

# Pension fight stirs moral issues for ELCA, publisher

by [G. Jeffrey MacDonald](#) in the [August 24, 2010](#) issue

As the Evangelical Lutheran Church in America fights to stay out of a legal battle over unpaid pension benefits, all sides agree on at least one point: more is at stake than millions of dollars owed to some 500 pensioners of Augsburg Fortress, the ELCA's publishing arm.

The ELCA asked in late June that a federal court drop the denomination from a suit filed by stakeholders in Augsburg's recently dissolved pension plan. The ELCA contends that it bears no responsibility under the 1974 Employee Retirement Income Security Act because Augsburg Fortress's pension program is a "church plan." Church plans are exempted from ERISA requirements, which include sufficient funding to meet promised obligations.

Some Lutherans, however, don't like what they're seeing. If Augsburg Fortress is indeed a church plan by virtue of its denominational affiliation, they say, then shouldn't the church take responsibility for the publisher's debts?

Whether or not the ELCA has a legal duty to keep Augsburg Fortress retirees out of poverty, it certainly has a moral one, according to Leonard Flachman, a retired ELCA minister who worked at Augsburg Fortress from 1987 to 1993 as assistant to the president.

"The church cannot say, 'We need to raise money for people in Haiti' when we have 500 people here who will live on the edge of poverty when they retire because they lost their pension," said Flachman, who is not an Augsburg Fortress pensioner because he gets a separate ELCA clergy pension. "That in my view is the justice issue."

In its motion to dismiss, the ELCA seeks to distance itself from all financial obligations pertaining to Augsburg Fortress pensioners, regardless of whether the U.S. District Court in Minnesota deems it to be a church plan.

"Even if the plan is deemed an ERISA plan, plaintiffs' allegations that the ELCA is an appointing fiduciary fail to state a claim as a matter of law," says the ELCA's motion. ELCA spokesperson John Brooks declined to comment further, citing pending litigation. A hearing on the motion to dismiss is scheduled for October 29.

Augsburg Fortress, a program unit of the ELCA, terminated its defined benefit plan on December 31. In March, the publisher distributed the remaining funds—about \$8.2 million—among stakeholders in lump sum payments worth a fraction of what employees expected to receive over their lifetimes.

After years of underfunding and a financial crisis that battered investments, the publishing house had no good choices, according to Augsburg Fortress president Beth Lewis. Terminating the program was a more "equitable" solution, she said, than letting funds run out within five years and leaving most stakeholders with nothing.

"Legally, we could have let it just run out," Lewis said. "But we said: that's not right. That's not fair and equitable because 60 percent, more or less, of the plan participants would never have received a nickel if we had done that."

Lewis declined to comment on whether she believes the ELCA has a responsibility—legal, moral or otherwise—to fulfill Augsburg Fortress's pension commitments.

Some in Lutheran circles feel that the ELCA is on the right track in refusing to fulfill pension promises made by an affiliated organization. Justin Johnson, pastor of St. Timothy Lutheran Church in Geneseo, New York, warns of a dangerous precedent for all denominations if the ELCA is held responsible. If that happens, he said, any number of church-affiliated schools, camps or other entities could default on pension commitments and saddle denominations with potentially devastating financial burdens.

"Say everybody named in the suit is found [responsible]. Would that be the end of the ELCA because they don't have the funds?" Johnson said. "You're not just talking about pensioners from Augsburg Fortress. You're talking about pensions of all the pastors, all the people that the ELCA is responsible for—all the missions and all the ministries. And you're already talking about a denomination that's in the red a lot."

Plaintiffs in the suit, who are seeking class-action status, are aware of this case's potential to set a far-reaching precedent, according to their attorney, Richard

Lockridge. (Plaintiffs, citing the ongoing litigation, declined to comment for this story.) To date, Lockridge says, previous cases involving church plans haven't defined where a denomination's responsibilities begin and end.

Lockridge said it's likely, on the basis of similar cases in the past, that the court will in fact deem Augsburg Fortress's plan to be a church plan exempt from ERISA rules. If that happens, he will argue that the denominational affiliation makes the ELCA responsible for paying what could amount to an estimated \$20 million to \$40 million in pension benefits.

"To terminate the plan for existing employees and existing retirees who've been relying on this plan for decades is simply unconscionable," Lockridge said. "The ELCA obviously could come up with the money. . . . The ELCA theoretically could lay off some people, or divert some of the parishioners' contributions that now go to other programs to the welfare of these retirees. There's a whole host of things they could do."

Twelve regional ELCA synod meetings considered resolutions urging some type of denominational action to resolve the Augsburg Fortress pension issue; six of the resolutions passed. The votes set the stage for a possible debate on the issue when the 4.8-million-member ELCA convenes its next Churchwide Assembly in 2011. —G. Jeffrey MacDonald, RNS