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Retiree Benefits

U.S. Supreme Court Will Consider Inference In Favor of Vested Retiree Health Benefits

By Jacklyn Wille

May 5 — The U.S. Supreme Court announced that it will take up the issue of retiree health-care benefits next term, granting review of an appellate court decision upholding a permanent injunction reinstating certain M&G Polymers USA retirees in the company's health plan (*M&G Polymers USA, LLC v. Tackett,* U.S., No. 13-1010, *cert. granted* 5/5/14).

The case asks the high court to consider what has become known as the "*Yard-Man* inference," a judicial presumption that union retiree benefits are intended to be vested in the absence of specific plan or bargaining agreement language to the contrary (*United Auto Workers v. Yard-Man Inc.*, 716 F.2d 1476, 4 EBC 2108 (6th Cir. 1983)).

While *Yard-Man* has been applied in the retiree friendly U.S. Court of Appeals for the Sixth Circuit, other circuits—including the Second, Third and Seventh—have required stronger plan language to support a finding of vested retiree health benefits.

In August 2013, the Sixth Circuit upheld a permanent injunction ordering the retirees reinstated in M&G's health plan. The Sixth Circuit agreed with a federal district court that the retirees' benefits had vested under the language of the plan and that certain side agreements purporting to limit health benefits didn't apply to the plant that employed the plaintiff retirees.

The Supreme Court limited its review to M&G Polymers's first question presented, which asks whether courts construing collective bargaining agreements in Labor Management Relations Act cases should presume that silence concerning the duration of retiree health benefits means that the parties intended for those benefits to vest for life. The high court made its announcement May 5.

However, the high court said that it won't review the second question presented—namely, whether different rules of construction should apply when determining whether health benefits have vested in "pure" Employee Retirement Income Security Act-governed plans, as opposed to collectively bargained plans.

BNA Snapshot

M&G Polymers USA, LLC v. Tackett, U.S., No. 13-1010, *cert. granted* 5/5/14

Key Development: U.S. Supreme Court grants review in case involving vested status of retiree health-care benefits.

Key Takeaway: U.S. Supreme Court will consider language necessary to support inference in favor of vesting of lifetime retiree health- care benefits.

Attorney Reaction

William T. Payne, a partner with Pittsburgh-based Feinstein Doyle Payne & Kravec LLC, said that the Sixth Circuit's ruling in this case was consistent with the reasonable belief of many union retirees who assume their health benefits continue for life.

"In my experience, the vast majority of union retirees in the single employer setting simply assume that retiree health benefits continue along with their pensions," Payne told Bloomberg BNA in a May 5 e-mail. "And this is especially true not only when there is specific 'lifetime' language in the labor agreement, but also where the contract is 'silent' on the lifetime question."

Payne said that in his view, "the retirees in such situations reasonably believe that these important benefits are *not* mere gratuitous benefits that can be terminated at the employer's whim."

"I believe that Sixth Circuit law from the past 30 years applying an inference that these benefits are vested in such situations is correct and is consistent with pre-ERISA common law. I would hope that the Supreme Court does not disturb that precedent."

Payne isn't involved in the instant litigation.

Retiree Benefit Dispute

The lawsuit stemmed from M&G's announcement in December 2006 that it would begin requiring its retirees to contribute to the cost of their health benefits. The retirees claimed that M&G's collective bargaining agreements with the United Steelworkers granted them free, lifetime health benefits. The lawsuit alleged that, by requiring the retirees to pay a portion of the health costs, M&G violated ERISA and the LMRA.

The U.S. District Court for the Southern District of Ohio dismissed the case in November 2007 (228 PBD, 11/29/07; 34 BPR 2835, 12/4/07; 42 EBC 2984), but the Sixth Circuit revived it in April 2009 by ruling that the retirees might have vested benefits in light of the language in their CBA stating that they would receive "full company contribution" toward their health benefits (63 PBD, 4/6/09; 36 BPR 852, 4/7/09; 46 EBC 1901).

On remand to the district court, M&G pointed to an "unbroken chain" of side agreements dating back to a 1991 cap letter that provided that M&G would have the ability, at some undetermined date, to impose caps on its contributions for the retirees'

benefits. The district court was unable to come to a conclusion on whether the retirees' vested benefits were capped or uncapped, and the case proceeded to a bench trial (60 PBD, 3/29/11; 38 BPR 698, 4/5/11; 51 EBC 1080).

Following the bench trial, the court found that employees who retired from M&G and its predecessor's plant in Apple Grove, W.Va., who met eligibility requirements for retiree health benefits specified in agreements that were effective before Aug. 5, 2005, had a vested right to contribution-free lifetime health benefits.

However, the court found that, after Aug. 5, 2005, retirees only had a right to capped lifetime health benefits, contingent on the qualifying retirees paying above-cap premiums (153 PBD, 8/9/11; 38 BPR 1508, 8/16/11; 51 EBC 2454).

Injunction and Appeal

In February 2012, the district court awarded a group of retirees a permanent injunction reinstating them in the existing version of M&G's health plan after finding that the retirees succeeded in showing that they had a vested right to lifetime, contribution-free medical benefits (35 PBD, 2/23/12; 39 BPR 414, 2/28/12; 52 EBC 1935).

On appeal, the Sixth Circuit said that its earlier opinion found that the relevant CBA language "indicated a desire to vest benefits." However, the earlier opinion "did not conclusively determine that Plaintiffs' retirement benefits had vested," which was the conclusion reached by the district court on remand, the Sixth Circuit said.

On that point, the Sixth Circuit said that the district court's determination rested in part on its conclusion that certain side agreements between the union and employers that purported to cap health benefits didn't apply to the M&G plant that employed the retirees. M&G argued that this was an error, because, among other things, "internal union conversations" indicated that at least some union representatives believed that the cap letters applied.

M&G also pointed to the summary plan description as evidence that retiree benefits were capped, but the Sixth Circuit wasn't persuaded. It said that SPDs are neither legally binding nor part of the relevant plan document, and the district court wasn't required to find the SPDs persuasive. Therefore, in "the face of such ambiguity," the Sixth Circuit concluded that the district court didn't err in finding the cap letters inapplicable.

Moreover, the Sixth Circuit found that the district court didn't err by determining that the retirees had a vested right to health benefits. The court found that the relevant CBA language "specifically promised a 'full Company contribution' toward health care benefits" and that the district court's conclusion that benefits were vested wasn't unreasonable.

The petition for review was filed by Christopher A. Weals, Allyson N. Ho and John C. Sullivan of Morgan, Lewis & Bockius LLP, Washington and Dallas.

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For More Information

Text of the Sixth Circuit's opinion is at http://www.bloomberglaw.com/public/document/Tackett_v_M__G_Polymers_USA_LLC_733_F3d_589_196_LRRM_2570_56_EBC_.

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