

What Happens to Retirees' Pensions and Life Insurance if Sears Declares Bankruptcy?

By Ron Olbrysh, NARSE Chairman, Spring, 2017

When Sears recently announced that past operating results indicate, *“Substantial doubt exists relating to the company’s ability to continue as a going concern,”* it sent shock waves throughout the country and had a special impact on the company’s retirees.

This warning statement, the first ever from Sears Holdings, spooked everyone, even though the company’s finance chief, Jason Hollar, said this disclosure was in line with recent regulatory standards and did not reflect management expectations for the business’s near-term health.

Retiree Pensions

NARSE has received numerous inquiries from retirees concerned about their pension and life insurance benefits. First, to assuage retirees who have a pension, the Pension Benefit Guaranty Corporation (PBGC), a United States government independent agency, will secure your pension.

The PBGC was created by the Employee Retirement Income Security Act of 1974 (ERISA) to encourage the continuation and maintenance of voluntary private defined benefit pension plans, and to provide timely and uninterrupted payment of pension benefits if a company “cannot continue as a going concern.”

Subject to other statutory limitations, PBGC's insurance program pays pension benefits up to the maximum guaranteed benefit set by law to participants who retire at 65 (\$60,136 a year as of 2016).

The benefits payable to insured retirees who start their benefits at ages other than 65 or elect survivor coverage are adjusted to be equivalent in value. And, you may lose some of the benefits if the promised amount exceeds the limits set by Congress.

As soon as the PBGC takes over a company's plan as trustee, you will be contacted with general information about the pension insurance program and what the PBGC guarantees. If you are already receiving pension benefits, you won't miss a payment.

Your benefit from the PBGC is based on the benefit amount you earned under the provisions of the company's pension plan. The PBGC starts with that amount and then determines if the legal limits set by Congress apply to your benefit. Historically, most people receive the full benefit they earned before the plan ended.

According to PBGC, customer service is their top priority. You can call PBGC's Customer Contact Center toll-free at 1-800-400-7242 Monday – Friday, 8 a.m. to 7 p.m. Eastern Time; or you can write to PBGC at P.O. Box 151750, Alexandria, VA 22315-1750.

PBGC pays monthly retirement benefits to approximately 826,000 retirees of 4,700 terminated defined benefit pension plans. Including those who have not yet retired and participants in multiemployer plans receiving financial assistance, PBGC is responsible for the current and future pensions of about 1.5 million people.

Retiree Life Insurance

While retirees' pensions are protected by the PBGC. The life insurance guaranteed to retirees by the company is a totally different matter.

As background, the promised life insurance that was the subject of the 1997 class action lawsuit was settled in 2002. This lawsuit was the result of then Chairman Arthur Martinez retroactively taking the promised life insurance from the retiree population and reducing it over a 10-year period of time. However, as a result of the settlement, Sears could not reduce the final insurance amount to less than \$5,000.

The insurance premiums to cover the cost of this retiree life insurance are paid by Sears on an annual basis. As long as Sears exists, this insurance is secure. However, if Sears would liquidate its assets through a Chapter 7 bankruptcy filing, the premium payments by Sears would stop and your life insurance would be cancelled.

Under the bankruptcy code, life insurance and pensions are considered “welfare benefits” and are not protected in bankruptcy. But, as set forth above, the PBGC does secure pensions up to a certain amount. However, there is nothing securing life insurance in a bankruptcy, even though there is a 2002 court approved Settlement Agreement regarding Sears Retiree Group Life Insurance Litigation.

This Settlement Agreement stipulated that Sears could not further accelerate the life insurance reduction schedule that began in 1998 and it could not reduce the final insurance amount to less than \$5,000.

Unfortunately, in bankruptcy this Settlement Agreement is an unsecured claim, meaning that it has no priority if Sears liquidates. Your promised life insurance paid for by Sears will be gone.

Any Options?

Recently, retirees may have received a letter from Securian Life Insurance Company, setting forth the life insurance coverage for the plan sponsored by Sears Holdings Corporation. This certificate included personalized information about the insurance coverage and describes the features of this insurance plan.

Included as one of the features of this plan is “Conversion Rights.” Under this conversion, Securian *“May convert your insurance to any type of individual policy of life insurance then customarily issued by (Securian) for purposes of conversion, except term insurance. The individual policy will not include any supplemental benefits, including, but not limited to, any disability benefits or accidental death and dismemberment benefits.”*

Are these conversion rights really a viable option for our retirees? At this point in time we don’t know and Securian cannot speculate on how individual retirees will react to their conversion rights.

AARP recently offered its members Guaranteed Acceptance Life from New York Life Insurance Company. No doctors’ visits are needed and you don’t have to answer a single health question. However, only AARP members age 50-80 and their spouse’s ages 45-80 are eligible to enroll. Due to guaranteed acceptance without medical underwriting, the premiums include an extra mortality risk charge. The premiums are based on your age when you enroll

and will not increase. If you qualify and are interested in such a policy, you can call New York Life at 1-800-268-5182.

We assume that most insurance carriers have similar age restrictions for purchasing life insurance. So, realistically, there may be no viable life insurance options for retirees if Sears declares bankruptcy.

For more information about the Sears life insurance plan contact the Securian Financial Group by calling 1-866-483-9975, Monday – Friday, 7 a.m. – 6 p.m. CST. Securian is headquartered in St. Paul, Minnesota.

The Only Viable Liquidation Option

Many retirees today only have the life insurance promised to them by Sears. If the company does liquidate, then Sears will stop paying the annual premium, and the retiree life insurance will be cancelled. And even though the Securian policy contains “conversion rights,” the cost of converting will be prohibitive for most retirees.

This retiree earned life insurance was always presented by Sears’ management as a benefit in positive terms, as a benefit secure in the future. The possibility that coverage after retirement might be changed or reduced, or eliminated, or that the cost of the coverage would be passed on to the retirees, was never mentioned.

If Sears cannot avoid bankruptcy, even though Mr. Hollar stated that the disclosures the company made did not reflect management expectations for Sears Holdings near-term health, then we are asking the company, and specifically Chairman Lampert to honor its long-standing promise to retirees and assure that their life insurance benefits will be preserved, no matter what happens to Sears Holdings.

We suggest that you, like NARSE, contact Chairman Lampert and tell him that if Sears liquidates, that he will assure that the retirees’ earned life insurance will be protected. You can contact Mr. Lampert at the following two addresses:

Edward S. Lampert
ESL Investments
1170 Kane Concourse

Suite 200
Bay Harbor Islands, FL 33154

Phone: 1-786-923-5961

Or

Edward S. Lampert
Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL 60179

Phone: 1-847-286-2500

Please let us know if you receive a response.