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### Retiree Benefits

## Retiree Benefit Dispute Heads to Trial; Judge Cites Tackett Concurrence



By Jacklyn Wille

April 2 — In allowing a dispute over retiree health benefits to proceed to trial, a federal judge repeatedly cited Justice Ruth Bader Ginsburg's concurring opinion in a recent U.S. Supreme Court case on the same topic (*Zanghi v. FreightCar Am., Inc.*, 2015 BL 91263, W.D. Pa., No. 3-13-cv-00146, 3/30/15).

In *M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926, 59 EBC 1425 (U.S. 2015) (17 PBD, 1/27/15), a unanimous Supreme Court rejected the retiree-friendly inference that some courts had used to find that retiree health benefits vest for life absent specific contract language to the contrary, instead finding that such disputes were to be resolved through application of ordinary contract principles.

Joined by three other justices, Ginsburg filed a concurring opinion reminding lower courts that ordinary contract principles can include consideration of extrinsic evidence—including details surrounding the collective bargaining process—in the event contractual language is ambiguous with regard to vesting.

In the instant dispute between FreightCar America Inc. and a proposed class of union retirees, Judge Kim R. Gibson of the U.S. District Court for the Western District of Pennsylvania found ambiguities in the relevant bargaining agreements on the question of whether FreightCar remained bound to continue providing medical benefits for certain retirees.

Gibson denied cross-motions for summary judgment in a March 30 opinion and allowed the dispute to proceed to trial. In so doing, he largely narrowed the scope of the parties' dispute to the question of whether FreightCar remained bound by a 1991 side letter requiring continued retiree medical coverage, or whether the parties previously agreed that the company had satisfied its obligations under the side letter and was therefore no longer bound by its terms.

### Mirroring Agreement

The parties' dispute centered on whether FreightCar was required to provide vested retiree medical benefits based on a 1991 side letter it executed with the union at about the time its predecessor acquired the retirees' former employer, Bethlehem Steel Corp.

Under a "mirroring" provision in the side letter, FreightCar agreed to create mirror benefit plans that were "identical in all material respects" to the plans maintained by Bethlehem Steel.

Of particular importance to the litigation was a provision in Bethlehem's medical plan providing that retirees "shall not have such coverage terminated or reduced...so long as the individual remains retired from the Company...notwithstanding the expiration of this agreement, except as the company and union may agree otherwise."

Based on these provisions, the court found that FreightCar originally was bound by the language requiring continued coverage. However, the court said it couldn't determine at this stage whether FreightCar remained bound by this language—and therefore required to continue providing retiree medical benefits—or whether the fact that these provisions didn't appear in subsequent bargaining agreements meant that the union had agreed to release FreightCar from this obligation.

In allowing this issue to proceed to trial, the court made "particular note" of several factors, including the fact that FreightCar continued to pay retiree welfare benefits until 2002.

In a previous ruling, the court found that the parties' dispute should continue in the Western District of Pennsylvania, despite FreightCar's attempt to bring suit in the U.S. District Court for the Northern District of Illinois (11 PBD, 1/16/14; 57 EBC 2900).

The retirees were represented by Stephen M. Pincus, William T. Payne, Joel R. Hurt and Pamina G. Ewing of Feinstein Doyle Payne & Kravec LLC, Pittsburgh. FreightCar was represented by Nancy G. Ross and Samuel P. Myler of Mayer Brown LLP, Chicago; James C. Munro II, Michael J. Parrish Jr. and Ronald P. Carnevali Jr. of Spence, Custer, Saylor, Wolfe & Rose LLC, Johnstown, Pa.

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### For More Information

Text of the opinion is at

[http://www.bloomberglaw.com/public/document/ANTHONY\\_J\\_ZANGHI\\_KENNETH\\_J\\_SOWERS\\_DOMINIC\\_MCCUCH\\_JAMES\\_HOHMAN\\_and](http://www.bloomberglaw.com/public/document/ANTHONY_J_ZANGHI_KENNETH_J_SOWERS_DOMINIC_MCCUCH_JAMES_HOHMAN_and)

### BNA Snapshot

*Zanghi v. FreightCar Am., Inc.*, 2015 BL 91263, W.D. Pa., No. 3-13-cv-00146, 3/30/15

**Holding:** Lawsuit seeking vested retiree health benefits will proceed to trial.

**Takeaway:** Judge weighing retirees' claims for vested health benefits cites to concurring opinion in *Tackett*, which emphasized importance of extrinsic evidence in resolving such disputes.

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