Beck, Jeffrey & Crown Paper Co. v. PACE International Union, et al. (06/11/2007)

Case Reference:
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Questions presented: Whether an employer that sponsors and administers a single-employer defined benefit plan has a fiduciary obligation under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq., to consider merger as a way to implement the employer's decision to terminate the plan?

On Jan. 19, 2007, the U.S. Supreme Court accepted review of the case.

EMILY WHIPP, MEDILL NEWS SERVICE

According to pension and bankruptcy law expert Mark Johnson, after Beck v. PACE International Union is heard by the Supreme Court in April, the most press coverage it will probably receive in the newspaper is a few sentences or maybe a sidebar.

The case centers on narrow issues of pension and bankruptcy law, which do not lend themselves to the emotionally charged elements of a high-profile Supreme Court case.

However, Johnson who runs ERISA Benefits Consulting and has managed over $14 billion in pension assets while serving as managing director of benefits and pensions for a Fortune 500 company, points out that the implications could be widely felt by all of those with a stake in a pension plan.

The case concerns pension plans at Crown Vantage Incorporated an Oakland, California-based company that produced and marketed paper products for printing, publishing and specialty packaging. It was the parent company of the East Coast's Crown Paper Company, which operated seven paper mills and employed 2600 workers.

In March 2000, amid financial turmoil, Crown filed for Chapter 11 bankruptcy and began liquidating its assets. The Pension Benefit Guarantee Corporation (PBGC), an independent governmental agency created to protect pensions by the Employee Retirement Income Security Act of 1974 (ERISA), filed proofs of claims detailing the millions of dollars of liability they would be forced to assume

if they took over Crown's pension plans. The bankruptcy court was hesitant to grant Crown Chapter 11.

Crown's board of directors, who were theees for the company's 18 pension plans, began looking for alternative ways to terminate the pensions. In July 2001, they considered purchasing annuities in order to get rid of the pension plans.

However, the Paper, Allied-Industrial, Chemical and Energy Workers Union International (PACE), which represented 17 of the pension plans and covered all of the hourly employees with collective bargaining agreements, disagreed with this solution.

PACE was advocating for a merger of the pension plans into the PACE Industrial Union Management Pension Fund (PIUMPF), a pension fund founded in 1963 for PACE members. The union favored this fund because in recent years it had paid an extra monthly check per year and presented the possibility that retirees would receive more than their minimum benefits.

While PACE and Crown had discussed a possible merger with PIUMPF throughout the summer, Crown went ahead in October and purchased an annuity as a means of terminating 12 pensions.

PACE along with plan participants Edward Miller and Jeffrey Macek filed a case in bankruptcy court. They argued that Crown had violated ERISA by failing to "perform a diligent investigation into the PIUMPF merger" and by failing to discharge its duties "solely in the interests of the participants and beneficiaries." The court found in favor of PACE.

ERISA is the legislation that governs how employers may terminate pensions. It requires employee benefit plan fiduciaries, the people with discretionary authority over the pension plans to discharge their duties "solely in the interest of plan participants and beneficiaries."

An employer may end a single-employer defined benefit pension plan only through the process set out by ERISA. However, it is important to note that the decision to terminate a plan is not subject to ERISA.

Crown appealed to the United States District Court for the Northern District of California saying that it was not subject to fiduciary obligations in terminating the plan since a merger is an impermissible means of terminating a pension under ERISA.

The district court affirmed the bankruptcy court's finding. It ruled that the implementation of a pension termination is discretionary and therefore subject to fiduciary obligations. Under ERISA, Crown had a duty to investigate the merger before deciding to purchase annuities.

Crown appealed the case to the 9th U.S. Circuit Court of Appeals. The court ruled that the district court was correct in finding that the Crown board had breached its fiduciary duties by failing to consider the PIUMPF merger. They held that "under ERISA and its regulations, merger into a multiemployer plan is not a prohibited means of terminating a pension plan."

While this case may appear to have narrow implications limited to pensions and bankruptcy law, according to Johnson, the implications will be widely felt.

"Loads and loads of defined benefit programs are being terminated," Johnson said.

He said that employers have been freezing or replacing them with 401(k) plans for the past 20 years and attributed the change to a number of factors. Mainly, he said, in an age where people are no longer working in the same job for the same employer for their entire career, defined benefit plans are not a great incentive.

Defined benefit plans are calculated using a formula based on one's pay and service at a certain job. If one moves from job to job throughout their career they will not have enough time to acquire a big pension

As companies look to get rid of their defined benefit pension plans in order to attract new employees, they are facing difficult decisions on how to do so. This case will answer the question of whether or not a pension plan sponsor's decision to purchase an annuity rather than to merge the pension plan with another is subject to ERISA guidelines.

If the court upholds the appeals court decision and rules that it is a fiduciary duty to consider a merger as an alternative to plan termination, employers may have to choose merger over termination even if the termination would save their company money.

Oral arguments for the case are scheduled for April 24, 2007.

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http://otd.oyez.org/articles/2007/06/11/beck-jeffrey-crown-paper-co-v-pace-international-union-et-al-06112007