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One Minute Memo®

D.C. Circuit Court of Appeals Orders Pension Plan to Pay Interest on "Unreasonably" Delayed (45 Days!) Payment of Lump Sum Benefits

On July 15, 2011, the U.S. Court of Appeals for the District of Columbia Circuit held, in *Stephens v. U.S. Airways Group, Inc.*, D.C. Cir., No. 10-7100, that a 45-day delay between the participants' stated "annuity starting date" in the plan document and when the lump sum distributions were actually made, was not reasonable. The court ordered, on remand, that the district court calculate the appropriate amount of interest owed to the pilots due to the unreasonable delay.

Factual and Procedural Background. Two retired U.S. Airways pilots sued U.S. Airways claiming that because they received their lump sum pension payments 45 days after their annuity starting date, they should have received interest for the delayed payment. U.S. Airways claimed that the delay was administratively necessary because of additional calculations and precautions it takes when issuing lump sums instead of annuity payments. After the lawsuit was initiated, the plan was terminated due to U.S. Airways' bankruptcy and the Pension Benefit Guaranty Corporation ("PBGC") became the plan's trustee and the main defendant in the case. The district court rejected the plaintiffs' claims.

Appellate Court Ruling. On appeal, the pilots argued that the 45-day delay rendered their lump sum benefits worth less than the annuities they could have received, and therefore, the plan violated the requirement set forth in Section 204(c)(3) of the Employee Retirement Income Security Act ("ERISA") that lump sums paid in lieu of an annuity "shall be the actuarial equivalent" of the annuity payment. The court rejected the PBGC's arguments that the delay was reasonable because (i) historically, U.S. Airways took a period of 21 business days to calculate the lump sum, and (ii) in practice, most pension plans deemed a delay of 30 days, not 45, to be reasonable.

Although one judge dissented from the opinion because he believed that the 45 day delay was not unreasonable (particularly because the administrator needed final average pay to perform the benefit calculation), the concurring judge argued that the retired pilots should receive interest from day one for the full 45-day delay.

Client Considerations. *Stephens v. U.S. Airways Group* may put pressure on plan administrators to ensure that payment of lump sum benefits from a defined benefit plan is made within a "reasonable" period after the annuity starting date laid out in the plan – and to be able to explain any delay – or else to adjust the payment for interest to the extent that it is delayed.

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