

## Appeals Court Reaffirms that Health Plan Amendment Violates Pension Plan Prohibition Against Cutbacks

ERISA's anti-cutback rule prohibits amendments to defined benefit or defined contribution pension plans that reduce or eliminate accrued benefits, early retirement benefits, retirement-type subsidies or optional forms of benefit. There is no corresponding prohibition on amendments to welfare plans, such as health care plans. Yet in August 2008, a New Jersey federal district court ruled that an amendment to a collectively bargained multi employer retiree healthcare plan was a prohibited cutback to benefits under a related collectively bargained multi employer pension plan. You can read our summary of the district court's decision by clicking on the following link. [Court Rules that Health Plan Amendment Violates Pension Plan Prohibition Against Cutbacks.](#)

We criticized the district court's ruling for its lack of analytical rigor and its inappropriately broad application of regulatory guidance. We speculated that the decision would be appealed and the Third Circuit Court of Appeals would pay closer attention to the governing statute and regulations. Unfortunately, our speculation appears to have been unfounded.

The Third Circuit Court of Appeals has affirmed the district court's decision. The appellate court's ruling, like that of the lower court, is a conclusion in search of a supporting rationale. (And just to be clear, we have no dog in this hunt.)

The pension plan in this case was underfunded and permitted lump sum distributions, which exacerbated its underfunding. Because of the anti-cutback rule, lump sum distributions could not be eliminated. So in an effort to forestall the "run on the bank" caused by participants requesting lump sums, the trustees amended the related retiree health care plan to disqualify from retiree health care benefits any participant who took a lump sum distribution from the pension plan.

The Third Circuit found that the welfare plan amendment "constructively" amended the pension plan and was "part of" the pension plan "to the extent" that it pertained to pension benefits. The court reasoned that the anti-cutback rule could not be applied in "an overly simplistic, robotic fashion." 'Nuff said.

If you have questions or would like additional information about this decision or ERISA's anti-cutback rule, please feel free to contact Brian Dougherty at 215-587-5919 or [bdougherty@postschell.com](mailto:bdougherty@postschell.com).

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