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Liberty Mutual Inks \$30M ERISA Deal With Retirees

By **Danielle Nichole Smith**

Law360 (March 5, 2018, 4:53 PM EST) -- A California federal judge granted final approval Friday to Liberty Mutual's agreement to add about \$30 million of additional retirement benefits to retirees' plan, settling Employee Retirement Income Security Act claims the insurer misled employees about how time spent at an acquired company would factor into their retirement benefits.

U.S. District Judge Gonzalo P. Curiel said the proposed amendment to the retirement benefits plan is an "excellent result" for the class of current and former Liberty Mutual employees, who had accused the insurer of wrongly denying retirement benefits for their time working at Golden Eagle Insurance Co. before its acquisition by Liberty Mutual in 1997. The amendment will allow current and future retirees to claim credit for 50 percent of the time they worked at Golden Eagle, providing roughly \$30 million in additional benefits, according to the order.

"Class members are going to get half of the years they worked for Old Golden Eagle added into the Liberty Mutual retirement plan formula as if they had worked those years for Liberty Mutual," Judge Curiel said. "This will put more than millions of dollars in added retirement benefits in the pockets of class members and eliminate the uncertainty of further litigation."

Judge Curiel also granted class counsel's request for \$7.5 million in attorneys' fees and the requested \$250,000 of the \$385,000 in costs the counsel incurred. The settlement result, which the judge noted had received no complaints or objections, and the skill demonstrated by the attorneys justified the fees, Judge Curiel said.

Additionally, three of the named plaintiffs in the case were awarded a \$5,000 incentive award, and another named plaintiff received a \$10,000 incentive award in the order.

Judge Curiel said it was obvious no collusion had occurred between the counsel in the settlement agreement, noting that the "parties opposed each other vigorously and repeatedly at every turn" and pointing to the long litigation history in the case.

The retirees and future retirees, who filed their first class complaint under ERISA in October 2010, received class certification from the district court in April 2012 after a second amended complaint. But in July 2013, the court granted Liberty Mutual summary judgment on all four of the class' claims in its third amended complaint.

That same month, the class **appealed the decision** to the Ninth Circuit, and in May 2016, the appeals court revived the class' claim for equitable relief against Liberty Mutual, remanding the case to the district court.

The district court found on remand that two of the named plaintiffs were time-barred from bringing claims, but denied Liberty Mutual summary judgment on the rest of the surviving claims. The insurer filed a motion for reconsideration on that order that was still pending when the parties began settlement talks.

Judge Curiel said the risks for the current and future retirees in continuing the litigation, both due to the older age of the class and the potential legal arguments against them, were factors in favor of approving the settlement agreement.

"It was unclear, therefore, what the class would look like if the plaintiffs had rejected settlement, and then, even if they won, to sit through the inevitable post-trial appeal process," Judge Curiel said. "In sum, while plaintiffs have a strong case, there were serious risks in continuing to litigate this action against a capable defendant and defense counsel with great resources and time on their side."

Counsel for the class declined to comment Monday. Counsel for Liberty Mutual told Law360 its client does not have comment.

The class is represented by Craig M. Nicholas, Alex M. Tomasevic and David G. Greco of Nicholas & Tomasevic LLP and Jack B. Winters Jr., Georg M. Capielo and Sarah Ball of Winters & Associates.

Liberty Mutual Retirement Benefit Plan, Liberty Mutual Retirement Plan Retirement Board, Liberty Mutual Group Inc. and Liberty Mutual Insurance Co. are represented by Ashley B. Abel, Robert M. Wood and Michael D. Drenan of Jackson Lewis PC.

The case is *Moyle et al. v. Liberty Mutual Retirement Benefit Plan et al.*, case number 3:10-cv-02179, in the U.S. District Court for the Southern District of California.

--Editing by Richard McVay and Alanna Weissman.