

Pension Plan Mortality Table Litigation – What’s Next?

by [Suzanne E. Meeker](#) on April 29, 2021

The first major settlement of a lawsuit challenging the mortality assumptions used to calculate pension plan benefits was announced earlier this year. According to court filings in *Cruz v. Raytheon Company*, the settlement will be worth about \$59.2 million to more than 10,000 retirees and surviving spouses in five Raytheon pension plans who will see increased monthly benefits.

The *Raytheon* case is one in a series of lawsuits that began in late 2018 against sponsors and fiduciaries of large (multibillion-dollar) defined benefit pension plans including MetLife, Pepsi, UPS, American Airlines, US Bancorp, AT&T and others. Although facts and specific claims differ from case to case, all are based on the legal theory that ERISA prohibits the use of allegedly outdated mortality assumptions to calculate “actuarially equivalent” plan benefits. More specifically, plaintiffs assert that, where ERISA requires an optional annuity to be actuarially equivalent to the normal form – typically a single life annuity – ERISA requires that the mortality tables used to determine actuarial equivalence must be reasonable; reasonableness precludes the use of older tables as mortality improves; and, therefore, using older tables results in an unlawful forfeiture of vested benefits. Plan fiduciaries are charged with a breach of their responsibilities by using the mortality factors prescribed by the plan document.

The *Raytheon* settlement is noteworthy not only for its size but also because, to date, there have not been any dispositive court decisions on the legal theories in the ongoing litigation. The rulings by various trial courts on motions to dismiss and class certification have yielded mixed results. Roughly one third of the cases have been dismissed by court order or joint motion of the parties, and AT&T settled with individual plaintiffs after class certification was denied. Apart from *Raytheon*, the remaining cases are ongoing. Further, the rulings on procedural motions have been based on varying interpretations of ERISA requirements. Key legal questions remain unresolved, including:

- Does the alleged ERISA requirement exist?
- Can plan participants and beneficiaries enforce a reasonableness rule derived from tax law requirements for qualified plans?[*]
- What does reasonableness mean in this context (under ERISA or the Internal Revenue Code)?
- Can fiduciaries be liable for paying benefits in accordance with plan terms based on a new interpretation of ERISA?

For pension plan sponsors and fiduciaries, the uncertainty created by the pension plan mortality litigation will not be eased by the end of the *Raytheon* lawsuit. It is not possible to draw conclusions or to derive design standards for other pension plans from the

settlement. Judicial answers to the legal questions may be a long time coming and will, of course, also depend on the facts of each case. At the same time, the high-profile settlement is likely to result in new lawsuits.

How should pension plan sponsors respond now? We believe the best course is to continue with responsible stewardship and view the settlement as a reminder to always be cognizant of their plan design. Plan sponsors should stay informed about important developments in the ongoing litigation, periodically review discretionary actuarial equivalence assumptions with the help of their plan actuary, and assure that there is a prudent, objective process when actuarial equivalence assumptions are selected or re-evaluated and that the process is documented.

Please contact a member of Verrill's Employee Benefits & Executive Compensation Group if you have questions regarding the *Raytheon* case or the mortality assumptions in your defined benefit plan.

[*] Different from ERISA, which simply requires that certain optional forms of payment be the "actuarial equivalent" of a single life annuity, tax regulations indicate that forms of payment must be adjusted based on "reasonable" actuarial assumptions.



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