

Increased Litigation Around PRTs Brings Insurance Industry Practices to Light

As defined benefit plan sponsors look to de-risk and offload pension liabilities, the selection of annuity providers has come under increased scrutiny in recent lawsuits.

Reported by [REMY SAMUELS](#) | Art by OYOW

With more companies looking to shed their pension liabilities, as the cost for managing defined benefit plans continues to rise, many pension beneficiaries are concerned about no longer having their retirement benefits in the hands of their former employer and under the protections of the Employee Retirement Income Security Act.

As a result, companies have started to receive increased scrutiny after completing pension risk transfers that involve selecting insurance providers to handle the pension payments via annuities, prompting retirees and other beneficiaries to sue.

In 2024, three notable lawsuits have been filed following major PRT deals.

First, [AT&T Inc.](#) was sued by former participants in March after conducting a \$8.05 billion PRT in May of last year, offloading 96,000 of its plan participants to Athene Annuity and Life Company. Also in March, [Lockheed Martin Corp.](#) was sued over two PRTs the company conducted in 2021 and 2022, also with Athene, totaling around \$9.4 billion in assets. Most recently, aluminum producer [Alcoa Corp.](#) was also targeted following a series of PRTs it completed with Athene between 2018 and 2022.

The plaintiffs in both the Lockheed Martin and Alcoa lawsuits are represented by law firm Schlichter Bogard LLP.

Why Now?

With these cases, Andrew Oringer, partner at Wagner Law Group, says plaintiffs' lawyers will only pursue them if they expect they can get a return on their investment.

"These cases are investments for plaintiffs' lawyers because they're not going to get enough money unless there's a recovery or settlement," Oringer explains. "So, they have to feel that these cases are worthwhile."

Oringer says if plaintiffs' attorneys start to see high-profile cases reach settlements, they may feel more inclined to pursue lawsuits of this nature.

Another reason why more of these cases are cropping up, according to Oringer, is because they deal with large employers that are handling very large DB plans, so the settling these cases could result in a lot of money for the attorneys involved.

"Old line companies have these gigantic defined benefit plans that [are] frankly hard to get out of," Oringer says. "If they're underfunded, [plan sponsors] can't get out of them. And if they're overfunded, you have to give the government almost all of the overfunding. So, the [plans] sit there, and they generate risk, and these employers want to find a way to mitigate that risk."

According to the [Wealth Advocate Group](#), when a DB plan is overfunded by hundreds of thousands, or even millions of dollars, upon liquidation, the overfunded amount is subject to income taxes and an excise tax of 50%, equating to up to 90% in taxes paid back to the government.

Increased PRT Activity

As more employers are seeking to de-risk and avoid the costs that managing a pension plan requires, Oringer says plan sponsors are increasingly pursuing PRT deals.

John Lowell, partner at consulting firm October Three, adds that high interest rates have improved the funded status of many pension plans, thus putting employers in a better position to conduct a PRT. Some companies also have plans that have been frozen for a long time and are now well enough funded for plan sponsors to terminate. When interest rates are high, Lowell says it is a good time to terminate a plan, as well.

With the Federal Reserve potentially cutting interest rates later this year, Lowell says now is likely a good time for sponsors to think about settling their pension obligations.

At the same time, Lowell says PBGC premiums have been increasing relative to plan assets, particularly for small and medium-sized companies, therefore making it more expensive for sponsors to manage DB plans.

With increased turnover and job hopping occurring in the employment market, Lowell says companies are seeing a lot of employees with three to six years of service leave their jobs as terminated vested participants in the pension plan. Companies typically are not buying annuities for these employees, but they are looking for ways to cash them out.

"Companies are carrying a lot of low-liability people," Lowell says. "If I'm paying \$100 a person in PBGC premiums, it doesn't matter if my liability for that person [is] \$10,000 or \$1 million dollars. I'm still paying the same \$100 a year to [the] PBGC."

Complexities of Reinsurance

Edward Stone, executive director of Retirees for Justice Inc. and the legal counsel for the Association of BellTel Retirees, noted that the sheer volume of PRT deals has increased to the point where more than \$300 billion in liabilities have been transferred to insurance companies since 2012.

Stone adds that more reinsurers are popping up in jurisdictions that report under Generally Accepted Accounting Principles—not the National Association of Insurance Commissioners' Statutory Accounting Principles, under which most regulated insurance companies in the U.S. report. As a result, he says there has been more scrutiny on the practice of insurers taking credit for reinsurance with an affiliate. Stone explains that some insurance companies will use a third-party affiliated reinsurance company to cover some of their exposure.

"Then the reinsurer gives an IOU to its affiliates in jurisdictions where they're allowed to hold all sorts of assets on their balance sheets that would never be allowed at a regulated insurance company level," Stone says. "...When you take credit for reinsurance with an affiliate, you're just moving liabilities from one part of the corporate structure to another. It's not a real, genuine risk transfer" for the insurance company. For example, Athene, which has received a lot of scrutiny in the recent litigation, was purchased by the private equity company Apollo Global Management in 2022. About 80% of Athene's PRT liabilities are reinsured through Bermuda affiliates owned by Apollo, according to Stone. With this arrangement, it frees the insurance company—Athene in this case—from taking on all the liabilities from employers by sharing some risk with Apollo.

"I think that practice is a form of financial alchemy and could threaten the financial security of all the retirees that have been impacted by these PRTs," Stone says.

Stone points out that Athene is one the fastest-growing players in the PRT market. Because Athene works with a Bermuda-based reinsurer, Stone argues that it does not report in accordance with statutory account principles like a U.S.-based insurer would, so there is a lack of visibility and transparency into what Athene is investing in, as they do not report the same level of detail that U.S.-based insurance companies are required to.

Athene has previously denied allegations that it is an “unsafe” provider of annuity benefits. In response to the lawsuit against Alcoa Corp., an Athene spokesperson called the complaints “baseless” and “instigated by class action attorneys who are attempting to enrich themselves at the expense of retirees.”

Selecting the ‘Safest’ Annuity Provider

Many of the lawsuits also cite a 2022 analysis from NISA Investment Advisors, which analyzed debt issued by nine of the top PRT providers and the spread of those securities over five-year Treasuries. Athene was ranked as the “least safe,” having the largest spread at 214 bps.

According to NISA, spreads are a “mark to market measure of the creditworthiness of an entity,” essentially arguing that investors will demand to be paid higher interest rates on bonds if they are seen as riskier investments.

Since 2022, the spreads have compressed, but the ranking of insurers is still in the same order.

“My big criticism of pension risk transfers ... is [that] when a defined benefit plan sponsor offloads liabilities by sending them to an insurance company, the retirees lose all of their uniform protections that were intended by Congress under ERISA,” Stone says. “Under an ERISA defined benefit plan, [a retiree would be protected] by the PBGC, which would take over if the plan got in trouble, and provide benefits.”

He says more retirees are “starting to get fearful” about PRTs because if an insurance company were to default, it could mean a huge loss in benefits.

Active members of the Communications Workers of America and retirees at AT&T have taken steps to fight back against the PRT deal that the company completed with Athene. The president of the CWA will host a town hall for all AT&T members and retirees on June 5 to share more information on the transaction and the legal complaint.

Despite concerns, only a few small regional insurance companies have actually failed in the past, so a major bust has yet to be seen. The failure of First Executive Life Insurance Company in 1991 marked the largest collapse in the insurance industry, but nothing of similar magnitude has occurred since.

When PRTs first came on the scene just over a decade ago, Stone says the lawsuits that were cropping up mainly focused on whether companies had standing to conduct a PRT in the first place, whereas the lawsuits coming out now are more centered around fiduciaries selecting the safest available annuity provider.

The SECURE 2.0 Act of 2022 required the Department of Labor to review published guidance, known as [Interpretive Bulletin 95-1](#), which outlines the fiduciary standards that a plan sponsor must use when selecting an annuity provider for a PRT. The DOL [held hearings on the standards in 2023](#) and was supposed to recommend possible modifications to the bulletin by the end of last year, but as of the end of May nothing has been published by the department.

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