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# Rehearing Requested on Second Circuit Decision Requiring Plan Participants to End Employment Before Seeking Retirement Benefits

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On April 15, 2022, participants in the U.A. Plumbers & Steamfitters Local 22 Pension Fund filed a petition for panel and en banc rehearing of the Second Circuit's ruling in favor of the pension plan's decision to retroactively require plan participants to choose between either ceasing their post-retirement employment or foregoing early retirement benefits. *See Metzgar v. U.A. Plumbers & Steamfitters Local No. 22 Pension Fund*, No. 20-3791, 2022 U.S. App. LEXIS 5466 (2d Cir. Mar. 2, 2022), and our previous article on that decision.

In 2013, certain plan participants brought suit against the pension fund itself, the Board of Trustees, and the plan administrator, in her individual capacity, alleging that the plan's reinterpretation of the conditions of "retirement" breached ERISA fiduciary duties to plan participants and unlawfully denied benefits. The plaintiffs also argued that having to choose between continued employment and receiving their pensions violated ERISA's anti-cutback provision in that the reinterpretation of the plan subsequently decreased their amount of accrued benefits.

In March 2019, Magistrate Judge Leslie G. Foschio from the Western District of New York recommended granting summary judgment to defendants, focusing on the plan's discretionary authority provision and finding that the plan's reinterpretation was based on a reasonable belief that the provision violated IRS rules. Judge John Sinatra adopted that recommendation and granted summary judgment in October 2020. The Second Circuit affirmed.

In their petition for rehearing, plaintiff-petitioners argued that the Second Circuit ruling deviated from established precedent that precluded plan reinterpretations from decreasing previously awarded benefits. In particular, petitioners cited to the U.S. Supreme Court's 2004 decision in *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004), where the Supreme Court ruled that a plan could not be amended to "undercut" a plan participant's reliance on the value of his or her pension rights and promised benefits. Petitioners also highlighted the Second Circuit's 2006 decision in *Frommert v. Conkright*, 433 F.3d 254 (2d Cir. 2006) (referred to as "*Frommert I*"), which considered whether a pension plan violated ERISA's anti-cutback rule by applying a phantom account formula to calculate the hypothetical growth that rehired employees' past distributions would

have experienced in order to reduce their present benefits, where the phantom account provisions had appeared in previous plan documents but had been omitted from a subsequently restated plan document. Petitioners argued that, in rejecting the plan's claim that the provisions were always part of the plan as an unreasonable exercise of discretion and an anti-cutback violation, the Second Circuit had focused on the "centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them."

Petitioners also argued that the fund's reinterpretation of the conditions of retirement for participants applied "discretionary[] [and] subjective" conditions on a participant's ability to receive benefits, which violated ERISA regulations. Petitioners distinguished that while the fund did have discretion to determine whether participants had satisfied objective conditions required to receive a benefit, it could not subjectively decide what those conditions are.

In contrast, appellees argued that the anti-cutback provision is not even at issue as courts have held that plan participants cannot accrue illegal benefits.

Petitioners' panel rehearing request is currently pending.



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