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The Promise of Retiree Insurance Benefits: Does it Have to Be Kept?

By John Tucker*

THE PROBLEM: Your client is a retiree from a large local company or a multinational corporation. He took a retirement package which included “health insurance for life.” At the time, he had a traditional 80/20 type of health plan. He could pick his own doctors, receive whatever care he needed, and nearly everything was covered, with 80% of the bill being paid by the company’s health plan. He was convinced that this coverage would never change. However, the economy soured for the company and as it looked for ways to cut costs, the health plan was converted to an HMO. Your client comes to you after he receives a letter giving him a choice of HMO’s from which he can now select his coverage. There is no mention of the 80/20 plan, and the coverage is much more restricted, particularly in the area of prescription drugs. Your client asks, “Can they do that?”

THE ANSWER: The short answer is probably yes. This article will address what information you need to answer this question, and the law that governs your analysis.

As a starting point, you must know what law governs your client’s claim. Nearly every employee that works for a private employer (i.e. not a governmental entity or a church) is subject to a federal law known as “ERISA” – the Employee Retirement Income Security Act.¹ Passed in 1974, ERISA covers a wide range of insurance and pension benefits. According to an Eleventh Circuit case, *Donovan v. Dillingham*, which has been widely cited for the test to determine what is an employee benefit plan under ERISA, a benefit plan will be covered if it provides “medical, surgical, hospital care, sickness, accident, disability, death, unemployment or vacation benefits, apprenticeship or other training programs, day-care centers, scholarship funds, prepaid legal services or severance benefits to participants or their beneficiaries.”²

ERISA is primarily a group of procedural statutes designed to safeguard employee interests and promote the creation of benefit plans.³ At its core are reporting and disclosure requirements designed to advise employees and their beneficiaries of the nature of a benefit plan offered by their employer (known in ERISA parlance as the “plan sponsor”). A “Summary Plan Description” (“SPD”) must be provided to employees for each benefit plan offered, and the SPD must accurately describe the terms of the benefit plan.⁴ The SPD is your starting point in any ERISA case.

1 29 U.S.C. § 1001, et seq.

2 668 F.2d 1367, 1370-71 (11th Cir. 1982).

3 29 U.S.C. § 1001(a) and (b).

4 29 U.S.C. §§ 1022, 1023, and 1024.

By definition, the SPD is a summary of the Plan's terms. You should obtain both the SPD and the full Plan document (often an insurance policy). These two documents will provide you with at least enough information to conduct a threshold evaluation of your client's problem. Read them both.

So, what are you looking for? The key lies in ERISA's treatment of welfare benefits as compared to pension benefits. A welfare benefit is any type of insurance or non-pension benefit. The distinction lies in the area of vesting⁵, and it is crucial. Pension benefits **must** vest according to ERISA's statutory provisions, whereas insurance benefits **do not** have to vest.

When the U.S. Supreme Court visited the retiree benefit issue in 1995, in a case called *Curtiss-Wright Corp. v. Schoonejongen*, the distinction between welfare benefits and pension benefits was a crucial part of the Court's analysis.⁶ There, the Court considered a reduction in health benefits by the Curtiss-Wright Corporation, an aviation manufacturer. It held that "ERISA does not create any substantive entitlement to employer-provided health benefits or any other kind of welfare benefits. Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans. [citation omitted]. Nor does ERISA establish any minimum participation, vesting, or funding requirements for welfare plans as it does for pension plans."⁷ As a result, the Court held that there is no cause of action against a plan sponsor or administrator for amending a plan to reduce health benefits.⁸ Instead, the only action that may exist depends upon the plan language which gives power to the sponsor or administrator to amend the plan and whether it properly exercised its power.⁹

The *Curtiss-Wright* Court noted that ERISA "§ 402(b)(3) actually requires *two* things: a "procedure for amending [the] plan" *and* "[a procedure] for identifying the persons who have authority to amend the plan."¹⁰ Where a plan satisfies these two elements, it not only complies with the statute, but creates a binding procedure which the plan administrator must follow. The inquiry then focuses on whether the amendment was adopted according to the procedure (i.e. whether the proper entity amended the Plan in compliance with the Plan's terms). The failure to follow the plan's amendment procedure arguably renders an improper amendment a nullity, and would permit the employee or his beneficiary to argue that the previous plan terms remain in effect. Similarly, a Plan whose terms do not provide that it may be amended does not permit the administrator to amend the Plan at all. This is why one often sees Plan language which permits the administrator to "amend the Plan from time to time in any manner it deems necessary in its discretion."

5 Simply put, vesting means that after a defined period of time, a particular pension benefit becomes the property of an employee which cannot be taken away.

6 514 U.S. 73 115 S.Ct. 1223 (1995).

7 514 U.S. at 78, 115 S.Ct. at 1228.

8 *Id.*

9 *Id.*

10 *Id.*

However, one also has to look at the SPD and Plan to determine if any language would lead a reader to conclude that benefits were being extended on a permanent (i.e. non-amendable) basis. For example, a promise in the SPD that health benefits would be provided to retirees for their lives would preclude the employer from withdrawing that promise under certain circumstances. One should also look at correspondence and other documents given to retirees explaining a plan at the time of their retirement, as these documents may form a part of the SPD by explaining the coverage which is being offered. The courts have evaluated language of this type using contractual principles to determine if a retiree obtained vested benefits by virtue of their status.

For example, an earlier decision of the Eleventh Circuit, *United Steelworkers of America v. Connors Steel Co.*, evaluated a collective bargaining agreement which provided that health benefits would be paid to retirees for the duration of their retirement, “notwithstanding the expiration of [the collective bargaining] agreement,” and held that the health benefits which were conferred upon retirees vested for the duration of their retirement.¹¹

One must read both the SPD and the Plan document, as one will often control based upon the terms of the documents.¹² In the context of an ERISA claim, these documents are the guiding principles from which an administrator may not vary. If an administrator does not comply with the Plan’s terms, it may be subject to a claim for breach of fiduciary duty or for equitable relief under ERISA’s civil enforcement statute.¹³

In summary, while there is a wide body of law surrounding this complex question, purported amendments to retiree welfare benefits must be evaluated based upon the administrator’s right to amend the plan, and whether proper amendment procedures were followed. If the administrator both had the power to amend and properly followed amendment procedures, a reduction in coverage will apply to a retiree, unless it can be shown by other contractual language that the parties intended the benefits to vest at previous levels. This analysis can only be conducted by obtaining the Summary Plan Description and Plan documents and reviewing them in their entirety in the context of your client’s particular circumstances.

¹¹ 855 F.2d 1499, 1501-5 (11th Cir. 1988).

¹² See, e.g., *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir. 1998)(where SPD was silent on right to amend, but Plan contained right to amend and plan language indicated that omissions from SPD would be controlled by Plan, summary judgment was granted to employer); but see *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243 (6th Cir. 1996)(where employer promised lifetime coverage in SPD, but failed to include SPD provision reserving right to amend which appeared in Plan document, ambiguity existed and court held benefits vested.).

¹³ 29 U.S.C. §1132.

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