

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRUCE D. KUNSMAN, et al.,

Plaintiffs,

DECISION AND ORDER

08-CV-6080L

v.

SALLY L. CONKRIGHT, et al.,

Defendants.

This is one of several cases that have come before this Court in recent years involving claims brought under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §1101 *et seq.*, by current and former employees of Xerox Corporation, relating to the manner in which plaintiffs’ pension benefits have been calculated.

There are currently three motions pending before the Court: plaintiff Joseph McNeils’s motion for summary judgment and equitable relief (Dkt. #84); the remaining plaintiffs’ motion for summary judgment and injunctive relief (Dkt. #85); and defendants’ cross-motion for summary judgment (Dkt. #89).

As all sides’ motion papers make clear, many of the issues presented by those motions relate directly to another case decided by this Court, *Testa v. Becker*, No. 10-CV-6229. The Court issued a decision in *Testa* on May 9, 2017, 2017 WL 1857384, which is currently the subject of cross-appeals in the Second Circuit. It appears from the Second Circuit’s docket sheet that the Court of Appeals heard argument in *Testa* on May 22, 2018. *See* Ct. App. Dkt. #17-1826.

In light of those facts, I believe that the best course would be to defer deciding the pending motions and to stay this action pending a decision by the Court of Appeals in *Testa*.

It is well established that a Court may, in the interests of justice, stay proceedings *sua sponte*. See *S.E.C. v. Chestman*, 861 F.2d 49, 49 (2d Cir. 1988). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its own docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A court may properly exercise this power when a higher court is close to settling an important issue of law bearing on the action.” *In re Literary Works in Elec. Databases Copyright Litig.*, No. M-21-90, 2001 WL 204212, at *2 (S.D.N.Y. Mar. 1, 2001). See, e.g., *Spano v. V & J Nat’l Enterprises, LLC*, 264 F.Supp.3d 440, 460-61 (W.D.N.Y. 2017).

Regardless of how the Second Circuit rules in *Testa*, it will likely impact issues pending in this case. But if this Court were to rule now in this action, without the benefit of an appellate ruling in *Testa*, it would only result in complicating matters, risking a ruling at odds with *Testa*, and delaying the resolution of this action still further. I therefore conclude that deferring a ruling and staying this case is warranted. Since the Court of Appeals has already heard argument in *Testa*, the stay will presumably be of relatively short duration.

CONCLUSION

This action is hereby stayed, pending the outcome of the appeal before the Second Circuit in *Testa v. Becker*, Ct. App. Dkt. #17-1826, as set forth in the body of this Decision and Order, or further order of this Court.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer". The signature is written in a cursive style with a large initial "D".

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
June 25, 2018.