IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROYAL OAK ENTERPRISES, LLC,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 1:13-cv-01040 (GK)
	)	
PENSION BENEFIT GUARANTY CORPORATION,	)	
	)	
	)	
Defendant.	)	

PENSION BENEFIT GUARANTY CORPORATION'S
REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN
FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Dated: March 10, 2014
Washington, D.C.

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INTRODUCTION

Before the Court is an administrative record case, about the standard termination of a defined benefit plan under ERISA's Title IV,[1] which provides the "exclusive means" for terminating Royal Oak's Plan in a standard termination.[2] As the agency tasked by Congress with administering and enforcing Title IV, PBGC determined that Royal Oak did not, as Title IV requires, pay all benefits due under the Plan in accordance with the Plan's terms "as of the termination date." 29 U.S.C. § 1341(b)(1)(D). *See* 29 C.F.R. § 4041.8; PBGC's Final Determination, AR-0874-0876. As a result, Royal Oak short-changed Plan participants and beneficiaries by approximately $2.1 million. In reaching its Final Determination, PBGC interpreted its governing statute, Title IV, and its own regulation, 29 C.F.R § 4041.8.

Royal Oak clouds these straight forward facts with complex tax code arguments that have no bearing here. The Court should disregard Royal Oak's attempts to prevent PBGC from performing one of its mandated functions: auditing standard terminations (and seeking necessary enforcement) to ensure that plan participants and beneficiaries receive what they are owed under the Plan's terms as of its termination date. *See* 29 U.S.C. § 1303(a).

STATUTORY AND REGULATORY BACKGROUND

The statutory and regulatory background pertinent to this memorandum is set forth in PBGC's S.J. Memo. at 2-10, and in PBGC's Opp'n Memo. at 2-5.

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[1] PBGC incorporates herein the definitions from its Memorandum of Points and Authorities in Support of its Motion for Summary Judgment ("PBGC's S.J. Memo.") (Dkt. 20), and from its Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment ("PBGC's Opp'n Memo.") (Dkt. 21).

[2] 29 U.S.C. § 1341.

STATEMENT OF MATERIAL FACTS

The facts pertinent to this case are set forth in PBGC's S.J. Memo. at 10-14, and are incorporated herein.

STANDARD OF REVIEW

PBGC's Final Determination may be set aside only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[3] An agency's construction of its regulation "need not be the *only* reasonable one before [the court] will sustain it;"[4] so long as the agency's determination "was based on a consideration of the relevant factors," and the "agency has exercised a reasoned discretion," it must be enforced.[5]

Although Royal Oak suggests that PBGC "overemphasizes" the role of its regulation in this standard termination case, standard terminations are governed "exclusive[ly]" by Title IV

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[3] 5 U.S.C. § 706(2)(A). *See Deppenbrook v. PBGC*, No. 11-600, 2013 WL 2948193, at *4 (D.D.C. June 17, 2013). *See also PBGC v. LTV Corp.*, 496 U.S. 633, 656 (1990).

[4] *A.D. Transp. Express, Inc. v. United States*, 290 F.3d 761, 767 (6th Cir. 2002) (internal quotations and citations omitted) (emphasis in original) (noting that A.D. Transport "made a plausible [] argument" concerning the agency's regulation, but affirming the agency's interpretation). *Cf. LTV Corp.*, 496 U.S. at 656 ("We conclude that the PBGC's failure to consider all potentially relevant areas of law did not render its [] decision arbitrary and capricious."); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. PBGC*, 839 F. Supp. 2d 232, 245 (D.D.C. 2012) ("While the agency's explanation cannot run [] counter to the evidence, courts should uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned.") (internal quotations and citations omitted).

[5] *Nat'l Small Shipments Traffic Conference, Inc. v. Civil Aeronautics Bd.*, 618 F.2d 819, 826-27 (D.C. Cir. 1980) (internal quotations and citations omitted).

of ERISA and PBGC's regulations.[6] As the agency tasked with administering and enforcing Title IV, PBGC is the agency that oversees standard terminations.[7] While Royal Oak is insistent that PBGC is interpreting PPA § 1107, PBGC's Final Determination makes clear that PPA § 1107 is not relevant to its analysis, since PPA § 1107 "does not provide relief from, or alter ERISA's Title IV standard termination requirements." AR-0875. Rather, PBGC's Final Determination is grounded in its assessment of Title IV and PBGC's own regulations, and its conclusion that Royal Oak did not fully comply with the Title IV requirements for completing a standard termination is entitled to deference.[8]

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[6] 29 U.S.C. § 1341(a)(1) ("Exclusive means of plan termination – . . . a single-employer plan may be terminated only in a standard termination under subsection (b) . . . ."); Memorandum of Points and Authorities in Opposition to Pension Benefit Guaranty Corporation's Motion for Summary Judgment by Plaintiff, Royal Oak Enterprises, LLC ("Royal Oak's Opp'n Memo.") (Dkt. 22) at 8. *See also Hughes Aircraft Co. v. Jacobson*, 525 U.S. 462, 446 (1999) ("Based on the language of [29 U.S.C. § 1341], these means constitute the sole avenues for voluntary termination.").

[7] *See, e.g.*, *Beck v. PACE Int'l Union*, 551 U.S. 96, 102-03 (2007).

[8] Just as *Metro. Stevedore Co. v. Rambo*, 521 U.S. 121, 137 n.9 (1997), cited by Royal Oak, is inapposite to the standard termination case before the court, as outlined in PBGC's Opp'n Memo. at 7 n.19, so too is *Adams Fruit Co. v. Barrett*, 494 U.S. 638 (1990). *See* Royal Oak's Opp'n Memo. at 8, 10, 22. In *Adams*, the Court found that the Department of Labor's conclusion that worker's compensation benefits provided the *exclusive* means for recovery in a work-related automobile accident involving migrant farmworkers was not entitled to deference, since the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") expressly provided for a private right of action for this type of accident, and expressly vested the Judiciary with authority to review these claims. Here, PBGC is vested with the authority to ensure compliance with the standard termination requirements under Title IV of ERISA, and its Final Determination is entitled to deference.

ARGUMENT

I. ENFORCING PBGC'S FINAL DETERMINATION DOES NOT RESULT IN ANY OF THE CONFLICTS MANUFACTURED BY ROYAL OAK

PBGC's Final Determination, Summary Judgment, and Opposition fully address why compliance with PPA § 1107 does not provide relief from Title IV of ERISA.[9] Royal Oak, nonetheless, continues to manufacture reasons why enforcing PBGC's Final Determination would conflict with any number of legal principles. The previously alleged conflicts between the Final Determination and the Plan's IRS determination letter, as well as PBGC's treatment of retroactive amendments in non-standard terminations, *vis a vis Davis v. PBGC*, 734 F.3d 1161 (D.C. Cir. 2013), have already been addressed in PBGC's Opposition.[10] Royal Oak now tells the Court that enforcement of PBGC's Final Determination could lead to two additional conflicts.

First, Royal Oak tells the Court that "if" a Royal Oak employee had terminated employment in June 2008, and chosen a lump sum distribution, PPA § 1107 would have required the lump sum to be calculated using PPA assumptions. According to Royal Oak, that would have created disparate treatment between Royal Oak's hypothetical pre-termination retiree and the post-termination retirees that the Final Determination requires be paid the greater of their lump sum calculated using GATT assumptions and PPA assumptions. But, much like the situation Royal Oak finds itself in now, the disparity posed by this hypothetical is of Royal Oak's own making, driven by its disregard of Title IV's requirements and a continued misinterpretation of the PPA and Code § 417(e), and is completely avoidable. Contrary to Royal Oak's assertions, neither the PPA nor Code § 417(e) forbids a plan from paying larger lump sums.

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[9] *See, e.g.*, PBGC's Final Determination, AR-0874-0876; PBGC's S.J. Memo. at 17-18; PBGC's Opp'n Memo. at 9-11.

[10] *See* PBGC's Opp'n Memo. at 11-13.

Had Royal Oak decided to pay a pre-termination lump sum calculated using the new PPA minimums, it could have fulfilled any duty to treat hypothetical Plan participants equally by adopting a PPA amendment prior to Plan termination. It also could have adopted a post-termination amendment requiring the greater of GATT assumptions or PPA assumptions, and topping up any hypothetical pre-termination PPA-calculated lump sums. So, PBGC's Final Determination creates no inherent dichotomy in the treatment of any Plan participants. Any such dichotomies would be created solely by the chosen actions of the plan sponsor.

Second, enforcing PBGC's Final Determination is not at odds with the Code's minimum funding requirements. Royal Oak tells the Court that adopting PBGC's position "could impact" a plan's funding liability, and penalize plans that terminated prior to PPA § 1107's amendment deadline. Royal Oak further states that, in light of the PPA's requirement that funding calculations be done using PPA assumptions for lump sums, the payment of lump sum benefits calculated using GATT assumptions would "caus[e] some plans to become underfunded." Royal Oak's Opp'n Memo. at 13. This is simply wrong. To the extent minimum funding takes into account any lump sums that might be paid under a plan, those calculations do not require the use of PPA assumptions.[11] And minimum funding requirements are just that – the statutorily required minimum contributions that must be paid to a plan, and have no bearing on whether a plan is fully-funded.

The calculations necessary to determine plan sufficiency for a standard termination must be calculated in accordance with Title IV. *See* 29 U.S.C. § 1344. Using the appropriate section to determine benefit liabilities, and being mindful of Title IV's requirements that benefits be

[11] Minimum funding calculations take into account plan terms paying lump sum benefits in excess of the Code § 417(e) minimums. *See* 26 C.F.R. §§ 1.430(d)-1(f)(4)(iii)(B) and (D).

calculated as of the date of plan termination, as well as the prohibition against benefit-reducing, post-termination amendments, a plan sponsor has all the tools it needs to properly calculate its plan's standard termination liabilities. Thus, PBGC is not, as Royal Oak suggests, penalizing plan sponsors that terminated their plans before the PPA § 1107 amendment deadline. Rather, PBGC's Final Determination merely dictates that Royal Oak comply with the requirements for standard terminations under Title IV, adopting any benefit-reducing PPA amendment it chose to make prior to Plan termination.

II. THE PPA AMENDMENT VIOLATES 29 C.F.R. § 4041.8

Royal Oak next alleges that, because PPA § 1107 provides relief from the anti-cutback provisions under Title I of ERISA and the Code, this somehow magically makes lump sums calculated using PPA assumptions rates no less valuable than those calculated using GATT assumptions rates. *See* Royal Oak's Opp'n Memo. at 16-19. But, as Royal Oak repeatedly acknowledges, Congress passed PPA § 1107 to provide relief from violations of ERISA's Title I and the Code when substituting PPA assumptions for GATT assumptions. *See, e.g.*, Royal Oak's S.J. Memo. at 17; Royal Oak's Opp'n Memo. at 18-19. This was necessary because it was acknowledged that the change in assumptions would, as a general matter, reduce the value of lump sums. *See, e.g.*, Royal Oak's S.J. Memo. at 17; Royal Oak's Opp'n Memo. at 18-19. But, as previously discussed, PPA § 1107 does not provide Title IV relief, and providing relief from anti-cutback violations does not mean that PPA benefits are not less valuable than GATT

benefits. In this case, the benefits are over $2 million less valuable.[12] And, post-termination amendments that reduce the value of benefits are prohibited by 29 C.F.R. § 4041.8.[13]

Royal Oak also tells the Court that, rather than decreasing lump sum benefits, it has protected these benefits, because only an amendment adopting Code § 417(e)'s actuarial assumptions will ensure that lump sums equal the minimum actuarial equivalence required by that section. Royal Oak further explains that, using any actuarial assumptions it sees fit so long as they are no less than Code §417(e) minimums, as PBGC purportedly suggests, is "unworkable" because "[u]sing any assumptions other than those dictated under Code § 417(e) would run the risk that, given the fluctuating nature of interest rates, those assumptions could at some point produce a lower benefit amount than that produced by the assumptions in Code § 417(e)." Royal Oak's Opp'n Memo. at 17. PBGC's Final Determination does not suggest that the Plan could have used any actuarial assumptions it chose; rather, PBGC states that Royal Oak

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[12] Royal Oak points out that PBGC Regulation § 4041.8 discusses decreases in "value" not the "amount" of benefits. *See* Royal Oak's Opp'n Memo. at 19. Royal Oak also states that, because the Plan promised the actuarial equivalent of an annuitized benefit, and provided one (albeit one calculated using assumptions other than those mandated by the Plan for determining those equivalents on its date of termination), there was no decrease in the "value" of lump sums. But, by Royal Oak's reasoning (even though it acknowledges that "a slight change in . . . interest rate can have a significant impact on the amount of a lump-sum"), the assumptions used to calculate actuarial equivalence are of no significance, and never produce a benefit less valuable than any other actuarial equivalent. *Id*. at 17. First, it is absurd on its face to say that benefits that are $2.1 million more than those calculated using PPA assumptions are of equal value. Moreover, as of its date of termination, the Plan did not simply promise payment of actuarially equivalent benefits, but actuarial equivalent benefits valued using the greater of the Plan's assumptions or GATT assumptions. Plan participants received lump sum benefits calculated in a manner that produced benefits less valuable than those promised under the Plan.

[13] In its Opposition, Royal Oak again twists PBGC's words, making much over the fact that PBGC notes that the Plan itself acknowledges that benefits calculated using different actuarial assumptions can produce larger benefits. *See* Royal Oak's Opp'n Memo. at 18 n.4. Royal Oak accuses PBGC of using this language as an authoritative source for determining statutory construction. But this is simply nonsense. PBGC merely points out that the Plan itself acknowledges what Congress acknowledged in passing PPA § 1107 – that changing actuarial assumptions can result in the reduced value of lump sums.

could have made an amendment that paid the greater of lump sums calculated using GATT assumptions or PPA assumptions. *See* AR-0874-0876.

And contrary to Royal Oak's protestations, by following this formula, it simply is not possible to "produce a lower benefit amount than that produced by the assumptions in Code § 417(e)," as Royal Oak fears. Royal Oak's Opp'n Memo. at 17. Of course, Royal Oak also could have amended the Plan prior to termination, and not concerned itself with whether its post-termination amendment decreased benefits in violation of PBGC Regulation § 4041.8.

Nor does the IRS determination letter speak to whether another amendment, one that complied with Title IV's standard termination requirements, would be acceptable. *See also* PBGC's S.J. Memo at 8; PBGC's Opp'n Memo. at 11-12. As PBGC's Final Determination explains, Royal Oak could have made a PPA amendment that complied with Title IV's standard termination requirements; Royal Oak chose not to, and now must face the consequences of its decision and pay Plan participants and beneficiaries what they are owed.

CONCLUSION

For the foregoing reasons, the Court should grant PBGC's motion for summary judgment and enter an order upholding PBGC's Final Determination.

Respectfully submitted,

Dated: March 10, 2014
Washington, D.C.

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Oppositions and Replies

1:13-cv-01040-GK ROYAL OAK ENTERPRISES, LLC v. PENSION BENEFIT GUARANTY CORPORATION

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