

Federal Appeals Court Restores Retiree Medical Benefits, Effectively Nullifies "Reservation of Rights" in SPDs

The United States Court of Appeals for the Third Circuit has restored health care benefits to pre-1990 levels for a dozen Unisys retirees because company supervisors and human resources staff neglected to remind these individuals, while discussing retiree benefits with them at the times of their retirements, that the company reserved the right to modify or eliminate those benefits at any time. Prominent statements of this right in company summary plan descriptions alone were found insufficient. This ruling unquestionably heightens employer sensitivity to the content of communications with employees about benefits.

When Burroughs Corporation and Sperry Corporation merged in 1986 to form Unisys, each corporation had a culture and tradition of providing lifetime retiree health care benefits at little cost to the retirees. Six years after the merger Unisys, reacting in part to new accounting rules that made such retiree programs prohibitively burdensome to a company's financial well-being, changed all that. It replaced its retiree health care program with a new program that, among other things, required increasing contributions by retirees to the cost of coverage until, by 1996, retirees were required to bear the full cost of their health care benefits.

Not surprisingly, tens of thousands of retirees expressed their displeasure in the form of class action lawsuits. During the next ten years nearly all of these claims were dismissed for lack of merit or settled. One of the keystones of Unisys' success was the uncontradicted language contained in its summary plan descriptions for retiree health care benefits, unambiguously reserving the right to modify or eliminate these benefits at any time and for any reason.

By 2003 the only claim that remained against Unisys was for breach of fiduciary duty. The theory was that statements by supervisors and human resources staff to employees and prospective retirees led them to believe that they would receive retiree health care benefits without change for their lifetimes. In making these statements, the supervisors and staff were acting in fiduciary capacities, and the "reservation of rights" language in the summary plan descriptions was not a sufficient defense. This theory was endorsed by the Third Circuit Court of Appeals.

Because a claim for breach of fiduciary duty required a plaintiff to prove that he or she relied to his or her detriment on the purported misrepresentations, resolution of the claim required individual factual determinations. This made class actions improper vehicles for litigating these claims, and the plaintiff classes were decertified in 2003.

Following an additional series of procedural calisthenics, the claims of 14 individual plaintiffs went to trial in 2005. The federal district court found that 12 of these 14 individuals had proven that Unisys breached its fiduciary duty to them by affirmatively misrepresenting the lifetime nature of their retiree health care benefits and inadequately disclosing the company's right to modify or eliminate those benefits.

The Third Circuit Court of Appeals has now upheld that judgment. The appellate court explained that statements about lifetime health care benefits by supervisors and human resources staff were made in a fiduciary capacity and were misrepresentations, because they "created the impression that the retirees would enjoy these benefits for the remainder of their lifetimes without the possibility of change," and were "at best a half-truth because there was no mention of Unisys' right to amend or terminate the plan at any point in the future." Responding to Unisys' argument that disclosure of its "reservation of rights" in the summary plan descriptions effectively countered these statements by company personnel, the court found it "unavailing because Unisys did not present this information when it was counseling its employees on their retirement decisions."

Because of the nature of the issues in this case and their heavy dependency on factual determinations, it seems unlikely that the Supreme Court will grant review. If that is so, this saga has finally reached its end, on a rather sobering note for employers.

Taken to its logical extreme, the message from the Third Circuit is that an employer's reservation of the right to modify or eliminate an employee benefit plan will be effective only if employees are reminded of that right virtually every time they receive an oral or written communication about the substance, cost or duration of their benefits. This places a very high premium on these kinds of communications and reinforces the principle that authority to communicate with employees about retiree benefits should be limited to a small group of well-trained individuals.

If you have questions or would like additional information about fiduciary responsibility for communications about employee benefits, please feel free to contact Brian Dougherty at (215) 587-5919 or bdougherty@postschell.com.

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