

UPDATE – AUGUST 22, 2010

The litigation is ongoing. We have continued our work on the two remaining claims of the case, which as you will recall from our last update, were the following:

1. The SBA Offset Claim, which is the claim that the Defendants violated ERISA’s “anti-cutback” rule by amending the plan to increase the interest rate used to project a portion of Secured Benefit Account (“SBA”) balances to age 65 for purposes of calculating the SBA offset for participants who terminated their employment or retired before age 65, and
2. The Social Security Offset Claim, which is the claim that the Defendants violated ERISA’s “anti-cutback” rule by applying a Social Security offset to benefits attributable to years of service worked prior to the adoption of the offset.

As you also know and as we previously advised, on March 16, 2010, the Court granted in part our motion to compel documents that Defendants withheld based on the claim that the documents were privileged. The Court ordered Defendants to disclose the documents that were produced for the plan administrator’s consideration, or reviewed by the plan administrator in connection with the administrative decisions that were issued by the plan administrator before the lawsuit commenced. That ruling can be found on the Garrett Action website (www.garrettaction.com). On April 12, 2010, Defendants produced a new privilege log and pursuant to the Court’s order, Defendants also produced thousands of additional pages of documents to us. Following that production, we successfully challenged the continued claim by Defendants that they did not have to produce some of the documents, which were related to settlement discussions that took place during the administrative claim process. The Court then required Defendants to produce additional documents listed on Defendants’ privilege log. We also successfully challenged Defendants’ claim that we were not entitled to ask Defendants’ witnesses about an amendment that was made to the SBA offset in the year 2000 and the Court ordered that we could inquire about this amendment.

As we previously advised, the Court ordered that all fact discovery must be completed by May 31, 2010. Between April 12, 2010 and May 31, 2010, the parties conducted at least 24 depositions at various locations around the country. Following the close of fact discovery on May 31, 2010, the parties have engaged in expert discovery. We engaged our original actuary to provide an additional expert report. The Defendants had three expert witnesses. We then engaged two more actuarial expert witnesses, who, along with our original expert, provided rebuttal expert reports. We have now deposed all of Defendants’ expert witnesses and the last expert deposition will take place on August 24, 2010 in Philadelphia.

Following expert discovery, both parties must file final disclosures listing witnesses and exhibits to be used at trial by September 17, 2010 and both parties may file motions seeking to have the Court rule on the Remaining Claims on or before September 21, 2010. The parties will then file responses to the opposing motions and thereafter file reply briefs in support of their original motions. We expect the briefing process to be concluded in November. The Court may then schedule oral argument on the motions or may decide the motions without oral argument.

We cannot estimate when the Court will issue a ruling.