PLUNKETT COONEY

Sixth Circuit's Definition of 'Accrued Benefit' Favors Pension Plans

May 27, 2009

While the U.S. Court of Appeals for the Sixth Circuit has been handing down many difficult decisions for employers, it recently ruled against a former employee and in favor of a multi-employer pension plan. The "defining" issue was the definition of "accrued benefit" under the Employee Retirement Income Security Act (ERISA).

Thornton v. Graphic Communications Conference of the International Brotherhood of Teamsters Supplemental Retirement and Disability Fund is a case of first impression for the Sixth Circuit under ERISA that would have been decided differently had the plaintiff retired four years later. Specifically, the plaintiff, a pension plan participant, retired from his graphic communications industry position in 1995. Four years after he retired, the plan was amended to provide a 9.4 percent increase to all retirees.

However, a few years later, an actuarial consultant advised the plan that it faced a significant funding shortfall that could jeopardize its financial stability unless remedied. As a result, the plan eliminated the 9.4 percent increased benefit for all plan participants who retired **before** the 1999 amendment.

The plaintiff challenged the reduction in his annual benefit that had been granted under the 1999 plan amendment. He argued that this was an "accrued benefit" as defined under ERISA and under the Internal Revenue Code (IRC). Both ERISA and IRC have an anti-cutback rule that prohibits the reduction of participants' accrued benefits under a qualified plan. A violation of the anti-cutback rules has several serious consequences including the disqualification of a pension plan from tax exempt status.

The court focused on the definition of "accrued benefit," relying on *Board of Trustees of Sheet Metal Workers' Nat'l Pension Fund v. Comm'r,* a case decided a few years ago by the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit reviewed the statutory definition and found that the Congressional intent of the law was to ensure that the eventual payout of a retirement benefit be made in accordance with the plan that is in effect while an employee works for the employer sponsoring the plan. Since the cost of living adjustment at issue in *Sheet Metal Workers* was a **post** retirement benefit for the plaintiffs, it did not accrue **during** service, but rather after the employees had permanently separated from the covered employment.

The Sixth Circuit found this reasoning persuasive and held that a "post retirement increase in benefits does not create an 'accrued benefit' for a given participant…unless it is 'in accordance with the plan in effect while the employee works in the service of the employer.'" As a result, the plaintiff's claim in *Thornton* failed.

It is important to note that the plan eliminated the increase **only** for participants who had retired **before** the 1999 amendment to the plan. As to those who retired after the 1999 amendment, the increase would be an "accrued benefit." Therefore, in order to avoid anti-cutback rules, it is important to review the terms of the plan in existence when a participant retires to determine his/her accrued benefits since these may vary with plan amendments.