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STEPTOE & JOHNSON LLP

ERISA Advisory

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Supreme Court Bids Adieu to "*Yard-Man* Inferences"

Last term, the Supreme Court rejected the "*Moench* presumption," which had long been popular among district and appellate courts. This term opens with the rejection of an even older Sixth Circuit doctrine, popularly known as the "*Yard-Man* inferences." In *M&G Polylmers USA, LLC v. Tackett*, 2015 U.S. LEXIS 759 (Jan. 26, 2015), the Court held that the *Yard-Man* line of cases, "a thumb on the scale" in favor of construing retiree health benefits provided through collective bargaining as irrevocable lifetime promises, was "not compatible with ordinary principles of contract law." On that point, the Court was unanimous. A concurring opinion by four Justices suggested, however, that disagreement remains on exactly how "ordinary principles of contract law" affect the interpretation of welfare benefit plans.

Contact Us

Questions and comments about the Steptoe ERISA Advisory are always welcome.

Paul Ondrasik
+1 202 429 8088
pondrasik@steptoe.com

Eric Serron
+1 202 429 6470
eserron@steptoe.com

Tom Veal
+1 312 577 1234
tveal@steptoe.com

The dispute concerned medical benefits for retired workers at an M&G plant in West Virginia. In 2000, after buying the plant, M&G agreed to continue the "Pension, Insurance, and Service Award Agreement" that the former owner had negotiated with the union representing plan employees. An exhibit to that agreement governed retiree health benefits:

> Effective January 1, 1998, and for the duration of this Agreement thereafter, the Employer will provide the following program of hospital benefits, hospital-medical benefits, surgical benefits and prescription drug benefits for eligible employees and their dependents:
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> * * * *
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> Employees who retire on or after January 1, 1996 and who are eligible for and receiving a monthly pension under the 1993 Pension Plan . . . whose full years of attained age and full years of attained continuous service . . . at the time of retirement equals 95 or more points will receive a full Company contribution towards the cost of [health care] benefits described in this Exhibit B-1 . . . . Employees who have less than 95 points at the time of retirement will receive a reduced Company contribution. The Company contribution will be reduced by 2% for every point less than 95. Employees will be required to pay the balance of the health care contribution, as estimated by the Company annually in advance, for the [health care] benefits described in this Exhibit B-1. Failure to pay the required medical contribution will result in cancellation of coverage.

The terms of the agreement expired in November 2003. Bargaining for a successor agreement began in September 2003 and continued until a new agreement was finally reached in August 2005. The new agreement incorporated a "letter of understanding" that placed a cap on the "full Company contribution" for retirees who satisfied the Rule of 95. In December 2006, the company notified those individuals that they would henceforth have to pay a portion of the cost of their coverage. A group of retirees sued, alleging that, by virtue of the Pension, Insurance, and Service Award Agreement, they had a vested right to lifetime coverage at the company's expense.

Their claim, which ultimately prevailed in the Sixth Circuit (generating no fewer than eight judicial opinions in the process), rested on a much earlier case, *International Union, United Auto, Aerospace, and*

Agricultural Implement Workers of America (UAW) v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). There, a collective bargaining agreement provided that workers who retired at age 65 or older would receive the same health benefits as active employees. The plant covered by the agreement closed, the agreement expired, and the employer stopped paying retiree benefits. The Sixth Circuit, purporting to apply "traditional rules for contractual interpretation," concluded that the parties had implicitly agreed that benefits for retired workers would continue for life, regardless of what happened to the collective bargaining agreement, and ordered them reinstated.

The Supreme Court's *Tackett* opinion furnished a succinct summary of the principal "*Yard-Man* inferences" (citations omitted):

> Although the [Sixth Circuit] found the text of the provision in that case ambiguous, it relied on the "context" of labor negotiations to resolve that ambiguity in favor of the retirees' interpretation. . . . Specifically, the court inferred that parties to collective bargaining would intend retiree benefits to vest for life because such benefits are "not mandatory" or required to be included in collective-bargaining agreements, are "typically understood as a form of delayed compensation or reward for past services," and are keyed to the acquisition of retirement status. . . . The court concluded that these inferences "outweigh[ed] any contrary implications [about the termination of retiree benefits] derived from" general termination clauses.

Although many circuits rejected *Yard-Man*, the Sixth Circuit continued to extend its scope. Applying it to the facts of *Tackett*, that court concluded that "in the absence of extrinsic evidence to the contrary, the agreements indicated an intent to vest lifetime contribution-free benefits." *Tackett v. M&G Polymers USA, LLC*, 733 F.3d 589, 600 (6th Cir. 2013). The first of the two opinions in the case offered three grounds for this holding:

> First, the "full Company contribution" language suggests that the parties intended the employer to cover the full cost of health-care benefits for those employees meeting the age and term-of-service requirements. Keeping in mind the context of the labor-management negotiations identified in *Yard-Man*, we find it unlikely that Plaintiff USW would agree to language that ensures its members a "full Company contribution," if the company could unilaterally change the level of contribution. The CBA has no limitation on the amount of a company contribution and if the Defendants' argument were accepted, the company presumably could lower the contribution to zero without violating this language. Such a promise would be illusory.
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> Second, the limiting language, "[e]mployees will be required to pay the balance of the health care contribution," follows the provision requiring contributions by those retirees who had not attained the requisite seniority points. From the placement of this language, we can reasonably infer that it did not apply to all retirees, but only to those retirees who had not attained the requisite seniority points.
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> Third, the collective bargaining agreement tied eligibility for health-care benefits to pension benefits. This is another factor indicating that the parties intended the health care benefits to vest upon retirement. [561 F.3d 478, 490 (6th Cir. 2009)]

Not surprisingly, the Supreme Court concluded that *Yard-Man* violates ordinary contract principles by "placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements." The Court criticized *Yard-Man*'s assessment of likely behavior in collective bargaining as being "too

speculative and too far removed from the context of any particular contract to be useful in discerning the parties' intention." Indeed, "the Court of Appeals derived its assessment of likely behavior not from record evidence, but instead from its own suppositions about the intentions of employees, unions, and employers negotiating retiree benefits."

From this initial error, more dubious propositions followed, including:

- *Yard-Man*'s "refus[al] to apply general durational clauses to provisions governing retiree benefits"
- The treatment of "provisions that admittedly benefited some class of retirees as 'illusory' merely because they did not equally benefit *all* retirees"
- The "fail[ure] even to consider the traditional principle that courts should not construe ambiguous writings to create lifetime promises" (a principle that the same court had taken for granted when applied to non-collectively bargained contracts, *Sprague v. General Motors Corporation*, 133 F.3d 388, 400 (6th Cir.), *cert. denied*, 524 U.S. 923 (1998))
- The "fail[ure] to consider the traditional principle that contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement" (internal quote marks omitted), so that "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life"

Having said all that, the Supreme Court vacated the Sixth Circuit's judgment in *Tackett* and remanded the case to that court with instructions "to apply ordinary principles of contract law in the first instance."

In a concurring opinion joined by Justices Breyer, Sotomayor, and Kagan, Justice Ginsburg agreed that courts should apply ordinary rules of contract interpretation "without *Yard-Man*'s 'thumb on the scale in favor of vested retiree benefits.'" The concurrence suggests, however, that constraints may be imposed on an employer after the expiration of a collective bargaining agreement by "explicit terms" or by "implied terms of the expired agreement." And in view of the concurrence, a provision stating that "retirees 'will receive' health-care benefits if they are 'receiving a monthly pension'" is relevant to whether the parties intended retiree health benefits to vest. Whether the courts below will pick up on these suggestions remains to be seen.