ORAL ARGUMENT SEPTEMBER 10, 2013
No. 12-5274

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THOMAS G. DAVIS, *et al.*,
Plaintiffs - Appellants
v.
PENSION BENEFIT GUARANTY CORPORATION,
Defendant - Appellee

On Appeal from the U.S. District Court for the District of Columbia
No. 1:08-cv-01064 (Frederick J. Scullin, Jr., J.)

APPELLEE PENSION BENEFIT GUARANTY CORPORATION'S RESPONSE TO SUPPLEMENTAL BRIEF OF APPELLANTS (IN RESPONSE TO COURT'S ORDER OF SEPTEMBER 10, 2013)

PUBLIC COPY – SEALED MATERIAL DELETED

Office of the General Counsel
JUDITH R. STARR
General Counsel
PHILIP R. HERTZ
Deputy General Counsel
KENNETH J. COOPER
Assistant General Counsel
KIMBERLY J. DUPLECHAIN
GREG C. MATISOFF
Attorneys

Office of the Chief Counsel
ISRAEL GOLDOWITZ
Chief Counsel
CHARLES L. FINKE
Deputy Chief Counsel
JAMES J. ARMBRUSTER
PAULA J. CONNELLY
JOSEPH M. KRETTEK
GARTH D. WILSON
Assistant Chief Counsels

September 30, 2013

PENSION BENEFIT GUARANTY CORPORATION
1200 K Street, N.W.
Washington, D.C. 20005-4026
Telephone: (202) 326-4020 ext. 3068
Facsimile: (202) 326-4112
Counsel for Defendant-Appellee PBGC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited

United States Code Cited

Other Authorities Cited

Summary of Argument

At oral argument, the Court asked the Pilots to file a supplemental brief addressing their standing to assert in Claim 8 that PBGC should have paid a 50% supplement to disabled pilots who had participated in the Prior Plan. The Pilots have failed to meet their burden of showing that any Pilot has standing to raise that claim. They make only a conclusory assertion that four named pilots would receive greater benefits if the Court ruled in their favor. They provide no calculations or other evidence to prove that that is so. Because PBGC determined that the PC3 benefits of all four pilots were already at the maximum level payable from a qualified pension plan under section 415(b) of the Internal Revenue Code, the pilots cannot receive increased benefits solely from a ruling in their favor on Claim 8.

The Pilots acknowledge the 415(b) problem, but assert that the named pilots would get more benefits from a favorable ruling on Claim 8 because PBGC incorrectly used a 415(b) limit that was too low, as they argued on Claim 2, and this Court should order PBGC to use a higher limit. But, again, they provide no calculations or other evidence to prove that their benefits would actually increase even if they should prevail on Claim 2. And, for the reasons set forth in PBGC's principal brief, the district court's decision, and this Court's earlier denial of a preliminary injunction, the Pilots should not prevail on Claim 2.

Argument

I. The Pilots have not met their burden to prove standing.

The Pilots, as the party invoking federal jurisdiction, bear the burden of establishing all the elements of standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *accord Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009). At the summary judgment stage (as here), "the plaintiff can no longer rest on . . . 'mere allegations,' but must set forth by affidavit or other evidence 'specific facts,' Fed. Rule Civ. Proc. 56(e) . . . ." *Defenders of Wildlife*, 504 U.S. at 561 (quoting *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 115 n.31 (1979)).

A. The named pilots cannot receive increased benefits solely from a favorable ruling on Claim 8, because their PC3 benefits are already at the 415(b) maximum.

The Pilots have failed to meet their burden. In their latest supplemental brief, they conclusorily assert that four named pilots were injured by PBGC's determination on this claim and that their injuries would be redressed by a ruling in their favor on Claim 8. Pilots' Supp. Brief at 2-3 (Sept. 19, 2013). But the Pilots provide no evidence that any of these Pilots would actually receive increased benefits from a favorable ruling.

In fact, as the Pilots appear to concede, none of them would receive increased benefits based solely on a favorable decision on the disability portion of

Claim 8, due to the limitation on benefits payable from a qualified pension plan in 26 U.S.C. § 415(b). PBGC determined that all four named pilots – [redacted], [redacted], [redacted], and [redacted] – were already receiving PC3 benefits at the highest level permitted under section 415(b).

We proceed through the list of pilots in alphabetical order. Mr. [redacted], who retired after the Plan terminated, received his entire benefit in the form of an annuity. His PC3 benefit was $[redacted], which was "the maximum that was permitted under IRC § 415(b) if Mr. [redacted] had retired on April 1, 2000." *See* Attachment A (Enclosure 13 to Appeals Board's Disability Decision of Sept. 11, 2008).[1]

The other three pilots all retired more than three years before the Plan terminated. Each received 75 percent of his total US Airways benefit as a lump sum (more than $[redacted] each), with the remaining 25 percent paid as an annuity. PBGC determined that only a small portion of the remainder annuities

[1] The administrative record of the Appeals Board's Disability Decision of September 11, 2008, contained confidential personal and financial information about many of the Pilots. PBGC produced the full disability administrative record ("DAR") to the Pilots' counsel, with the portions containing personal information labeled "Sealed DAR__." Counsel for both parties agreed that neither side was likely to cite certain confidential portions in presenting its case and that, should it become necessary to do so, the parties would move that those portions be filed under seal. *See* Dkt. # 74, PBGC's Cross-Mot. for Summ. J. at 13 n.44. In accordance with that agreement and to protect the privacy of the individual pilots, PBGC has attached the relevant pages of the Sealed DAR to this brief (Attachments A-D) and has moved to file the brief under seal.

were in PC3, due to the combined effect of the large lump sums and the 415(b) limit of $135,000 that applied three years before the Plan's March 31, 2003 termination date:

- Mr. [redacted] had a PC3 benefit of $[redacted], the maximum he could receive under section 415(b). *See* Attachment B (Enclosure 17 to Appeals Board's Disability Decision of Sept. 11, 2008).

- Mr. [redacted] had a PC3 benefit of $[redacted], the maximum he could receive under section 415(b). *See* Attachment C (Enclosure 21 to Appeals Board's Disability Decision of Sept. 11, 2008).

- Mr. [redacted] had a PC3 benefit of $[redacted], the maximum he could receive under section 415(b). *See* Attachment D (Enclosure 31 to Appeals Board's Disability Decision of Sept. 11, 2008).

Thus, because their PC3 benefits were already at the 415(b) cap, a ruling in the Pilots' favor on Claim 8, by itself, cannot provide these four pilots any additional PBGC benefits.[2]

B. The Pilots have failed to show that they would receive increased benefits even if they also prevail on Claim 2.

Implicitly conceding the 415(b) bar described above, the Pilots attempt to get around it by falling back on their argument in Claim 2 that PBGC allegedly used a 415(b) limit that was too low. They assert that "if" they are correct that

[2] As the Attachments show, the benefits of each of the four Pilots exceeded the maximum amount of PBGC's guarantee. Therefore, each could receive additional benefits from PBGC only if his PC3 benefit increased. *See* PBGC's principal Brief at 3-4 (explaining relationship between guaranteed benefits and PC3 benefits). But, as shown above and in the attachments, the PC3 benefit of each is already at the 415(b) limit.

PBGC used the wrong 415(b) limit, "then the Court can provide relief for Claim Eight even to Prior Plan Pilots currently at the PBGC's § 415 limit by increasing the benefit amount to the higher § 415 limit." Pilots Supp. Brief at 3-4 (Sept. 19, 2013).

This conclusory assertion is insufficient to establish standing. The Pilots fail to provide *any* calculations or other evidence suggesting, let alone proving, that the four named pilots would necessarily receive increased benefits from a favorable ruling on the disability issue in Claim 8 even if they were also to prevail on Claim 2. In the absence of such a showing, whether they would actually receive increased benefits in that circumstance is speculative.

Moreover, the Pilots are unlikely to prevail on Claim 2. As the district court held, PBGC's exclusion from PC3 of cost-of-living adjustments to the 415(b) limit was based on a reasonable interpretation of the statutory and regulatory PC3 provisions. JA 1115-17; *see* PBGC principal Brief at 38-42. Furthermore, when this Court earlier affirmed the district court's denial of a preliminary injunction, it held regarding Claim 2 that "the statutory text is plainly against [the Pilots]." JA 103.

In sum, if this Court affirms PBGC's reasonable interpretation on Claim 2, then it is certain that the Pilots will not get increased benefits if they prevail on the disability issue in Claim 8. But even in the unlikely event that this Court reverses

its earlier view and agrees with the Pilots on Claim 2, it is merely speculative whether the Pilots would get increased benefits from a favorable ruling on Claim 8. The Pilots have failed to prove that they would.

II. The possibility of increased benefits on remand does not support standing.

The Pilots argue, as they did in their first supplemental brief, that the Appeals Board's decision on participant [redacted] somehow shows that "a mere remand for a benefit recalculation can redress injuries without regard to the § 415(b) issue." Pilots' Supp. Brief at 4 (Sept. 19, 2013); *see also* Pilots' Supp. Brief at 7-8 (Sept. 3, 2013). This argument is baseless.

Mr. [redacted] retired in 1998. A portion of his benefit was paid to his ex-spouse under a qualified domestic relations order. *See* Exhibit B at 2 of 106 to Pilots' Supp. Brief (Sept. 3, 2013) (Appeals Board decision on [redacted] dated May 9, 2012).[3] Mr. [redacted] received the rest of his benefit as a lump sum. *Id.* As a result, he was receiving no benefit from the Plan when PBGC took it over in 2003. *See id.* at 2, 5 of 106 . PBGC later recognized that it had not issued him a benefit determination, and proceeded to do so in January 2011, finding that he had already received his full Plan benefit and thus was entitled to nothing from PBGC. *Id.* at 3 of 106; JA 1072. Mr. [redacted] then filed what Pilots' counsel termed an

[3] The page references follow the pagination in Exhibit B rather than in the Appeals Board decision contained in that exhibit.

"entirely protective" appeal, raising the same issues that the Appeals Board had already resolved in its previous decisions on the Pilots' claims. JA 1066.

The Board denied his appeal in May 2012 on the ground that, because Mr. [redacted]'s benefit in 1998 exceeded the then-existing 415(b) limit, he could not receive increased benefits from PBGC even if the Board granted his appeal. Exhibit B at 9-11 of 106 to Pilots' Supp. Brief (Sept. 3, 2013).[4] To make that determination, the Board had to reconstruct what Mr. [redacted]'s annuity benefit would have been when he retired in 1998, based on his salary history and various other Plan records, and applying the interpretation of the Prior Plan minimum benefit that US Airways and PBGC had used. *See id.* at 8-9, 12-18 of 106. The Board found that his benefit so calculated substantially exceeded the 415(b) limit, and therefore determined that he could not receive increased benefits even if the Board accepted his arguments. *Id.* at 9-10 of 106.

Thus, the Board in no way increased his benefit, as the Pilots mistakenly allege, Pilots' Supp. Brief at 7-8 (Sept. 3, 2013). Moreover, the mere possibility that PBGC might, sua sponte, discover and correct some error upon remand hardly establishes standing. Although the Pilots imply that the Court should remand for

[4] As the Board explained, because Mr. Peterman took his entire benefit as a lump sum, he could not later receive payments based on future cost-of-living increases to the 415(b) limit. *Id.* at 17 of 106 n.14 (citing Treas. Reg. § 1.415(d)-1(a)(4)(iii)).

some undefined further proceedings, they have already received thorough administrative and judicial consideration of their claims. No remand is warranted.

Conclusion

The Pilots have failed to meet their burden to demonstrate that they have standing on the disability portion of Claim 8.

Dated: September 30, 2013

Respectfully submitted,

Office of the General Counsel
JUDITH R. STARR
General Counsel
PHILIP R. HERTZ
Deputy General Counsel
KENNETH J. COOPER
Assistant General Counsel
KIMBERLY J. DUPLECHAIN
GREG C. MATISOFF
Attorneys

Office of the Chief Counsel
ISRAEL GOLDOWITZ
Chief Counsel
CHARLES L. FINKE
Deputy Chief Counsel
JAMES J. ARMBRUSTER
PAULA J. CONNELLY
JOSEPH M. KRETTEK
GARTH D. WILSON
Assistant Chief Counsels

PENSION BENEFIT GUARANTY CORPORATION
1200 K Street, N.W.
Washington, D.C. 20005-4026
Telephone: (202) 326-4020 ext. 3068
Facsimile: (202) 326-4112
Counsel for Defendant-Appellee PBGC

CERTIFICATE OF SERVICE

I, James J. Armbruster, certify that on September 30, 2013, true and correct copies of the Appellee's Response to Supplemental Brief of Appellants (In Response to Court's Order of September 10, 2013) were served via overnight delivery upon the following counsel:

Anthony F. Shelly, Esq.
Timothy P. O'Toole, Esq.
Miller & Chevalier Chartered
655 Fifteenth Street, N.W., Suite 900
Washington, D.C. 20005-5701

_____
James J. Armbruster

CERTIFICATE OF COMPLIANCE

I, James J. Armbruster, hereby certify, pursuant to Fed. R. App. P. 32(a)(7)(B), that the word count of Appellee's Response Brief is 1,875, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). Appellee's Response Brief was prepared using Microsoft Word 10, and Appellee's counsel has relied on the word count function of Microsoft Word 10 to calculate the word count.

Appellee's Response Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point, Times New Roman font.

Dated: September 30, 2013

_____

James J. Armbruster
Assistant Chief Counsel

ATTACHMENT A

Mr. [redacted] (Appeal # [redacted])

Mr. [redacted] was born on [redacted]. In a letter dated [redacted], SSA awarded him a disability benefit with an onset date of [redacted]. Mr. [redacted]'s employment status was still "Active Original Hire," indicating he was on leave, when the Plan terminated on March 31, 2003. He retired on [redacted] with a Joint and 100% Survivor (J&100%S) annuity.

PBGC determined that Mr. [redacted]'s PC3 benefit was $[redacted] in the J&50%S annuity form, using ordinary (non-disability) benefit formulas. This amount ($7,417.13) is the maximum that was permitted under IRC § 415(b) if Mr. [redacted] had retired on April 1, 2000. This amount also exceeds PBGC's MGB even under favorable disability assumptions: $3,664.77 per month if paid as a Straight Life Annuity, if PBGC payments start at age 65 or earlier. PBGC is paying Mr. [redacted] the larger PC3 benefit: $[redacted], plus $[redacted] funded by legal recoveries if paid in the J&50%S form. Thus, Mr. [redacted]'s PBGC benefit is $[redacted] if paid as a J&50%S, or an actuarially equivalent $[redacted] benefit in his J&100%S annuity form.

The Appeals Board found that your appeal presented no basis for PBGC to recalculate Mr. [redacted]'s PC3 benefit based on the Plan's disability retirement formula. Mr. [redacted]'s [redacted] disability onset date is after the April 1, 2000 PC3 date. Moreover, his $[redacted] PC3 benefit is already the maximum the Plan could provide, under IRC § 415(b), regardless of which Normal Retirement Benefit formula PBGC used to determine his benefit. Thus, the Appeals Board cannot increase Mr. [redacted]'s PC3 benefit. As already noted, his PC3 benefit is already above PBGC's Disability MGB. The Appeals Board, therefore, concluded that your Appeal provides no basis for using the Plan's disability formula to increase Mr. [redacted]'s PBGC benefit.

ATTACHMENT B

Enclosure 17

Mr. [redacted] (Appeal # [redacted])

Mr. [redacted] was born on [redacted]. SSA found that he was disabled with an [redacted] onset date. On [redacted], US Airways officials determined that he was T & P disabled. After exhausting his leave, US Airways placed Mr. [redacted] on Long Term Disability effective [redacted]. US Airways officials determined that his Additional Benefit Programs disability benefit would be $[redacted] per month. He retired approximately [redacted] weeks later, on [redacted]. Using non-disability benefit formulas and before adjusting for a 75% lump-sum payment, US Airways officials calculated his total benefits in all retirement plans in his Joint and 50% Survivor annuity form as: $[redacted] under the ERIP, and $[redacted] without the ERIP enhancements. The $[redacted] ERIP total (and the $[redacted] non-ERIP total) exceeded his $[redacted] [1] maximum benefit under IRC § 415(b).

After receiving lump-sum payments of $[redacted] from the Plan and $[redacted] from the Target Plan, US Airways started paying him $[redacted] {$[redacted] x 25%} per month, entirely from the Top Hat Plan.[2] Because the IRC § 415(b) limit increased to $135,000, on January 1, 2000, his $[redacted] monthly payment was divided as $[redacted] from the Top Hat Plan, and $[redacted] from the Plan. Because of later IRC § 415(b)-limit increases, the Plan was providing him $[redacted] per month on the March 31, 2003 Plan termination date.

PBGC calculated his PC3 benefit using the total benefit US Airways calculated without ERIP enhancements as $[redacted]. Like US Airways, PBGC found: (i) Mr. [redacted]'s lump-sum payments provided his full IRC § 415(b)-limited benefit when he retired; and (ii) Because the IRC 415(b) limit increased $5,000 in 2000, his Plan benefit was $[redacted] [3] on the April 1, 2000 PC3 date. Except for a small difference due to mathematical rounding, the $[redacted] PC3 benefit PBGC calculated is the same benefit the Plan was paying him on April 1, 2000.

PBGC also determined that Mr. [redacted]'s $[redacted] lump-sum payment was equivalent to a $[redacted] per month Straight Life Annuity. This amount ($[redacted]) exceeds PBGC's MGB, even under favorable disability assumptions: $3,664.77 per month in the Straight Life Annuity form, if PBGC payments start at age 65 or earlier. Therefore, Mr. [redacted]'s guaranteed benefit is $0. Because his $[redacted] PC3 benefit was

---

[1] ($130,000 ÷12 months) x [redacted] age [redacted]

[2] Mr. [redacted] also received a $[redacted] lump sum from the Top Hat Plan.

[3] $5,000 ÷ 12 months x [redacted] for age [redacted]

larger, PBGC determined that Mr. Hiney's PBGC benefit is his PC3 benefit: $[redacted] per month.

We found that using the Plan's disability retirement formula would not increase the Plan benefits that either US Airways or PBGC used. Even with maximum 33% COLAs, the Plan's disability retirement formula provides at most $[redacted] {$[redacted] x 133%} per month, less than the $[redacted] and $[redacted] amounts US Airways and PBGC used. Thus, using the Plan's disability retirement formula, as your appeal requests, does not improve the PC3 benefit PBGC determined. Also, as already noted, Mr. [redacted]'s guaranteed benefit is still $0, even under the Disability MGB.

Thus, the Appeals Board determined that your appeal presented no basis for using the Plan's disability retirement formula to change either Mr. [redacted]'s PC3 benefit or his guaranteed benefit. However, Mr. [redacted] is one of 85 participants for whom PBGC is reviewing its calculation methodology and will issue a new Benefit Determination. His new Benefit Determination will include a new 45-day right to appeal issues not already decided here or in the Board's February 2008 Consolidated Decision.

ATTACHMENT C

Enclosure 21

Mr. [redacted] (Appeal # [redacted])

Mr. [redacted] was born on [redacted]. He retired under the ERIP on [redacted]. Using non-disability benefit formulas, and before adjusting for a 75% lump-sum payment, US Airways officials calculated his total monthly benefit under all retirement plans (the Plan, the Top Hat Plan, and the Target Plan) as $[redacted] under the ERIP, and $[redacted] without the ERIP enhancements. The Plan portion of the $[redacted] ERIP total was $[redacted],[1] the maximum the Plan could provide him under IRC § 415(b) in 1999. His total ERIP retirement benefit was $[redacted] {$[redacted] benefit x 25%}, paid entirely from the Top Hat Plan because he received: (i) a $[redacted] lump-sum payment from the Plan, (ii) a $[redacted] lump-sum payment from the Target Plan, and (iii) a $[redacted] lump sum from the Top Hat Plan. Thus, the Plan initially provided him $0 per month.

After the IRC § 415(b) limit increased from $130,000 to $135,000 in January 2000, his Plan-provided benefit increased to $[redacted].[2] The Plan-provided portion of his $[redacted] total ERIP benefit further increased as the IRC Section 415(b) limits increased. Thus, the Plan was providing him $[redacted] per month when it terminated on March 31, 2003.

PBGC determined that Mr. [redacted]'s $[redacted] lump-sum benefit from the Plan was equivalent to a $[redacted] per month Straight Life Annuity, under PBGC's actuarial assumptions. This amount ($[redacted]) far exceeds PBGC's MGB, even under favorable assumptions for disability: $3,664.77 per month in the Straight Life Annuity form, if PBGC payments start at age 65 or earlier. Therefore, Mr. Loprinzi's guaranteed benefit is $0.

PBGC calculated Mr. [redacted]'s PC3 benefit using the total benefit US Airways calculated without ERIP enhancements: $[redacted]. Like US Airways officials had found, PBGC found: (i) Mr. Loprinzi's lump-sum payments already provided his full IRC § 415(b)-limited Plan benefit when he retired, and (ii) because the IRC § 415(b) limit increased in 2000, his Plan benefit became $[redacted] on the April 1, 2000 PC3 date. Except for a small difference due to mathematical rounding, the $[redacted] PC3 benefit PBGC calculated is the same $[redacted] benefit the Plan was paying him on April 1, 2000.

Never Received Disability Plan Benefits

On [redacted], SSA determined that Mr. [redacted] was disabled with a [redacted] onset date, which is [redacted] months after his [redacted] retirement. The Board found no evidence that he ever participated in the Disability Plan. As noted in this decision, T & P disability is determined under the Disability Plan. Also, participation in

---

[1] $130,000 x .[redacted] for age [redacted] ÷ 12 months

[2] $[redacted] x $5,000 ÷ $130,000

the Disability Plan was limited to Employees and former Employees who were receiving Disability Plan benefits when they retired.[3] In contrast, Mr. [redacted]'s employment status when he retired in 1999 was "Active Original Hire," not "Leave Pilot Disability". Finally, Mr. [redacted]'s SSA disability onset date was late in [redacted], well after he had retired and when he was no longer an Employee. Because he never received an LTD benefit before his US Airways employment ended, he never became eligible to be determined T & P disabled.

T & P Disability Cannot Increase Plan Benefit

The Board also found that even if Mr. [redacted] did become T & P disabled, his Plan benefit would not be affected. US Airways found Mr. [redacted]'s $[redacted] lump-sum distribution provided the maximum (IRC § 415(b)-limited) benefit the Plan could provide him. The $[redacted] amount US Airways paid, which PBGC determined to be in PC3, is the maximum the Plan could pay on April 1, 2000, after the January 1, 2000 IRC § 415(b) limit increase. Therefore, the April 2000 Plan benefit that US Airways calculated, and which PBGC used in determining Mr. [redacted]'s PC3 benefit, is the same IRC-415(b) maximum regardless of which Plan benefit formula was used.

Mr. [redacted]'s disability cannot be used to change his guaranteed benefit, either. As noted above, the annuity equivalent of his $[redacted] lump sum far exceeds PBGC's MGB, even under favorable assumptions for disability.

The Appeals Board concluded that Mr. [redacted]'s disability cannot be used to increase: (i) his Plan benefit, (ii) his PC3 benefit, nor (iii) his guaranteed benefit. Mr. [redacted] is one of 85 participants for whom PBGC is reviewing its calculation methodology on lump-sum adjustments and who will receive a new BD. His new BD will include a new 45-day right to appeal issues not already decided here or in the Board's February 2008 Consolidated Decision.

[3] See Paragraph 2.1-2.2 of the 1997 Disability Plan document.

ATTACHMENT D

Enclosure 31

Mr. [redacted] (Appeal # [redacted])

Mr. [redacted] was born on [redacted]. After exhausting his leave, US Airways officials determined that, effective [redacted], Mr. [redacted] qualified for LTD payments of $[redacted] per month. He retired approximately [redacted] weeks later, under the ERIP, on [redacted]. SSA later determined that he was disabled with a [redacted] onset date.

Using non-disability benefit formulas and before adjusting for a 75% lump-sum payment, US Airways officials calculated his total benefits in all retirement plans (the Plan, the Target Plan, and Top Hat Plan) in his Joint and 50% Survivor annuity form as: $[redacted] under the ERIP, and $[redacted] without the ERIP enhancements. The $[redacted] ERIP total (and the $[redacted] non-ERIP total) exceeded his $[redacted] maximum benefit under IRC § 415(b).

After receiving lump-sum payments of $[redacted] from the Plan and $[redacted] from the Target Plan, US Airways started paying Mr. [redacted] $[redacted] {$[redacted] x 25%} per month, entirely from the Top Hat Plan.[1] After the IRC § 415(b) limit increased to $135,000 on January 1, 2000, his $[redacted] payments were divided as follows: $[redacted] from the Top Hat Plan, and $[redacted] from the Plan. Because of later § 415(b)-limit increases, the Plan was paying him $[redacted] per month on the March 31, 2003 Plan termination date.

Like US Airways, PBGC found: (i) Mr. [redacted]'s lump-sum payments provided his full IRC § 415(b)-limited benefit when he retired, and (ii) Because the IRC § 415(b) limit increased in 2000, his Plan benefit was $[redacted] on the April 1, 2000 PC3 date. Except for a small difference due to mathematical rounding, the $[redacted] PC3 benefit PBGC calculated is the same $[redacted] benefit the Plan was paying him on April 1, 2000.

PBGC also found that Mr. [redacted]'s $[redacted] lump-sum payment was equivalent to an $[redacted] per month Straight Life Annuity, under PBGC's actuarial assumptions. This amount ($[redacted]) exceeds PBGC's Maximum Guaranteed Benefit, even under favorable disability assumptions: $3,664.77 per month in the Straight Life Annuity form, if PBGC payments start at age 65 or earlier. Therefore, PBGC determined that his guaranteed benefit is $0. Because Mr. [redacted]'s $[redacted] PC3 benefit was larger than $0, PBGC determined that Mr. Volkwein's PBGC benefit is his PC3 benefit: $[redacted] per month.

Mr. [redacted]'s PBGC benefit is not affected by which Plan benefit formula (ordinary or disability) US Airways and PBGC used. US Airways officials found that

[1] Mr. Volkwein also received a $[redacted] lump sum from the Top Hat Plan.

Mr. [redacted]'s $[redacted] lump-sum distribution provided the maximum (IRC § 415(b)-limited) benefit that the Plan could provide when he retired. The $[redacted] amount US Airways paid, and that PBGC determined in PC3, is the maximum benefit the Plan could have paid on April 1, 2000, after the January 1, 2000 IRC § 415(b) limit increase. Therefore, the Plan benefits US Airways and PBGC calculated are the same IRC § 415(b) maximums regardless of which Plan benefit formula was used.

Moreover, the $[redacted] non-ERIP enhanced total retirement pension PBGC used, before adjusting for his lump-sum payments, is already larger than the maximum Plan benefit possible under the 4.1(E) T & P-disability retirement formula: $[redacted].[2]

Thus, the Appeals Board decided that the Appeal provides no basis for using the Plan's disability retirement formula to change either Mr. [redacted]'s PC3 benefit or his guaranteed benefit. We note that Mr. [redacted] is one of 85 participants for whom PBGC is reviewing its calculation methodology and will issue a new BD.[3] His new BD will include a new 45-day right to appeal issues not already decided here or in the Board's February 2008 Consolidated Decision.

---

[2] $[redacted] = $[redacted] initial LTD benefit x 133% maximum COLAs. US Airways explained to Mr. Volkwein in 2001 how ordinary benefit formulas were more advantageous than using the 4.1(E) disability retirement formula. See Enclosure 16 to the Appeals Board's February 2009 Consolidated Decision.

[3] The group of 85, including Mr. [redacted], are listed in Enclosure 1 to the Appeals Board's February 2008 Consolidated Decision.