Retirement Income
JOURNAL

Here Come the Suits

By Kerry Pechter *Tue, Apr 2, 2024*

Close observers of the 'Bermuda Triangle' strategy weren't surprised when class action lawsuits were filed against AT&T, State Street Global Advisors and Lockheed Market for their choice of Athene Annuity and Life as the annuity provider in a pension risk transfer deal. RIJ articles about Athene's use of the strategy were cited in two of the lawsuits.

Participants in two different multi-billion-dollar defined benefit pension plans filed three separate federal class action lawsuits in mid-March, claiming that the corporate sponsors of their plans breached their "fiduciary duties" when they decided to sell the assets and liabilities of the plans to Athene Annuity and Life in so-called pension risk transfer (PRT) deals.

Two of the suits are filed against AT&T, former sponsor of an $8 billion pension, and its investment adviser, State Street Global Advisors. **Lockheed Martin** is the defendant in the third suit. Athene is not a defendant in the case, but plaintiffs in all three actions criticized the choice of Athene as the issuer of the giant annuities that replaced their DB plans.

Pensioners at **AT&T** and Lockheed are represented by Darby Law Group and by St. Louis-based Schlichter Bogard in two of the suits. Jerry Schlichter achieved both fame and notoriety for his suits against 401(k) plan sponsors a decade or so ago. His clients charged plan sponsors with choosing plan investment options with "excessive fees." In the **third suit**, pensioners at AT&T are represented by four law firms.

Plaintiffs' attorneys are doing what they always do—trying to catch deep-pocketed targets in an egregious legal blunder, while angling for as much as a third of the dollar-value of a potential settlement or judgment. But it's not surprising that Athene, an affiliate of **Apollo Global Management**, has attracted such suits.

The suits claim that, by purchasing an annuity from Athene, AT&T and Lockheed violated the Department of Labor's requirement (Under the DOL's **Interpretive Bulletin-95**) to find the "safest annuity available." The plaintiffs charge that an objective review of Athene would have shown that an Athene annuity didn't meet that requirement.

Athene and Apollo pioneered what *RIJ* has called the "Bermuda Triangle" business strategy.

The strategy varies, but often involves selling long-dated fixed indexed annuities, using some of the proceeds to finance high-yield “leveraged loans” to risky companies, and reducing surplus capital through the purchase of an unusual form of reinsurance from affiliated reinsurers. *RIJ* articles about the Bermuda Triangle strategy are referenced in the Schlichter Bogard lawsuits.

One of the suits against AT&T and SSgA alleges that “Athene lacks a sufficient track record to be entrusted with guaranteeing such a massive amount of pension liabilities” and because:

> “Athene today is, compared to traditional providers, invested in riskier assets to support participants’ payments, Athene’s risk is increased by its reinsurance of annuities with offshore companies affiliated with Athene which are not as transparent or required to set aside as much capital as U.S.-based insurers; Athene employs questionable accounting strategies to overvalue its assets; and the risks inherent in Athene’s strategies are magnified by unstable economic conditions.”

It’s too soon to say whether the lawsuits might harm Athene, or affect the thriving pension risk transfer business, which allows corporations to offload their DB pensions and allows annuity companies to acquire large asset pools, but deprives pensioners of certain protections under the Employee Retirement Income Security Act of 1974 (ERISA).

The outcomes may depend on the mindsets of the federal judges who hear the cases in Massachusetts (AT&T) and Maryland (Lockheed), and whether they tend to believe that DB pensions are safer in the hands of life/annuity companies and NOHLGA (the association of state guaranty associations, which try to protect annuity owners’ savings in the event of insurer insolvency) or in the hands of the ERISA-regulated DB corporate sponsors and the federal Pension Benefit Guaranty Corporation.