

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CRAIG A. COVIC, MARK J. ABBOTT,
ROBERT A. WATT, GARY J. FRIESEN,
MICHAEL H. MCKENNA, and
GEOFFREY B. COE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

V.

FEDEX CORPORATION, THE FEDEX CORPORATION EMPLOYEES' PENSION PLAN, THE RETIREMENT PLAN INVESTMENT BOARD OF FEDEX CORPORATION, and JOHN/JANE DOES 1-10,

Defendants.

Case No. 2:23-cv-02593-JPM-atc

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED COMPLAINT

Before the Court is Defendants’ Motion to Dismiss Plaintiffs’ Consolidated Complaint. (ECF No. 46.) Plaintiffs’ claims under the Employee Retirements Income Security Act (“ERISA” or “the Act”) appear to hinge on the meaning of “actuarial equivalent” under § 1505 of the Act. (See ECF No. 50 at PageID 727, 743); 29 U.S.C. §§ 1055(d)(1)(B), (d)(2)(A)(ii) (imposing the “actuarial equivalent” requirement for a qualifying joint and survivor annuity and a qualifying optional survivor annuity, respectively). Plaintiffs allege that there is a reasonableness requirement for actuarial equivalence implicit in the statutory language and incorporated through federal regulations and industry customs. (ECF No. 50 at PageID 738–39.) Defendants counter that no such requirement exists given the statutory text and Congress’s

express inclusion of reasonableness requirements elsewhere in the Act. (ECF No. 46-1 at PageID 363–65.) For the reasons discussed below, Defendants’ Motion is **GRANTED**.

I. BACKGROUND

The issue at hand is the calculation of joint and survivor benefits under the Retirement Plan (“the Plan”) sponsored and executed by Defendants. (See ECF No. 33 at PageID 183–86.) In addition to single life annuities (“SLAs”), the Plan offers joint and survivor annuities (“JSAs”), or annuities for “the participant’s life with a contingent annuity payable to the participant’s beneficiary (usually a spouse) for the life of the beneficiary.” (ECF No. 33 at PageID 166.) Regardless of the selected percentage, the monthly amount payable on a JSA will be less than that on an SLA due to the calculated possibility that the participant will predecease the beneficiary, who will continue to receive benefits. (*Id.*) However, ERISA § 205(d), codified at 29 U.S.C. § 1055(d), requires that qualifying JSAs (“QJSAs”) be the “actuarial equivalent of the participant’s SLA.” (*Id.*) “Actuarial equivalence is determined by applying a ‘conversion factor,’ which is the number generated by the combination of mortality and interest rate assumptions.” (ECF No. 54 at PageID 777.) The Plan uses the UP-1984 mortality table (“UP-84”), based on data from the 1970s, in calculating most of the named Plaintiffs’ benefits.¹ (ECF No. 33 at PageID 167–68.)

Plaintiffs are pilots who worked for Defendant FedEx Corporation and participated in the Plan. (ECF No. 33 at PageID 165, 169–70.) Plaintiffs filed their Consolidated Complaint

¹ The Plan also uses the 1971 Group Annuity Mortality Table (“1971 GAM”), based on data from the 1960s, for one named Plaintiff, Robert Watt. (ECF No. 33 at PageID 168-69.) The UP-84 is thus the primary mortality table at issue and was the only one covered in Plaintiffs’ Opposition to this Motion. (See ECF No. 50.)

on November 6, 2023. (ECF No. 33.) Plaintiffs submitted two claims for relief alleging Defendants' mortality methodology constitutes: (i) a violation of ERISA's mandate for actuarial equivalence between the Plan's QJSAs and the SLA ("Claim I"); and (ii) a breach of Defendants' fiduciary duty under ERISA ("Claim II"). (ECF No. 33 at PageID 195–99.)

Defendants filed the present Motion to Dismiss on December 21, 2023. (ECF No. 46.) Plaintiffs filed their Memorandum in Opposition to the Motion ("Opposition") on January 23, 2024, and Defendants filed their Reply in Support on February 13, 2024. (ECF Nos. 50, 51).

II. PARTIES' ARGUMENTS

Plaintiffs allege that Defendants failed to provide actuarial equivalent retirement benefits to its pilots in violation of § 1055. (See ECF No. 33 at PageID 193–94.) Plaintiffs allege that Defendants' use of mortality tables based on fifty- and sixty-year-old data in calculating the pilots' QJSAs under the Plan was unreasonable because the chosen tables did not reflect modern mortality data. (See ECF No. 33 at PageID 183–86.) Defendants' use of these tables thus allegedly violated ERISA's requirement of actual equivalence between QJSAs and SLAs offered under the Plan by "material[ly] reducing the monthly benefits that [Plaintiffs] receive[d] in comparison to the monthly benefits they would receive if Defendants used factors based on updated, reasonable actuarial assumptions." (ECF No. 33 at PageID 193–94.)

On the other hand, Defendants argue that the Plan follows ERISA's mandates regarding QJSAs because the Act does not require reasonable or other specific assumptions for actuarial equivalence under § 1055(d). (See ECF No. 46-1 at PageID 363–64.) Defendants point to other areas of the Act, including within § 1055, which require a reasonableness factor or specific mortality tables and actuarial assumptions. (Id. at PageID 364–65, 367.) Defendants assert that

the lack of additional requirements beyond actuarial equivalence under § 1055(d) means the Plan's use of the UP-84 and 1971 GAM are not in violation of ERISA. (See id. at PageID 362.) Accordingly, Defendants allege that Plaintiffs fail to state a claim for relief under the law, thus requiring the dismissal of the case at hand. (See id. at PageID 369.)

III. LEGAL STANDARD

Under the Federal Rule of Civil Procedure 12(b)(6), a plaintiff must allege enough facts to state a claim to relief under the law that is “plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept the complaint's factual allegations as true. See id. at 555–56. However, the Court should not accept “legal conclusions” or “[t]hreadbare recitals of the elements of a cause of action.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). If the Court's context-specific review of the plaintiff's factual allegations does not permit the Court to “infer more than the mere possibility of misconduct,” the plaintiff has failed to show that they are entitled to relief. Id. at 679 (citing Fed. R. Civ. P. 8(a)(2)).

In a Rule 12(b)(6) motion, courts can only consider the complaint, the attached exhibits, and any “items appearing in the record . . . and exhibits attached to [the] defendant's motion to dismiss so long as they are referred to in the [c]omplaint and are central to the claims contained therein.” Reichert v. Bakery, Confectionary, Tobacco Workers & Grain Millers Pension Comm., No. 2:23-cv-12343, 2024 U.S. Dist. LEXIS 113803, at *3 (E.D. Mich. Apr. 17, 2024) (quoting Bassett v. Nat'l Collegiate Athletic Ass'n, 528 F.3d 426, 430 (6th Cir. 2008)).

IV. ANALYSIS

While courts in other circuits have tackled some of the questions central to Plaintiffs' claims, see Herndon v. Huntington Ingalls Indus., Inc., No. 4:19-CV-52, 2020 WL 3053465, *2 (E.D. Va. Feb. 20, 2020) (district court case in the Fourth Circuit holding that actuarial equivalence requires "'reasonable' data") (collecting cases), there do not appear to be cases within this circuit directly addressing such questions. See Reichert, 2024 U.S. Dist. LEXIS 113803 (district court case within the Sixth Circuit cited in the reviewable record regarding the instant issue). Accordingly, there is no apparent Sixth Circuit precedent compelling a particular outcome as to this Motion. The Court, however, finds persuasive the arguments proffered by Defendants and the Eastern District of Michigan in Reichert regarding the plain reading of the Act and so dismisses both of Plaintiffs' claims.

a. Claim I – Failure to Use “Reasonable” Assumptions for QJSAs

Plaintiffs argue that ERISA requires that Defendants use mortality tables based on reasonable assumptions to meet the actuarial equivalence requirement of § 1055(d). (ECF No. 33 at PageID 193–94.) They point to Department of Treasury regulations; out-of-circuit case law, see, e.g., Urlaub v. CITGO Petroleum Corp., No. 21 C 4133, 2022 WL 523129 (N.D. Ill. Feb. 22, 2022) (Seventh Circuit); and their interpretation of the plain meaning of the Act. (ECF Nos. 33, 50.)

ERISA is a carefully crafted legislative scheme governing retirement pensions. See Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 510 (1981). Congress listed the metrics and definitions that retirement pension plans should use for calculating benefits, including designating which regulation or Secretary would define such. For example, § 1055(g) specifies

the applicable mortality tables that plans must utilize when calculating lump sum benefits. See 29 U.S.C. § 1055(g)(3)(B) (“a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under [§ 1083(h)(3)(A)]”). Under established doctrines of statutory interpretation, courts should generally find that the omission of specific language that Congress uses elsewhere in a statute was intentional. See Russello v. United States, 464 U.S. 16, 23 (1983) (“Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (citation omitted); Stalley ex rel. United States v. Methodist Healthcare, 2006 WL 8452338, at *3 (W.D. Tenn. Dec. 22, 2006) (McCalla, J.) (applying the same principle in interpreting the False Claims Act).

Section 1055(d), which governs the issue at hand, requires that QJSAs be the “actuarial equivalent” of the offered SLA. Section 1055(d), however, does not require a specific set of assumptions, reasonable or not, for actuarial equivalence for QJSAs. Other sections of ERISA do require the use of certain assumptions and/or reasonableness criteria. See 29 U.S.C. § 1055(g)(3)(B); 29 U.S.C. § 1393(a)(1) (requiring that withdrawal liability be calculated using “actuarial assumptions and methods which, in the aggregate are reasonable”); 29 U.S.C. § 1085 (requiring that plan funding rely on “reasonable” “actuarial assumptions and methods”). If Congress intended to include a reasonableness requirement for § 1055(d), it could have—but it did not. See Russello, 464 U.S. at 23; Stalley, 2006 WL 8452338, at *3; see also Whitman v. Am. Trucking Ass’n, 531 U.S. 457, 468 (2001) (Congress “does not alter the fundamental details ... in vague terms of ancillary provisions.”). Furthermore, courts disagree as to whether calculating actuarial equivalence requires the use of reasonable assumptions. See Adams v.

U.S. Bancorp, 635 F. Supp. 3d 742, 749–50 (D. Minn. 2022) (summarizing recent conflicting court rulings on the meaning of “actuarial equivalence” under § 1054(c)(3) regarding accrued benefits); see also Stephens v. U.S. Airways Grp., Inc., 644 F.3d 437, 440 (D.C. Cir. 2011) (providing the established meaning of “actuarial equivalent” as when the present values of two benefits payments “are equal under a *given* set of assumptions”) (emphasis added).

Plaintiffs argue that authority beyond the statutory text incorporate the reasonable assumptions requirement into the actuarial equivalence requirement under § 1055. Plaintiffs state that actuarial equivalence is a “term of art” defined elsewhere which this Court must follow. (ECF No. 50 at PageID 737.) In support of that definition, Plaintiffs point to certain professional Actuarial Standards of Practice (“ASOPs”), on which ERISA’s regulations allegedly rely, as mandating reasonable actuarial assumptions. (Id. at PageID 738.) However, the cited ASOPs only use the suggestive “should” rather than the mandatory “shall” present in other parts of ERISA and § 1055. (See id.); see also, e.g., § 1055(a) (dictating “[r]equired contents for applicable plans” with multiple “shall” statements). Moreover, Plaintiffs cite certain regulations as mandating reasonable assumptions in actuarial equivalence calculations, (see ECF No. 50 at PageID 738 & n.9); however, none is enforceable or applicable to § 1055(d) and, consequently, its actuarial equivalence requirement. See Belknap v. Partners Healthcare Sys., Inc., 588 F.Supp.3d 161, 171–73 (D. Mass 2022) (finding that §§ 401 and 417 of the Code of Federal Regulations are unenforceable under ERISA and § 411 applies to lump sum benefits, not annuities). Accordingly, there is no extra-statutory reasonableness requirement for Defendants to follow when determining the QJSAs. Thus, the Plan’s mortality methodology does not violate ERISA or give rise to an actionable claim against Defendants.

Defendants raise other arguments regarding Plaintiffs' failure to state a claim which provides a basis for this Court to grant relief as to Claim I. First, Defendants claim that some of the Plaintiffs are not covered by § 1055(d) based on their selected 100% QJSAs. (ECF No. 46-1 at PageID 16.) Defendants also assert that the relationship between the Plan and the collective bargaining agreement ("CBA") demonstrates that the challenged QJSAs at issue and the underlying assumptions were the subject of collective bargaining. (*Id.* at PageID 22–23.) Plaintiffs correctly state that parties cannot simply contract around the mandates of ERISA. (ECF No. 50 at PageID 730–31); see also *Esden v. Bank of Boston*, 229 F.3d 154, 172–73 (2d Cir. 2000). While ERISA creates a floor for bargaining, there is no sign that the Plan argued in accordance with and incorporated into the CBA did not meet or exceed that floor since there was no explicit or otherwise applicable reasonableness requirement for the mortality assumptions. (See ECF No. 51 at PageID 753.) Regardless, since this Court can decide this Motion on the grounds discussed above, no determination of these additional arguments is necessary here.

The meaning of actuarial equivalence is a matter of law, not fact. It is a key element of Plaintiffs' claim against Defendants for a violation of ERISA. (See ECF No. 33.) Plaintiffs concede that the contested benefits were calculated in accordance with the Plan's terms. (ECF No. 46-1 at PageID 23.) Plaintiffs have failed to allege facts that Defendants' use of the UP-84 under the Plan's terms violated the actuarial equivalence requirement of § 1055(d) for the reasons discussed above. Thus, this Court **GRANTS** Defendants' Motion to Dismiss as to Claim I.

b. Claim II – Breach of Fiduciary Duty

Plaintiffs' claim for breach of fiduciary duty is dependent on the alleged violation of ERISA. See Reichert, 2024 U.S. Dist. LEXIS 113803, at *6–7. Regardless of whether Defendants are fiduciaries under ERISA,² there was no breach of fiduciary duty by Defendants' mortality methodology since, as established above, such methodology did not violate ERISA. Since there is no violation, Plaintiffs have failed to state a claim upon which this Court can grant relief under Claim II. Accordingly, the Defendants' Motion to Dismiss as related to Claim II is **GRANTED**.

V. CONCLUSION

For the reasons stated above, Plaintiffs failed to state a claim upon which this Court can grant relief. Moreover, Plaintiffs' argument in their Response in Opposition requesting leave to amend their complaint is insufficient as a Motion for Leave to Amend. (ECF No. 50 at PageID 746); see LR 15.1 (listing the required filings and format for a motion to amend). Accordingly, Defendants' Motion to Dismiss is **GRANTED** and Plaintiffs' Motion for Leave to Amend is **DENIED**. This case is **DISMISSED** with prejudice.

SO ORDERED, this 18th day of September, 2024.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE

² Defendants argue that they are not fiduciaries, and therefore do not owe fiduciary duties to Plaintiffs in the administration of the Plan. (ECF No. 46-1 at PageID 23–24.)