

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IN RE MERCY HEALTH ERISA LITIGATION

No.: 1:16-cv-00441-SJD-SKB

District Court Judge Susan J. Dlott
Magistrate Judge Stephanie K. Bowman

**DECLARATION OF MARK P. KINDALL IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

**EXHIBIT B
DECLARATION OF MITCHELL I. SEROTA**



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
(WESTERN DIVISION)**

David Lupp, Janet Whaley, Leslie Beidleman,
Patricia Blockus, Charles Bork, et al, on behalf
of themselves and all others similarly situated,

Plaintiffs,

vs.

Mercy Health, Mercy Health Retirement Plan
Committee and Members of the Mercy Health
Retirement Plan Committee,

Defendants.

**Civil Action No.: 1:16-cv-00441-SJD-
SKB**

DECLARATION OF MITCHELL I. SEROTA

I, Mitchell I. Serota, declare as follows:

1. I am the President of Mitchell I. Serota & Associates, an independent firm of actuaries serving the employee benefit needs of the middle market and large employers for over 30 years. I have a Fellowship in the Society of Actuaries (F.S.A.), the highest educational credential in the profession. I am also credentialed as an Enrolled Actuary (E.A.) under ERISA, and a Member of the American Academy of Actuaries (M.A.A.A.). I participate on two committees of the Academy. The first committee reviews the status of all types of retirement plans in the United States, including private plans, public plans and church plans. The second is



the Actuarial Standards Board where I served six years helping to write Standards of Practice for pension actuaries.

2. My current practice is primarily as a consultant for pension plans, regarding the adequate funding and proper administration of their plans. My clients include private corporations, professional practices, municipal pension plans in Illinois, one church plan (for over 20 years), and post-retirement medical plans for private corporations and for Illinois school districts. My curriculum vitae is attached as Exhibit 1. I also testify for counsel in civil cases in which my expertise bears on some issue in the case. A list of the cases in which I have testified as an expert by deposition or at trial is attached as Exhibit 2.

3. I have been retained by counsel for the plaintiffs in this litigation. As part of my work on behalf of the plaintiffs, I have been asked to opine on the funded status of Mercy Health's "church plans" under ERISA and on the value of a nine-year guarantee contained in the proposed Settlement Agreement negotiated by the parties in this litigation. My analysis below is based on the Consolidated Financial Statements and Supplementary Information of Mercy Health: Years ended December 31, 2017 and 2016, produced by Ernst & Young, LLP ("Consolidated Statement"). This document is publicly available at . https://www.mercy.com/-/media/about-us/corporate-responsibility/afile_001_audited_financial_statements--2016-audited-financial-statements--unsecured.ashx?la=en.

ERISA's Funding Requirements.

4. Defined benefit plans, by their structure, provide a stream of income over the lifetime of the participant. As the ultimate retirement vehicle, they are distinct from defined contribution plans, whose mission is to build a "pot of gold" by the end of the working lifetime



of the employee, who then has to figure out how best to spend it over the ever-lengthening span of retirement years. The risks of a defined benefit plan fall squarely on the plan sponsor. The ultimate risk is ruin: to run out of money while there are still retirees or potential retirees who could make a claim that their lifetime benefits are still payable.

5. The funded status of a plan (“Funded Status”) is the ratio between the plan’s present assets and the (Accumulated) Benefit Obligation (“ABO”). The American Academy of Actuaries published an Issue Brief in July 2012 which succinctly states, “Actuarial funding methods generally are designed with a target of 100%.”¹

6. Pension plans are funded from two sources of income: plan sponsor contributions and return on investment. As return on investment declines, plan sponsor contributions, of necessity, must increase.

7. One of the most important protections contained within ERISA, which is not applicable to Church plans, is the minimum funding requirement. The minimum funding requirement operates in two ways. If the plan is already well-funded (but not fully funded in the sense of meeting all of its obligations), it maintains that status. If the plan is not yet well-funded, the minimum funding requirement provides a path to get the plan there.

8. The funding requirements for defined benefit pension plans subject to ERISA are set forth in Internal Revenue Code § 430, 26 U.S.C. § 430. The Pension Protection Act (2006) revised ERISA’s standards to make defined benefit plans affordable for plan sponsors. Recent legislation, including the “Moving Ahead for Progress in the 21st Century Act” (“MAP-21”) of

¹ http://www.actuary.org/files/80_Percent_Funding_IB_071912.pdf/



2012 and the “Highway and Transportation and Funding Act of 2014” (“HAFTA”), part of economic stimulus packages, have temporarily relaxed ERISA’s minimum funding requirements further still, by lowering the discount rate plans use to determine pension plan liabilities.

9. A discount rate is the rate by which a cash flow stream (the benefits to be paid out by the Plan) can be converted to the present value of the plan’s Actuarial Liabilities. The Citi Pension Liability Index (“CPLI”) is a monthly published table which provides the yields of AA corporate bonds with maturities ranging from 6 months to 30 years. The CPLI is commonly accepted by accountants and actuaries to measure a pension plan’s liabilities on a plan sponsor’s balance sheet because it approximates a risk-free investment portfolio. The weighted or “effective” CPLI discount rate, taking account of all the maturation lengths in their survey as of December 31, 2017, was 3.60%.

10. As a result of the MAP-21 and HAFTA changes, ERISA currently requires an effective discount rate of approximately 5.75%.²

The Plans’ Current Funding

11. Note L of the Consolidated Statement discloses the financial status of Mercy Health’s church plans. The Summary on page 55 shows the assets to be \$1.656 billion and the (Accumulated) Benefit Obligation (“ABO”) to be \$1.746 billion, using a weighted discount rate of 3.54% (which is very close to the CPLI discount rate discussed in paragraph 9). The ratio of the two, 95%, is the Funded Status of the Plan on the ABO basis (refer back to paragraph 5).

² For purposes of ERISA, the discount rate is divided into three segments: 3.92% for the first 5 years of discounting, 5.52% for the next 15 years of discounting, and 6.29% thereafter. The effective rate is the weighted average discount of those three segment rates as applied to the plan as a whole.



12. Using MAP-21/HAFTA effective discount rate of 5.75%, however, would so reduce the Plans' calculated liabilities that for ERISA purposes, the Plan would be considered "fully funded" when determining the Required Minimum Contributions ("RMC"). When the Plan is fully funded, the RMC would be zero. Thus, if the Plans were covered by ERISA today, Mercy Health would not presently be required to put additional money into the Plans' trust funds.

Valuing the Settlement Agreement's 9-Year Guarantee

13. The Settlement Agreement provides that Mercy Health will guarantee payment of benefits from the Plans for a period of nine years. To calculate the value of this guarantee, it is worth considering what it would cost Mercy Health to purchase an equivalent guarantee in the form of insurance, given the current assets and liabilities of the Plans. There *is* a type of insurance available to pension plans for just this purpose, made available through the federal Pension Benefit Guarantee Corporation (PBGC). ERISA plans are required to pay PBGC premiums. While the Settlement permits Mercy Health to continue treating the Plans as ERISA-exempt Church Plans, and thus Mercy Health need not make PBGC premium payments, premiums that Mercy Health *would* have paid for PBGC coverage provide a way to quantify the market value of Mercy Health's nine-year guarantee.

14. ERISA was designed to protect employees from the negligence of plan sponsors who failed to properly fund employee benefit plans. The most egregious case was Studebaker, a car maker which shut down its South Bend plant in 1963 and terminated the hourly retirement



plan for its workers. The participants received pennies on the dollar. The resulting crisis ultimately spawned Title IV of ERISA, the PBGC.³

15. The purpose of the PBGC is to provide insurance to all Defined Benefit pension plans covered by ERISA. It has been in existence since 1976 and has successfully protected millions of pension plan participants when the sponsoring entity is no longer able to fund the promises they made to their employees. It has additional responsibility to survey the privately-held defined benefit plans to determine when any of them are having trouble meeting the funding requirements. It also monitors plans with low funded ratios. In the event that a plan becomes bankrupt and the plans' employers are unable to make up the shortfall, the PBGC insures benefit payments to plan participants.

16. All private sector defined benefit plans are required to pay annual premiums to the PBGC unless they are small professional organizations or church plans. The premium consists of two pieces. The first is a head tax, that is, a set fee for each participant. In 2018, the head tax is \$74 per participant; in 2019 and thereafter, it will be \$80.

17. The second is a variable premium, which represents a risk charge for underfunded plans. The premium increases when a plan is underfunded because there is a higher risk that the plan will default on its liabilities. (The concept is comparable to the notion of charging people with pre-existing conditions a higher health care premium because the actuarial expectation is that their utilization of medical services will be higher.) The charge in 2018 is 3.8% of the

³ Wooten, James A., 'The Most Glorious Story of Failure in the Business': the Studebaker-Packard Corporation and the Origins of ERISA. *Buffalo Law Review*, Vol. 49, P. 683, 2001. Available at SSRN: <https://ssrn.com/abstract=290812> or <http://dx.doi.org/10.2139/ssrn.290812>.



unfunded liability of the Trust, using special PBGC interest rates.⁴ In 2019 and after, the charge will rise to 4.2%.

18. The information contained in the Consolidated Financial Statement is sufficient to estimate the minimum premium that Mercy Health Systems would have to pay to the PBGC to insure the Plans under ERISA, based on several reasonable and conservative assumptions described below.

19. To calculate what Mercy Health would pay to insure the Plans with the PBGC for the next nine years, I start by calculating the head tax. Mercy Health has stated that there are currently 36,041 plan participants. I therefore multiply that number by \$74 to arrive at \$2,667,000. (Please refer to Exhibit 3.) For future years, I assume the head count will remain constant. Thus, for subsequent years, the head count premium, at \$80 per participant, will increase to \$2,883,000.

20. The variable premium is based on the Actuarial Liability using PBGC assumptions less the amount of assets. For the Actuarial Liability, I started with the Accumulated Benefit Obligation (“ABO”) presented in the report, \$1.7 billion. Although the effective PBGC discount rate differs from the 3.8% discount rate Mercy Health’s actuary used to calculate the ABO, the ABO serves as a reasonable proxy for the calculation of PBGC pension liabilities. In practice, it may actually show lower liability than the PBGC liability because the ABO effective rate is

⁴ The special PBGC interest rates are parallel to the ERISA funding segment rates described in footnote 3. For PBGC, the segment rates are 2.33%, 3.55% and 4.11% respectively. The effective interest rate for the PBGC segment rates is lower than, but very close to, the effective rate for the CPLI, as described in paragraph 9.



higher. This would mean my estimations of liability and variable premium are probably a little low.

21. To calculate the ABO Liability for 2019 and after, I start with the ABO Liability at the beginning of the previous year and added the “Service Cost,” which represents the annual build-up of liability from the active participants. The Statement shows that number to be \$15.453 million on page 51. Although it will most likely be increasing over time as the population of participants ages, I kept that figure constant for the future to keep the logic simple (again, this is a conservative assumption that works in favor of the Defendant). The Actuarial Liability also increases from interest on the Liability as of the beginning of the year and the Service Cost. Again, for the sake of simplicity, I also assumed that the effective discount rate would remain at 3.80% for the next nine years. Finally, the Actuarial Liability decreases by the amount of expected payouts. The Statement disclosed these payouts for the next 9 years on page 61, and I used those amounts.

22. Turning to the Asset side, I started with the current market value of assets, \$1.66 billion. To estimate assets for future years, I start with the asset level at the beginning of the previous year and add expected annual contributions of \$9.6 million as shown on page 51. Although there is absolutely no assurance that the plan sponsor will maintain that level, I am making conservative assumptions that work in favor of the Defendants. To those components, I added an expected return on investment of 4.02%, which is the expected return for ERISA plans



used in Defendants' actuarial reports, page 55.⁵ Finally, I subtract off the expected payouts during the year, identically as described in paragraph 21.

23. For each of the next nine years, I computed the difference between the Actuarial Liabilities and the Assets to result in the Unfunded Liability. This Unfunded Liability is taxed according to the charges laid out in paragraph 17 above, subject to a maximum cap which is inapplicable to this Plan

24. Adding the head tax premium and the variable premium for the period from 2018 to 2026, is a reasonable proxy for the market value of Mercy Health's 9-year guarantee.

25. I conclude that \$63.3 million is a reasonable estimate of the market value of Mercy Health's 9-year guarantee, since that is the approximate cost Mercy Health would incur to insure that risk.

Executed this 13th day of July 2018 in Skokie, IL.



Mitchell I. Serota

⁵ Mercy Health discloses a long-term return on plan assets of 6.50% with no substantiation. For purposes of calculating PBGC premiums I use the more realistic "risk free" discount rate Mercy Health's actuaries assume for calculating net periodic benefit cost of 4.02%.

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DECLARATION OF MITCHELL I. SEROTA

**EXHIBIT 1
CURRICULUM VITAE OF MITCHELL I. SEROTA**

EXHIBIT 1



**VITA
MITCHELL I. SEROTA**

Professional Credentials

Fellow, Society of Actuaries, 1983
Member, American Academy of Actuaries, 1980
Enrolled Actuary, 1983

Founding Member (1988) of Retirement Income Planners, a Chicago discussion group of 16 Employee Benefit Plan attorneys and one actuary, who meet monthly to discuss interpretation of law, anticipation of legislation, coordination with government agencies, etc.

Professional Service

Actuarial Committee Membership

Member, Pension Committee of American Academy of Actuaries, 2009-
Member, Pension Committee of Actuarial Standards Board, 2011-2017
Vice-chair, Entrepreneurial Actuaries Section of Society of Actuaries, 2002-05
Founding Member, Entrepreneurial Actuaries Section, 2002
Liaison between EAS for SOA and Smaller Consulting Group for Conference of Consulting Actuaries, 2003-05
Member, SOA Task Force on the Personal Actuary, 2005-07

Educational

Society of Actuaries Examination Committee Member, Pension Plan Design and Funding, 1984-87
Society of Actuaries Education Coordinator, Pension Plan Design and Funding, 1986-87

Speaking

Illinois Municipal League, 2014 (funding problems of Illinois municipalities)
Enrolled Actuaries Meeting, 2014 (new Actuarial Standards of Practice)
Society of Actuaries Speaker, 1983, 2000, 2004, 2005, 2008
Society of Actuaries Lead Workshop Co-Chairperson, 1989
Conference of Consulting Actuaries, Program Committee and Moderator on Comprehensive Medical Reform, 1992-94

Publications

"Searching for Revenue in a Very Wrong Place," *Pension Section News*, March 2014, #83, p. 1.
"QDROs with Fewer Hassles," *Pension Section News*, June 2001, #46, pp. 6-7.
"Lump sum distributions for QDROs," speech at Society of Actuaries, October 16, 2000.
"Effect of the Social Security Act of 1983 on the Funding of Pension Plans," *Record of the Society of Actuaries*, IX, 521ff.
"Government Health and Welfare Programs in the United States and West Germany," *Benefits International*, December, 1979, pp. 15-18.

VITA (cont.)
MITCHELL I. SEROTA



Professional Experience

Mitchell I. Serota & Associates, Inc. (April, 1988 to present)

President

Serota & Associates is a corporation dedicated to general Employee Benefit Consulting

- Pension Design and Funding
 - Assisting consulting firms and law firms for independent actuarial review
 - Mergers and acquisition support
 - Writing actuarial valuation reports
 - Writing analysis of impact of law on a given situation
 - Analyzing potential (or imminent) impact of change in law
 - Dealing with government agencies regarding compliance
 - Negotiating with government agencies regarding non-compliance
 - Presenting expense figures to auditors based on
 - *ASC 715-30*
 - Cost Accounting Standards (Federal Government)
 - *LAS-19* (International)
 - *GASB 67/68* (Government entities)
 - Projecting costs using deterministic and stochastic modeling
 - Optimizing benefit design of plan, given a budget
 - Comparing advantages and disadvantages of hybrid designs

- Group Health and Post-Retirement Medical
 - Calculating Incurred But Not Reported Reserves
 - Trending claims cost levels
 - Calculating COBRA rates for self-funded plans
 - Optimizing Stop-Loss levels for group health programs
 - Presenting expense figures to auditors based on
 - *ASC 715-60*
 - Cost Accounting Standards (Federal Government)
 - *LAS-19* (International)
 - *GASB 43/45, 74/75* (Government entities)
 - Projecting costs using deterministic and stochastic modeling

- Actuarial testimony
 - Preparation of reports and testimony before the State of New Jersey Board of Public Utilities to reduce proposed rate increases successfully (8 times)
 - Consulting and writing actuarial opinions for Delta Air Lines Retirement Committee during Bankruptcy (“1114 Committee”) which led to the successful award to the retirees of \$70 million
 - Providing analysis and testimony for divorce cases, including drafting QDROs and QILDROs
 - Providing analysis and testimony for wrongful death and dismissal cases
 - Calculating contingencies for estate planning attorneys

VITA (cont.)
MITCHELL I. SEROTA



Professional Experience (cont.)

Alexander & Alexander Consulting Group, Inc. (April, 1987 to April, 1988)

Vice President

Consulting Actuary responsibilities included marketing prospects, meeting with clients, understanding their Human Resource needs and their financial goals, and tailoring employee benefits programs to fit their specific circumstances.

Johnson & Higgins of Illinois, Inc. (October, 1978 to April, 1987)

Vice President, 1986

Assistant Vice President, 1982

Consulting Actuary responsibilities included performing pension valuations for United States corporations with domestic or foreign pension plans; analyzing and immunizing investment portfolios, researching markets for asset management; analyzing self-funded group medical and long-term disability programs; valuing liabilities for post-retirement medical plans; training employees.

CNA Insurance (July, 1976 to October, 1978)

Actuarial Assistant responsibilities included organizing, writing, and revising the Major Group Claims Cost Manual; researching the utilization and cost of non-standard group health benefits; determining the fluctuation of utilization and prices of group health and dental care across the country.

Academics

Adjunct Professor of History and Business, Carthage College, Kenosha, WI, 2010-13

Adjunct Professor, Columbia College Chicago, Dept. of Liberal Education, 2003

University of Chicago, Ph.D., History, March, 1976

University of Paris-I (1973-74)

University of Chicago, M.A., History, June, 1972

Massachusetts Institute of Technology, S.B., Mathematics, June, 1971

Massachusetts Institute of Technology, S.B., History, June, 1971

Personal Data

Born January 24, 1950 in Chicago, Illinois

Community service

Glenview School District 34 Caucus, 1994-2002

Chairman, 2000-2002

Northfield School District 225 Caucus, 2000-2004

Substitute Teacher at Glenbrook South H.S.: History, Mathematics, French

Surrey Lane Civic Association, President 1999-2005

Educational Counselor for M.I.T. applicants, 1998-2010

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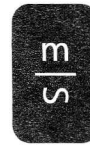
**EXHIBIT 2
TESTIMONY APPEARANCES & DEPOSITIONS OF
MITCHELL I. SEROTA**



EXHIBIT 2

TESTIMONY APPEARANCES AND DEPOSITIONS
OF MITCHELL I. SEROTA

- I. September 10, 1993, trial appearance in Chicago, IL
Henley v. Henley
divorce case
- II. September 23, 1993, trial appearance in Philadelphia, PA (federal court)
First Options, Inc. v. M K Investments, Inc.
non-compliance of pension plan with E.R.I.S.A. regulations
- III. April 26, 1994, deposition in Chicago, IL
April 29, 1994, trial appearance in Chicago, IL
Ronald J. Dranchak v. AKZO America, Inc.
wrongful discharge
- IV. September 19, 1996, deposition in Chicago, IL
Stopka v. American Alliance of Insurers
wrongful discharge, discrimination
- V. July, 2000, deposition in Skokie, IL
Edwards v. Dad Cab Co.
Wrongful injury
- VI. November, 2001, deposition in Chicago, IL
Garratt v. Knowles Electronics, Inc.
Disagreement over terms and payout of Supplemental Executive Retirement Plan
- VII. September 15, 2006, trial appearance in Chicago, IL
Prieto v. Prieto
Divorce case



**TESTIMONY APPEARANCES AND DEPOSITIONS
OF MITCHELL I. SEROTA (cont.)**

- VIII. April 13, 2009 trial appearance in Chicago, IL
June 2, 2009, deposition appearance in Skokie, IL

Former Marriage of Gulbrandsen
Divorce case settlement of pension distributions

- IX. February 22, 2010, hearing in Newark, NJ

In the matter of the Petition of Public Service Electric and Gas Company for approval of changes in rates and for other relief

- X. March through October 2010

In the matter of the Petition of five additional New Jersey public utilities for approval of changes in rates and for other relief; submission of testimony and appearances via telephone

- XI. October 14, 2010, deposition appearance in Chicago, IL

Stephens v. Stephens
Divorce case

- XII. March 8, 2012, deposition appearance in Chicago, IL
March 26, 2012, trial appearance in Chicago, IL

Wachowski v. Wachowski
Divorce case

- XIII. June 28, 2012, deposition appearance in Skokie, IL
March 26, 2012, trial appearance in Chicago, IL

Phillip Hall v. Sterling Park District
Wrongful discharge

- XIV. October 16, 2013 hearing in Newark, NJ

In the matter of the Petition of Jersey Central Power & Light Company for approval of changes in rates and for other relief

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**EXHIBIT 3
ESTIMATE OF PBGC PREMIUMS**

