

[Search All Issues](#)[Contents](#)[Back to Search Results](#)

BNA, Inc.

Pension & Benefits

DAILY

Volume 07 Number 204
Tuesday, October 23, 2007
ISSN 1523-5718

Legal News

Cash Balance Plans Exhaustion of Remedies Isn't Mandated Where Participants Assert Statutory Claims

Exhaustion of administrative remedies is not required before two cash balance pension plan participants can pursue their claim that the plan violates the Employee Retirement Income Security Act by freezing the retirement benefits of older, longer-service employees, the U.S. District Court for the District of Wyoming held Oct. 18 (*Jensen v. Solvay Chemicals Inc.*, D. Wyo., No. 06-CV-273, 10/18/07).

In so holding, Judge Alan B. Johnson found that the participants' claims were that the plan violated the statutory provisions of ERISA and, as such, their claims were not subject to the judicially-created requirement that administrative remedies be exhausted before lawsuits for benefits can be filed in federal court.

In a separate opinion issued the same day, Judge Johnson found that a magistrate judge erred when he denied the participants' request to conduct discovery. According to Johnson, while the court would be limited to the administrative record if the participants were requesting plan benefits under ERISA Section 502(a)(1)(B), here the participants were not asking for benefits but instead were asserting under ERISA Section 502(a)(3) that the plan did not comply with ERISA. The court thus found that because the participants' claims were statutory in nature, they should be permitted to conduct discovery outside the administrative record.

Wade E. Jensen and Donald D. Goff asserted in their lawsuit that Solvay Chemicals Inc. amended its defined benefit pension plan on Jan. 1, 2005, to convert it to a cash balance plan. Jensen and Goff argued that the structuring of the plan amendment violated ERISA because it froze the retirement benefits of older, longer-service employees and offered lower rates of benefit accrual at older ages. In addition, Jensen and Goff argued that Solvay violated ERISA by failing to provide adequate notice of the amendment.

Exhaustion Not Required

Solvay filed a motion to dismiss the lawsuit, contending that Jensen and Goff failed to exhaust their administrative remedies before filing the lawsuit. The court denied the motion, finding that while courts require exhaustion when plaintiffs bring claims for benefits under ERISA Section 502(a)(1)(B), exhaustion is not required when plaintiffs claim a statutory violation of ERISA.

According to the court, the plaintiffs' claims would require a determination of whether Solvay's actions in converting to a cash balance plan violated ERISA. "Solvay does not have any expertise in interpreting whether plan provisions violate the statute. The claims do not require Defendants to interpret any provisions of the plan. The Solvay appeal process would not require Defendants to interpret any provisions of the plan. Deference to the Solvay committee's expertise would serve no meaningful purpose and is not required," the court said.

In a separate opinion issued the same day, the court granted a motion by Jensen and Goff to set aside a magistrate judge's order from July 11, 2007, denying their request to conduct discovery. Judge Johnson found that the magistrate erred in issuing the order because the magistrate found that Jensen and Goff's ERISA claims were claims for plan benefits that would be considered based only on the administrative record.

Instead, Johnson found that **Jensen** and Goff's claims were for statutory violations of ERISA for which exhaustion of internal procedures was not required and for which a trial would be conducted de novo, without reference to the administrative record. Johnson thus found that because **Jensen** and Goff's statutory violation claims arose under ERISA Section 502(a)(3) and case law does not constrain discovery in Section 502(a)(3) actions, **Jensen** and Goff could conduct further discovery.

Goff and **Jensen** were represented by Stephen R. Bruce of Law Offices of Stephen R. Bruce, Washington, D.C., and Richard H. Honaker of Honaker Law Offices, Rock Springs, Wyo. **Solvay** was represented by J. Richard Hammett and Scott M. Nelson of Baker & McKenzie, Houston, and Paul J. Hickey of Hickey & Evans, Cheyenne, Wyo.

The full text of the opinions are at <http://pub.bna.com/pbd/06cv273.pdf> and <http://pub.bna.com/pbd/06cv273a.pdf>.

Contact customer relations at: customercare@bna.com or 1-800-372-1033
ISSN 1523-5718

Copyright © 2007, The Bureau of National Affairs, Inc.
[Copyright FAQs](#) | [Internet Privacy Policy](#) | [BNA Accessibility Statement](#) | [License](#)

Reproduction or redistribution, in whole or in part, and in any form,
without express written permission, is prohibited except as permitted by the BNA Copyright Policy,
<http://www.bna.com/corp/index.html#V>

