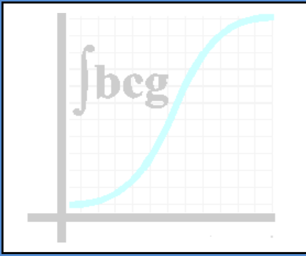

BCG Retirement News Roundup

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Boomershine Consulting Group (BCG) provides this monthly news roundup of highlighted significant articles from the retirement industry – for clients and friends. Retirement plan news has become increasingly pertinent for many audiences these days, including:

- Retirement Plan Sponsors – addressing both private and public sector issues
- Employers – dealing with complicated decision making for their plans
- Employees – educating the Boomer generation that is nearing retirement
- Industry Practitioners - helping to understand and resolve today's significant challenges

We review numerous industry news services daily and will include a collection of timely and significant articles each month concerning compliance, actuarial plan costs (including assumption debates), plan design change issues and benefit trends, as well as other related topics. If you would like to discuss any of these issues, please contact us.

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Public Sector/Government Plans

Wilshire: State pension plan funding falls in fiscal 2015

The funding ratio of 131 state defined benefit plans fell 3 percentage points to an estimated 74% in fiscal year 2015 as liability growth outpaced assets, said a recent report from Wilshire Consulting.

Of the 131 defined benefit plans, fiscal year 2015 data were available for 98. The remaining pension funds' 2015 data were estimated. Most of the plans had a fiscal year that ended June 30.

For those 98 plans that provided fiscal year 2015 data, pension assets rose 0.4% over the year to $2.14 trillion, while liabilities rose 4.3% to $2.94 trillion, for a funding ratio of 72.8%.

U.S. equity posted a strong performance in the 12 months ended June 30; however, rising interest rates in the second quarter of 2015 and a strong U.S. dollar dampened the returns of fixed income and global equity, respectively, said Russell J. Walker, Wilshire vice president and co-author of the report, in a telephone interview about the results. As a result, liability growth outpaced asset growth.

Additionally, 21 of the 98 plans reporting fiscal year 2015 data lowered their discount rates in 2015 because of reduced return assumptions, Mr. Walker said. Such a change could have raised plan liabilities.

The report, which also looks at plans' asset allocations, continued to show movement out of U.S. equities and into other growth assets such as non-U.S. equities, real estate and private equity.

The average allocation to U.S. equities in 2015 was 27.3%, down 16.7 percentage points from 2005. During the same period, the average allocation to non-U.S. equities rose 5.1 percentage points to 20.1% in 2015, real estate rose 3.9 percentage points to 8.1%, and private equity rose 5.6 percentage points to 10%. Regarding the other asset classes that Wilshire tracks, the average allocation to U.S. fixed income fell 7.5 percentage points during the period to 21.1%, while the average allocations to non-U.S. fixed income and other non-equity assets (cash and cash equivalents, commodities, hedge funds and other absolute-return strategies) rose 1.1 and 8.5 percentage points, respectively, to 2.3% and 11.1%.

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U.S. Supreme Court declines to hear N.J. pension case

The U.S. Supreme Court has declined to rule on a legal dispute between Governor Christie and New Jersey public labor unions suing over billions of dollars in missed payments to the state pension system.

The court's announcement Monday capped a furious two-year legal battle in New Jersey over one of its biggest financial problems: the notoriously underfunded pension system for nearly 800,000 public workers and retirees.

The decision means that — unless New Jersey voters approve a constitutional amendment to guarantee pension funding — New Jersey governors and lawmakers have discretion over how much money to send to the troubled retirement funds every year. For the coming fiscal year, Christie has proposed a $34.8 billion budget with a $1.86 billion pension payment, around 40 percent of what state actuaries say is necessary.

Monday's ruling left both sides digging in and defending their positions, with the governor's office calling on the unions to work with Christie to "find a solution that is fair for all taxpayers" and the head of the New Jersey Education Association, the state's largest teachers union, saying his organization will continue to work toward a constitutional amendment.

"We're heartened by the U.S. Supreme Court's decision today," a spokeswoman for the governor's office, Joelle Farrell, said in a statement. "Now it's time to return to the hard work of coming together to find a real, long-term solution to make our pension system and public employee health benefit costs affordable and sustainable. All parties need to come back to the table and work on the governor's plan to find a solution that is fair for all taxpayers."

Wendell Steinhauer, the head of the NJEA, said he was "disappointed but not surprised" by the decision, adding that it "does not reduce or eliminate the state's pension obligations."

"We still need a solution to the problem the state has created for itself," he said. "This decision just reinforces our commitment to pursuing a constitutional amendment to require responsible pension funding."

Unions for teachers, police officers, firefighters and other public workers unsuccessfully challenged Chris-tie's decision to cut billions of dollars in payments he had once promised for the pension system. In his first term, Christie signed laws pledging to make more than $16 billion in financial contributions to the pension funds over seven years, but then reneged on his plan in 2014.

The New Jersey Supreme Court upheld Christie's decision to cut the pension payments in a 5-2 ruling in June.

Unions, including the New Jersey Education Association, the Communications Workers of America and the State Troopers Fraternal Association, filed an appeal. But the U.S. Supreme Court declined to take the case, according to an order issued Monday. As is their custom, the justices did not give reasons for turning down the case. New Jersey public worker unions have no more avenues for appeal.

The unions faced long odds in persuading the U.S. Supreme Court to hear the case. It agrees to hear only 75 to 80 cases each year — out of more than 10,000 requests.

Attorneys for the unions had argued that Christie and the state Legislature could not skip the higher pension payments — and that the U.S. Supreme Court would be sending a bad signal by letting his pension cuts stand.

The pension funds managed by the state face soaring financial liabilities estimated at $40 billion to $80 billion and are projected to run out of money beginning in 2024. Christie vetoed a tax increase on millionaires that Democrats proposed to cover the pension shortfall.

The state Supreme Court ruled that only New Jersey voters, not lawmakers, could approve the multibillion-dollar pension reform plan through a constitutional amendment. State Democrats have proposed an amendment, likely to be on the ballot in November, that would mandate quarterly pension payments.

Christie in his first term also raised public workers' pension costs and their retirement age, and suspended yearly cost-of-living increases to their pensions. Retirees and unions are seeking to restore the cost-of-living increases in a separate case now pending before the state Supreme Court.

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Agreement will allow PERC to continue operating

The Public Employee Retirement Commission can continue to operate as an essentially independent agency until a court rules on a challenge to Gov. Tom Wolf's attempt to close it, according to an agreement made public Thursday.

Two House Republicans, Seth Grove and Stephen Bloom, in February filed a lawsuit to prevent the closure of the agency, which reviews municipal pension plans and legislation that would affect the pensions of public workers.

An agreement signed by representatives of Mr. Grove and Mr. Bloom, the Wolf administration and the attorney general's office says that until the court issues a decision in the lawsuit, PERC can continue with its duties and does not need approval from the governor's budget office for general work issues.

In a press release, Mr. Grove and Mr. Bloom said the agreement temporarily restores the independence of the agency.

A spokesman for Mr. Wolf said in a statement that the administration had already agreed that PERC could continue to carry out its functions related to municipal pensions, and that the governor would work with the General Assembly "to finalize any long term solutions that would require statutory authorization."

An order from a Commonwealth Court judge says the case should be scheduled for argument in May in Philadelphia.

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The Search for Consensus on Public Pension Reform

It's always a big deal when policymakers, labor and management come together and find meaningful solutions to contentious fiscal issues, especially when those issues involve public pension systems. As unfunded pension liabilities continue to skyrocket across the nation, reaching at least $2 trillion, consensus among stakeholders for reform should no longer be the exception but the rule of thumb. And we need to look no further than Arizona's sweeping overhaul of its statewide public-safety pension system to see how it can be done.

Arizona's Public Safety Personnel Retirement System (PSPRS) was on a downward trajectory, with $12.7 billion in liabilities and only $6.2 billion in assets. The plan's debt has been mounting for years due to factors that included poor investment performance and an unsustainable cost-of-living formula structure. Further, reforms that were enacted in 2011

are being challenged before the state's Supreme Court. So it's a good thing for the state's public safety workers and taxpayers that state Sen. Debbie Lesko and other legislators decided to act before it was too late. And they did it thoughtfully by making it a bipartisan effort and including the PSPRS, firefighters' and police officers' associations, and local governments.

Major provisions of the Arizona reforms include replacing the broken cost-of-living formula structure with a traditional Consumer Price Index-based calculation for employees and retirees; offering new workers a choice between a defined-contribution plan and a traditional defined-benefit pension plan; and requiring new employees and their employers to share equally, 50/50, in retirement account costs. Without immediate changes, Arizona's pension debt would have continued to escalate, with every downturn in the market putting the system at risk of collapse.

Unfortunately, it's not only Arizona that has found itself in this predicament. The vast majority of America's public pension systems are houses of cards built on risky holdings such as stocks, hedge funds and real estate. Unbalance just one piece of the structure and the houses collapse. We can see this scenario already playing out across the country as many state and local governments face service cuts and tax increases due to tremendous pension debt.

Today's pension crisis is due to policy decisions made years ago by legislative bodies that created unsustainable systems, lulled by years of a bull market into thinking they could increase benefits based on unrealistic and risky market expectations. But bull markets don't last forever. When the bottom falls out, taxpayers are left to pick up the shortfall.

If pension systems were set up with less risk (as they once were), more sharing of that risk and lower return expectations, then the real cost of retirement benefits would be more apparent to everyone. So while the recent market downturn isn't fully to blame for the funding crisis we face today, it is exposing our pension systems for what they are.

History shows that as government pension plans face insolvency, policymakers tend to increase taxes and/or pull funds from important public services, such as education, public safety and transportation, to pay down pension debt. In Arizona's case, to help make up the shortfall, required employer contributions to the plans increased by as much as 145 percent over the past few years, exceeding 60 percent of payroll in many jurisdictions throughout the state.

Growing pension costs are also threatening the long-term solvency of public employee retirement plans, putting at risk these workers' hard-earned benefits. As with all workers,

public employees should be able to count on every dollar in benefits that they've earned and not have to watch their futures go down the drain because of unsustainable pension systems. We have seen enough municipal bankruptcies to know that pubic employees and retirees suffer in that process.

Today's policymakers didn't create the mess they find themselves in, but they can certainly take a page from Arizona's playbook and begin turning the tide to make their systems sustainable. While it's easy to kick the can down the road for another day, if policymakers don't get control of the public pension crisis now the ramifications will be dire not only for public employees but also for the public they serve.

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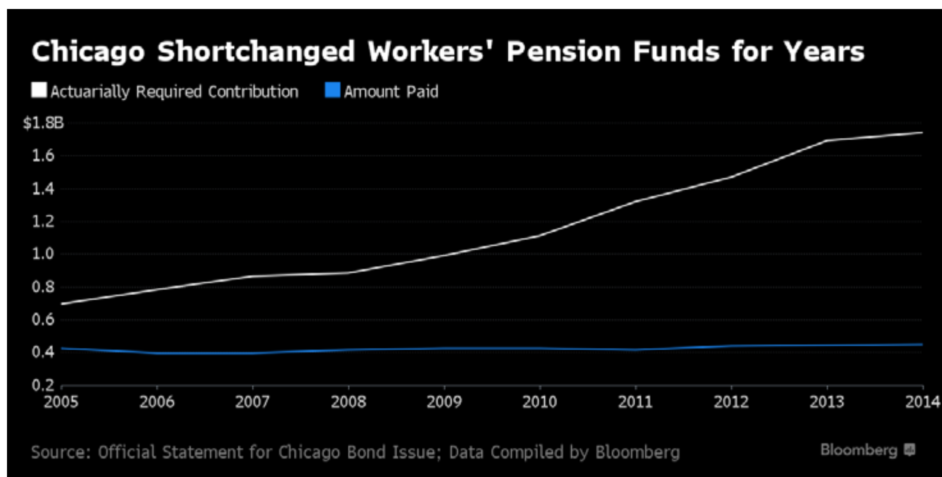
Chicago’s Plan to Overhaul City Pensions Dashed by Top Court

Chicago’s plan to ease its $20 billion public-worker pension deficit was ruled illegal by the Illinois Supreme Court, a decision that the city warned may lead to the funds’ running out of money and worsen its financial strains.

The Chicago plan, passed in 2014, violates the Illinois Constitution, which bars the diminishing of public pensions, the court said Thursday. The finding upholds a lower court decision from July and follows a similar ruling by the Illinois Supreme Court last May preventing changes to the state’s pension funds.

“It’s disappointing, but not unexpected,” said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt, including Chicago securities. “It will take longer to bring these costs under control absent the ability to enact common sense reforms that were negotiated.”

The city, the third-largest in the nation, shortchanged its pensions over the last decade, creating a shortfall that’s left it with a lower credit rating than any big U.S. city except once-bankrupt Detroit. Under the now void law, its projected annual payment of $886 million due this year to its four retirement funds was more than twice what it was a decade ago, spurring officials to adopt a record property-tax increase to ease the impact on the budget.



The ruling in the Chicago case impairs Mayor Rahm Emanuel's efforts to pare a deficit that threatens the city's solvency. The defeat leaves officials racing to devise new ways to shore up retirement system, though it will also save money in the short term because the overhaul required the city to boost contributions to its municipal and laborers funds. The two cover about 60,000 workers and retirees.

"My administration will continue to work with our labor partners on a shared path forward that preserves and protects the municipal and laborers' pension funds, while continuing to be fair to Chicago taxpayers and ensuring the City's long-term financial health," Emanuel said in an e-mailed statement.

Workers hailed the decision for eliminating the risk that promised benefits will be scaled back. "Today's ruling strengthens the promise of dignity in retirement for those who serve our communities, and reinforces the Illinois Constitution, our state's highest law," city unions said in a joint statement.

The court's ruling comes almost 11 months after it unanimously struck down a 2013 law to alter Illinois's retirement system, saying the changes to solve the state's $111 billion pension shortfall violated constitutional protections of workers' benefits. That holding led Moody's Investors Service to cut Chicago's credit rating to junk in May, citing the increased risk that the city's law would also be thrown out.

Moody's, which has a negative outlook on Chicago's Ba1 rating, one step below investment grade, said it would continue to assess its plans to fix pensions in the wake of the ruling.

Ruling Expected

Before the ruling, Moody's said the city could get hit with another downgrade if the court sided with unions and officials don't develop and enact an alternate plan. Unlike cities such as Detroit, Chicago can't file for bankruptcy protection to cut its debts because Illinois law doesn't allow it.

There was little trading in Chicago bonds after the verdict, which investors had predicted would not go in the city's favor.

The ruling was an "expected setback for the city," said John Miller, co-head of fixed income in Chicago at Nuveen Asset Management, which oversees about $110 billion in munis, which includes Chicago debt. The city has a growing and diverse economy, he said, citing increasing corporate relocations and a rise in assessed valuations among other positives.

"They have time and they have strength to pull from," Miller said. "I think other reform models that could pass muster are still being worked on. They tried one type, and that one type didn't work, so they got to try another model."

Chicago argued that its plan was different from the state version because it increased city funding of the municipal workers' and laborers' pension funds, essentially protecting benefits by ensuring the funds don't go broke. The plans for fire and police retirees weren't covered by the overhaul.

Accrued benefits shouldn't be changed, Illinois Governor Bruce Rauner told reporters on Thursday. He reiterated the importance of his agenda, stalled in the Democrat-led legislature, to bolster the state economy through limits on unions and property tax relief.

"I'm not going to bail out Chicago, but our reforms structurally will allow Chicago to solve a lot of its own problems," Rauner said.

The affected plans cut future cost-of-living raises. Lawyers for unions sued the city, arguing that any reduction in benefits was illegal. The court agreed.

"The statutory funding provisions are not a 'benefit' that can be 'offset' against an unconstitutional diminishment of pension benefits," the opinion reads.

The city's measures were intended to make the laborer and municipal worker pensions 90 percent funded by the end of 2055. The municipal workers' pension was only 42 percent funded, and the laborers only 64 percent funded, at the end of 2014, city documents show.

Unfunded liabilities are increasing each day by an average of $2.48 million, city lawyers said in court papers. One fund will be out of money within 10 years, the other in 13, they said. The court rejected that as a justification for reducing benefits.

"To put it simply, in 10 years, the members of the Funds will be no less entitled to the benefits they were promised," the opinion reads. "Thus the 'guaranty' that the benefits due will be paid is merely an offer to do something already constitutionally mandated by the pension protection clause."

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Private Sector

Renco Group to take back 2 plans from PBGC; marks second time in agency history

The Pension Benefit Guaranty Corp. will restore two pension funds that the agency took over from holding company The Renco Group Inc., the agency announced Friday.

Under the agreement, Renco will take the pension funds back as of June 1, 2016, pay all future benefits and pay $35 million in shutdown benefits not guaranteed by PBGC but covered by the plans. Renco will also reimburse the PBGC $15 million for benefits that agency has paid since taking over the two pension funds in November 2012, when they were underfunded by $82 million and $7.4 million.

The agreement marks only the second time in the PBGC's history that terminated pension funds were restored to an employer. In 1993, PBGC restored three LTV Steel pension funds after legal challenges that reached the Supreme Court, under different circumstances.

In Renco's case, PBGC officials were made aware through its early warning program that Renco was planning to leave the control business group responsible for the pension funds. In January 2013, the agency filed a lawsuit in U.S. District Court in New York alleging that the principal purpose was to evade responsibility for the pension funds, and the company committed fraud by misleading the PBGC about the facts of the transaction.

The PBGC lawsuit alleged that when Renco Group sold a 24.5% ownership stake in RG Steel, Sparrows Point, Md., to an affiliate of Cerberus Capital Management in January 2012, the goal was to "free itself from responsibility for RG Steel's pension debts."

Shortly after the trial began in December, the parties had a settlement agreement. "We thought the trial went extremely well; apparently Renco thought the same," said a PBGC official on background.

The PBGC "accomplished just about every goal the agency had," the official said, including protecting $80 million in PBGC assets that would have gone to cover future RG Steel benefits if it had kept the pension funds.

Renco Group spokesman Jim McCarthy said in an e-mailed statement that restoring the plans "was a creative, non-traditional approach that allowed the parties to reach a reasonable economic resolution." Mr. McCarthy said Renco "strongly believes" the PBGC allegations were erroneous and that the company acted appropriately during the financing transaction, which was aimed at solving RG Steel's liquidity problem. The settlement with

PBGC "was the most sensible, economic and practical resolution to the dispute, and it puts an end to the significant expense and distraction of continued litigation," he said.

"When companies attempt to evade their obligations, PBGC will act to protect participants' benefits and PBGC's premium payers from unnecessary losses," PBGC Director W. Thomas Reeder Jr. said in a statement.

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Supreme Court Finds ERISA Preempts State Claims Reporting

The Employee Retirement Income Security Act's reporting requirements trump those of individual states, including a Vermont requirement that self-insured employee health plans must report claims data, the U.S. Supreme Court ruled Tuesday in a victory for Liberty Mutual Insurance Co.

The justices ruled 6-2 to uphold the Second Circuit's ruling, which had found that ERISA's reporting requirement was crafted to prevent insurance companies from having to navigate a hodgepodge of cumbersome state regulations. Justice Anthony Kennedy wrote for the majority, with Justice Ruth Bader Ginsburg and Justice Sonia Sotomayor dissenting.

"We're gratified by the court's careful ruling," Liberty Mutual's attorney, Seth P. Waxman of WilmerHale, said in an email." A spokesman for Liberty Mutual also said they're "pleased."

Vermont Solicitor General Bridget Asay said Wednesday that they're "disappointed," especially "given the importance of claims data to evaluating health care reform efforts." The U.S. Department of Justice declined to comment.

At oral arguments in December, the justices had been skeptical of arguments by Vermont and the federal government that 50 sets of regulations from 50 states wouldn't be burdensome for insurers, despite agreeing that states should have access to the data.

Liberty Mutual had argued that having to submit the data to the states would be expensive, as administrators had to deal with conflicting requirements, and that burden would run contrary to ERISA. Vermont said the information was already available and the state had the right to use it to ensure the safety and health of its residents.

Justice Elena Kagan had called Liberty's case "intuitive" while Justice Stephen Breyer suggested that either side ask the U.S. Department of Labor or U.S. Department of Health and Human Services for uniform rules that would procure the data in a simpler way.

The insurer had sued in August 2011, after Vermont subpoenaed claims data from Liberty Mutual's third-party administrator. The suit sought a declaration that Vermont's law and regulation requiring health insurers — including self-funded plans such as Liberty Mutual's — to file reports with the state, including claims data and other information for a health care database, was preempted by ERISA.

But in November 2012, U.S. District Judge William K. Sessions III held ERISA didn't preempt Vermont's law.

On appeal, in 2014 the Second Circuit reversed the lower court's finding, and noted that Liberty Mutual's self-funded plan provides benefits to 137 people in Vermont and more than 80,000 people nationwide.

Writing for the majority, U.S. Circuit Judge Dennis Jacobs said that even though more recent precedent had pulled away from an earlier judicial consensus that construed ERISA preemption broadly, the fact that the law's preemption clause is meant to preclude the need to handle a variety of state regulations and the acknowledgment that "reporting" is a core administrative function of ERISA both have remained constant.

"The trend toward narrowing ERISA preemption does not allow one of ERISA's core functions — reporting — to be laden with burdens, subjected to incompatible, multiple and variable demands and freighted with risk of fines, breach of duty and legal expense," Judge Jacobs wrote.

Vermont appealed after the Second Circuit refused a rehearing en banc.

The state of Vermont is represented by Bridget C. Asay of the Vermont Office of the Attorney General and Peter K. Stris of Stris & Maher LLP.

The federal government, supporting Vermont, is represented by Assistant Solicitor General John F. Bash.

Liberty Mutual is represented by Seth P. Waxman of WilmerHale.

The case is Gobeille v. Liberty Mutual Insurance Co., case number 14-181, before the Supreme Court of the United States.

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Pension Plan Advances Novel Challenge to IRS Program

A novel lawsuit accusing the Internal Revenue Service of mismanaging its Voluntary Correction Program is moving forward after a federal judge denied the service's motion to dismiss.

The lawsuit—which accuses the IRS of refusing to consider a retirement plan's attempt to maintain tax-qualified status—appears to be the first lawsuit challenging the IRS's administration of its Voluntary Correction Program (VCP) in this way. The VCP allows retirement plans to identify and correct errors in plan design and operation that would jeopardize their tax-qualified status.

Brian D. Netter, the attorney suing the IRS on behalf of Information Systems and Networks Corp., said that the lawsuit appears to be unprecedented.

“As far as we can tell, it's the first of its kind, although there has been a growth in challenges against the IRS on administrative law grounds,” Netter told Bloomberg BNA March 4.

On March 2, Judge Richard J. Leon of the U.S. District Court for the District of Columbia denied the service's motion to dismiss the lawsuit. Leon issued this order without an accompanying written opinion explaining his reasoning.

First of Its Kind

Netter, a partner in Mayer Brown's Washington office, said the lawsuit came about because his client wanted to correct some mistakes in its retirement plan, but the IRS “isn't willing to play ball.”

Because the VCP allows plans to avoid the costly consequences of failing to maintain tax-qualified status, Netter said that a win for his client would benefit both retirement plans and their participants.

In contrast, “a win for the IRS would mean that the IRS could arbitrarily prevent companies from bringing their plans into compliance, which I think would be contrary to the interests of both companies and their participants,” Netter said.

Because this case appears to be the first of its kind, Netter said he wasn't sure whether similar suits by other companies would follow.

“As this case develops, we'll see more about whether there are other companies in similar circumstances and whether others are interested in filing similar suits,” he said. “From that perspective, whenever you file the first case of a kind, understanding how courts are going to process those claims helps everybody to understand whether it makes sense to file similar claims in the future.”

Netter added that it was “surprising” that the IRS wouldn't want to work with a company attempting to bring its retirement plan into compliance with the tax code.

“Here you have a company that is trying to turn the page and be diligent in honoring its legal obligations,” Netter said. “It's surprising in many respects that the IRS doesn't want to help a company like that. We're looking forward to seeing how the case can be resolved now that the district court has ruled that we have stated a claim.”

A spokeswoman for the Department of Justice's Tax Division declined to comment on the lawsuit.

VCP Dispute

According to the company's complaint, it filed a VCP application with the IRS in 2012 in an attempt to correct missteps allegedly related to the plan's court-appointed independent fiduciary. The fiduciary was appointed in the course of a long-running dispute with the Department of Labor over prior fiduciaries' alleged failure to make required plan contributions .

Although the service was receptive to some of the company's correction efforts, it eventually told the company that it couldn't rule on the VCP application because it involved fiduciary issues that should be addressed to the Department of Labor, the complaint alleged.

The company argued that this move by the IRS violated the Administrative Procedure Act and threatened the plan's tax-qualified status.

In response, the IRS argued that the company lacked standing to bring these claims because

it hadn't been injured by any conduct of the service. In addition, the service argued that it hadn't issued a final agency action that could form the basis of a lawsuit.

Judge Leon's March 2 order denying the service's motion to dismiss means that the case will continue.

Netter represents the company, along with William G. McGarrity of Mayer Brown's Chicago office. Ann E. Nash and Olga L. Tobin of the Department of Justice's Tax Division represent the IRS.

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Corporate Pensions Seek Protection Against PBGC Hikes

Two-thirds of corporate pensions will change how they manage their plans in response to skyrocketing Pension Benefit Guarantee Corporation (PBGC) premiums, according to NEPC.

With flat-rate and variable-rate premiums set to increase over the next three years by 25% and 35%, respectively, plan sponsors are looking for ways to close funding gaps, NEPC Partner Brad Smith told CIO.

“A lot of our clients were saying, ‘Hey, this is a big deal, this has got our attention,’” Smith said. “Given the magnitude of the increase, it’s not really surprising.”

To avoid paying increasingly costly PBGC premiums—up this year to a $64 fixed rate and $30 variable rate—plan sponsors are turning to higher contributions, lump sum payouts, and pension-risk transfers.

Of the 66% who planned on changing their plans, 32% said they were considering making higher contributions. Another 32% cited the possibility of lump sum payouts.

A smaller proportion, 17%, said they would look into partial risk transfers.

“We’ve seen over the years a pretty significant increase in the number of plan sponsors at least evaluating the merits of a partial plan termination, and for those plan sponsors on the bubble this could be the data point they need to make it more economical for it to occur,” Smith said.

However, the consultant warned that the reduction in overall liabilities from a partial risk transfer would also bring a drop in funded status, as plans will have to settle the full dollar

amount regardless of how well-funded they are.

"Kimberly-Clark settled a huge liability, but they also had to make a huge contribution to fund that pension-risk transfer," Smith said. "Plan sponsors really need to be educated to understand that they could be forced to make higher contributions more quickly if they do a pension-risk transfer because their funded status will likely fall."

NEPC also found that midsize plans—those with assets between $250 million and $1 billion—were the most likely to react to the rising premiums. Meanwhile, plans with assets totaling more than $2 billion were less likely to have changes intended.

"If you've got a $5 billion plan that's 80% or 85% funded, it would take a big check to close the gap to make it fully funded," Smith said.

Making contributions to fund liabilities was a more feasible option for the smaller plans. However, Smith acknowledged a client with more than $2 billion in assets also planned to make a special contribution to improve funding status in the near future.

Additionally, GM, one of the country's largest corporate pension plans with liabilities exceeding $20 billion, announced last year it would borrow $2 billion to contribute to the plan——a move Russell Investments has said is now cheaper than paying PBGC premiums.

Smith agreed that an economic argument could be made for borrowing to fund the plan—but only if plan sponsors also de-risked their portfolios.

"If the goal is to avoid future variable-rate premiums and if you are going to borrow money to fund up the plan, you really do need to evaluate the merits of a hibernation strategy, where you significantly de-risk the asset portfolio and really lock down the surplus volatility," Smith said.

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PBGC Reporting Changes Account for Pension 'Smoothing'

The Pension Benefit Guaranty Corporation finalized changes to its annual financial and actuarial information reporting regulations for pension plans to account for funding stabilization provisions passed and then extended by Congress in recent years.

The rule, issued March 22, makes changes involving pension plans' funding target attainment percentage and that percentage's relationship to requirements that plans report

to the PBGC. It also modifies waivers from reporting and adds new ones.

The modifications codify changes made by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21), the Highway Transportation and Funding Act of 2014 (HAFTA) and the Bipartisan Budget Act of 2015. Those laws included pension “smoothing” provisions designed to ease the impact low interest rates have had on single-employer plans' minimum funding requirements.

MAP-21's rules limit the volatility of certain interest rates used for funding purposes by constraining them within a range, and that “corridor” was set to begin phasing out in 2013. HAFTA extended the beginning of the phaseout to 2018, and the budget deal pushed it back again, to 2021 .

The effective date of the new rule (RIN 1212-AB30) is April 22. The first filings under the regulation will be due April 17, 2017.

FTAP

With regard to the funding target attainment percentage (FTAP), the rule codifies the statutory changes—and guidance in two pieces of PBGC guidance, Technical Updates 12-2 and 14-2. It changes the definition of the FTAP in PBGC regulations to provide that it's determined without regard to the pension smoothing rules. The rule also renames FTAP the “4010 funding target attainment percentage.”

The rule also clarifies under PBGC regulations that the plan's funding target as of the valuation date is also determined without regard to interest rate stabilization rules.

In addition, the rule codified a waiver from Technical Update 12-2 for plans meeting certain funding requirements.

Other Waivers

The final rule also changed a waiver for plans whose aggregate underfunding—called the “4010 funding shortfall” for Section 4010 of the Employee Retirement Income Security Act—is $15 million or less.

The proposed rule, issued in July 2015, would have limited the waiver to controlled groups of a certain size .

However, in response to comments, the PBGC is allowing plans of any size to use the

waiver, but is modifying how the Section 4010 funding shortfall is determined—by using non-stabilized rates.

The rule also includes new waivers that the PBGC said will reduce Section 4010 reporting and duplicative reporting.

In addition, the rule provides alternative methods of compliance for reporting certain actuarial information, including the funding target of the plan determined as if the plan has been in at-risk status for at least five plan years and determined without regard to the interest rate stabilization rules.

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