

# 1st Circ. Eyes Revival Of Welch's Execs' Pension Fight

By **Kellie Mejdrich**

Law360 (October 8, 2024, 4:15 PM EDT) -- The First Circuit appeared receptive Tuesday to former Welch's executives who are seeking to revive a suit claiming they were shortchanged by a supplemental retirement plan, with two judges pointing out conflict-of-interest disputes on appeal that the lower court left unaddressed.

A three-judge panel heard arguments in the appeal from retired executives of the Welch Foods Inc. cooperative, who seek to overturn a Massachusetts federal court's summary judgment ruling in favor of Welch's from October 2023. Executives first sued in 2020, alleging they were shorted \$29 million in benefits from the Welch Foods Inc. A Cooperative and National Grape Cooperative Association Inc. Pension Plan for Non-Union Employees.

Executives alleged Welch's violated the Employee Retirement Income Security Act when it lowered retirees' pension obligations by \$29 million by selecting a lower interest rate to use when determining the lifetime value of their benefits. Retirees alleged the 9.5% rate, which had been used since the plan's inception in 1997, shouldn't have been lowered to 4% in 2019 because the benefits were supposed to be guaranteed semiannually for the life of a retiree and their spouse.

Judges on the panel quickly focused on whether the lower court should have addressed whether the decision to change the interest rate, which directly affected the level of benefits that retirees or their spouses received under the plan, was infected by a conflict of interest.

"Our case Denmark couldn't be any clearer, that it has to be considered — the conflict has to be considered, assuming there is a conflict. Why wouldn't we at least remand, at least on that issue, for the district court to address it?" asked U.S. Circuit Judge Jeffrey R. Howard in an exchange with the attorney for Welch's, Nipun J. Patel.

Judge Howard was referring to the First Circuit's decision in 2009 in *Denmark v. Liberty Life Assurance Co. of Boston*, which reversed a summary judgment win for an insurance company in an ERISA dispute over disability benefits in order for a district court to more thoroughly address conflict-of-interest disputes.

A complicating factor in the Welch's executives' lawsuit is that so-called "top hat" retirement benefit plans can involve questions of both ERISA and contract law and varying standards of review for a plan administrator's decisions. Welch's retirees pointed out in their appellate briefing that the First Circuit in its 2015 decision in *Niebauer v. Crane & Co.* declined to choose whether top-hat plan administrators' decisions are subject to de novo or arbitrary and capricious standard of review, deciding instead that contract terms determined the standard in each case, which the panel discussed during proceedings Tuesday.

In his reply to Judge Howard's specific question about the conflict dispute during argument proceedings, Patel replied that the issue didn't matter because executives didn't argue the issue before the district court, and that the record also reflected that conflict didn't influence the pension committee's decision. Moreover, the court was being asked to decide whether a denial of benefits was proper, he said.

But as Patel delivered his answer, Judge Howard interrupted.

"Taking into account any structural conflict, and the district court didn't address that," the judge said.

Patel said that to prevail, the retirees would have to prove not only a structural conflict but also an actual conflict, which they couldn't prove. U.S. Circuit Judge Kermit V. Lipez then interrupted him and noted the dollar value attached to the conflict-of-interest allegations.

"So why was there all this attention to the \$29 million that the company's going to save because of this reduction in the interest rate?" Judge Lipez said. "That seemed to be a big deal."

Earlier during proceedings, Judge Lipez had asked the retirees' attorney to explain how arguments about the conflict-of-interest issue affected which standard review the district court was supposed to apply when reviewing their claims.

Their attorney, Stephen Rosenberg, told the panel that Welch's had "29 million reasons not to decide in favor of the plaintiffs and the participants, just as was the case." He also argued that the Welch's plan documents supported de novo review of the retirees' claim by the district court, not the more deferential standard of review based on whether an administrator's decision was arbitrary or capricious that the court had applied.

Even while two judges appeared more focused on the conflict-of-interest dispute, Judge Gustavo A. Gelpí appeared skeptical of the retirees' overall claim that they were owed benefits subject to a specific interest rate.

"I don't see anything in the contract or the agreement that says it has to be 9.5," Judge Gelpí said.

Counsel for the retirees declined to comment. Counsel for Welch's and a Welch's spokesperson didn't immediately respond to a request for comment Tuesday.

U.S. Circuit Judges Gustavo A. Gelpí, Kermit V. Lipez and Jeffrey R. Howard sat on the panel for the First Circuit.

The retired executives are represented by Stephen D. Rosenberg and Jordan D. Mamorsky of the Wagner Law Group PC.

Welch's is represented by Michael T. Maroney and Nipun J. Patel of Holland & Knight LLP.

The case is Vivian Tseng et al. v. Welch Foods Inc. a Cooperative et al., case number 23-1945, in the U.S. Court of Appeals for the First Circuit.

--Editing by Amy Rowe.