

Omega Pharma Case – Legal Aspect



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Omega Pharma scheme

Scheme met statutory MFS

TDR: employer contributions fixed by trustees, after consulting with scheme actuary and principal employer

Employer issued 3 months' notice to discontinue contributions





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What Happened?

Expert advice obtained from scheme actuary

€2.23m based on hybrid MFS/annuity buy-out valuation basis

Employer declined to engage with trustees

Trustees sued employer




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Court's Decision

Upheld trustees' claim

Trustees' decision:

- Could not be regarded as one which no reasonable body of trustees would have made
- Was reasonable in absence of input from employer

Judgment for €2.23 million





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Where does this case get us?

Trustees' perspective

Employers' perspective

Advisers' perspective



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Element Six and Omega Pharma



Parties	Scheme members v scheme trustees	Scheme trustees v employer
Type of scheme	Defined benefit	Defined benefit
Engagement between employer and trustees	Detailed engagement leading to majority of trustees accepting final contribution offer	No engagement by employer with proposed consultation process, resulting in unilateral demand by trustees
Primary issue	Whether accepting a final contribution offer well below scheme deficit amounted to a breach of fiduciary duty?	Whether correct computation method was used in calculation of final contribution demand?
Allegation of conflict of interest	Yes	No



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Element Six and Omega Pharma

		
Appropriate standard of review for trustees decisions	Act honestly, in good faith and reasonably. Take all relevant considerations into account, exclude all irrelevant considerations	Agreed by Moriarty J. Employer's actuary/expert also conceded he would have adopted the trustees' approach if in a similar scenario
Method of computation used	MFS	Hybrid of MFS and annuity buy-out basis



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Lessons from Omega Pharma

1.

Seek and
consider expert
professional
advice

2.

Trustees entitled
to seek more
than statutory
MFS

3.

Onus on
employers to
engage with
trustees

4.

Reasonable
decision – Court
won't interfere



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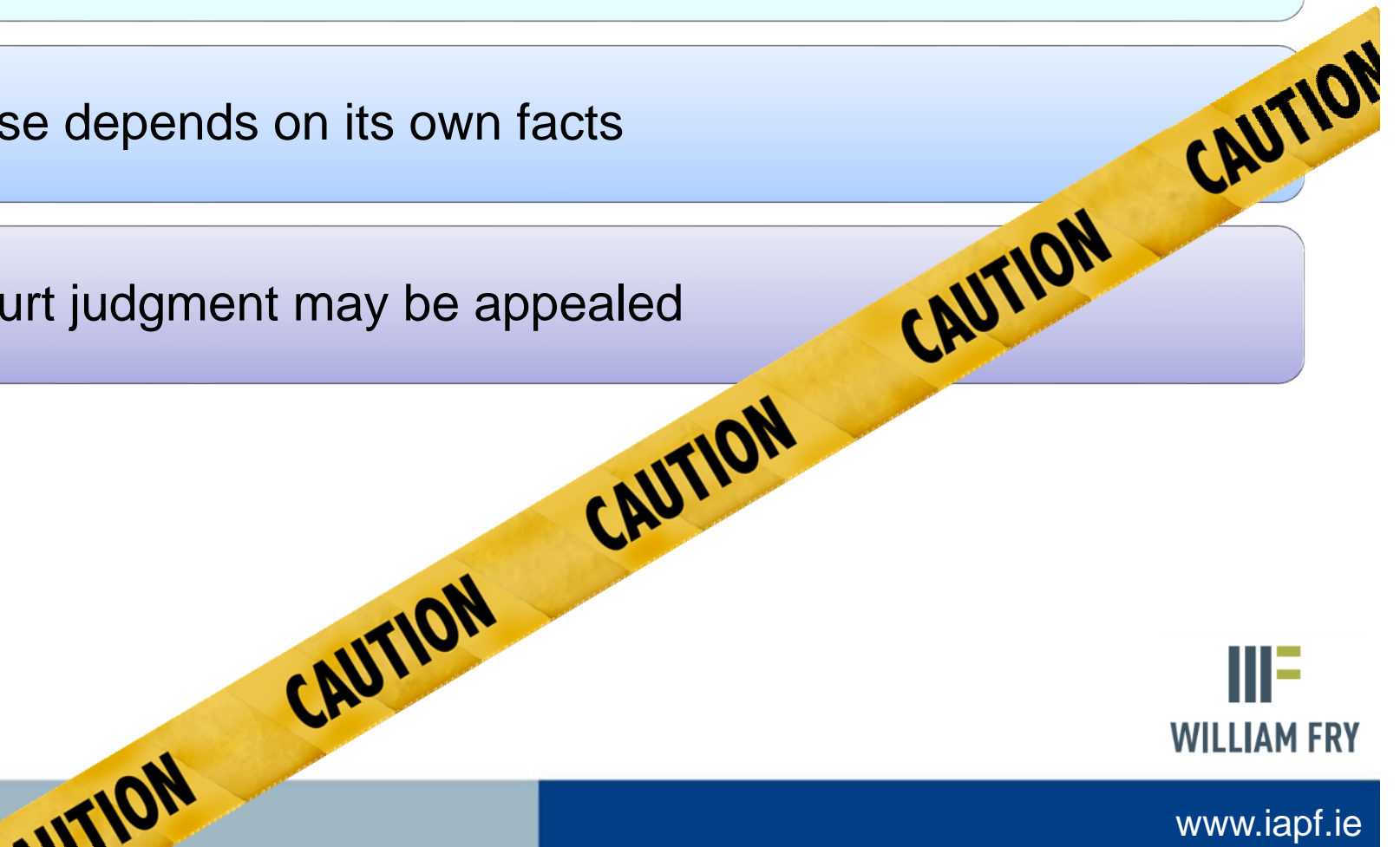
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Caveats

TDRs differ from scheme to scheme

Each case depends on its own facts

High Court judgment may be appealed



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