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Proskauer Benefits Brief: The Supreme Court Weighs in on Withdrawal Liability

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Last month, Proskauer secured a unanimous victory at the U.S. Supreme Court on behalf of the Trustees of the IAM National Pension Fund. In a 9-0 decision authored by Justice Ketanji Brown Jackson, the Court resolved a circuit split concerning how multiemployer pension plans calculate the liability of withdrawing employers.

In this episode of the *Proskauer Benefits Brief*, Neil Shah is joined by John Roberts, who argued *M & K Employee Solutions v. Trustees of the IAM National Pension Fund* before the U.S. Supreme Court. They discuss the Court's unanimous decision rejecting the Second Circuit's timing rule for actuarial assumptions used to calculate withdrawal liability, the reasoning behind the opinion, and what it means for plans, employers, actuaries, and future withdrawal liability disputes.

Neil Shah: Welcome to the Proskauer Benefits Brief, legal insight on compensation and benefits. I'm Neil Shah, senior counsel at Proskauer.

In our first episode, we started with a discussion about the Supreme Court hearing the first withdrawal liability case to have come to the High Court in 30 years. The question was whether there is a deadline for picking the actuarial assumptions used to calculate withdrawal liability.

Well, on May 21st, 2026, a unanimous court held that ERISA does not require actuarial assumptions to be selected on or before the measurement date. The opinion was authored by Justice Jackson and it was 9-0.

To discuss the case and what it means going forward, I'm joined by John Roberts, a partner at Proskauer who argued the case on behalf of the IAM National Pension Fund. John, welcome.

John Roberts: Thank you, Neil. It's great to be here.

Neil Shah: So, why don't you start by telling us a little about your practice and how this case made its way up to you?

John Roberts: I'm the co-chair of the Appellate Practice Group at Proskauer. So, what that means is that I litigate appeals all over the country, primarily in federal appellate courts and the US Supreme Court. And one area in which I've litigated many appeals is in the ERISA sphere.

I first encountered this case probably some point in 2021. One of my partners came to me and explained that his client, the IAM National Pension Fund, had lost a series of arbitrations involving withdrawal liability calculations. And the reasoning in each of the arbitrations was the same: the arbitrators ruled that because the fund's actuary had calculated withdrawal liability using assumptions adopted after the so-called measurement date, the calculations were invalid. And so, my partner asked me if he thought we could appeal these arbitration decisions and get them overturned.

Neil Shah: All right, so now before we get into the opinion itself, let's set the scene for our listeners. In prior episodes, we've talked in detail about how withdrawal liability is calculated based on the plan's unfunded vested benefits, "as of the measurement date," which is the last day of the plan year before the employer withdraws, and how that measurement date and the assumptions that are selected are a key component of calculation of the withdrawal liability. Now, there are a lot of cases about whether those assumptions are reasonable or not, but this case was not really about that at all. So why don't you tell us a little bit more in detail about what this case was about?

John Roberts: Yeah, so this case was about the timing of when the assumptions are selected, not whether the assumptions are reasonable. In 2020, the Second Circuit decided a case that was called National Retirement Fund v. Metz Culinary Management, and in that case, the Second Circuit adopted a rule that when calculating an employer's withdrawal liability, a plan's actuary can only use assumptions that were selected before the so-called measurement date. That is before the last day of the plan year, before the year in which an employer withdrew. This timing rule took a lot of plans by surprise because the standard practice at the time was for actuaries to wait until after the end of a plan year to select assumptions in order to ensure that the assumptions reflect the plan's conditions at the end of the year. Metz said, "No, you can't do that. You have to select the assumptions before the end of the plan year if you're going to use those assumptions to calculate the liability of an employer that withdraws during the subsequent year." So how did that apply to our case?

Well, in the IAM arbitrations, the employers withdrew from the fund in 2018. So that means that if the Metz timing rule applied, their liability would have to be calculated using assumptions that were selected before the end of the prior plan year, which was December 31st, 2017. As it turned out, IAM's actuary didn't select the assumptions for the 2017 plan year before the end of the year, as Metz would have required. As was common practice at the time, the actuary selected the assumptions in early 2018.

Now, Metz is a Second Circuit case. Second Circuit covers New York, Connecticut, and Vermont. The IAM plan is based in Washington, D.C. So, there was a question as to whether the Metz timing rule would apply to the IAM plan. And that was the question that was presented to the arbitrators. The parties agreed that the arbitrators would first address this timing question about when the assumptions were selected before addressing any questions about whether the assumptions were reasonable. In each of the arbitrations — there were four of them — the arbitrator felt compelled to follow the Metz timing rule. So, in each case, the arbitrator vacated IAM's withdrawal liability calculations because they were based on assumptions selected after the measurement date.

Now getting back to the question you asked me earlier about when I first encountered this case, it was after these arbitrations were decided, after the rulings came out, relying on the Metz decision. The question that was presented to me was, “Is there a way to get these arbitration decisions overruled on appeal?” What struck me at the time when I first encountered these cases is that Metz was a deeply flawed decision. The timing rule that the Second Circuit imposed didn’t have any basis in the statute. The outcome seemed to be driven by policy concerns. The facts in Metz suggested that the plan may have manipulated the assumptions to increase the employer’s withdrawal liability. And the Second Circuit apparently didn’t like that. So, it came up with this timing rule. But really, the Second Circuit selected the wrong solution. The statute already provides a remedy if there’s any manipulation of assumptions, And that remedy is that the employer is allowed to challenge the assumptions in arbitration on the grounds that they’re either not reasonable or that they didn’t reflect the actuary’s judgment. So, what the Second Circuit, in my view, should have done was rely on the statutory remedies that already existed. So, I knew we had strong arguments that Metz was wrongly decided, but I also knew it would be an uphill battle because we would be in the DC Circuit and we’d have to get courts within the DC Circuit to disagree with the Second Circuit.

Neil Shah: All right, so the arbitrators issue these decisions, and they all go up to the district court in DC, which vacated them. And then the DC Circuit affirmed that decision and the Supreme Court ultimately affirmed it. Describe for us the reasoning that each of these courts employed on their way up to the ultimately the Supreme Court’s decision.

John Roberts: Yeah, so I think the courts generally all follow the same reasoning. As you mentioned, we first had to challenge the arbitration rulings in the district courts in DC, and there we were able to convince two district judges to disagree with the Second Circuit on the timing rule. Those decisions got appealed to the DC Circuit, and we prevailed there as well. And that created what’s called the circuit split. So, we were able to convince the DC Circuit to disagree with the Second Circuit as to whether this timing rule existed. And what that means practically is that the law in New York within the Second Circuit was different from the law in DC. The Supreme Court doesn’t like when there’s that lack of uniformity in the law, so they often get involved to resolve these circuit splits. And so here the Supreme Court agreed to hear this case, and we ended up prevailing there as well 9-0. The courts generally followed the same reasoning.

The primary reason why we prevailed is that the Metz timing rule has no basis in the statutory text. Courts generally begin with the text of the statute when they're interpreting the statute. And here, the relevant statute contains only two requirements for actuarial assumptions. They have to be reasonable, and they have to offer the actuary's best estimate of the plan's anticipated experience. So looked at it another way: there is an objective and a subjective component. The assumptions must be objectively reasonable, and they subjectively must represent the actuary's judgment, not, let's say, the plan's judgment. What the statute doesn't say is anything about a timing rule. There's no timing rule mentioned in the statute, and typically courts won't read into statute's requirements that Congress didn't include.

Another textual point that the courts made is that the statute talks about assumptions reflecting the actuary's best estimate of a plan's anticipated experience. Well, an actuary doesn't have complete information about a plan year, until after the plan year ends. So, it won't be able to make its best estimate of a plan's anticipated experience in a given plan year until after that year ends, that is until after the measurement date. And so, since Congress wanted assumptions to reflect an actuary's best estimate, there's no reason to think that it intended to force actuaries to select assumptions before the end of the plan year, before the actuary had complete information about that plan year. So those were all the textual reasons why the Metz timing rule didn't seem to make a lot of sense and didn't seem to be what Congress intended.

Neil Shah: So, John, that's all helpful. It looks like, you know, a plain reading of the statute. There's no timing rule. You can't really point to any type of language that says that there's a strict deadline by which assumptions need to be adopted. Tell us a little bit about why the employers thought in this case that that was wrong, that there in fact was a statutory basis, and some of the other arguments that they tried to advance in order to sustain the Metz timing rule.

John Roberts: Yeah, so the employers had their own textual argument, and it relied on the fact that the statute says that withdrawal liability must be calculated as of the measurement date. That's the key language that the employers focused on, "as of." The employers argued that the only way to calculate liability "as of" the measurement date is to use assumptions that were already in place on the measurement date. But the Supreme Court correctly, in my view, rejected that argument. As the court explained, "as of" merely sets the measurement date as the reference point for withdrawal liability calculations. It doesn't mean that assumptions must be selected by that date. That's just simply not what the phrase "as of" means.

Besides that textual argument based on "as of," the employers also made a policy argument that the Metz timing rule is necessary to prevent plans from manipulating assumptions to artificially inflate an employer's withdrawal liability. Supreme Court rejected that argument as well, explaining that the statute already provides a remedy should manipulation occur. As I mentioned earlier, an employer is allowed to challenge its withdrawal liability calculations in arbitration if the assumptions are unreasonable or don't reflect the actuary's best estimate. So, to the extent there was — any manipulation occurs in a given case, there already is a remedy provided in the statute for the employers, and there's no reason for a court to invent some timing rule that isn't in the statute.

Neil Shah: As part of the Supreme Court briefing and the cases before the DC Circuit as well, there were submissions by non-parties that had in the case. I think it was a particularly star-studded cast on both sides, but why don't you provide us a little bit of peek into what that entails in terms of litigating at the appellate level?

In connection with the Supreme Court case and the appeal before the D.C. Circuit, there were submissions by various interested parties, and I take it that that played a role in those courts' decisions. Why don't you tell us a little bit about the submissions that were made and kind of how those come about and what impact that they actually have on the court's decisions?

John Roberts: Yeah, so you're referring to the amicus briefs that we had filed in support of us. So, an amicus is a non-party. They're not part of the, the litigation that's before the court, but they're a party that has some sort of interest in the outcome of the case. And they're important because what an amicus can do is explain to the court the practical implications of the case, why it's important that one side should prevail. And they often have a little more leeway than the parties to make arguments based on policy and implications of a decision. And I think the court generally finds these arguments very helpful.

We were able to line up a pretty impressive lineup of amicus support at the Supreme Court. We were supported by the PBGC and many of the leading actuarial firms, and groups that represent participants in these plans, including AARP and the AFL-CIO. We also had support from the association that represents multi-employer pension plans. These amicus briefs helped a lot. They helped the court to understand why it matters that actuaries should be permitted to select assumptions based on up-to-date information and not have to have an artificial deadline for selecting assumptions, which might result in withdrawal liability calculations being less accurate.

I should note that some of these amici, we approached them and asked them, we knew they would have an interest in the outcome of the case and we asked if they would be interested in submitting a brief. Others just came to us and reached out to us and said that they were interested. So, it's a mix of strategy in terms of identifying potential amicus and then having some good fortune of having some reach out to us.

Neil Shah: The participation of the amici kind of comes out in the opinion itself. Now, this is the first withdrawal liability opinion by the Supreme Court in something like 30 years. And besides just deciding the principal question presented to the court on whether there is a timing rule or not, there are a number of other tidbits in the case that might be of interest to practitioners in the future. Why don't you summarize some of those for us?

John Roberts: So, in footnote three of the Supreme Court's decision, the court noted that because the statute governing withdrawal liability is addressed to actuaries, the actuary's understanding of the statute is relevant to how a court will interpret the statute. So, the court actually cited the ASOPs, which are the professional standards governing actuaries, multiple times in the decision. And what that suggests is that in future disputes over the meaning of this statute, the ASOPs' and actuaries' views of the statute could be relevant. The idea is that when Congress drafts a statute with certain professional specialists in mind, it is relevant to interpreting the statute how those professionals interpret the statute. Since the statute is directed towards actuaries, the court made it clear that the actuaries' views of how the statute works is relevant. So that's something that could come up in future cases. To the extent there's ambiguity in the statute, the views of the actuaries may be considered by a court.

Neil Shah: Now, John, this case was argued back in January, and, and you handled the oral argument on behalf of the fund, both at the Supreme Court and then previously the DC Circuit. Why don't you tell us a little bit about what your process is to prepare for these types of oral arguments and maybe how it might have differed for a case like this that does involve an issue that doesn't come up that frequently and that involves various actuarial issues?

John Roberts: So, when I first approach a new appellate case, the challenge for me is to become an expert on the issue in that case. And so, what I do first is a lot of reading. I read the record in the case. I read the case law. I read treatises. I spend several days just getting myself up to speed on the issues so that I can feel like I am an expert on the issue, even though it may be something I've never dealt with before. Prior to this case, I had never dealt with withdrawal liability, for instance, before, but I had to become the expert on that. And that took several days, intensive study and reading.

Since we were technically the appellant at the outset, we had the arbitration decisions that went against us. I then spent a lot of time looking at the decision, trying to find flaws in the reasoning. And what I generally do when I'm on that side of the ledger is I will look at the opinion that I'm trying to get overturned, and I will note all of the areas that I want to challenge in that opinion, and I'll make a bullet point list. I have a whiteboard in my office, and I make a list of all the bullet points, of all the points that I want to make in my brief. And then I take all those points, and I start to organize them under general headings. And that helps me organize the brief that I will eventually need to write in terms of what the topics are and what arguments go within the different topics.

Then you get to the writing stage, which is, you know, at the appellate level, very intensive. You have to write briefs that are persuasive and clear and logical, but also concise and interesting. And it's a very difficult writing process, a very intensive writing process. It was particularly challenging in this case because dealing with a technical issue like withdrawal liability, which courts often don't have to deal with, there's a lot of educating that you need to do in the briefs. Whereas with other issues that courts deal with all the time, you might be able to get right into the argument and, you know, assume that the court knows where you're going with certain things. Here, there was a lot more handholding that had to be done in the brief in terms of explaining how this statute works, knowing that the judges probably are less familiar with this statute than they are others.

And then you get to the oral argument, and at that point, you just need to know the case inside out, particularly at the Supreme Court, where they allow you two minutes to give an introduction, and then they basically will just ask you questions for the rest of your time. So, you're not planning on presenting to the Supreme Court. You are planning on answering their questions, and you just have to be prepared for whatever questions may come. A lot of the work in preparing for the oral argument is anticipating the questions that are likely to arise so that you are, you know, familiar with them and have answers for them. We did several — what we call moot arguments — where various people played Supreme Court justices, and we did a dry run of my argument. I got the practice of answering questions that were presented to me that would be similar, likely to what the court would ask.

It’s interesting: people sometimes go up to oral argument, and they bring all kinds of materials, and they bring all the briefs, and they bring a big binder full of case law. You can’t refer to any of that stuff. There is no time to refer to anything. When I got up to the Supreme Court, I had three pieces of paper with a couple of bullet points on it, and I’m not sure I even looked at those. It’s very much just reacting to the questions that are presented to you, and the only way to be able to do that well is to know the case inside out.

Neil Shah: Now, the, the oral argument was in January. I remember it vividly. I was there and it was extremely cold. John, why don’t you give us kind of your impression of the oral argument and kind of what you saw in terms of where the justices were going with their questions?

John Roberts: Yeah, so I had a sense that the argument, based on the questioning, that the justices were probably leaning the plan’s way. It seemed like the court had two practical concerns about the plan’s position, and this is common at oral argument. The court will often want to explore the implications of its decision. And so, they’ll have questions about the practical implications of what they are considering deciding.

And there were two practical concerns the court seemed to have at the argument. The first had to do with what happens if a plan manipulates assumptions to increase an employer’s liability. “Don’t we need this timing rule to prevent such manipulation?” That’s a question that came up. And I addressed that concern by explaining that, as I mentioned earlier, the statute already provides a remedy in that situation. The employer can challenge the liability assessment in arbitration. And there was some concern that it would be very difficult for employers to succeed in such challenges, but I think I was able to assuage the court’s concerns that the standards provided in the statute are not toothless and that employers have a real remedy in a situation in which manipulation of assumptions occurs. I also pointed out that the Metz timing rule wouldn’t prevent any manipulation anyway. If a plan really wanted to manipulate assumptions, it could do it before the measurement date, comply with Metz and Metz wouldn’t have anything to say about that. Both of those points, by the way, made their way into the court’s decision.

The second concern that the court seemed to have is whether the rule that the DC Circuit handed down below was workable. Just to give you a little background there, the DC Circuit held that an actuary is allowed to select its assumptions after the measurement date, but the assumptions must be based only on facts that were available on the measurement date. In other words, any facts that came to light after the measurement date couldn't be considered by the actuary. Now, the employers argued that this rule was unworkable because it would require an actuary to ignore information that it had learned after the measurement date, which, according to employers, is not physically possible for someone to disregard information that it learned. I explained to the court that this was not a legitimate concern for several reasons, one of which was that it's perfectly normal in the law for parties to be asked to consider only certain information. So, for instance, we ask juries all the time to consider whether a defendant's actions were reasonable based on the information that was available at the time of the action and ignore anything that may have been learned after the action was taken. Well, if we can expect a jury to disregard subsequent events when deciding what's reasonable at a given time, certainly an actuary can do the same. After all, an actuary's job is to make assumptions based on a fixed set of data. So that was my position for why there was no concern with the workability of the DC Circuit rule.

As it turns out, the Supreme Court ultimately punted on the question of what information an actuary is permitted to consider when selecting assumptions after the measurement date. That was not the question presented in the case, and there was no circuit split on that question. So the court said it will save for another day the question of what information an actuary is allowed to consider when selecting assumptions after the measurement date.

So that's an issue that will likely come up in future litigations. The DC Circuit has ruled on this issue. The DC Circuit has said that the actuary can only consider information available on the measurement date. But other circuits may have different views on that, and I assume there will be some litigation on that question in the future.

Neil Shah: John, this was terrific. Thank you so much for joining us and sharing your perspective on the case.

John Roberts: Thanks for having me.

Neil Shah: That’s our episode for today. If you found this useful, be sure to follow us and subscribe on Apple Podcasts, Spotify, and YouTube so you don’t miss the next episode. If you liked what you heard or want to know more, drop us a line at wl@proskauer.com.

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