Segal Consulting

update

Compliance News for Multiemployer Plans

July 6, 2018

Latest Court Decision Affirms Use of the "Segal Blend" to Calculate Withdrawal Liability

Judicial Decision:

- The arbitrator in this case supported use of the Segal Blend to calculate withdrawal liability.
- The District Court judge agreed with the arbitrator's decision and upheld the reasonableness of the Segal Blend.
- The decision in this case is consistent with almost all decisions on this issue handed down over the years.

This *Update* reviews a July 3, 2018 decision by the United States District Court for the District of New Jersey in *Manhattan Ford Lincoln, Inc. v. UAW Local 259 Pension Fund* (the *Manhattan Ford* decision), a case that addressed the calculation of withdrawal liability using the Segal Blend method. In its opinion, the court granted the pension fund's motion for summary judgement. In doing so, it upheld the arbitrator's findings that the use of funding assumptions is not required in calculating withdrawal liability and that Manhattan Ford Lincoln, Inc. failed to demonstrate that the actuary's selection of the Segal Blend rate for purposes of that calculation was unreasonable. This decision is consistent with every other decision handed down in similar cases except for one since 1980 when withdrawal liability became part of the Employee Retirement Income Security Act (ERISA).*

Background on Withdrawal Liability and the Segal Blend

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) created the current framework for employer withdrawal liability to protect the funded status of the plan by not allowing employers to withdraw and leave behind unfunded liabilities. Typically, a dispute between a plan and an employer over a withdrawal liability determination goes to arbitration.

ERISA governs withdrawal liability arbitration proceedings and includes certain presumptions, including the rule that, in the case of a determination of a plan's unfunded vested benefits (UVBs), the determination is presumed correct unless the employer shows, by a preponderance of the evidence, that the actuarial assumptions and methods were, in the aggregate, unreasonable (taking into account the plan's experience and reasonable expectations) or that the plan's actuary made a significant error in applying those assumptions and methods.

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* The exception is the decision rendered earlier this year by the United States District Court for the Southern District of New York in *N.Y. Times Co. v. Newspaper & Mail Deliverers'-Publishers' Pension Fund*, WL 1517201 (S.D. N.Y. 2018). That decision has been appealed to the United States Court of Appeals for the Second Circuit. The judge in *Manhattan Ford,* after reviewing cross motions for summary judgment, concluded that there were no triable issues of material fact and the fund was entitled to judgment as a matter of law. In reaching his decision to uphold the use of the Segal Blend, the judge also discussed why he came to a different conclusion than the judge in *New York Times.* It is, of course, too early to know if the *Manhattan Ford* decision itself will be appealed, but if it is, the appeal will go to a different Circuit Court — the United States Court of Appeals for the Third Circuit.

Use of the Segal Blend method for calculating withdrawal liability has been consistently upheld as not unreasonable. It involves two separate liability calculations, which are then blended to form the final result. The first recognizes that the withdrawing employer is entering into a final settlement of its obligations and has no ongoing risk. The vested liability in this calculation is based on insurance company annuity close-out rates. (These are reflected in the interest assumptions used by the Pension Benefit Guaranty Corporation for plans terminating by mass withdrawal.) The second calculation recognizes that there is a risk premium to be earned on actual plan investments, and uses the ongoing funding assumptions to value the portion of the liability not covered by current assets. The Segal Blend method has been used by both Segal actuaries and actuaries from other firms.

Most plans that do not use the Segal Blend for calculating withdrawal liability use the same actuarial assumptions that are used for ongoing plan funding, recognizing the risk premium on investments but not the settlement approach.

The District Court's *Manhattan Ford* Decision

The UAW Local 259 Pension Fund had been using the Segal Blend method to calculate withdrawal liability for more than 25 years. After its withdrawal from the fund, Manhattan Ford was assessed with $2.55 million in withdrawal liability, and it challenged the fund's use of the Segal Blend on the grounds that such use was "unreasonable." Manhattan Ford argued that a pension plan actuary must use the same assumptions for calculating withdrawal liability as it uses for determining ongoing funding required contributions. In this instance, if the funding rate — 7.5 percent — had been used instead of the Segal Blend, there would have been no withdrawal liability. The arbitrator rejected that argument and the court agreed.

The judge noted that his analysis of the record "starts from the premise that protection of Plan participants, so long as it reflects professional actuarial judgments and not the self-interested bias of the Plan itself … is a permissible, indeed a paramount, goal."

The court pointed out that the case raised two essential questions:

1. Does ERISA require that a pension plan's actuary use identical actuarial assumptions to calculate the plan's ongoing funding required contributions and its UVBs for withdrawal liability?

2. If the answer to question 1 is "no," did the arbitrator in this case err when he found that the pension fund actuary's use of the Segal Blend to determine Manhattan Ford's withdrawal liability did *not* make the actuarial assumptions "in the aggregate, *unreasonable*"?

The court determined the clear answer to both questions was "no." Consequently, it affirmed the arbitrator's decision to award withdrawal liability as calculated by the fund. The decision noted:

> Minimum funding and withdrawal liability are different concepts under ERISA with different, although related, policy concerns. … Funding is an ongoing process, subject to adjustment for an employer that is remaining in the plan. … Withdrawal liability, however, is calculated once, as of the time of withdrawal. Should the unexpected occur after that employer's departure, the burden may unfairly fall on other plan employers… The risk-transfer and settlement models of withdrawal liability recognize a more complicated reality than the one embodied in minimum funding levels.

The decision quotes testimony from the Segal actuary that, under the Actuarial Standards of Practice (ASOP), "every actuary needs to look at the purpose of the measurement before you know what assumptions you can use."

It is noteworthy that the *Manhattan Ford* decision is consistent with other decisions in upholding the actuary's use of the Segal Blend as not unreasonable for withdrawal liability calculations. It is likely that other courts will look to the decision for useful guidance on this important issue because the *Manhattan Ford* decision provides a thorough and informed explanation of the actuarial concepts and related case law involving discount rates as applied for funding and withdrawal liability calculations.

Questions?

For more information about the District Court's *Manhattan Ford* decision or the Segal Blend, please contact your Segal consultant or the Segal office nearest you. As with all judicial decisions, rely on the advice of your fund counsel as it relates to the legal implications of the *Manhattan Ford* decision.

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