

EU Court of Justice Finds that Ireland Must Protect Pension Benefits in Bankruptcy

May 14, 2013

The EU Court of Justice held that Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 (‘**Directive 2008/94**’) applies to pension benefits under a supplementary pension scheme, regardless of the cause of the employer’s insolvency, and without taking into account state pension benefits. Directive 2008/94 provides that member states must protect the pension interests of retirees when an employer becomes insolvent. In prior cases, the EU Court of Justice held that, while a member state need not guarantee 100 percent of the pension benefit, a guarantee of less than 50 percent is insufficient. In the case before the court, a crystal manufacturer (the ‘**Employer**’) in Waterford, Ireland, entered into bankruptcy. The Employer’s defined benefit pension scheme was severely underfunded and could cover only between 18 percent and 28 percent of the liabilities. A group of employees sued the Irish Minister for Social and Family Affairs for relief under Directive 2008/94. In addition to holding that Directive 2008/94 applied to the supplementary pension scheme set up by the Employer, the EU Court of Justice further held that for the participants to have standing, three prongs must be satisfied: the rule of European Union law infringed must be intended to confer rights on them, the breach of that rule must be sufficiently serious, and there must be a direct causal link between the breach and the loss or damage sustained by the individuals. The EU Court of Justice found that in the case presented, all three prongs were satisfied. HOGAN & ORS -V- MINISTER FOR SOCIAL AND FAMILY AFFAIRS & ORS 2010/2922 P (Hogan C 398/11 25 April 2013) Directive 2008/94 can be found [here](#). The EU Court of Justice Opinion can be found [here](#).