May 2013

<u>Lee, et al., v. Verizon Communications, Inc., et al.</u>

Pension De-Risking - Retirees' Class Action Litigation Still Active

This is an update about the case being sponsored and fully financed by the Association of BellTel Retirees Inc ("Association") and pursued on behalf of retirees whom Verizon expelled from the Verizon Management Pension Plan ("VMPP") and sent over to The Prudential Insurance Company of America ("Prudential"). On March 28, 2013, Dallas federal court Chief Judge Sidney A. Fitzwater granted class certification of the *Lee, et al., v. Verizon Communications Inc., et al.* case. There are two classes: one class consisting of all 41,000 persons (all management retirees) who were transferred out of the pension plan and sent over to Prudential and complain about that transaction; and one class consisting of about 55,000 persons who remain in the pension plan and complain that excessive fees were paid with pension monies when Verizon should have paid those fees using corporate operating revenues.

To recap, on October 17, 2012, Verizon disclosed in a filing made with the United States Securities and Exchange Commission ("SEC") that it had entered into a contract with Prudential to end Verizon's responsibility for approximately 41,000 management retirees in the VMPP. The announced $8.5 billion transaction was a freight train headed downhill and completely caught all of the retirees and the Association by surprise. The Association immediately sought legal and other expert advice and decided to mount a legal challenge for the benefit of all retirees. Immediately, a formal request for documents was submitted to Verizon pension plan administrators and they were required by federal law to timely respond to the request within 30 days. Once the responsive documents were received, the Association's outside legal counsel (Curtis L. Kennedy of Denver and Robert E. Goodman, Jr., of Dallas) went to work drafting a

federal court complaint and all other necessary court filings in an effort to obtain injunctive relief to stop the transaction.

The case was filed in the Dallas federal court and championed by two retirees slated to be affected by the transfer to Prudential, William Lee and Joanne McPartlin. The case was filed against both Verizon and Prudential and the case was assigned to Chief Federal Judge Sidney A. Fitzwater who put the matter on a fast-track for legal briefing. An enormous amount of legal briefing and supporting documents were submitted. Of course, both Verizon and Prudential made legal arguments whining about how expensive it would be to delay the transaction, potentially costing Verizon an extra $100 million. On December 7, 2012, Chief Judge Fitzwater issued his ruling – and he did not stop the freight train. The transaction went forward and was completed on December 10, 2012. 41,000 retirees were transferred to Prudential.

Now that the annuity transaction has been completed, all 41,000 transferred retirees have lost all federal law protections and the uniform guarantee provided by the Pension Benefit Guaranty Corporation ("PBGC"). The insurance annuities, now being provided outside of the ERISA rubric, are subject to varying state *voluntary* insurance protections, may be subject to creditors' and bankruptcy claims, and there is no prohibition preventing Prudential from either selling or transferring some or all of the annuities to another international insurance company. The retirees rightfully contend the annuity transaction was not a fair arm's length arrangement occurring with the retirees' informed consent but, rather was another example of Verizon's cram-down tactics adverse to retirees' interests.

The December 7, 2012 ruling to deny the retirees' immediate injunctive relief **did not end the *Lee* case**. The Association decided it could not afford immediately to appeal that initial

ruling because that process would most likely require the posting of a multi-million dollar bond, perhaps up to $100 million. However, the *Lee* case is going forward, and an amended federal complaint was filed wherein the retirees seek either to unwind the transaction so that the retirees get a choice in the matter or get more protections. Also, another retiree, Edward Pundt, who remains in the Verizon pension plan, has joined the lawsuit because Verizon wasted a great amount of pension monies not necessary to do the hurried-up annuity transaction.

On January 25, 2013, an Amended Complaint was filed asserting all available claims to be made. Verizon's course of action with Prudential, affecting 41,000 pensioners without their knowledge and consent, was not in compliance with standard termination procedures established under ERISA and by the Pension Benefit Guaranty Corporation ("PBGC") for a defined benefit pension plan and is unprecedented. Verizon, one of the most financially successful U.S. corporations, has "de-risked", or abandoned, its long-term responsibility for financing and paying the pension obligations of 41,000 retirees, simply to enhance its corporate credit rating. There has never been a corporation do what Verizon has done, simply get rid of a bunch of retirees and keep the pension plan running for all remaining others. Verizon says it did the transaction in order "to better focus on the core mission of providing the best communications network around the world." As part of the transaction, Verizon gave Prudential about $1 billion more than was necessary to cover the cost of the retirees' $7.5 billion in obligations shifted over to Prudential. All that extra money which came out of the pension plan was used to pay commissions, consulting fees, lawyer fees and the extra gravy given to Prudential.

In shedding the management pension obligations, Verizon took advantage of the group of retirees least able to defend themselves. Verizon moved swiftly against management retirees

who lack a formalized bargaining representative or other such protection. Verizon did not engage in the same or similar action with respect to non-management retirees or those management retirees formerly represented by unions. And a large group of management retirees who formerly worked at MCI are not affected, as they remain in the VMPP. All of the 41,000 management retirees, now removed from the VMPP and shipped over to Prudential, have lost all federal ERISA rights, all federal PBGC protections and they run the risk of not only Prudential failing due to some unforseen financial disaster, but also run the risk that retirees' personal creditors and bankruptcies can get at the very insurance annuities now sponsored by Prudential, something that could not happen had the retirees stayed in the ERISA protected pension plan.

The Amended Complaint asserts the following four separate claims:

Count One	Verizon Employee Benefits Committee - Violation of ERISA Section 102(b), Failure to Provide Required Disclosure in Summary Plan Descriptions;
Count Two	Verizon Employee Benefits Committee, Verizon Investment Management Corporation - Violation of ERISA Section 404(a)(1), Breach of ERISA Fiduciary Duties;
Count Three	Verizon, Verizon Employee Benefits Committee, Verizon Investment Management Corporation - Violation of ERISA Section 510, Interference with Protected Rights; and
Count Four	Verizon, Verizon Employee Benefits Committee, Verizon Investment Management Corporation - Appropriate Equitable Relief under ERISA Section 502(a)(2) for the Benefit of the Plan.

In short, the retirees contend that Verizon's action evades the dictates of ERISA, undermines the protection accorded by the PBGC, undermines the intent of Congress in enacting ERISA, violates ERISA and Internal Revenue Code restrictions and limitations on making accelerated benefit distributions when a defined benefit plan is less than 80% funded and violates ERISA's

prohibition on engaging in discriminatory treatment. Verizon, unlike other responsible and fair acting corporate pension sponsors, did not give the retirees any choice. For instance, when GM decided to terminate its management pension plan last year it treated all retirees the same and gave them a choice and 30,000 chose to receive a lump-sum distribution. The rest were transferred to Prudential and given an insurance annuity.

As is usual in a highly contested ERISA case, Verizon has hired a team of lawyers to defend the annuity transaction and they have asked the federal court to dismiss the lawsuit. Verizon contends that providing insurance annuities to retirees is not unusual. True, but that only happens at the beginning of a person's retirement or when the whole pension plan is terminated. It is unheard of to simply change everything years after persons have retired, kick them out of the pension plan and send them to an insurance company, while maintaining the pension plan on-going for all others, such as Verizon has done. Verizon contends it didn't need to seek permission from the retirees, because the annuity payment provides the same monthly dollars and cents. It is true that the monthly payment remains the same amount, but all other uniform federal protections have been lost, including the right to receive annual disclosures that would reveal the financial integrity of the group annuity account and how the fund is invested. Verizon contends no one was personally harmed by using pension plan monies to pay extra fees and expenses because the company poured some monies back in the master trust account. Verizon also contends that Department of Labor regulations allow for reasonable expenses incurred in implementing a plan termination to be paid by the plan. But, this wasn't a plan termination, as the plan is on-going for about 55,000 others. Verizon simply booted out of the plan 41,000 management retirees, all done for the convenience of the corporation and paid all of

the consultants', advisors' and attorneys' fees. The retirees contend that pension monies should not have been used for such purposes and, although Verizon put monies back into the master trust, the trust account ended year 2012, after the annuity transaction was concluded, with a pathetic funding level of only $68 %.

The *Lee* case is one of first impression and, certainly, we can expect Verizon to vigorously defend with teams of highly-paid lawyers, as is the usual situation. It is very unlikely that the *Lee* case will be settled or compromised prior to a final judgment entered by the trial court judge. Then, the case which has implications on millions of retirees all over the nation will likely wind up in the federal appeals court. The case is being closely watched by countless other corporate sponsors of pension plans who, too, may try to ride the this latest waive of "de-risking" pension plans and substituting insurance annuities. Regularly, contributors and advisors of employee benefit forums are telling corporate sponsors of defined benefit plans that they need to stay tuned for the outcome of the motion to dismiss pending in the *Lee* case.

Should the federal judge not order the annuity transaction to be undone, the latest court filing clarifies that the retirees request alternative relief in the form of annual notices about the financial status of the annuity accounts, and there should be some security posted to make up for the loss of the PBGC's uniform guarantee . The Association will continue to post in chronological order the important court filings and documents about the *Lee* case:

See **http://www.belltelretirees.org/index.php?option=com_content&view=article&id=71&Itemid=71**

And, as the *Lee* case progresses, the Association will send out further updates.

Curtis L. Kennedy