



I P E B L A

International Pension and Employee Benefits Lawyers Association Teleconference

Teleconference:	"Insolvency protection for pension fund members: Impact of the decision of the European Court of Justice in Case No. C398/11 (Hogan & Others v. Minister for Social and Family Affairs, Ireland, Attorney General)"
Live Date:	Thursday 16th May, 2013
Time:	10 a.m. Eastern Daylight Saving Time (Toronto, Canada) 3 p.m. UK Time 4 p.m. Central European Time
Replay Date:	Replay available up until 11:59 a.m (EST) on Sunday 16th June, 2013

The IPEBLA Teleconference Committee has assembled an expert panel of speakers who will address the topic **"Insolvency protection for pension fund members: Impact of the decision of the European Court of Justice in Case No. C398/11 (Hogan & Others v. Minister for Social and Family Affairs, Ireland, Attorney General)"**.

This Teleconference will be conducted in English.

Speakers: An Van Damme, Claey's & Engels, Belgium
Kees-Pieter Dekker, Van Benthem & Keulen NV, The Netherlands
Brian Buggy, Matheson, Ireland
Philip Bennett, Slaughter and May, UK

Moderator: Brian Buggy, Matheson, Ireland

Setting the scene:

On Thursday 25th April, 2013 the European Court of Justice decided that Ireland had not transposed Article 8 of Directive 2008/94 (on the protection of employees on the insolvency of their employer) into Irish law.

This meant that Ireland had failed to provide appropriate protection for employees' pension rights under their supplementary occupational pension schemes on the insolvency of the employer. Press reports suggest that Ireland could face a bill of hundreds of millions of Euro. This case may well also have ramifications for Belgium and The Netherlands and the UK Pension Protection Fund compensation cap (in the case of a deferred member or an early retired member whose pension is reduced to less than 49% of the original amount as a result of the application of the cap).

Even though the Waterford Crystal Limited Contributory Staff Pension Scheme was set up under trust, the plaintiffs in this case were likely to receive significantly less than half of the benefits that they would have been entitled to if the Waterford Crystal Pension Scheme had been adequately funded.

The Court noted that Member States had retained some discretion as to the level of compensation to be provided. But the amount of protection achieved for the plaintiffs in the case fell below the 49% level of protection referred to by the European Court of Justice in Case No. C-278/05 (Robins & Others v. The Secretary of State for Work and Pensions), decided on 25th January, 2007; a case on whether the United Kingdom had correctly transposed Article 8 of Directive 2008/94. In the Robins case, the European Court of Justice decided the United Kingdom had not correctly transposed Article 8.

Ireland sought to distinguish the decision of the ECJ in the Robins case on the basis that there was no obligation on the employer to make up a shortfall to the under funding of an Irish supplementary occupational pension scheme whether on the insolvency of the employer or in other non-insolvency circumstances. In other words, the position in Ireland was



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different from the position in the United Kingdom where there was an obligation on the employer to contribute to its supplementary occupational pension scheme on employer insolvency (under Section 75 of the UK Pensions Act 1995).

The European Court of Justice also decided that there was a sufficiently serious breach of a rule of European Union Law that a damages claim against Ireland was sustainable by the individuals affected by the failure by Ireland to transpose Article 8 (on the basis that all Member States were well aware of what was required to transpose correctly Article 8 of Directive 2008/94 following on from the Robins case).

Items to be covered:

The teleconference will look at the following:

- Although the decision is most welcome for members of the Waterford Crystal Pension Scheme, an immediate question is whether in Ireland there are now inconsistencies between the protections available on insolvency and the protections available in non-insolvency situations where there is termination of an Irish supplementary occupational pension scheme.
- The ramifications of the case in Ireland. Will the Irish Government introduce an equivalent requirement to that in the UK under which the insolvent employer must contribute an amount equal to the deficit in the pension scheme as part of the structure for putting in place a compensation scheme? The argument would be that otherwise whoever is funding the compensation scheme would be picking up too heavy a burden.
- The ramifications of the case in Belgium (where there is a question as to whether Belgium has adequately transposed Article 8 of Directive 2008/94 into Belgium law).
- The ramifications of the case in The Netherlands (where there is a question as to whether The Netherlands has adequately transposed Article 8 of Directive 2008/94 into Dutch law).
- Whether the limitations under the UK Pension Protection Fund on the maximum level of compensation to the lower of 90% of the accrued pension (expressed as an annual amount) or a cap (of £34,867.04 per annum for a normal pension age of 65) where the former employee has not attained his normal pension age for Pension Protection Fund purposes, remain valid in the UK. Is this compensation cap required to be underpinned so that the employee can never receive less than 49% of his accrued annual pension?

Length of teleconference:

The panel discussion will run for approximately 70 minutes, followed by a 20-minute question and answer session.

This presentation will be repeated as a replay. Please see replay schedule below. The replay will include the presentation and questions and answers but will not include a live opportunity to ask questions.

Timing:

Date	Time	Country
Thursday 16th May, 2013	10 a.m.	USA/Canada: Eastern Daylight Saving Time
	3 p.m.	UK
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Teleconference Format:

For those not familiar with the format of a teleconference, it is a bit like listening to a radio programme on the topic in question. The expert panel will discuss the chosen topic. Those who have signed up for the teleconference will receive an electronic confirmation with dial-in instructions, speaker slides and any other materials to which the speakers will be talking for the call.

For those joining the live discussion, you will have the opportunity to ask questions of the speakers. For those joining the replay, you will hear the replay and the question and answer session.

For registration form, please scroll down to page 3.



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IPEBLA TELECONFERENCE REGISTRATION FORM

Teleconference: “Insolvency protection for pension fund members: Impact of the decision of the European Court of Justice in Case No. C398/11 (Hogan & Others v. Minister for Social and Family Affairs, Ireland, Attorney General)”

Date: Thursday 16th May, 2013

The price for this teleconference is **€30/\$40.00USD/\$40.00CAD for IPEBLA members** and **€56/\$75.00USD/\$75.00CAD for non-members**. To register, please complete the form below and fax (+1 416 929 5256) to IPEBLA or e-mail ipebla@managingmatters.com) with credit card payment for the registration fee. You can also register on line at: www.ipebla.org.

(Non members who decide to join IPEBLA within 30 days of the conference will receive a reduction in their membership fee of US\$50.00)

The registration deadline for this teleconference is **Wednesday 15th May, 2013**

I am an IPEBLA member I am not an IPEBLA member I would like to become a member

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Please indicate for which session you are registering:

- I am registering for the live session
- I am registering for the replay session