 financial crisis, the organizations said that no annuity provider with outstanding benefit obligations has failed, while the same can't be said for single-employer pension plans.

"Lest we enter into yet another phase of unfounded ERISA class actions that are designed to compel settlement not because of their merits but because of the costs of defending them, it is imperative that these pension risk transfer claims be soundly rejected at the pleading stage," the organizations said.

Tom Christina, executive director of the ERISA Industry Committee, told Law360 that the case is "another way for the plaintiffs' bar to poach a profit."

"For large employers voluntarily offering defined benefit plans, managing another litigation threat means diverting resources to legal fees instead of reinvesting in their business and workforce," Christina said.

Kent Mason, an attorney for American Benefits Council, told Law360 that the organization thought the brief was important to sign on to because the retirees are attempting to litigate baseless claims when no harm has occurred.

Dennis Simmons, executive director of the CIEBA, told Law360 that his organization signed on to the brief to defend against "frivolous lawsuits" that may prevent employers from offering benefits plans in the future.

Representatives of the retirees and AT&T did not immediately respond to requests for comment.

The benefits organizations are represented by Kristen McGurn, Ada W. Dolph and Thomas Horan of Seyfarth Shaw LLP.

The retirees are represented by Douglas S. Brooks and Elizabeth N. Mulvey of Libby Hoopes Brooks & Mulvey PC; Robert T. Naumes of Naumes Law Group; Cyril V. Smith and Bryan M. Reines of Zuckerman Spaeder LLP; Edward Stone of Edward Stone Law PC; Elizabeth Hopkins and Susan L. Meter of Kantor & Kantor LLP; and Jerome J. Schlichter, Kurt C. Struckhoff and Sean E. Soyars of Schlichter Bogard LLP.

AT&T is represented by Meaghan VerGow, Brian D. Boyle, Shannon M. Barrett and William Pollak of O'Melveny & Myers LLP and Ian D. Roffman and Mark C. Jensen of Nutter McClennen & Fish LLP.

The case is *Piercy et al. v. AT&T Inc. et al.*, case number 1:24-cv-10608, in the U.S. District Court for the District of Massachusetts.

--Editing by Bruce Goldman.