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Accrued Benefits

Third Circuit Rules Against United Refining, Ducks Lingering Question of ERISA Deference

By Jacklyn Wille

March 18 — In giving a big win to a class of United Refining Co. retirees, the U.S. Court of Appeals for the Third Circuit dodged a question about ERISA deference levels that drew the attention of a number of industry groups (*Cottillion v. United Ref. Co.,* 3d Cir., No. 13-4633, 3/18/15).

The case asks whether the Employee Retirement Income Security Act prevents an employer from reinterpreting its pension plan in a way that reduces retired workers' benefits. Several industry groups filed amicus briefs in the case, debating the level of deference owed to an ERISA plan administrator who adopts such a reinterpretation.

However, the Third Circuit declined to wade into the deference dispute, instead finding that "no amount of deference" could rescue United Refining's reinterpretation from its "flat contradiction" with the terms of the relevant plan documents.

Given this, the Third Circuit found that United Refining violated ERISA's anti-cutback rule, which prohibits pension plan amendments that reduce workers' accrued benefits. It went on to affirm a district court decision awarding the retirees unreduced pension benefits, saying that " United must pay the Employees what it promised."

Tybe A. Brett, of counsel for Feinstein, Doyle, Payne & Kravec LLC in Pittsburgh and counsel for the retirees, said the decision was straightforward and unsurprising.

"It seems to me to be a fairly straightforward application of existing law," Brett told Bloomberg BNA March 18.

Counsel for United Refining declined to comment on the ruling.

BNA Snapshot

Cottillion v. United Ref. Co., 3d Cir., No. 13-4633, 3/18/15

Holding: Pension plan administrator's reinterpretation of plan violates ERISA's anti-cutback rule.

Takeaway: Third Circuit declines to address level of judicial deference owed to ERISA fiduciaries that reinterpret plan provisions.

Plan Reinterpretation

The class action was filed by two former United Refining workers who objected to the company's attempt to recoup a portion of their early retirement benefits. The company based this effort on a reinterpretation of the plan's provisions regarding actuarial reductions for early retirement benefits.

In April 2013, the U.S. District Court for the Western District of Pennsylvania found that this reinterpretation constituted a plan amendment that violated ERISA's anti-cutback provision by reducing participants' accrued benefits after they began receiving monthly payments (68 PBD, 4/9/13; 56 EBC 2264).

Seven months later, the district court granted class certification in the case and awarded the class injunctive relief. It forced the plan to provide unreduced early retirement benefits and reimbursement for any reductions already in effect (216 PBD, 11/7/13; 57 EBC 1460).

On appeal, the case drew two amicus briefs from various industry groups that disagreed about the level of deference owed to United Refining's plan reinterpretation (189 PBD, 9/30/14).

Three employer-side groups—American Benefits Council, ERISA Industry Committee and U.S. Chamber of Commerce—urged the Third Circuit to vacate the ruling below, arguing that the district court should have deferred to the plan administrator's reasonable interpretation of the plan.

Taking up the other side of the issue, the AARP argued that ERISA bars employers from cutting the benefits of vested participants who are currently receiving benefits, calling such actions "beyond cruel."

In particular, the groups disagreed over the applicability of the U.S. Supreme Court's 2010 decision in *Conkright v. Frommert*, 559 U.S. 506, 48 EBC 2569 (U.S. 2010) (76 PBD, 4/22/10), which held that ERISA plan administrators won't be stripped of deferential judicial review when they make a "single honest mistake" in administering their plans.

Retirees Win on Appeal

The Third Circuit dodged these issues in short order, saying that United Refining's plan reinterpretation was erroneous under any level of deference, because it clearly contradicted the terms of the relevant ERISA plans.

Instead of focusing on the deference question, the Third Circuit proceeded to strike down each of United Refining's arguments in support of its position.

In particular, the Third Circuit said that both the text and the structure of the plan documents—along with the text of external documents such as summary plan descriptions—supported the conclusion that the reduction in benefits was unwarranted.

United Refining also argued that ERISA itself only guarantees vested participants "no less than" an actuarially reduced benefit. The court rejected this contention, explaining that the plans in question "expressly provided" retirees with "more than the statutory floor."

Moreover, the court found that the retirees' alleged failure to exhaust their administrative remedies didn't bar their lawsuit. Rather, the court found that ERISA's exhaustion requirement was excused by futility because United Refining had a "fixed policy" of denying these claims.

Plan Amendment?

Another issue the court's opinion devoted little attention to was the question of what constitutes a plan amendment. In order to state a violation of ERISA's anti-cutback rule, participants must show that a plan amendment—rather than some other action—resulted in a reduction in benefits.

The Third Circuit appeared to find that United Refining's "reinterpretation" constituted a plan amendment, despite noting that other circuits—including the Ninth and Seventh—have taken a "narrower view" of the term "amendment."

On that point, the court said that its view of "what constitutes an 'amendment' to a pension plan has been construed broadly to protect pension recipients" (quoting *Battoni v. Elec. Workers IBEW Local 102 Emp. Pension Plan*, 594 F.3d 230, 48 EBC 1833 (3d Cir. 2010) (25 PBD, 2/9/10)).

Further, the court added that, "An erroneous interpretation of a plan provision that results in the improper denial of benefits to a plan participant may be construed as an 'amendment'" for purposes of ERISA's anti-cutback rule (quoting *Hein v. FDIC*, 88 F.3d 210, 20 EBC 1470 (3d Cir. 1996)).

The court announced its decision in a March 18 opinion written by Judge Thomas L. Ambro and joined by Judges Michael Chagares and Thomas I. Vanaskie.

The participants were represented by Tybe A. Brett, Ellen M. Doyle and Joel R. Hurt of Feinstein, Doyle, Payne & Kravec, Pittsburgh. United Refining was represented by Christopher J. Rillo and Eugene D. Fowler of Maynard Cooper & Gale PC, San Francisco.

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Text of the opinion is at
http://www.bloomberglaw.com/public/document/John_Cottillion_et_al_v_United_Refining_Co_et_al_Docket_No_130474/3.

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