Report to Central States Pension Fund Retiree Representative Susan Mauren

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Background

The Multiemployer Pension Reform Act of 2014 ("MPRA") was enacted in December 2014. Generally, MPRA provides that certain multiemployer defined-benefit pension plans may apply to the Treasury Department for permission to suspend benefits. As the Central States, Southeast and Southwest Areas Pension Fund (the "Fund" or "Central States") contemplated an application to suspend benefits under MPRA, Ms. Mauren was appointed in January 2015 to act as the Retiree Representative. I was retained by Susan Mauren in February 2015 to assist her and her legal counsel, Leonard O'Brien Spencer Gale & Sayre, Ltd.

I began employment for a firm of consulting actuaries in 1981 and began to pursue my education towards professional certification, having become an Associate of the Society of Actuaries in 1990 and an enrolled actuary under ERISA in 1992. Since 1993, I have focused on multiemployer pension plans and I have experience with funds of all sizes in a wide variety of industries, including manufacturing, building and construction, entertainment, retail, and transportation. I am a frequent speaker at trustee and professional education conferences for actuaries and attorneys and have authored articles on issues relating to funding under the Pension Protection Act of 2006 and withdrawal liability. I am also a contributing editor of the *Journal of Pension Benefits* for multiemployer issues. In 2014, I completed a three-year term as a member of the International Foundation of Employee Benefits Plans' Professionals Committee. I am also a fellow of the Conference of Consulting Actuaries and a member of the American Academy of Actuaries. I am a now a shareholder with First Actuarial Consulting, Inc. We are a full-service actuarial and benefits consulting firm based in New York. Our firm currently serves as a consulant to approximately 60 multiemployer pension and welfare funds.

Introduction

MPRA provides limited guidance on the retiree representative's duties and its role with respect to the process. Only a plan with 10,000 or more participants is required to appoint a representative. According to MPRA, the retiree representative "shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process." That is all MPRA says except that the retiree representative must be a fund retiree in pay status. Trustees may wait until 60 days before they file an application to appoint a representative. It is this later provision that provides insight into my role as an actuary for the retiree representative. Given the time constraints, it is evident under these circumstances the statute does not contemplate that the retiree representative's actuary scrutinize the Fund's operations or its actuary's projections with the skepticism of a forensic audit. Furthermore, under the statute, the actuary is not tasked with the responsibility of completing a participant-by-participant analysis of a proposed suspension plan of 10,000 or more participants in a 60-day time period. It is unrealistic to require a retiree representative's actuary to replicate a fund actuary's valuation, annual zone-status certification, and proposed benefit-suspension projections from whole cloth in 60 days. Rather, in our view, our mandate is to observe that reasonable actuarial assumptions and methods were utilized, that the actuary appears to have complied with the restrictions imposed by MPRA, and that there appear to be no obvious flaws in the actuary's or trustees' analysis.

Ms. Mauren's legal counsel requested and received from the Fund a comprehensive set of documents relating to the historical information about the Fund, its plan of benefits and reports from the Fund's Independent Special Counsel. In addition, Ms. Mauren and her legal counsel have been provided all of the materials considered by the Trustees throughout their exhaustive deliberations regarding a suspension plan. These materials have all been provided to me. In addition, I requested specific information from the Fund to assist me in my evaluation of the financial and actuarial position of the Fund and the proposed suspension plan options being considered. All of the information I have requested and all of the information I believe necessary for me to complete my analysis have been provided. In addition to the documents, I attended one of the Trustees' MPRA Subcommittee meetings and participated in a number of telephone conferences with Ms. Mauren, Fund Counsel, the Fund's Actuary and members of the Fund's staff.

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Ms. Mauren requested that I address a series of questions to assist her in her role as an advocate for the retirees and deferred vested participants. My responses are based upon all of the records and information that I have been provided by Central States, information provided by Ms. Mauren's legal counsel, the information obtained through my attendance at the Trustees' Subcommittee meeting, the various telephone conferences, and my background and professional experience in this area.

1. **Discuss the accuracy and sufficiency of the underlying data used by the Fund and its actuary. Is it the type of data you would expect a defined-benefit pension plan to use in this type of process? Did the Fund provide you all data you needed to make this determination?**

   <u>**Response:**</u>

   The data used by the Fund, the Trustees and its actuary appears to be sufficient, given my understanding of the vast complexities of this Fund's benefit-determination operations. The Fund provided me all of the information and data I requested to complete my analysis of the integrity of the data being used. I was provided all information I determined to be necessary.

   The Fund's actuary presented reports to the Trustees at many meetings throughout the past nine or so months. His reports are detailed and his analysis thorough. Based upon my professional experience and expertise, I believe that the data used by the Fund's actuary to prepare these reports to the Trustees is sufficient, appears to be accurate, and is the type of data I would expect an actuary to use and rely upon to perform this analysis. It appears that the data the Fund's actuary used throughout this process was continually updated to reflect any new information Fund staff was able to retrieve from its records. Some of the data the Fund provided to the Fund's actuary is data relating to events that occurred many years ago, as the scope of pension funds of this type normally looks back over 40 or 50 years. For example, in order to categorize benefits into one of the three tiers mandated by the statute, the Fund reviewed details relating to employer withdrawals occurring in some instances more than 20 years ago. This data included details about the extent to which an employer paid its withdrawal liability in full, possibly two or three decades ago. It appears that the Fund staff worked diligently and constantly during this process to locate all relevant and necessary records.

2. **Absent any benefit suspension, is the Fund expected to become insolvent in 2026 as projected by the Fund's actuary? Has the Fund met MPRA's conditions for suspension as it relates to the Fund's solvency?**

   <u>**Response:**</u>

   We actuaries at FACT are not attorneys, nor do we attempt to practice law. However, per our understanding of MPRA, a pension plan that is in critical and declining status may apply to the Treasury Department for approval of a suspension of benefits. A pension plan is in critical and declining status if it is projected to become insolvent during the current year or any of the 14 succeeding years (or 19 succeeding years if the pension plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the pension plan is less than 80 percent).

According to the Fund's actuary, the Fund is projected to become insolvent in 2026, therefore satisfying the definition of critical and declining status. Furthermore, the Fund's ratio of inactive to active participants is more than 5 to 1. Based upon the documents and information I have reviewed I agree that the projections for insolvency appear to be reasonable.

Revenue Procedure 2015-34 provides that a MPRA suspension is permissible only if it is reasonably estimated to enable the Fund to avoid insolvency. The Fund must demonstrate that it meets this requirement both deterministically and stochastically.

On a deterministic basis, the Fund must show that throughout the "extended period" beginning on the effective date of a suspension, the Fund is projected to remain solvent. Additionally, if the Fund's projected funded percentage at the end of the extended period is less than or equal to 100 percent, then neither the Fund's solvency ratio nor its available resources can be projected to decrease in any of the last five years of the extended period. Using an extended period beginning in 2016 and ending in 2064, the Fund's actuary projected deterministically that the proposed suspension results in expected solvency throughout the extended period. Furthermore, neither the Fund's solvency ratio nor its available resources were projected to decrease in any of the last five years of the extended period. These projections do not appear to be unreasonable.

A MPRA suspension is only allowed if, according to stochastic projections that reflect variances in investment returns, it results in the fund having at least a 50% probability of solvency throughout the 30-year period beginning on the effective date of the suspension. Per IRS guidance, the stochastic projection need not include, as variables, anticipated demographic experience, or, more importantly, future employer or industry-wide activity. In my experience, ignoring these factors diminishes the utility of the modeling. As well, we find that deterministic projections, such as those required for this process, are rather sensitive to emerging experience different from that contemplated.

According to the Fund's actuary, the proposed suspension results in a minimum 50.4% probability of solvency throughout the extended period following the proposed suspension. Consequently, this requirement appears to be satisfied, and the proposed suspension appears reasonably estimated to enable the Fund to avoid insolvency.

3. **Does the proposed suspension plan meet the limitations under MPRA:**
    a. **No one reduced below 110% of the PBGC guarantee**
    b. **No suspensions for participants over age 80, limitations between 75-79**
    c. **No suspensions of participants receiving disability benefits**

Response:

I reviewed the proposed suspension plan and the sample calculations used by the Fund to calculate each participant's benefits both before and after the suspension. I have not reviewed individualized benefit statements as it would be impossible and impractical for me to review more than 400,000 benefit statements. However, it appears that the Fund's methods are reasonably calculated to ensure that no participant's benefit is reduced below 110% of the PBGC guarantee, that no participant over the age of 80 will have his or her benefits reduced, and the laddered protections for those between ages 75 and 80 will be met. Finally, the suspension plan as proposed appears designed to protect retirees who retired with a disability pension from the Fund. Given the numbers of participants and retirees, it is always possible that errors may occur in the calculation of the benefits, however, the Fund has represented it will establish a process for participants to seek review in the event a calculation error has occurred.

4. **Is the Fund's proposed suspension just sufficient to avoid insolvency and no more (the "Goldilocks" rule)?**

Response:

Under temporary and proposed MPRA regulations, a proposed suspension is not materially in excess of the level necessary to avoid insolvency if the proposed suspension is sufficient to avoid insolvency throughout a period of at least 30 years, but a suspension that is 5% smaller is not sufficient. In its draft solvency certification the Fund's actuary determined that the proposed suspension would enable the Fund to remain solvent through 2064. A suspension smaller by 5% was found to result in insolvency within the 30-year period beginning on the date of the proposed suspension. Accordingly, the proposed suspension, as measured by the Fund's actuary, appears to be not materially in excess of the level necessary to avoid insolvency.

5. **Central States' actuary has concluded that most participants are better off with a suspension and continued solvency of the Fund as opposed to no suspension and Fund insolvency occurring in 10 years or less. Discuss your review of this "winners and losers" analysis.**

Response:

To me, the Fund actuary's projections of insolvency appear to be reasonable. On a macroeconomic basis, we conducted our own projections of likely Fund cash flows and found the following: with no reduction in its annual expenditures and no significant increase in its contribution base, the Fund is likely to run out of money during the next ten years. The Fund actuary's basis for this claim assumes a steady return on investments of 7.50% per year. If insolvency occurred, everyone in the Fund would receive no more than what PBGC will pay, resulting most certainly, based upon the data and analysis we've seen, from major reductions to practically all participants' benefits. The Fund actuary's analysis indicates that benefits for most participants will be significantly higher than PBGC levels after the proposed suspension.

6. **Does a delay in the implementation date of the proposed suspension significantly increase the amounts of suspension required to maintain solvency?**

Response:

Relevant reports from the Fund actuary confirmed our own observations, namely, that any delay in a reduction of Fund expenditures (or a delay in increase in income) would only cause a further reduction to the Fund's asset base requiring further reductions in benefits to be proposed in order to maintain Fund solvency.

7. **Discuss your observations on the number of suspension plan proposals the Trustees considered.**

Response:

MPRA provides no standards for determining whether the number of suspension alternatives considered was appropriate. MPRA instead focuses on whether the Trustees adequately considered the impacts of the proposed suspension. However, materials from Central States MPRA Subcommittee meetings indicate that the Trustees with their actuary considered dozens of alternatives to the proposed suspension over the course of several months of evaluation. In analyzing each alternative, it appeared as if the Trustees reviewed the projected impact on various classifications of Fund participants, as a whole and by demographic groups with respect to age, service and benefit amounts. Additionally, they reviewed the projected impact of each scenario on the Fund's anticipated solvency.

Conclusion

Our review was based upon many summarizing materials and reports, charts and data provided by the Fund and its actuary. To us the analysis of the Fund's current condition, as proffered by the Fund's actuary, does not seem to be unreasonable. It appears the Fund actuary has exercised the due diligence and care required by our profession, complied with its precepts and standards of practice, has employed assumptions and methods within the realm of what we see in the multiemployer community, and has stayed within the guidelines mandated by our understanding of MPRA and its attendant regulations.

Our report has been prepared in accordance with generally accepted actuarial principles and practices consistent with our understanding of the Code of Professional Conduct and applicable Actuarial Standards of Practice promulgated by the Actuarial Standards Board. I am a credentialed actuary who meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained in this report. This report does not address contractual or legal issues as we are not attorneys nor do we attempt to practice law.

Our report was prepared exclusively for the use of Ms. Mauren and her legal counsel in her role as retiree representative under the Fund for purposes of evaluating the suspension of benefits proposed by the Fund's Trustees. Use by another party or for other purposes may prove to be inappropriate and misleading and we assume no responsibility in that event.

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