# Courts Give Conflicting Guidance In Actuarial Equivalent Suits

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In an opinion issued in Smith v. Rockwell Automation[1] on Feb. 10, U.S. District Judge Lynn Adelman denied Rockwell's motion to dismiss a putative class action complaint alleging that the company's pension plan violated the Employee Retirement Income Security Act of 1974, or ERISA, by using mortality tables from 1971 and 1984 to calculate annuities for pension plan participants. The complaint alleges that the mortality tables are outdated, and their use resulted in underpaid benefits.

Similarly, in a written order issued in Herndon v. Huntington Ingalls Industries[2] on Feb. 20, U.S. District Judge Henry Coke Morgan Jr. denied Huntington Ingalls' motion to dismiss a putative class action complaint alleging that the defendants deprived plan participants of their actuarially equivalent benefits by relying on actuarial assumptions that include life expectancies from a 1971 mortality table.

**Background**

In the past year, approximately 10 large employers, as well as fiduciaries of their pension plans, have been sued over the actuarial assumptions (which include mortality tables and interest rate assumptions) used by their pension plans. The lawsuits generally allege that the employers and the plans violated ERISA by calculating certain pension benefits using mortality tables dating from 1951 to 1984.

In the suits, the plaintiffs allege that the use of these tables is unreasonable, violates ERISA's requirement that benefit alternatives to single life annuities be the actuarial equivalent to the single life annuity, and leads to impermissibly diminished retirement benefits.

ERISA requires that a pension paid in a form other than a single life annuity be "the actuarial equivalent of" a single life annuity.[3] The general notion is that benefits are actuarially equivalent when they are paid in ways that make them equally valuable to each other, after factoring in the time value of money and the annuitant's life expectancy. ERISA, however, does not define "actuarial equivalent."

**The Courts' Decisions**

In Smith v. Rockwell Automation, the plaintiff alleged that the alternative forms of annuity, such as joint and survivor annuities, are not the actuarial

equivalent of the standard single life annuity offered under the plan, in violation of ERISA. In short, the plaintiff claimed that retirees who select these alternative forms of benefits receive less in their monthly pension checks than they should as a result of the outdated actuarial assumptions.

Specifically, the plaintiff alleged that:

- The plan's use of the 1971 Group Annuity Mortality Table for Males, or 1971 GAM table, and the 1984 Unisex Pension Table, or UP-1984 table, do not provide an actuarially equivalent benefit under ERISA;

- The plan must be reformed to change the mortality tables and to allow the plaintiff to recover benefits under the plan following reformation; and

- The plan committee breached its fiduciary duty by calculating benefits using the 1971 GAM and the UP-1984 tables, while the company breached its concurrent duty to monitor the committee.

The defendants moved to dismiss the case, arguing that:

- ERISA requires plan sponsors to put actuarial assumptions in the plan document — but not to change them — and requiring changes would put ERISA and provisions of the Internal Revenue Code in conflict; and

- The mortality tables used by the plan are reasonable as a matter of law.

In denying the defendants' motion to dismiss, the court found that, under ERISA, "plans must ensure that any optional annuity forms are actuarially equivalent to a single life annuity," which "means that plans must use the kind of actuarial assumptions that a reasonable actuary would use at the time of the benefit determination." The court rejected defendants' argument that a plan complies with ERISA so long as it calculates the actuarial equivalent benefit using actuarial assumptions that were reasonable at the time they were written into the plan.

The court, in rejecting the defendants' arguments:

- Held that requiring a plan to periodically adjust the mortality tables would not lead to plans manipulating actuarial assumptions in violation of the Internal Revenue Code's antidiscrimination mandate;

- Recognized that amending a plan's actuarial assumptions could result in some conflict with the anti-cutback rules; and

- Concluded that a potential conflict did not support defendants' interpretation of "actuarial equivalent."

The court went on to disagree with the notion that the plaintiff's interpretation of "actuarial equivalent" would require courts to legislate actuarial assumptions. Instead, the court reasoned that "ERISA already contains the relevant rule: plans must ensure the optional annuity forms are actuarially equivalent to a single life annuity."

Less than two weeks after the decision in Rockwell Automation, the court in Herndon v. Huntington Ingalls Industries denied Huntington Ingalls' motion to dismiss a putative class action complaint. In that case, the complaint alleged that the defendants deprived plan participants of their actuarially equivalent benefits by relying on actuarial assumptions from a 1971 mortality table.

Citing Smith v. Rockwell Automation among other decisions, the court concluded that ERISA required the use of reasonable actuarial assumptions to ensure that participants were receiving benefits that are equivalent to a single life annuity. The court agreed with defendants that what is reasonable constitutes a range, not a point, but determined that the plaintiff sufficiently alleged conduct falling outside that range.

Although the court denied the motion to dismiss, the court left the door open for the defendants to demonstrate that the use of the 1971 mortality table was reasonable.

**Key Takeaways**

These recent decisions are the fifth and sixth such cases in which the court has denied defendants' motions to dismiss. Both of the recent decisions discussed above assumed that the actuarial factors used to calculate actuarial equivalence must be considered reasonable.

Interestingly, in a recent opinion denying a motion to dismiss in another of the pending cases challenging the use of certain mortality tables, the U.S. District Court for the District of Massachusetts disagreed with the presumption that the actuarial assumptions be reasonable at all. Rather, that court concluded that the only question was whether the annuities at issue were actuarially equivalent, putting aside whether the assumptions used to calculate them were reasonable.

One court has granted a motion to dismiss. The U.S. District Court for the Southern District of New York granted a motion to dismiss claims by participants who had retired early and chose to receive their benefits in the form of a joint and survivor annuity. The court held that because ERISA's antiforfeiture requirement applies only to retirement benefits that accrue upon the attainment of normal retirement age, the claims by the plaintiffs who had not attained normal retirement age could not stand. Motions to dismiss in two other cases remain pending.

These recent decisions highlight the conflicts that pension plans face regarding actuarial equivalence. Uncertainty remains about how the plans facing these lawsuits, and thousands of other defined benefit pension plans, should move forward in light of these recent challenges to established practices and differing interpretations of ERISA's requirement of actuarial equivalence.

The Rockwell Automation decision suggests that using variable assumptions might be a solution. However, all of the current decisions have been made at the pleadings stage, where a court decides only whether a plaintiff has stated a plausible claim for relief.

The courts in these recent decisions could not, and did not, consider and weigh evidence. Accordingly, these courts have yet to consider all of the relevant facts and the practical implications of an established plan amending its actuarial assumptions in the manner suggested.

In addition, the different approaches courts have taken in these cases, and some courts' rejection of other courts' reasoning or application of the law, create additional confusion for

plans and employers. The risk of inconsistencies in conclusions and rationales across jurisdictions, as well as the limitations a court faces (including the consideration of only the parties involved), suggest that a legislative response may be the most practical path forward.

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[1] Smith v. Rockwell Automation Inc. et al., No. 19-C-0505 (E.D. Wis.).

[2] Herndon v. Huntington Ingalls Industries Inc. et al., No. 4:19-cv-52 (E.D. Va.).

[3] See 29 U.S.C. §§ 1054(c)(3); 1055(d)(1)(B) and (2)(A)(ii).