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making financial sense of the future

Professional Negligence
Will it get an easier?

Actuaries and the Law
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Professional Negligence
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The Parties

- For the Claimants (Chris Netiatitis):
 - BIG Pension Trustees
 - Greedy Corporate Limited
- For the Defendant (David Archer):
 - RedHot Actuaries
- Judge (Graham Ness)
- The Jury (You)

Timetable

- Claimants' Case
- Defendant's Case
- Questions to the Claimant and Defendant from the Jury
- Jury Deliberations
- Jury's Findings
- Closing

Facts

- BIG Pension Scheme (the “BIG Scheme”) is a final salary scheme. In mid 2000s it was closed to new entrants. Accrual of final salary benefits for existing members continues.
- BIG Scheme was created by deed in the 1980s with successive deeds and rules in 1980s and 1990s.
- Pension is calculated as $n/60\text{ths} \times \text{Final Pensionable Salary (FPS)}$ (where “n” is the duration of pensionable service). FPS is calculated by reference to “Pensionable Salary” (PS).
- The definition of “PS” in the Scheme’s rules includes fluctuating emoluments (bonuses and commissions).

Facts Continued

- BIG Pension Trustees and Greedy Corporate Limited decided in 1985 to remove fluctuating emoluments from the definition of PS. RedHot Actuaries agreed to implement any necessary changes to effect this.
- RedHot Actuaries have at all material times provided actuarial and administration services for BIG Scheme.
- Since 1985 BIG Scheme has been (and continues to be) administered on a basis consistent with a narrow definition of “Pensionable Salary” i.e. excluding fluctuating emoluments.
- Since 1985 the Employer and Trustees both understood that only basic annual salary was pensionable.

Submissions

The Claimant's Case

Submissions

The Defendant's Case

Questions

Questions from the Jury

Jury Deliberations

Things to consider whilst deliberating:

- Duty owed to the Company and Trustees? By whom?
- Evidence of the intention of the Company/Trustees?
- Who drafted the incorrect deeds?
- Breach of trust by the Trustees?
- Is any claim time barred?
- Duty to mitigate – Rectification?

Jury Deliberations

Obligations of Actuaries

- Obligations relating to appointment and scope of appointment – adequate/appropriate retainer letter
- Scheme Actuary's duty to inform Trustees?
- S.13 of the Supply of Goods and Services Act 1982 (contract) – Reasonable care and skill
- The standard of care here is that of a reasonable competent professional specialising in the field of occupation pension schemes.

Conclusions

What do you think?

Conclusion

Closing

Questions or comments?

