Summary of Issues in XXXX's Case

PBGC Customer ID: 7742847
Case Number: 19922400
Plan Name: United Airlines Ground Employees Retirement Plan

XXXX and XXXX became Registered Domestic Partners on January 11, 2017, after being together for about 24 years. Mr. XXXX died on December 12, 2019.

Ms. XXXX contacted United to gather more information about her potential eligibility for benefits. A representative informed her that her domestic partner, Mr. XXXX, had two separate pensions through his former employment. One plan is the United Airlines Ground Employees' Retirement Plan, which terminated on March 11, 2005, and the other is the Continental Airlines Retirement Plan, which is still administered by United. After a lot of back and forth, Ms. XXXX finally received payment from United for the Continental Airlines benefit, as Mr. XXXX's surviving domestic partner.

Under the Continental Retirement Plan, which is still administered by United, Ms. XXXX was eligible for a Single Life Annuity of $70.42 or a lump sum distribution of $11,890.25. Ms. XXXX chose the lifetime benefit, which commenced on June 1, 2021.

In a letter to XXXX from PBGC dated April 30, 2020, PBGC states that the denial of pension benefits was due to not recognizing XXXX as the surviving spouse of longtime employee XXXX.

In the PGGC Policy 5.7-4 Marriage Requirements, after summarizing the state of same-sex marriage law (which does not apply to XXXX and XXXX, as they are not a same-sex couple), the Policy states in C.1 that the general rule is that PBGC recognizes a marriage based on the laws of the jurisdiction in which the marriage was celebrated. "PBGC will recognize as marriages only those arrangements specifically denominated as marriages by state law – PBGC will not recognize other arrangements such as civil unions, domestic partnerships, etc., as marriages unless they are explicitly denominated as marriages by state law."

Under that rule, XXXX and XXXX as registered domestic partners in California are, in fact, spouses, under California Family Code § 297.5(a):

> California Family Code § 297.5 (a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

California law clearly states that domestic partners have the same rights, protections, and benefits as spouses. Case law backs this up. In California, domestic partners and spouses are the same under the law. Unfortunately, federal law is not this straightforward, and in some

areas, California is forced to defer to federal law. However, PBGC's own policy states that PGBC recognizes marriages under state law – and California state law recognizes XXXX and XXXX's rights as spouses. As PBGC records note, the death certificate also lists XXXX as married. Under PBGC's own policies and under the law, XXXX is entitled to survivor's benefits as the surviving spouse of one of United's long-time employees, who earned these benefits.

I submitted documentation to the PBGC in September 2021, showing that Ms. XXXX was approved for and is now in pay status with United for the Continental Plan survivor benefit. PBGC representatives informed me they would review documentation in this matter and let me know about Ms. XXXX's eligibility for the United plan they now administer, in which Ms. XXXX's domestic partner participated prior to his death.

In an email dated September 27, 2021, a PBGC representative informed me that:

> …we spoke with the Office of Benefits Administration last week and Ms. XXXX should receive a letter from them or the Office of General Counsel with a more complete explanation of the benefit denial within the next few weeks. Our office is currently researching the domestic partnership statutes and case law in California, and we plan to coordinate with OGC regarding PBGC's policy soon. PBGC's position is based off IRS and DOL guidance, but we are working to find room for OGC to alter this position.

In the meantime, I have requested a Plan Document and Summary Plan Description for the United Airlines Ground Employees' Retirement Plan from the PBGC.

PBGC Cases

BOA Case

Case documents included. We hope to have the final denial in the next couple weeks. PBGC is ultimately denying a survivor benefit to a surviving domestic partner - but their response, in the attached, makes it seem like they're presently exploring state domestic partnership laws, and may otherwise be changing their position. We thought it may be good for discussion - or to hear if anyone has had success in other ways - it seems the plan's language may help in these cases too.

WSPAP Case

Client contacted WSPAP in January 2021 for assistance locating a retirement benefit he earned working for Southern California Savings & Loan Association from 1986-1993. WSPAP researched the employer and determined that it changed its name or merged with another bank at least four times. When we were unable to locate an active plan associated with this employer WSPAP submitted a FOIA request to PBGC in April 2021 to determine whether the plan terminated and whether PBGC administered a benefit for our client. PBGC's response indicated that the client's plan merged with another plan that later terminated, but did not show whether the plan was a PBGC trusteed plan or include any information about our client specifically. WSPAP submitted a follow up request and the disclosure office directed us to contact the PBGC's main number with any additional questions. WSPAP conference called PBGC with the client and a PBGC representative told us that PBGC does have anything to do with the standard termination process and would only have records related to PBGC trusteed plans. The representative did not look up our client or the plan during that phone call. WSPAP then submitted a request for assistance to the PBGC Office of the Advocate who was able to locate additional records that confirmed the client's benefit merged into a PBGC trusteed plan and that the PBGC administers a benefit for our client.

Spanish Speaking Client

The other issue we considered are cases where the plan failed in assisting Spanish-speaking clients. Notably, in one case, the plan misread/misinterpreted the SSA Disability Award letter, and led to a denial of much needed disability benefits. The client was clearly eligible, if the plan had properly interpreted the SSA notice, and their failure to do so cost the client years of benefits - we were successful here, but highlights the likelihood that others similarly situated may be erroneously denied. We also had a case with Fidelity where they are refusing to provide an application inSpanish and won't otherwise translate key information, despite the request. We thought this may open conversation around practices with language access for LEP clients.

Case Specifics

Client contacted WSPAP in January 2021 with questions about his eligibility for disability benefits from the Southwest Carpenters Pension Trust Fund. Client is a Spanish speaker who does not speak, read or understand English. Prior to contacting WSPAP, the plan denied the Client's 2018 application for disability benefits but the Client did not understand why. The Plan's denial letter

was in English and did not explain what specific eligibility requirement the Client did not meet. WSPAP reviewed the Plan Document and the client's supporting documentation and determined that he is eligible for disability benefits. WSPAP submitted a letter to the plan along with the client's documentation requesting an explanation of the previous denial. The Plan Administrator responded that upon review the client was eligible when he applied in 2018 and that the previous denial was based on an incorrect translation of his Spanish Social Security Award Letter. Client is now receiving monthly annuity of $631.00 and received a retroactive payment of $39,122.00.

New trend with AT&T

We like raising issues with them since they often affect folks nationwide. This seems to be a systemic survivor benefits issue. The surviving spouse is denied a benefit because the participant died receiving a single life annuity. However, in the cases we've had, the clients were longtime spouses of the participant and married at retirement. AT&T (TPA = Fidelity) lacks the benefit election forms to show that our client, surviving spouse, waived a survivor benefit, and reasons that the single life annuity is proof she waived a survivor benefit. We found a case where AT&T did this same thing and the court essentially said they cannot rely on the lack of the waiver to deny the survivor benefit. However, this is exactly what they do. We submitted a claim and appeal for one client and was denied, but they ultimately settled w/us, but denied fault/denied the appeal. We have another claim that is outstanding. We cited the case with the same fact pattern in both of these claims. Issues with AT&T and Fidelity are not new to this group, but this survivor benefit practice is especially troubling.

AT&T Case Specifics

Client is the surviving spouse of an AT&T retiree. Prior to contacting WSPAP the Client contacted Fidelity and was told that she is not entitled to survivor benefits because her husband received a Single Life Annuity during his lifetime. WSPAP requested a copy of the participant's application including his benefit election form and the required spousal consent form. Fidelity denied our request stating they would not release documents without a court order. August 2019, WSPAP submitted a claim on the client's behalf arguing that she remained entitled to survivor benefits because the Plan Administrator could not prove that she waived her rights as required by law. AT&T did not respond. WSPAP contacted EBSA for assistance in February 2020. AT&T told EBSA they did not have the participant's application on file and could not provide a copy of the spousal consent, but argued that because their system did not indicate the participant was married so spousal consent was not required. AT&T finally issued a written denial of our claim in September 2020. WSPAP appealed citing a nearly identical case involving both AT&T and Fidelity that states a surviving spouse's right to survivor benefits is not terminated even when a Plan Administrator reasonably relies upon a participant's misrepresentation of their marital status. AT&T denied our appeal, but offered a $32,000 settlement, which the client accepted.

LEGAL SERVICES of NORTHERN CALIFORNIA

Monday, November 16, 2020

Benefits Plan Administrator
P.O. Box 770003
Cincinnati, OH 45277-1060

RE: Reference Item: [redacted]

Employee Name: [redacted]
Employee SSN: xxx-xx-[redacted]

Claimant Name: [redacted]
Claimant SSN: xxx-xx-[redacted]

Dear Plan Administrator,

The Western States Pension Assistance Project (WSPAP) is a non-profit law office that provides legal advice and assistance to retirement plan participants in legal matters involving their retirement benefits. I am writing on behalf of our client, [redacted], and have included a signed release with this letter for your convenience. This letter constitutes [redacted] appeal of the Plan Administrator's September 22, 2020 denial of her claim for benefits as the surviving spouse of plan participant [redacted].

Summary of Appeal

[redacted] was married to plan participant [redacted] from 1983 until his death in December 2018. In early 2019, [redacted] contacted the Plan to inquire about her right to survivor benefits and a Plan Representative informed her that the Plan's records indicate that she is not entitled to survivor benefits because the participant received a Single Life Annuity during his lifetime. [redacted] submitted a claim for survivor benefits in August 2019 on the grounds that she was married to the participant at the time he commenced benefits under the Plan and she did not sign a notarized waiver of her right to Joint and Survivor benefits as required by ERISA.

On September 22, 2020 the Plan's recordkeeper, Fidelity, denied [redacted] claim on the grounds that their records indicate that [redacted] received a Single Life Annuity during his lifetime and "there was no affirmation on file which indicated that [redacted] had a spouse at the time of his pension benefit commencement; therefore, spousal consent was not required." Fidelity went on to state "[t]here are no provisions within the Plan to accommodate your request for your client to receive a survivor benefit; therefore, your claim is denied." In considering [redacted] claim Fidelity appears to have only looked to the terms of the Plan while ignoring the law and the plan's fiduciary duties. Both ERISA and the terms of the Plan require the notarized consent of a participant's spouse at benefit commencement in order for a participant's election of a benefit payment form other than a 50% Joint and Survivor Annuity.

Applicable case law, including a strikingly similar case directly involving AT&T and Fidelity, establishes that a surviving spouse's right to survivor benefits is *not* terminated even when a Plan Administrator reasonably relies upon a participant's misrepresentation of their marital status. Because the denial of [redacted] claim is inconsistent with well-established law the Plan Administrator must approve her appeal and recognize her right to benefits as a surviving spouse.

Applicable Law

ERISA §205(c)(1)(A)(i)

(A) under the plan, each participant—

(I) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both)

ERISA §205(c)(2)(B)

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(B)it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

ERISA §205(c)(6)

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

ERISA §209(a)(1)

(a)

(1) Except as provided by paragraph (2) every employer shall, in accordance with such regulations as the Secretary may prescribe, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.

Case Law

Hearn v. W. Conference of Teamsters Pension Tr. Fund, 68 F.3d 301, 304 (9th Cir. 1995): a Plan Administrator's reasonable reliance on a participant's statements that they were not married or that

their spouse could not be found did not terminate the surviving spouse's right to Joint and Survivor benefits under ERISA and only shielded the Plan from liability to the surviving spouse to the extent that it has made payments under the Plan.

Low-Iacovino v. Benefit Plan Comm. of Nonbargained Program of AT&T Pension Benefit Plan, No. CV 16-6614-AB (GJSX), 2017 WL 6541772 (C.D. Cal. Dec. 20, 2017): A pension plan can only recoup benefits wrongfully paid to a participant during their lifetime from their surviving spouse if the Plan Administrator can demonstrate that they satisfied their fiduciary duties in determining whether spousal consent was required at benefit commencement and in considering the surviving spouse's claim for benefits.

Discussion

a. The Payment of a Single Life Annuity and a Plan Administrator's lack of records of the participant's marriage does not terminate a surviving spouse's right to Joint and Survivor benefits under ERISA.

Fidelity cites to Paragraph 4.3(c) of the Pacific Telesis Group Pension Plan for Salaried Employees to support its assertion that [redacted] consent was not required in order for the Plan to pay the participant a Single Life Annuity. Fidelity's interpretation is not supported by a close reading of Paragraph 4.3(c) which states:

"[s]pousal consent shall not be required **if the participant establishes, to the satisfaction of the Committee,** that consent cannot be obtained because there is no spouse or that the spouse cannot be located or for other reasons permitted by Section 205(c)(2)(B) of the Pension Act and applicable regulations." [emphasis added].

First, Fidelity has not shown that the participant made any representations or provided any evidence to establish that there was no spouse or that his spouse could not be located when he submitted his benefit election. By its own admission, the Plan Administrator failed to maintain adequate records to determine whether the Plan Administrator ever inquired about the participant's marital status or whether the participant made any representations about his marital status. Therefore, there is no evidentiary basis from which to conclude that [redacted] notarized consent was not required at the time the participant submitted his benefit election.

Second, the Plan Administrator's understanding of the applicable law has been rejected by the Ninth Circuit Court of Appeals as inconsistent with the plain text of ERISA §205(c)(6) which states that If a plan administrator satisfies its fiduciary duties in determining that a spouse's consent is valid or that such consent can't be obtained, that determination "shall be treated as valid for purposes of discharging the plan from liability **to the extent of payments made pursuant to such Act**." (emphasis added). *Hearn v. W. Conference of Teamsters Pension Tr. Fund*, 68 F.3d 301, 304 (9th Cir. 1995). In *Hearn*, the Court held that a Plan Administrator's reasonable reliance on a participant's statements that they were not married or that their spouse could not be found did not terminate the surviving spouse's right to Joint and Survivor benefits under ERISA and only shielded the Plan from liability to the surviving spouse to the extent that it has made payments under the Plan:

"To the extent [the participant] *hornswoggled the Trust Fund into paying him more than he was entitled to, payments to* [the surviving spouse] ***are suspended until the Fund is more or less where it would have been had*** **[the participant]** ***honestly disclosed his marital status.***" [emphasis added].

Hearn v. W. Conference of Teamsters Pension Tr. Fund, 68 F.3d 301, 304 (9th Cir. 1995).

According to *Hearn,* the Plan remains obligated to pay Joint and Survivor benefits to the surviving spouse and benefit payments must resume as soon as the Plan has recovered any amounts paid in error that it is entitled to. Therefore, Fidelity's denial of [redacted] claim for benefits is inconsistent with the requirements of ERISA and must be reversed. Furthermore, as I will explain below, the facts of this case are substantially different than those in *Hearn* such that the Plan is not entitled to recoup benefits wrongfully paid to the participant from the survivor annuity owed to [redacted] because it has failed to satisfy its fiduciary duties under ERISA.

b. The Plan Administrator cannot recoup any resulting overpayment from [redacted] survivor benefit because it has failed to satisfy its fiduciary duties in determining the need for spousal consent and in considering [redacted] claim for benefits.

Hearn states the Plan is protected from liability to the surviving spouse with respect to payments already made only if the Plan Administrator can demonstrate that it satisfied its fiduciary duties in determining that a spousal waiver was not necessary. 68 F.3d 301, 303. This requires a showing by the Plan Administrator that it actually took steps to determine the participant's marital status at the time of the participant's election and in denying the surviving spouse's claim for benefits. It should not be surprising that the Plan Administrator must make such a showing given that in 2017 the United States District Court for the Central District of California held in a strikingly similar case that AT&T could not recoup benefits wrongfully paid to the participant from the participant's surviving spouse because **Fidelity breached its fiduciary duties by failing to comply with ERISA's record keeping requirements and failing to investigate the surviving spouse's claim for benefits in good faith**.

In *Low-Iacovino v. Benefit Plan Comm. of Nonbargained Program of AT&T Pension Benefit Plan* the Court held that AT&T could not recoup benefits wrongfully paid to the participant from the surviving spouse because the Plan Administrator breached its fiduciary duty by failing to maintain adequate records to determine the surviving spouse's rights under the Plan and making "absolutely no attempt to retrieve [the surviving spouse's] waiver form" before denying her claim for benefits. *Low-Iacovino v. Benefit Plan Comm. of Nonbargained Program of AT&T Pension Benefit Plan*, No. CV 16-6614-AB (GJSX), 2017 WL 6541772 (C.D. Cal. Dec. 20, 2017).

ERISA §209(a)(1) states "every employer shall, in accordance with such regulations as the Secretary may prescribe, maintain records with respect to each of his employees sufficient to determine benefits due or which may become due to such employees." In 1980, the Department of Labor issued proposed regulations interpreting Section 209 to mean that records must be retained "as long as a possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary." Fidelity admits in the denial letter that it does not have a copy of [redacted] benefit election form, which is itself proof of the Plan Administrator's failure to comply with ERISA's record keeping requirements. Fidelity goes on to state:

"[b]ased on our records, there was no affirmation on file which indicated that [redacted] had a spouse at the time of his pension benefit commencement; therefore, spousal consent was not required and he was issued a monthly Single Life Annuity as of his BCD through the duration of his lifetime, in accordance with his qualified pension benefit election; therefore no further pension benefits are due from the Plan following his death."

The above statement is both legally incorrect and logically inconsistent. In the same paragraph, Fidelity both admits that it has not complied with ERISA's record keeping requirements and asserts that their records prove that spousal consent was not required and that [redacted] elected a Single Life Annuity. The Plan's records cannot be both inadequate and infallible. The only thing the Plan's records prove conclusively is that the Plan Administrator breached its fiduciary duty by failing to comply with ERISA's record keeping requirements. The Plan cannot present this failure as a virtue and use it to justify the denial of a legally required benefit without proof.

Similar to *Low-Iacovino*, the Plan Administrator again has failed to maintain adequate records and Fidelity does not appear to have made any attempt to determine what information the prior recordkeeper had or what the participant provided when he submitted his benefit application. Rather than investigating [redacted] claim in good faith, Fidelity attempts to deflect blame for any failures in plan administration to the prior recordkeeper stating "Please note, the qualified election submitted by [redacted] to the prior recordkeeper in 1987, in which he elected a Single Life Annuity, was accepted by the prior recordkeeper." The court rejected a similar argument in *Low-Iacovino*:

"Here, the Court is unable to determine whether a waiver form exists at all, let alone whether it strictly complied with the rules in § 1055(c)(2). Defendant asserts that it was never in possession of the form, and "has no way to access historical pension records for Mr. Iacovino or even to determine if such records still exist." First, the Court is unpersuaded by this argument. With respect to an employer's recordkeeping obligations, ERISA requires employers "maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees." 29 U.S.C § 1059(a)(1). This provision further states that an "employer shall furnish to the plan administrator the information necessary" for the administrator to make certain reports concerning employee benefits. Id. Based on these requirements, Plaintiff's waiver likely exists in AT&T's records, and Fidelity could have at least requested it in order to help determine Plaintiff's benefits under the plan. Although Plaintiff is not suing under § 1059 for failure to maintain required records, this provision reveals a plan administrator's ability to access such documents."

Low-Iacovino v. Benefit Plan Comm. of Nonbargained Program of AT&T Pension Benefit Plan, No. CV 16-6614-AB (GJSX), 2017 WL 6541772, at *5 (C.D. Cal. Dec. 20, 2017)

The Plan Administrator should know that it cannot shield itself from liability under ERISA by blaming any failures on the prior recordkeeper and refusing to investigate. As the case law demonstrates, this is not enough to satisfy their fiduciary duties under ERISA and will not exempt the Plan from liability in this case.

Conclusion

In this case, the Plan Administrator breached its fiduciary duties by failing to maintain adequate records to determine benefits payable under the Plan and by denying [redacted] claim for survivor benefits

without making a good faith effort to investigate the underlying facts and determine her rights under the law. The applicable case law demonstrates that under such circumstances the Plan remains liable to the surviving spouse and that the Plan cannot recover any benefits paid to the participant in error from the surviving spouse. Therefore, [redacted] respectfully requests that the Plan approve her eligibility for survivor benefits retroactive to the death of her spouse.

Best Regards,

/s/Chris McAllister
Staff Attorney, Western States Pension Assistance Project
Phone: (916) 551-2146
Fax: (916) 551-2197
Email: cmcallister@lsnc.net

Enclosures: Signed Release Authorization

LEGAL SERVICES
of
NORTHERN CALIFORNIA

PERMISSION TO RELEASE INFORMATION

NAME: [redacted]

ADDRESS:

DOB:

I give my permission to all entities to release any and all records pertaining to my late husband, Marchel Rhyne's employment or pension or retirement benefits to representatives of the Western States Pension Assistance Project (WSPAP). I authorize the WSPAP to ask questions and receive answers specific to me and Marchel Rhyne, seek records and documents pertaining to me and Marchel Rhyne, and to receive copies of records pertaining to me and Marchel Rhyne. Any claim or request made by any attorney or paralegal at WSPAP will be on my behalf and be treated as if made personally by me. This permission ends when WSPAP is finished assisting me. I understand that I may end my permission at any time in writing to the Western States Pension Assistance Project, Legal Services of Northern California, 501 12th Street, Sacramento, CA 95814. However, if I end my permission, information given out earlier based on this permission form remains disclosed and cannot be cancelled.

I have read/have had this read to me and had a chance to ask questions about anything that was not clear to me. I fully understand this form. I understand that I am entitled to receive a copy of this form.

A copy or facsimile of this form shall be as valid as the original.

SIGNATURE: [redacted] **DATE:** 4/15/19

Western States Pension
Assistance Project
501 12th Street
Sacramento, CA 95814
P: 866.413.4911
F: 916.551.2197
www.lsnc.net

Fidelity Service Center
P.O. Box 770003
Cincinnati, OH 45277-0070

Fidelity Service Center
1-800-416-2363
International Access
Dial AT&T Direct® Service Access Code,
then 800-416-2363
TDD Service for the Hearing Impaired
1-888-343-0860
Fidelity NetBenefits®
http://netbenefits.fidelity.com
Claims and Appeals
1-866-956-3126

Western States Pension Assistance Project
Legal Services of Northern California
C/O Attorney Chris McAllister
501 12th Street
Sacramento, CA 95814

September 22, 2020

Re: [redacted]

Dear Mr. McAllister,

We provide administrative services with respect to the Nonbargained Program of the AT&T Component Part of the AT&T/WarnerMedia Pension Benefit Plan ("the Plan"). Part of our responsibility to the Plan is to provide a review of all benefit claims. We are in receipt of your claim letter, dated August 19, 2019 (Attachment I), in which you requested a review of your client, [redacted] eligibility to receive a survivor pension benefit from the Plan as the surviving spouse of deceased Plan Participant, [redacted]

Our records indicate [redacted] was originally hired on February 25, 1957 by Pacific Bell Telephone and Telegraph Company, now known as Pacific Bell Telephone Company ("Pacific Bell") as a bargained employee eligible to participate in the Plan for Employees' Pensions, Disability Benefits and Death Benefits. On July 16, 1976, [redacted] transferred into a management position and during his Term of Employment (TOE), he became eligible to participate in the Pacific Telesis Group Pension Plan for Salaried Employees, now simply known as the Nonbargained Program, which is a component of the Plan. [redacted] remained employed with Pacific Bell until his termination of employment due to disability, which occurred on February 24, 1987.

As of [redacted] termination of employment from Pacific Bell, he had attained age 49 years and 11 months and had accumulated 30 years of service attributable to his TOE. Due to his attained age and TOE as of his February 24, 1987 termination of employment due to disability, [redacted] was deemed eligible for a Disability Pension benefit, as confirmed in Paragraph 4.1(c) titled "Disability Pension" of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) (Attachment II), which was the Plan restatement in effect as of [redacted] February 24, 1987 termination of employment and states the following:

> "c. Disability Pension
>
> Each employee whose term of employment has been fifteen or more years shall be a participant for the purposes of the disability pension provisions of the Plan,

provided that at least fifteen years of such term of employment has been completed as of the last day of the month in which the sixty-fifth birthday occurs. Any such participant who has become totally disabled as a result of sickness or of injury, other than by accidental injury arising out of and in the course of employment by a Participating Company shall upon leaving the service of such Participating Company by reason of such disability be granted a pension, which pension is designated a "disability pension"; provided that, if at the time of such cessation of service, the employee is qualified for a service pension under this Subparagraph (a) of this Paragraph 1, a service pension shall be granted instead of a disability pension…"

We have further reviewed and included Paragraph 4.1(a) titled "Service Pension" of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) within Attachment II, which outlines the Service Pension eligibility requirements. Based on the aforementioned Plan excerpts and [redacted] accumulated 30 years of TOE as of his termination of employment, he would have been eligible for a Service Pension in lieu of a Disability Pension.

To determine the methodology used to calculate [redacted] Service Pension benefit, we reviewed and included Section 4.2 of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) (Attachment II) in its entirety, to confirm the formulas applicable to [redacted] Service Pension benefit. We have determined that the "Final Five Formula," as detailed in Subparagraph 4.2(b)(1) within Section 4.2 (Attachment II), produced [redacted] highest overall accrued pension benefit from the Plan.

To determine the forms of payment to which [redacted] was eligible to commence his Service Pension benefit under the Plan, we reviewed Paragraph 4.3(a) of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) (Attachment II), which states the following:

"a. Joint and Survivor Annuity Option for Service Pensions

An employee who retires under the provisions of Paragraph 1(a) of this Section 4 shall during the election period, by written notice upon a form prescribed by the Committee, elect whether or not to have his service pension made payable in reduced amounts to him for life and in lesser amounts thereafter to a surviving annuitant for life. The election period shall start 90 days before the effective date of the pension and shall end on the effective date of the pension or, if later, 90 days after the date of mailing or personal delivery of a description of the joint and survivor annuity to the employee. The effective date of a pension shall be the first day following the last day of employment. The surviving annuitant may only be a spouse married to the employee on the effective date of the pension. The spouse shall be described in an affirmative election by name, date of birth, and address of residence. In the absence of any election during the election period if the employee had a spouse on the effective date of the pension, the joint and survivor annuity shall be deemed to have been elected. In the event a joint and survivor annuity is elected or deemed elected, the amount of service pension otherwise

payable under this Plan to the retired employee shall be reduced to ninety percentum (90%) of such amount. The amount to be paid the annuitant for as long as such annuitant survives such employee shall be computed as of the time of retirement of such employee as an amount equal to fifty percentum (50%) of the reduced service pension payable to the employee."

The aforementioned Plan excerpt states that when electing the payment option for his Service Pension benefit, a participant could make a qualified election to either receive the Joint and 50% Survivor Annuity, which would provide a reduced benefit to him and an amount equal to 50% of his reduced benefit to his spouse should he predecease her, or he may elect to receive a Single Life Annuity, which is an unreduced benefit, and does not provide any benefits to a surviving annuitant should the participant predecease his spouse. As further confirmed in the aforementioned text excerpt, in the event a married participant elects the Joint and 50% Survivor Annuity option, such surviving annuitant may only be the spouse who is married to the participant as of the effective date said benefit is commenced. Furthermore, the spouse shall be described in an affirmative election by name, date of birth and address of residence.

Our records confirm that following his termination of employment, [redacted] elected to receive his Service Pension benefit in the form of a monthly Single Life Annuity, in the amount of $1,227.83, effective as of a February 25, 1987 Pension Effective Date, which the Plan now refers to as a Benefit Commencement Date (BCD). We confirmed that following his termination of employment, and in accordance with his elections, the prior record keeper began issuing Mr. [redacted] monthly pension benefit of $1,227.83 as a Single Life Annuity form of payment. We have included the below table which depicts the methodology used to calculate [redacted] Single Life Annuity as of his February 24, 1987 termination of employment:

(i)	Final Five Total Pensionable Earnings	$169,355.00
(ii)	Average Annual Salary = (i) / 5 years	$33,871.00
(iii)	Pension Formula Multiplier	1.45%
(iv)	Term of Employment (Total Service)	30.0000
(v)	Annual Pension = (ii) x (iii) x (iv)	$14,733.89
(vi)	Final Single Life Annuity Amount = (v) / 12	$1,227.83

Our records indicate that [redacted] Single Life Annuity continued to be paid to him through October 1, 1989, when his Single Life Annuity of $1,227.83 increased by 4.44% to $1,282.35, due to the 1989 Special Increase. As a result, we have reviewed the appropriate Plan language, specifically Paragraph 4.2(j) of the Pacific Telesis Group Pension Plan for Salaried Employees (Amended and Restated as of January 1, 1989) (Attachment III), which states the following:

"j. 1989 Special Increase

(i) Effective October 1, 1989 and except as provided by in clause (ii) below, monthly service and disability pensions payable under the Plan to employees whose retirement date occurred before September 30, 1989, shall be increased. For those employees whose retirement date occurred after September 30, 1986 but before September 30, 1989, their service and disability pensions shall be increased by 1/36 of 5% for each

calendar month (or part thereof) from their retirement date to September 30, 1989…"

Based on the aforementioned Plan text, [redacted] 1989 Special Increase was determined as follows:

- 32 months (February 25, 1987 – September 30, 1989) / 36 months = 0.8889
- 0.8889 x 5.00% = 0.0444 (or 4.44%)
- $1,227.83 original Single Life Annuity x 1.0444 = $1,282.35 Single Life Annuity as of October 1, 1989

[redacted] continued to receive his Single Life Annuity associated with his TOE from Pacific Bell, in the amount of $1,282.35, until June 1, 1995 when his monthly benefit was subsequently increased by 3.0% to $1,320.82 as a result of the June 1, 1995 Ad Hoc Increase. We have additionally included Subparagraph 4.2(k), titled "1995 Ad Hoc Increase" of the Amendments to the Pacific Telesis Group Pension Plan for Salaried Employees (Attachment IV) for your records, to confirm [redacted] eligibility for a 3.0% pension increase, based on his February 25, 1987 Pension Effective Date.

On June 1, 2000, [redacted] monthly Single Life Annuity subsequently increased an additional 3.0%, from $1,320.82 to $1,360.44, due to the June 1, 2000 Ad Hoc Increase. We have included Supplement 9, titled "June 1, 2000 Ad Hoc Increase" of the SBC Pension Benefit Plan – Nonbargained Program (As Restated Through January 31, 2002) (Attachment V) for your records to confirm [redacted] eligibility for a 3.0% pension increase, based on his February 25, 1987 Pension Effective Date.

In April 2006, the Fidelity Service Center became the Plan Administrator for the Nonbargained Program participants and, upon conversion of data from the prior record keeper, an account was established for [redacted] which included his qualified elected form of payment and the indicative data as reflected by such prior record keeper. At that time, the Fidelity Service Center continued issuing [redacted] monthly Single Life Annuity payments of $1,360.44.

In May 2018, [redacted] contacted the Fidelity Service Center to request a pension verification letter. As a result, the Fidelity Service Center mailed the requested pension verification letter to [redacted] on June 4, 2018, which confirmed that he was receiving his monthly Nonbargained Program pension benefit of $1,360.44 in the form of a Single Life Annuity. This letter additionally confirmed that [redacted] commenced his pension benefit as of a February 25, 1987 BCD, and that his benefit would be payable for his lifetime only (Attachment VI).

On December 27, 2018, our records indicate that your client, [redacted] contacted the Fidelity Service Center to report [redacted] death, which occurred on December 19, 2018. As a result, the Fidelity Service Center reviewed [redacted] account to determine any applicable survivor benefits. Upon review of [redacted] account, it was determined that no survivor benefits were due, since [redacted] had elected to commence his pension benefit in the form of a Single Life Annuity, which was only payable through his lifetime. On January 8, 2019, the Fidelity Service Center mailed [redacted] a letter confirming that there were no survivor benefits due, since [redacted] had commenced his pension benefit in the form of a Single Life Annuity (Attachment VII).

Upon receipt of the January 8, 2019 letter confirming that no survivor benefits were due, Ms. [redacted] contacted the Fidelity Service Center and disputed her ineligibility for a survivor benefit

from the Plan and asserted that she was married to [redacted] and did not waive her right to a survivor annuity at the time [redacted] elected to commence his pension benefit. As a result, we reviewed [redacted] account and confirmed that his marital status under the Plan did not indicate that he was married and therefore reflected as single upon conversion of his records from the prior record keeper.

Within your claim, you requested that a survivor pension benefit be issued to your client, Ms. [redacted] as the surviving spouse of [redacted] since you stated she was not afforded the opportunity to waive her right to a survivor annuity at the time [redacted] elected to commence his pension benefit in 1987. As a result, we reviewed Paragraph 4.3(c), titled "Revoking Election, Restoring Pension, Spousal Consent" of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) (Attachment II), which goes on to state:

> "...Any election by a married participant not to receive a pension in the form of a joint and survivor annuity or any election to revoke a joint and survivor annuity under this Paragraph 3 shall not be effective unless the participant's spouse consents in writing. The consent shall acknowledge the effect of such election and shall be witnessed by a notary public. Spousal consent shall not be required if the participant establishes, to the satisfaction of the Committee, that consent cannot be obtained because there is no spouse or that the spouse cannot be located or for other reasons permitted by Section 205(c)(2)(B) of the Pension Act and applicable regulations."

As confirmed in the aforementioned Plan excerpt, in the event a married participant elects to waive the Joint and 50% Survivor Annuity option, his spouse must provide notarized consent; however, in the event that it is determined that the participant had no spouse at the time of pension commencement, or if the participant asserts he is unmarried, then no such consent will be required. Please note, the qualified election submitted by [redacted] to the prior recordkeeper in 1987, in which he elected a Single Life Annuity, was accepted by the prior recordkeeper.

Had [redacted] desired to provide a portion of his pension benefit to a surviving spouse in the event he predeceased her, he would have needed to indicate he was married at the time of his commencement. Paragraph 4.3(a) of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) (Attachment II), previously quoted above within this letter, states that if a participant made an election to commence his Service Pension benefit in the form of a Joint and Survivor Annuity, such reduction for the Joint and Survivor Annuity would be applied to the benefit. In [redacted] case, had he made a qualified election to commence his pension benefit in the form of a Joint and Survivor Annuity, he would have begun receiving his benefit in the amount of $1,105.05 effective as of his February 25, 1987 Pension Commencement Date, which would have been equal to 90% of his overall monthly accrued benefit of $1,227.83. We have included the below table which depicts the value of [redacted] pension benefit had he elected his pension in the form of a Joint and Survivor Annuity upon his February 24, 1987 termination of employment and continued to receive such reduced benefit through his date of death:

(i)	Unreduced Single Life Annuity as of February 25, 1987	$1,227.83
(ii)	Joint and Survivor Annuity Factor (90%)	0.90
(iii)	Joint and Survivor Annuity = (i) x (ii)	$1,105.05
(iv)	October 1, 1989 Special Increase = (iii) x 1.0444 (or 4.44%)	$1,154.11

(v)	June 1, 1995 Ad Hoc Increase = (iv) x 1.03 (or 3.0%)	$1,188.73
(vi)	June 1, 2000 Ad Hoc Increase = (v) x 1.03 (or 3.0%)	$1,224.39
(vii)	Joint and Survivor Annuity as of December 19, 2018	$1,224.39

We have confirmed that [redacted] was receiving $1,360.44 as of his date of death, which is equal to the value of his Service Pension benefit in the form of a Single Life Annuity in the original amount of $1,227.83, and inclusive of the applicable Ad-hoc increases for which he was eligible. As further evidence that [redacted] received his pension benefit associated with his TOE from Pacific Bell in the form of a Single Life Annuity, his pension benefit amount as of his February 24, 1987 termination of employment is additionally reflected on his Pensioner Master File document (Attachment VIII). This historical record reflects [redacted] Single Life Annuity pension benefit and employment data, and confirms a Computed Pension (abbreviated as "COMPUTED-PEN") of $1,227.83 as of his February 25, 1987 Pension Effective Date. The "ACT-PEN-AMT," which is an abbreviation of the phrase "Actual Pension Amount," reflects a value of $1,282.35, which was the Single Life Annuity amount he was receiving as of the date of such record, namely February 14, 1994, and after the October 1, 1989 Special Increase. Furthermore, had [redacted] elected a Joint and Survivor Annuity, your client's data, as his surviving spouse, would have been listed under the "Annuitant Info" section of the Pensioner Master File document, as confirmed from the spousal information described in an affirmative election of the Joint and Survivor Annuity, and outlined in Section 4.3(a) (Attachment II) quoted above within this letter.

As a result of your claim in which you requested that a survivor benefit become payable to your client at this juncture, following [redacted] receipt of a Single Life Annuity, we continued to review Paragraph 4.3(c) of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) (Attachment II), which confirms when a pension election can be revoked or changed as follows:

> "c. Revoking Election, Restoring Pension, Spousal Consent
>
> An election once made, whether affirmative or negative, may be revoked in writing at any time prior to the end of the election period; otherwise, except as herein provided, it shall be irrevocable. In the event of the death of a designated annuitant prior to the end of the election period, an election to receive a joint and survivor annuity shall be deemed to be revoked. In the event the annuitant predeceases a service or disability pensioner, his pension shall be restored to the full amount without reduction for this election starting with the pension payment for the month following the death of the annuitant."

The aforementioned Plan excerpt confirms that [redacted] would have been eligible to change his form of payment prior to the end of the election period preceding his elected February 25, 1987 BCD; therefore, his election for a Single Life Annuity was considered irrevocable, and, as such, his form of payment cannot be changed at this juncture to provide a survivor benefit to your client.

[redacted] qualified election was accepted in accordance with the provisions of the Plan quoted above within this letter. As a result, [redacted] initiated payment of his Service Pension benefit in the form of a Single Life Annuity, in the initial amount of $1,227.83 per month. After receiving the applicable ad-hoc increases to which he was entitled, [redacted] was receiving

$1,360.44 per month through his date of death on December 19, 2018. [redacted] would have needed to indicate and certify that he was married at the time of his commencement in order for your client to be eligible for a survivor pension benefit. In such case, as reflected in the text excerpts quoted above within this letter, your client's notarized spousal consent would have then been required and [redacted] ongoing monthly annuity payments would have been reduced in order to account for the cost of providing a survivor benefit. We have confirmed that [redacted] was receiving $1,360.44 as of his date of death, which is the value of his Single Life Annuity, and not reduced by a Joint and Survivor Annuity factor. Based on our records, there was no affirmation on file which indicated that [redacted] had a spouse at the time of his pension benefit commencement; therefore, spousal consent was not required and he was issued a monthly Single Life Annuity as of his BCD through the duration of his lifetime, in accordance with his qualified pension benefit election; therefore, no further pension benefits are due from the Plan following his death. Please note, while we are unable to obtain a copy of his actual pension benefit election forms, the historical documents on file support that [redacted] elected a Single Life Annuity as of his February 25, 1987 BCD.

We have further reviewed and included Paragraphs 4.3(g) and 4.3(h) of the Pacific Telesis Group Pension Plan for Salaried Employees (Effective January 1, 1985 with Amendments to and Including the Amendments Effective January 1, 1987) within Attachment II to determine whether your client would be eligible for a survivor benefit under the "Automatic Survivor Annuity" or "Other Survivor Annuities" provisions. We have determined that these provisions are not applicable to [redacted] or your client's situation, since [redacted] did not die as an active employee, nor did he die prior to commencement of his Service Pension benefit.

After careful review of your claim, we have determined that [redacted] received a Single Life Annuity benefit from his elected February 25, 1987 BCD through his December 19, 2018 date of death in accordance with his qualified election that he completed with the prior recordkeeper. [redacted] did not affirm that he was married at the time of his pension commencement; therefore, there are no further benefits due from the Plan as the result of his death. There are no provisions within the Plan to accommodate your request for your client to receive a survivor benefit; therefore, your claim is denied.

Please see the following page for the initiation form and identification information you will need to submit to the Fidelity Service Center should you wish to appeal our determination. Please submit the attached initiation form as the top page of your appeal.

FES_CLAIM_INIT
DB-ATT

You have the right to appeal this denial of your claim to the Benefit Plan Committee and, in connection with your appeal, to review pertinent documents. If you disagree with our decision and wish to have your claim reviewed by the Benefit Plan Committee, you or your authorized representative may submit a written request for review within 60 days of receipt of this letter to:

Benefits Plan Administrator
P.O. Box 770003
Cincinnati, OH 45277-1060

Please include the following information in your written request:

Reference Item: [redacted]

Employee Name: _____
Employee SSN: _____

And, if different than above,

Claimant Name: _____
Claimant SSN: _____

Please note that if you choose to submit an appeal, the Benefit Plan Committee will only determine whether the Plan was properly interpreted and administered. Because we submit all documentation on your account to AT&T during the appeal review process, you do not need to resubmit any prior correspondence you received from the Fidelity Service Center, your claim determination letter or the attached Plan text excerpts with your appeal.

If you elect to file an appeal, your appeal must be mailed to the Benefits Plan Administrator and postmarked by November 26, 2020. If we do not receive your appeal by December 1, 2020, you may not file an appeal for this claim at a later date. We will mail an appeal acknowledgement letter to your address on record within 3 days of receipt of your appeal. If you do not receive an appeal acknowledgement letter after 15 days, please contact the claims and appeals team in the Fidelity Service Center at 866-956-3126, weekdays from 9:00 a.m. to 5:00 p.m. EST. Because this is a legal process in which all correspondence must be handled in writing, the Fidelity Service Center will only be able to answer general questions surrounding the claims and appeals process on telephone calls and we will not be able to discuss the details regarding your specific case.

Sincerely,

Fidelity Service Center

2017 WL 6541772
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

Lorraine LOW-IACOVINO, Plaintiff,
v.
The BENEFIT PLAN COMMITTEE OF the NONBARGAINED PROGRAM OF the AT&T PENSION BENEFIT PLAN, Defendant.

Case No. CV 16-6614-AB (GJSx)
|
Signed 12/20/2017

Attorneys and Law Firms

Mark H. Boykin, Mark H. Boykin Law Offices, Woodland Hills, CA, for Plaintiff.

Stacey A. Campbell, Campbell Litigation PC, Denver, CO, Andrew Charles Pongracz, Seki Nishimura and Watase LLP, Los Angeles, CA, for Defendant.

FINDINGS OF FACTAND CONCLUSIONS OF LAW

HONORABLE ANDRÉ BIROTTE JR., UNITED STATES DISTRICT COURT JUDGE

***1** Plaintiff Lorraine Low-Iacovino ("Plaintiff") brings this action under the Employee Retirement Income Security Act ("ERISA") against The Benefit Plan Committee of the Nonbargained Program of the AT&T Pension Benefit Plan ("Defendant"). The case concerns Defendant's denial of Plaintiff's claim for survivor benefits and the waiver of benefits allegedly executed by Plaintiff and her husband, Randy Iacovino. This action came before the Court for trial on December 12, 2017. Mark H. Boykin appeared for Plaintiff. Stacey A. Campbell appeared for Defendant. After considering the evidence in the administrative record, the parties' trial and supplemental briefs, and the arguments of counsel, the Court now enters the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. Randy Iacovino ("Mr. Iacovino") worked for Pacific Bell Telephone and Telegraph Company for approximately 23.5 years, from June 17, 1968 to December 29, 1991. (AR 000110.)

2. Mr. Iacovino began his employment as a management employee eligible to participate in the Plan for Employees' Pensions, Disability Benefits and Death Benefits, which eventually became the Pacific Telesis Group Pension Plan for Salaried Employees, now known as the Nonbargained Program (the "Plan"), a component of the AT&T Plan. (AR 000110.)

3. The Plan administrator, AT&T Services, Inc., contracted with Fidelity Workplace Services LLC ("Fidelity") to provide certain services for the Plan, including determination of benefit eligibility and estimation of accrued benefits. (Dkt. No. 52-1, Declaration of Jeremy S. Siegel ("Siegel Decl.") ¶ 4.)

4. Under the Plan, employees are eligible to receive service pension benefits based on their age and years of service. (*See* AR 000195.)

5. In 1991, a Management Retirement Opportunity ("MRO") opened pension eligibility to participating employees, regardless of their years of service. Mr. Iacovino separated from Pacific Bell under this MRO, making him eligible to receive pension benefits under the Plan. [1] (*See* AR 000002.)

6. Based on the MRO Minimum Pension benefit formula, Mr. Iacovino was eligible under the Plan to receive a single life annuity ("SLA") pension benefit of $1,591.37 per month. (AR 0000002, 000320–321.)

7. Under the terms of the MRO, Mr. Iacovino was also entitled to a temporary 10% increase to his pension benefit through the time he reached age 62. (AR 000027.)

8. The Plan required an eligible retiring employee to elect whether to receive his pension as a Joint and Survivor annuity or a Single Life annuity. A Joint and Survivor annuity pays reduced amounts during the employee's lifetime and lesser amounts thereafter to a surviving spouse; a SLA pays the full amount of the benefit for the duration of the participant's life only. (AR 000103.)

***2** 9. The Plan states that, during the election period, an eligible retiring employee shall elect whether or not to have his pensions paid as a Joint and Survivor annuity. (AR 000103.) The electing employee must describe his spouse by name, date of birth, and address of residence. (*Id.*)

10. If no election is made during the election period, a Joint and Survivor annuity will be deemed elected. (AR 000103.)

11. Where a Joint and Survivor annuity is elected or deemed elected, the amount of the pension is reduced to ninety percent of the SLA amount. (AR 000103; AR 000211.)

12. The Plan states that any election by a married participant not to receive his pension in the form of a Joint and Survivor annuity or any attempt to revoke a Joint and Survivor annuity is not effective unless the participant's spouse consents in writing. (*See* AR 000212.)

13. Mr. Iacovino began receiving pension payments in the amount of $1,750.52 per month, effective December 29, 1991. (AR 000002.) This amount was consistent with the SLA monthly pension payment amount and also reflected the temporary 10% increase which was to be paid until Mr. Iacovino reached age 62. (*Id.*, AR000027.)

14.Mr. Iacovino continued receiving monthly pension payments of $1,750.52 until June 1, 1995, when his payments to $1,768.03 due to a 1% ad hoc increase. (AR 000002.)

15. Mr. Iacovino continued receiving monthly pension payments of $1,768.03 until June 1, 2000, when his payments increased to $1,803.38 due to a 2% ad hoc increase. (AR 000002.)

16. Mr. Iacovino continued receiving monthly pension payments of $1,803.38 until he died on December 11, 2014. (AR 000002.) Mr. Iacovino was 64 years old when he died. (*Id.*)

17. The temporary 10% increase to Mr. Iacovino's monthly pension payments should have ceased once Mr. Iacovino reached age 62. (AR 000002.) However, his payments were not properly adjusted and he continued to receive the enhanced amount until his death in December 2014. (*Id.*)

18. During the thirty-one months between Mr. Iacovino's 62nd birthday and his death, he was overpaid by $5,082.14 due to this error. (AR 000004–005.)

19. The Plan states:

> If any benefit is paid to a Participant, or as applicable Surviving Spouse ... in any amount that is greater than the amount payable under the terms of the Plan, the Plan will recover the excess benefit amount by eliminating or reducing the Participant's or as applicable Surviving Spouse's ... future benefit payments. If no further benefits are payable to the Participant or as applicable Surviving Spouse ... the Plan may employ such means as are available under applicable law to recover the excess benefit amount.

(AR 000098.)

20. Plaintiff is the surviving spouse of Mr. Iacovino. (AR 000019–021.)

21.On December 23, 2014, Fidelity notified Plaintiff that she was not eligible for survivor benefits under the Plan because Mr. Iacovino elected to receive his benefits in the form of a SLA. (AR 000036, 000039.)

22. Plaintiff subsequently asked Fidelity for documentation of Mr. Iacovino's pension benefit election forms and for documents showing Mr. Iacovino elected to receive his pension benefits in the form of a SLA. (AR 000045, 000019–020.)

23. Fidelity did not have Mr. Iacovino's records from the time of his retirement. (AR 000003.) When Fidelity assumed its administrative role for the Plan administrator, the Plan decided not to transfer historic records from the prior administrator for Plan participants who were then receiving pension benefits. (Siegel Decl. ¶ 6.)

***3** 24. Fidelity analyzed the Plan and the payment history of Mr. Iacovino's pension and determined, based on that information, that Mr. Iacovino had elected a SLA. Accordingly, Fidelity found that no survivor payments were due to Plaintiff under the terms of the Plan. (AR 000003; 000022.) In a February 10, 2015 letter, Fidelity advised Plaintiff that no surviving benefits were due to her under the Plan. (AR 000022.)

25. On March 13, 2015, Plaintiff made a claim for survivor benefits, arguing that she did not waive her right to such benefits. (AR 000019–020.)

26. Fidelity again analyzed the Plan terms and considered the payments received by Mr. Iacovino. (AR 000024–039.) Fidelity confirmed that the amount paid to Mr. Iacovino was consistent with the benefits due under a SLA. (AR 000025–030.) Fidelity also determined that Mr. Iacovino's monthly payments would have been approximately 10% lower had he elected a Joint and Survivor annuity.[2] (*Id.* at 000030.) Fidelity also considered Mr. Iacovino's Master File document—a computer printout of information related to Mr. Iacovino's pension benefits—and found that Plaintiff was not listed as a surviving spouse. (AR 000030; AR 000104[3].) For these reasons, Fidelity denied Plaintiff's claim. (AR 000024–032.)

27. On June 4, 2015, Plaintiff appealed Fidelity's denial of her claim. (AR 000033–035.) In her appeal Plaintiff again disputed having waived her right to a joint and survivor benefit and requested to have the $5,082.14 overpayment waived. (*Id.*)

28. The Benefit Plan Committee considers appeals of benefit denial decisions under the Plan. (AR 000149.)

29. On September 25, 2015, the Benefit Plan Committee affirmed Fidelity's denial of Plaintiff's claim. (AR 000106–113.) The Benefit Plan Committee considered the applicable pension formulas and determined that Mr. Iacovino received his pension benefit as a SLA for the entire period in which he received benefits. (AR 000113.)

30. Plaintiff filed the instant action on September 1, 2016. (Dkt. No. 1.)

II. CONCLUSIONS OF LAW

1. Jurisdiction and Venue

This action involves a claim for survivor benefits under an employee pension benefit plan that is subject to ERISA. Accordingly, the Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e). Venue in the United States District Court for the Central District of California is appropriate under 29 U.S.C. § 1132(e)(2) because the acts that gave rise to this lawsuit took place in this district, and Plaintiff and counterdefendant is domiciled in this district.

2. Standard of Review

Plaintiff seeks recovery of benefits under 29 U.S.C. § 1132(a)(1)(B), an award of equitable relief "absolving her from liability for overpayment" to Mr. Iacovino, and attorneys' fees. (Dkt. No. 1 ("Compl.") at 6.) A claim of denial of benefits in an ERISA case "is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 629 (9th Cir. 2009). If the plan confers such discretion, then the denial is reviewed for an abuse of discretion. *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105, 110–11 (2008). The Court is unpersuaded by Plaintiff's brief argument that a de novo standard applies in this case. Here, the Plan delegates discretion and authority to decide benefit claims to the Plan Administrator, AT&T Services, which in turn delegates its powers to Fidelity and the Benefit Plan Committee. (AR 000152; Siegel Decl. ¶ 4.)

***4** Under an abuse of discretion review, the dispositive issue is whether the denial of benefits was reasonable. *Firestone*, 489 U.S. at 111; *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 675 (9th Cir. 2011). A plan administrator's decision was unreasonable if it "was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts of the record." *Salomaa*, 642 F.3d at 676. If the Court is "left with a definite and firm conviction that [such] a mistake has been committed," it must find that the plan administrator abused its discretion. *Id.* at 676 (quoting *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009)).

3. Discussion

At the center of the dispute is a purported waiver of Joint and Survivor annuity pension benefits pursuant to ERISA. In order for a married participant to waive the joint and survivor

annuity form of benefit, he must obtain his spouse's consent in a signed and notarized writing. 29 U.S.C. § 1055(c)(2). Defendant contends that Plaintiff and her husband must have waived the joint and survivor annuity option because Mr. Iacovino was ultimately paid the SLA benefit amount. In other words, the Plan would not have paid Mr. Iacovino SLA benefits if he had not submitted a proper waiver form. Further, Defendant argues that Plaintiff's name would have appeared under the surviving spouses section of Mr. Iacovino's master file if he had elected a Joint and Survivor annuity; since Plaintiff's name is not there, Mr. Iacovino must not have elected the Joint and Survivor option. Plaintiff argues that she never signed a waiver, and that it was an abuse of discretion for the Plan to deny her claim without proof of a valid waiver.

Despite its research, the Court was unable to uncover a case with similar facts, i.e., a case where the alleged waiver form was not available. Typically, the waiver form is produced to support the Plan's denial of a claim, and the plaintiff challenges the waiver form as failing to comply with § 1055(c)(2). "Under ERISA, waiver of the qualified joint and survivor annuity, the standard form of payment from a defined benefit plan to a participant before death, is invalid unless it satisfies the rigorous rules in § 1055(c)." *Rice v. Rochester Laborers' Annuity Fund*, 888 F. Supp. 494, 498 (W.D.N.Y. 1995) (quoting *Lester v. Reagan Equip. Co. Profit Sharing Plan & Empl. Savings Plan*, No. 91-2946, 1992 WL 211611, at *5 (E.D. La. Aug. 19, 1992)). Accordingly, ERISA's waiver requirements call for strict compliance. *Neidich v. Estate of Neidich*, 222 F. Supp. 2d 357, 366 (S.D.N.Y. 2002); *see also* *McMillan v. Parrott*, 913 F.2d 310 (6th Cir. 1990).

In *Hagwood v. Newton*, 282 F.3d 485 (4th Cir. 2002), the court explained the necessity for strict construction of an alleged spousal waiver as follows:

> The spousal rights conferred by § 1055(a) were intended to "ensure a stream of income to surviving spouses," *Boggs*, 520 U.S. at 843, 117 S. Ct. 1754, 138 L.Ed. 2d 45, and the formalities required in § 1055(c) are included *to protect against the risks of a spouse's unwitting waiver of those rights*, *Lasche v. George W. Lasche Basic Profit Sharing Plan*, 111 F.3d 863, 867 (11th Cir. 1997) (noting that formalities are necessary "to ensure a valid waiver of a spouse's retirement plan [and] are consistent with the legislative policy of protecting spousal rights"). ERISA's formalities must, therefore, be strictly enforced. In *Lasche*, for example, the court held that a waiver was invalid under § 1055 simply because the signatures had not been witnessed by a notary as required by that section.
>
> ***5** *Hagwood*, 282 F.3d at 290 (emphasis added).

Here, the Court is unable to determine whether a waiver form exists at all, let alone whether it strictly complied with the rules in § 1055(c)(2). Defendant asserts that it was never in possession of the form, and "has no way to access historical pension records for Mr. Iacovino or even to determine if such records still exist." First, the Court is unpersuaded by this argument. With respect to an employer's recordkeeping obligations, ERISA requires employers "maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees." 29 U.S.C § 1059(a)(1). This provision further states that an "employer shall furnish to the plan administrator the information necessary" for the administrator to make certain reports concerning employee benefits. *Id.* Based on these requirements, Plaintiff's waiver likely exists in AT&T's records, and Fidelity could have at least requested it in order to help determine Plaintiff's benefits under the plan. Although Plaintiff is not suing under § 1059 for failure to maintain required records, this provision reveals a plan administrator's ability to access such documents.

Instead, it appears Fidelity made absolutely no attempt to retrieve Plaintiff's waiver form. At a minimum, Fidelity could have called AT&T Services to inquire into the situation, and could have discovered whether the form existed and how they could gain access to it. Other courts have held that similar conduct was inconsistent with a plan administrator's fiduciary duties. In *Lombardo*, the plaintiff submitted a claim for benefits, which was denied by the plan committee. The plaintiff argued that her signature had been forged by her husband, but the committee denied her claim without inquiring into the validity of the consent form. The court there stated that "[o]nce the Committee was notified of a claimed forgery, they had a duty to at least inquire as to the validity of the notarized spouse consent form. A plan administrator cannot ignore obvious warning signs that suggest an obligation to inquire." The Court continued that "[u]nder the circumstances, they may not have been able to determine anything further concerning the signature on

the spouse consent form. On the other hand, they might have uncovered information explaining the circumstances surrounding Mr. Lombardo's change of beneficiary or they may have been able to substantiate or disprove Mrs. Lombardo's claim that her signature had been forged. Instead, however, it appears from the record before the court on these motions for summary judgment that they chose to do nothing." 1997 WL 289669, at * 6. *See also* *Lester v. Reagan Equip. Co. Profit Sharing Plan & Emp. Sav. Plan*, No. 91–2946, 1992 WL 211611, at * 6–7 (E.D. La. Aug. 19, 1992) (finding an administrator abused its discretion when it "simply accepted, without further questioning or investigation, Mr. Lester's unverified statement that his wife could not be located").

***6** Like the committee in *Lombardo*, Fidelity did nothing when put on notice of Plaintiff's allegation that she did not sign—and her husband would not have signed—a waiver form. Instead, they merely relied on a history of payments made to Mr. Iacovino at the SLA rate, without any verification that the payments were issued based on a valid Joint and Survivor annuity waiver. Fidelity presented no evidence with respect to how such waivers are processed and inputted, and it does not appear that Fidelity or the Plan Committee considered these methods when making their determinations. Based on the information in the record, it is just as likely that an error was made when inputting Mr. Iacovino's information as it is that the Iacovino's elected to waive Joint and Survivor annuity.

Further, the Court is unpersuaded by Defendant's argument that Mr. Iacovino must have elected a SLA because Plaintiff's name does not appear on his master file. The default option for the Plan is a Joint and Survivor Annuity; thus, if a married participant makes no selection during the election period, he is automatically enrolled in a Joint and Survivor Annuity. It is not clear from the record that any spouse information would have been provided if a participant made no election. Thus, the Court cannot find that Mr. Iacovino affirmatively elected to receive his benefits in the form of a SLA simply because Plaintiff's name does not appear in his master file. Although the Court is troubled by this situation, it finds that Fidelity did not act prudently when it denied Plaintiff's claim. Fidelity owed Plaintiff a fiduciary duty to act according to her interest, *see* 29 U.S.C. § 1104 (a plan administrator must discharge his duties "solely in the interest of the participants and beneficiaries"); when she claimed that no waiver was executed, Fidelity should have, at a minimum, made a phone call to AT&T regarding Mr. Iacovino's historical records. Even if ultimately they were unable to recover the records, they could have gained information regarding the intake process to help support their arguments that they would not have paid a SLA rate without a valid waiver. Given the highest of fiduciary duties that were owed to Plaintiff, the Court holds that Fidelity and the Plan Committee had a duty to at least inquire. Accordingly, the Court finds that Defendant abused its discretion in denying Plaintiff's claim. *See also* *Gunderson v. W.R. Grace & Co. Long Term Disability Income Plan*, 874 F.2d 496, 499 (8th Cir. 1989) ("A decisionmaker can abuse its discretion if it fails to obtain necessary information, without which an administrator lacks substantial evidence to support his or her decision."); *Ritzer v. National Org. of Indus. Trade Unions Ins. Trust Fund Hosp. Medical Surgical Health Benefit*, 807 F. Supp. 257, 262 (E.D.N.Y. 1992) ("An administrator also can abuse his or her discretion where the administrator's decision to deny benefits is based on little or no probative evidence establishing a fact central to the decision.").

4. SLA Overpayment Offset

ERISA contains a limited safe harbor provision for plan administrators who comply with the statutory requirements. The statute provides that the plan will be discharged from liability "to the extent of payments made pursuant to the Act," if the plan administrator determines that the statutory requirements have been met and if the plan administrator acts in accordance with his fiduciary obligations. 29 U.S.C. § 1055(c)(6).

In *Lombardo*, the court authorized an offset where the plan administrator relied on a facially valid waiver when it authorized SLA payments. 1997 WL 289669, at *4. There, the court held there was an issue of fact as to whether the waiver was forged or had a notarization defect. However, because the alleged defects were not obvious from the face of the document, the court held that the plan administrator was entitled to offset overpayments made to the plaintiff under section 1055(c)(6). *Id.* at *4, *7. Therefore, the plan would only be liable to the plaintiff "if its debt to her exceeds its overpayments to her late husband." *Id.* at *7; *see also* *Hearn v. Western Conference of Teamsters Pension Tr. Fund*, 68 F.3d 301, 304 (9th Cir. 1995) ("Mr. Hearn received a total of $3,096 in benefits over the course of nine months. Had he

selected the joint and survivor annuity, he would have gotten only $1,399.50. The difference—$1,696.50—is the amount by which the Plan is discharged from liability. Had Mr. Hearn not waived the joint and survivor annuity, Mrs. Hearn would have been entitled to receive $78 per month beginning in October of 1991 (one month after Mr. Hearn died). The Trust Fund wasn't obligated to make payments to Mrs. Hearn until it offset the $1,696.50 it overpaid Mr. Hearn. Thus, the Trust Fund was entitled to withhold benefits from Mrs. Hearn for a period of approximately 22 months, until July of 1993. It was obligated to pay her $78 per month thereafter."); *Blessing v. Deere & Co.*, 985 F. Supp. 886, 893–94 (S.D. Iowa 1997) (holding a pension plan is discharged from liability to a surviving spouse only to the extent it made payments under the plan to the deceased spouse; the plan remains liable to the surviving spouse to the extent its debt to the surviving spouse exceeds its overpayments to the deceased).

***7** Again, this case presents the Court with another difficult decision. It is unclear whether plan administrator relied on a facially valid waiver in authorizing Mr. Iacovino to receive SLA pension payments. Defendant argues that it would not have paid the higher SLA amount without a valid waiver; but again, this is a conclusory and unsupported contention. Given ERISA's clear goal of protecting surviving spouses, the Court is uncomfortable accepting this bare assertion where there is no proof of compliance with section 1055. On the other hand, the Court recognizes that this could result in a windfall for Plaintiff, who may have signed a waiver after all, yet gets to reap the benefit of Fidelity's lack of effort to produce the document. However, the Court found above that Fidelity did not act in accordance with its fiduciary duties to Plaintiff, and should have attempted to locate the alleged waiver. Therefore, because Fidelity did not act in accordance with its fiduciary obligations, the Court finds the Plan is not entitled to offset the overpayments made to Mr. Iacovino. Fidelity was in the best position to avoid this outcome—a small amount of effort on its part could have shown it was entitled to an offset.

5. Temporary 10% Enhancement Overpayment

As noted in the Findings of Fact, the Plan overpaid Mr. Iacovino by $5,082.14 when it erroneously continued to pay him at an increased rate after his 62nd birthday. (AR 000004–005.) Based on the Plan's terms, the Plan is entitled to recover such overpayments:

> If any benefit is paid to a Participant, or as applicable Surviving Spouse ... in any amount that is greater than the amount payable under the terms of the Plan, the Plan will recover the excess benefit amount by eliminating or reducing the Participant's or as applicable Surviving Spouse's ... future benefit payments. If no further benefits are payable to the Participant or as applicable Surviving Spouse ... the Plan may employ such means as are available under applicable law to recover the excess benefit amount.

(AR 000098.) Accordingly, the Court finds the Plan shall recover $5,082.14. Defendant is entitled to withhold Plaintiff's survivor payments until it recovers this amount.

III. CONCLUSION

Based on the foregoing analysis, the Court finds that Defendant abused its discretion when it denied Plaintiff's claim. The Court also finds that Defendant is not entitled to offset the $47,064.21 it overpaid Mr. Iacovino during his lifetime, but is entitled to recover the $5,082.14 it overpaid Mr. Iacovino based on the failure to terminate his 10% increase after he reached age 62.

The Court reserves ruling on Plaintiff's request for attorneys' fees to allow Defendant an opportunity to present argument on that issue. Defendant shall submit any briefing on the issue within twenty-one (21) days of the issuance of this order.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2017 WL 6541772

Footnotes

1 Mr. Iacovino otherwise would not have been pension-eligible at this time. As of December 1991, Mr. Iacovino was forty-one years and seven months old, and had a twenty-three year and seven month term of employment. However, since he terminated his employment under the MRO, he became eligible for an enhanced MRO Minimum Pension. (AR 000002.)

2 Based on the Plan's terms, Mr. Iacovino received approximately $47,064.21 more than he would have received had he been paid at the Joint and Survivor rate. (Siegel Decl. ¶ 8.)

3 This document purports to be the computer printout of Mr. Iacovino's Master File; however, the Court is unable to verify the contents of the document due to the poor quality of the scan. (*See* AR 000104.)

PBGC/Benefits Admin & Payment Dept
P.O. Box 151750
Alexandria VA 22315-1750

404
June 01, 2016

PBGC Case Number: 21761400
Plan Name: FBOP CORPORATION PENSION PLAN

[redacted]

Dear [redacted]

We have finished our review of the plan and your benefit, and we have determined that you are entitled to a monthly payment of $366.07. This amount is based on your benefit starting on 08/01/2020 in the form of a Ten Year Certain and Continuous Annuity. The Ten Year Certain and Continuous Annuity provides you with a monthly benefit for the rest of your life. If you should die before having received 120 monthly payments, your beneficiary or estate will continue to receive your monthly benefit until a total of 120 monthly payments have been made. When you are ready to retire, we will send you information about other benefit forms available.

The enclosed Benefit Statement explains how we calculated your benefit and shows the date(s) you are eligible to retire. If you choose to retire after 08/01/2020, your monthly benefit will be increased.

This is PBGC's formal determination of your benefit. You have the right to appeal this determination if you provide a specific reason why the determination is wrong. Your appeal must be in writing and filed within 45 days of the date of this letter. If you simply have a question about how your benefit was calculated, you should call us for an explanation, instead of filing an appeal. But please note that the time you have to file an appeal will not be extended unless you specifically request an extension within the 45-day period. The enclosed pamphlet, *Your Right to Appeal*, explains more about filing an appeal.

Please call our Customer Contact Center at **1 (800) 400-7242** about four months before you are ready to begin receiving benefits. We will send you an application. Call anytime if you have any questions or need assistance. If you use a TTY/ASCII, call **1 (800) 877-8339**, and give the relay operator our telephone number. You may also write to:

PBGC/Benefits Admin & Payment Dept
P.O. Box 151750
Alexandria VA 22315-1750

PBGC
Protecting America's Pensions

Privacy Act Data

[redacted]

Benefit Determination Statement

FBOP CORPORATION PENSION PLAN

PBGC Case Number: 21761400
Date of Plan Termination (DOPT): April 21, 2011

Please verify the following information. If you find discrepancies, contact PBGC at 1-800-400-7242.

YOUR BENEFIT SUMMARY

Participant's Information

Name:	[redacted]
Social Security Number:	
Gender:	Male
Date of Birth:	[redacted]
Date of Hire:	
Date of Termination of Employment:	
Sub-Plan:	People's Bank of California (PBOC) Pension Plan

Summary of Participant's Benefit

You may begin receiving your monthly benefit on 08/01/2020. Your monthly benefit shown below is payable as a 10-Year Certain-and-Continuous Annuity. Other forms of benefit are available to you.

Normal Retirement Date (NRD):	08/01/2020
Monthly Benefit at NRD:	$366.07

Your benefit has not been affected by any PBGC limitations.

Pension Benefit Guaranty Corporation
P.O.Box 151750
Alexandria VA 22315-1750

Account Information
Customer ID: 6507888
Case Number: 21761400
Plan Name: FBOP CORPORATION PENSION PLAN

530M
August 18, 2021

[redacted]

Dear [redacted]

Thank you for contacting the Pension Benefit Guaranty Corporation (PBGC). The material you requested is enclosed.

If you have any questions, please call us at **1 (800) 400-7242**, Monday through Friday, 8:00 a.m. – 7:00 p.m. ET. If you use a TTY/ASCII, call **1 (800) 877-8339**, and ask the relay operator to call our telephone number. Or, you may write to us at the address on the letter. Please include your customer ID number: **6507888**, PBGC case number: **21761400**, and a daytime telephone number.

Please keep this letter in your records for future reference.

Sincerely,

PBGC Customer Service Representative
Office of Benefits Administration

Enclosure(s):

Privacy Act Notice
Copy Of BDL

Carpenters Southwest Administrative Corporation

ADMINISTRATIVE OFFICE: 533 S Fremont Ave • Los Angeles, CA 90071-1706 • Tel: (213) 386-8590 • Toll Free (800) 293-1370

www.carpenterssw.org

January 4, 2018

[redacted]

SUBJECT: SOUTHWEST CARPENTERS HEALTH AND WELFARE PLAN
Notice of Denial for Long Term Disability Claims---Participant [redacted]

Dear [redacted]

The Trustees of the Southwest Carpenters Health and Welfare Plan regret to inform you that your request for a Long Term Disability Benefit, received on October 23, 2017, has been denied. Per the Southwest Carpenters Health and Welfare Plan, restated as of January 1, 2015, you do not meet the requirements at the time of your application for benefits.

Article VI, Section 1(c) – Special Definition of Eligible Individual for Long Term Monthly Disability Benefit Purposes.

For the purpose of eligibility for the long term monthly disability benefit set forth in this Section 2, "Eligible Individual" means an individual:

(1) Who has accumulated at least 5 Pension Credits under the Southwest Carpenters Pension Plan without a Permanent Break in Service;
(2) Who has, under the Southwest Carpenters Pension Plan, 500 hours worked in Covered Employment since his Contribution Date and who has, under the Southwest Carpenters Pension Plan,
  (a) completed at least 350 Hours Worked in Covered Employment within the 12-month period immediately preceding the date of Total Disability; or
  (b) completed sufficient Hours Worked in Covered Employment to earn at least three-twelfths of Future Service Credit in each of three Calendar Years in the five consecutive Calendar Year period ended immediately prior to the Calendar Year in which he became Totally Disabled,
(3) Who has not worked in Non-Covered Employment after November 1, 1992, or who returned to Covered Employment after working in Non-Covered Employment and worked in such Covered Employment for at least as long as the period of Non-Covered Employment, and
(4) Except as provided in paragraphs (2) and (3) of subsection (e) of this Section 1, who has not established an Annuity Starting Date for a Pension under the Southwest Carpenters Pension Plan.

Records indicate you accrued 8.157 Pension Credits and 7.300 Vesting Credits and failed to meet the above mentioned requirements; therefore, are not eligible for a Long Term Disability Benefit.

However, you are eligible for a Normal Benefit at age 65, please contact the Trust at that time.

You may appeal this decision by filing an appeal within 60 days from the date that you received this letter or 180 days in the case of a claim for disability benefits. The appeal must be in writing, either on the form used by the Pension Plan or in a letter to the Trustees. You may use an attorney or other individual to represent you, but this must be authorized in writing as part of your request to appeal. We have enclosed a copy of the Plan's Appeal Procedures and Request for Appeal Form.

You are entitled to receive reasonable access to and receive copies of all documentation, records, and other information relevant to your claim, upon request, and free of charge. You also have the right to bring a civil action under ERISA Section 502(a) not later than the first anniversary of the date of an adverse benefit determination on review of your claim.

If you have any questions, please contact the Administrative Office at (213) 386-8590.

Sincerely,

Marlane Washington
Pension Department

Enclosures: Article VI, Section 1(c), Pension History, Appeals Procedures, & Request for Appeal Form

Carpenters Southwest Administrative Corporation

ADMINISTRATIVE OFFICE: 533 S Fremont Ave • Los Angeles, CA 90071-1706 • Tel: (213) 386-8590 • Toll Free (800) 293-1370

www.carpenterssw.org

APPEAL PROCEDURES

Disability Claims

Claimant's Appeal

You may file a written appeal of a denied claim with the Trustees within 180 days after receiving notice that this claim has been denied. You may authorize a representative to act on your behalf for this purpose. An authorization to use a representative must be provided to the Trustees on a written form provided by the Fund Office.

Claimant's Rights on Appeal

If you file a timely written appeal, you may:

i. submit additional materials, including any comments, statements or documents; and

ii. review all relevant information (free of charge) upon reasonable request to the Trustees. A document, record or other information is relevant if:

a. it was relied upon by the Plan in making the decision;

b. it was submitted, considered or generated (regardless of whether it was relied upon); or

c. it demonstrates compliance with the claims processing requirements.

iii. have the right to be advised of the identity of any medical experts

Full and Fair Review on Appeal

The Trustees' review shall consider all comments, documents, records and other information submitted or considered in the initial determination. The review must consider all comments and records submitted by the participant. The appeal cannot defer to the initial claim determination. If the determination is based on medical necessity or appropriateness, the Board of Trustees (or appeals committee) must consult a medical professional who is not the same individual who consulted on the initial review of the claim or a subordinate of that individual.

Time Limits on Appeal

Within 45 days after the submission of the written appeal, the Trustees shall render a determination on the appeal of the claim in a written statement. If special circumstances require a delay in the decision, the Trustees shall notify you of the reasons for the delay within the 45-day period. A delayed decision shall be issued no later than 75 days after the date the Trustees receive a request for review. The Plan shall notify you on the decision within five days of the date the decision is made.

Alternatively, the Trustees may also render the decision at the next quarterly meeting. If a request for appeal is received within 30 days of a quarterly meeting, then the decision may be rendered at the subsequent quarterly meeting.

Binding Nature of Decision

The determination rendered by the Trustees shall be binding upon all parties.

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Award

Office of Central Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241-1500
Date: October 1, 2017
Claim Number: [redacted] -

[redacted]

*0504S6WVG000086*NOTAFP.X3.PBMCSSPA.PC7.R170927.PAM

000000100

0026010635609

You are entitled to monthly disability benefits beginning July 2016.

However, we cannot pay you for July 2016 through June 2017.

The Date You Became Disabled

We found that you became disabled under our rules on June 24, 2012.

By law, we can pay benefits no earlier than 12 months before the month of filing. Since you filed for benefits on July 3, 2017, monthly payments will begin July 2016.

What We Will Pay And When

We pay Social Security benefits for a given month in the next month. For example, Social Security benefits for March are paid in April.

- You will receive $6,114.00 around October 2, 2017.
- This is the money you are due for July 2017 through September 2017.
- Your next payment of $2,038.00, which is for October 2017, will be received on or about the fourth Wednesday of November 2017.
- After that you will receive $2,038.00 on or about the fourth Wednesday of each month.
- These and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.
- The day of the month you receive your payments depends on your date of birth.

C

See Next Page

Others Who May Be Eligible For Benefits

Your children may now be eligible for benefits on your record. You named the following children when you applied for benefits:

[redacted]

If you have not filed an application for benefits for the children, please contact us.

Your Benefits

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive(s) may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums. We must also round down to the nearest dollar.

Beginning Date		Benefit Amount	Reason
July	2016	$2,032.00	Entitlement began
December	2016	$2,038.00	Cost-of-living adjustment

Other Social Security Benefits

This benefit is the only benefit you can receive from us at this time. In the future, if you think you might qualify for another benefit from us, you will need to apply again.

Your Responsibilities

We based our decision on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "What You Need To Know When You Get Social Security Disability Benefits." It tells you what you must report and how to report. Please be sure to read the parts of the pamphlet that tell you what to do if you go to work or your health improves.

A vocational rehabilitation or employment services provider may contact you to help you in going to work. The provider may be from a State agency or work under contract with Social Security.

If you go to work, we have special rules that let us continue your cash payments and health care coverage. To learn more about how work and earnings affect disability benefits, visit our website at www.socialsecurity.gov/work/. You may also call or visit any Social Security office to ask for the following publications:

TEXAS LEGAL SERVICES CENTER

TLSC
1920 E. Riverside Drive
Suite A-120, #501
Austin, TX 78741

www.tlsc.org

2021 National Training Conference
U.S. Administration on Aging – Administration for Community Living
Pension Counseling and Information Program
Case Sharing, Wednesday, October 27th
South Central Pension Rights Project

SSDI & FERS Disability Offset Overpayment Case
SCPRP represented Annuitant on an SSDI & FERS disability offset overpayment case in a Merit Systems Protection Board (MSPB) appeal of an Office of Personnel Management (OPM) reconsideration decision that Annuitant was overpaid $86k+. On 01/28/2021, the OPM Agency Representative appeared at the MSPB hearing in Washington D.C. and the SCPRP Attorney and Annuitant appeared remotely from different locations in Texas. At the MSPB hearing, the overpayment was agreed and established at $86,984.08 and settlement was reached for payments of $100/month for 869 months, over 72 years, with a final payment of $84.08, and no interest on overpayments. The MSPB appeal was dismissed with prejudice. Annuitant would be over 132 years old if he is still alive when he pays off the overpayment. Note: The MSPB hearing in Washington DC was originally set for 01/26/2021. At that hearing, the OPM Agency Representative told the MSPB ALJ that the OPM building was closed on January 6 and OPM Workers could not get back into the OPM building until that day, 01/26/2021, so she was not able to prepare or proceed. The MSPB hearing was reset to 01/28/2021.

Lost ERISA Pension Plan
Participant, age 72, discovered he had participated in two non-union single employer pension plans when he worked for a company in the 1980s and 1990s. An original pension plan was terminated then a reestablished pension plan was adopted. The calculations for the pension from the reestablished plan are in part dependent on the calculations for the pension from the original plan. The original plan purchased an annuity from a life insurance company, which made a lump sum payment with interest retroactive to Participant's normal retirement age of 65 and commenced paying a monthly annuity going forward. However, when Participant requested information about a pension from the reestablished plan (Plan), it responded that Participant did not show up on the Actuary's reports as being owed a benefit from the Plan and that he must have taken a lump sum.

SCPRP made a request for information and plan documents that built on Participant's previous request. The Plan was only able to provide a partial response but found Participant's benefit. SCPRP advised Participant to apply for the pension. The Plan made a lump sum payment of nearly $40k with interest (7.5%) retroactive to Participant's normal retirement age of 65 and commenced paying a monthly annuity of $232.13 going forward. The Plan did not provide a written determination on the claim per the SPD: "If your claim is denied, you will receive a written statement explaining why the claim was denied and making specific reference to the section or sections of the Plan which are relevant to the claim. The Committee will also provide a written explanation of how the claim denial may be appealed." There was no "adverse benefit determination" as defined in 29 C.F.R. 2560.503-1(m)(4). SCPRP resumed pursuit of information from the Plan after the claim was granted.

River Authority Local Government Pension Plan Overpayment Case

Beneficiary received 100% of Husband's/Participant's 5-year certain monthly pension check from a River Authority Pension Plan (Plan) via a facilities Medicaid QDRO rendered in an uncontested suit for support in TX District Court. About one month after Participant died, which was long after 5 years of monthly payments, Beneficiary mailed a copy of the Death Certificate to the Plan. Beneficiary received a letter from the Plan the next month that said: "Your pension is your pension, now and in the future."

The Plan paid the monthly benefit of $1300+ for 6 years and one month after Participant died. The total overpayment with interest was $107k+ and the interest rate was high. Immediately after a new Third-Party Administrator took over in 2021, the overpayment was discovered, and the monthly benefit stopped. The overpayment letter to Beneficiary alleged 73 monthly overpayments, including 37 monthly payments from before the 36-month statute of limitations. The TX 36-month statute of limitations "does not apply to an overpayment a reasonable person should know the person is not entitled to receive."

In preparation for the Complaint Procedure, the SCPRP Attorney obtained an older version of a Plan Document from the Texas Pension Review Board, which regulates the Plan, by calling their toll-free number and requesting the Representative please email a PDF, which she did that same day. Then two rounds of TX Public Information Act requests were made using the form on the TX Attorney General website and filing it on the Plan's website. One of the changes to the TX Public Information Act (the "PIA") as a result of the 2019 Texas Legislative Session is the creation of section 552.235 of the Government Code, which requires the Office of the Attorney General to create a public information request form for use by Texas governmental bodies (Public Information Request Form). The responses from the PIA requests did not include a copy of the Death Certificate that Beneficiary had sent, any information about pension plan best practices implemented by the Plan that may have helped avoid the overpayments, or any evidence that Beneficiary, as a reasonable person, should have known she was not entitled to receive the 73 monthly overpayments.

Beneficiary's administrative Complaint alleged gross negligence for 6+ years of overpayments, EPCRS doesn't necessarily require recovery, the 36-month statute of limitations applies, financial devastation to Beneficiary, and somebody other than Beneficiary should restore the overpayments to trust. The Plan decided not to pursue recoupment of the overpayment.

Compiled by Roger Curme, Regional Director and Managing Attorney of SCPRP.

MAPRP
Mid-America Pension Rights Project
www.mid-americapensions.org | 866.735.7737

Lansing Office
3815 W. St. Joseph
Suite C-200
Lansing, MI 48917
866.735.7737 | www.mid-americapensions.org

July 8, 2021

Bank of America
Corporate Benefits Committee
NC1-021-07-07
401 N. Tyron Street
Charlotte, NC 28255
ATTENTION: Legal Counsel

SENT BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Surviving Spouse
RE:
SSN:
DOB: 2/22/1953

Participant
RE:
SSN:
DOB: 6/16/1948
DOD: 8/9/2015

File Number W065517-18FEB21

Dear Counselor,

I am writing to you because on 5/13/2021 I sent an inquiry letter to your office and Soundra Simpson, Vice President of Life Event Services, regarding an alleged overpayment made to my client, XXX. On 7/6/2021 I received an email from Ms. Simpson indicating that she did not have information regarding my client's case. As of this date, I have not received a response from your office.

As stated in my 5/13/2021 inquiry letter, Mr. XXX's wife passed away in 2015 and was collecting a monthly pension benefit up until her death. Mrs. XXX had elected a 100% Joint and Survivor Benefit in the amount of $408.06 which was to be paid to Mr. XXX.

elm
Elder Law of Michigan, Inc.

Lansing Office
3815 W. St. Joseph
Suite C-200
Lansing, MI 48917

Detroit Office
7310 Woodward
Suite 415
Detroit, MI 48202

Sault Ste. Marie Office
511 Ashmun St.
Suite 200
Sault Ste. Marie, MI 49783

866.400.9164 | www.elderlawofmi.org

On 3/25/2021, Bank of America sent Mr. XXX a letter alleging that there was an overpayment of $27,340.02 for the period of September 2015 through February 2021 because payments should have ceased after the death of his wife, XXX. A copy of the letter is provided for your convenience.

Mr. XXX received a check from Bank of America Pension Plan, dated 6/18/2021, in the amount of $28,564.20. Mr. XXX has not cashed this check because he believes it is in error.

Mr. XXX's surviving spouse benefits stopped in March 2021. On 7/1/2021, Mr. XXX received a payment of $408.06 for July's payment. He has not received his surviving spouse benefit for the months of April, May, and June 2021 totaling $1,224.18 ($408.06 x 3).

Mr. XXX would like to resolve the issues of the alleged overpayment of $27,340.02 and the recent payment of $28,564.20. At this time, Mr. XXX is owed $1,224.18 for April, May, and June 2021 surviving spouse payments. Please advise us how to proceed in this matter and whether Mr. XXX should return the check for $28,564.20.

PLEASE NOTE: THIS IS NOT A CLAIM FOR BENEFITS.

If you prefer to send the information directly to Mr. XXX, I have provided his contact information below for your convenience:

XXX
ADDRESS

PLEASE RESPOND IN WRITING ONLY.

Thank you for your prompt assistance in this matter. If you have any questions, please contact me directly at (517) 853-7188 or csteinmetz@elderlawofmi.org.

Sincerely,

Christine Steinmetz
Attorney

Enclosure:
Authorization for Release of Information
Bank of America Letter, dated 3/25/2021
Inquiry Letter, dated 5/13/2021

Second Notice of Overpayment

Bank of America Employee
Retirement Benefits Service Center
800-457-5700

May 06, 2021

[redacted]

RE: File Number W065517-18FEB21

Dear Estate of [redacted]:

Please accept our condolences for your loss. Our records show that The Estate of [redacted] has received an overpayment of benefits from the Bank of America Pension Plan - LaSalle in the amount of $27,340.02, for the period of September 2015 through February 2021. The overpayment occurred because payments should have ceased after [redacted] death.

The Plan is a tax-qualified defined benefit retirement plan under the Internal Revenue Code. To maintain the Plan's tax-qualified status, the Plan Sponsor must ensure that all covered employees, retirees, and beneficiaries receive only the benefits to which they are entitled under the Plan. **To date, we have not received a response to our request for repayment.**

In the event of an overpayment, the Plan is required to recover the gross amount of the overpayment totaling $27,340.02. Please repay this amount in one lump sum by June 06, 2021.

To return the overpayment to the plan, please send check or money order for the above amount payable to FIIOC, FBO Bank of America Pension Plan - LaSalle. Please complete the enclosed *Repayment Form* and put reference number W065517-18FEB21 on the check, with a note stating this is a return of a Plan overpayment. The check and repayment form should be returned to the Bank of America Employee Retirement Benefits Service Center in the enclosed envelope.

Please note: If you do not remit payment or contact the Benefit Service center to make a reasonable attempt to repay the amount owed, further action may be taken (including your account potentially being turned over to a professional collection agency).

Please note that the overpayment amount is not eligible for favorable tax treatment accorded to distributions from qualified plans, and is *not* eligible for rollover to another employer-sponsored retirement plan or IRA. Therefore, if you rolled over the original annuity payments, you should contact your new plan sponsor or IRA custodian immediately to arrange to have the overpayment returned to the Plan. Your new plan sponsor or IRA custodian can follow the instructions in the preceding sentence in order to return