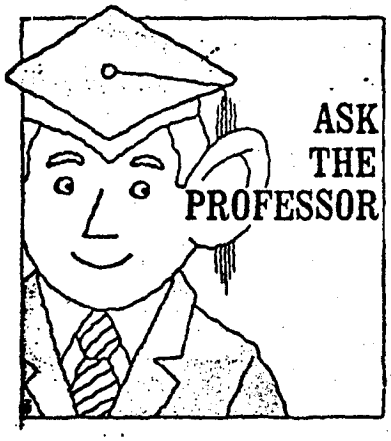

When Is An Actuary's Valuation Final?

By William Pearl

Question:

The members of four local unions were the participants in a corporate pension plan. It was decided to dissolve this plan and transfer the accrued credits of each participant to the pension plans of the respective unions. An actuarial consultant was retained to establish the value of the corporate plan, determine the individual credits, and establish the proportionate amounts to be transferred to each union pension fund. The agreement stipulated that the actuary's determination shall be final and binding on all parties.

After all this was accomplished, the corporate employer objected to the actuary's determination and refuses to pay over the money it controls of the pension fund. Is the actuary's determination enforceable?

Answer:

The U.S. Court of Appeals for the Second Circuit has decided that where a negotiated agreement provides that an actuarial consultant's determination shall be final and binding on the parties a court cannot substitute its own method of valuation. Clark v. Krafico Corporation, Nos. 74-1551, 74-1605 (2d Cir. February 5, 1975).

In that case, the company asserted that the agreement went no further than to express an intention on behalf of the parties that an actuarial study should be made. It further contended that the actuarial determination was to be predicated on the basis of "agreed procedures and assumptions consistently used" in the past. The union claimed that the actuary was given no instructions as to the manner he was to conduct his valuation work and was at liberty to use his own appropriate procedures and assumptions.

The District Court found that the agreement between the company and the union was ambiguous and ordered the consultant to submit a new redetermination report which contained three possible approaches to valuation.

The Court of Appeals disagreed with this decision by the District Court. It held that the words of the agreement "mean precisely what they say," namely, that the decision of the consultant shall be final and binding on all parties. It rejected the lower court's holding that there were ambiguities in the agreement.

The court compared the consultant's role to that of an arbitrator selected by the parties to make a final determination of the company's liability. It reaffirmed the view of the U.S. Supreme Court in the 1960 Steelworker cases that courts have no business overruling an arbitration because their interpretation of the contract is different from his. Since no fraud or lack of good faith was alleged, there is similarly no basis to upset the determination of the consultant.

Health Insurers Must Be Informed

Question:

The master policy of our group accident and health insurance requires each covered employee to answer a series of questions about the applicant's health history. One of the applicants who stated he was in good health listed three occasions on which he had received treatments of disorders referred to in the questionnaire. But he neglected to state that a year earlier his physician had made a diagnosis of a heart condition and had prescribed medication for its control.

Subsequently, he was seriously injured in a train wreck and applied to the insurance company for benefits. Although the injury was in no way related to his heart condition, the insurance company rejected his claim. Isn't this an improper rejection?

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