WilmerHale

Life and Annuity Series: Stable Value Funds

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Class action plaintiffs have long claimed that insurance companies may become ERISA fiduciaries when offering *variable* annuity products and funds to 401(k) plans.

The Colorado federal court decision in *Teets v. Great West Life & Ann. Ins. Co.* reminds us that insurance companies may also be subject to ERISA claims when offering *fixed* annuity-type products.

According to the complaint, Great-West issued what sounds like a stable value fund to 401(k) plans through a group annuity contract. Money invested in the fund was deposited in Great-West's general account; the fund paid a fixed rate of interest on contributions, and guaranteed that rate would not fall below 0%. The quarterly interest rate paid was set by Great-West at its discretion, and Great-West earned a “spread” between the rate it paid and the rate it earned on all contributions. The class action arose when a plan participant claimed that Great-West had violated ERISA by setting interest rates that were “artificially low,” and charging “excessive fees,” in connection with the fund.

Great-West moved to dismiss the complaint. It argued that it was not an ERISA fiduciary with respect to the money contributed to the fund because the contract was exempt from ERISA as a “guaranteed benefit policy.” That exemption applies where the contract allocates the investment risk to the issuer as a result of some guaranteed benefit for investors.

The Court denied Great-West's motion to dismiss. It recognized that the fund had “many of the incidents of a guaranteed benefit policy” exempt under ERISA. However, the Court noted that, unlike an exempt guaranteed benefit policy, the fund here imposed investment risk on the participants because the interest rate could fall to 0%. Moreover, Great-West had fiduciary-like authority because it set the interest rate each quarter at its discretion.

The Court's decision certainly does not strongly endorse the plaintiff's theory of ERISA liability. But its decision creates uncertainty for insurers who offer stable value funds or fixed annuity-type products to 401(k) plans. Insurers have traditionally retained discretion to set the quarterly rate, and in today's low interest rate environment the guarantee can amount to not less than 0%. If those two factors cause insurers to become an ERISA fiduciary despite the guaranteed benefit policy exemption, then insurers will not only be subject to ERISA claims on funds like those in the Great-West case. They will have to consider more broadly whether and how to manage the assets contributed through those funds in a way that is consistent with ERISA rules.