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in this issue:

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The Fifth Circuit Court of Appeals holds that a promise in a merger agreement amends retiree medical program plan documents and prevents the employer from making changes to the retiree medical program that the company estimated would save the company approximately $93 million in medical costs.

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Fifth Circuit Holds that Merger Agreement Amends Retiree Medical Program and Prevents Subsequent Amendment to Benefits Coverage

By Kerry E. Notestine and Timothy A. Rybacki

In a case with major implications for retiree medical plans, the Fifth Circuit Court of Appeals held in *Halliburton Company Benefits Committee v. Graves*, 463 F.3d 360 (5th Cir. 2006), that amendments made by Halliburton Company in 2003 to the medical benefit program for retirees of Dresser Industries violated a 1998 merger agreement between Halliburton and Dresser. The Court concluded that the provision of the merger agreement that allowed Halliburton to change retiree medical benefits only if the company made similar changes to medical benefits for current employees was a revision to the retiree medical program plan documents that restricted Halliburton's otherwise unfettered right to make changes to the Dresser retiree medical program.

Background of the Decision

As part of its merger agreement with Dresser Industries in 1998, Halliburton agreed to continue the Dresser retiree medical program for the approximately 5500 qualified Dresser retirees. The merger agreement allowed Halliburton to modify the Dresser retiree medical program if Halliburton made the same changes to the medical programs of Halliburton's similarly situated *active* employees. The agreement also required Halliburton to provide Dresser employees with medical benefits for three years, stated that nothing in the agreement was intended to confer on any third party any right, benefit, or remedy, and allowed Halliburton's officers, directors, and employees to enforce the agreement for a period of three years.

The Dresser retiree medical program plan documents included standard language reserving the right of the company to unilaterally amend or terminate the plans. Five years after the merger, Halliburton's plan administrator amended several provisions of the original Dresser retiree medical program to "achieve parity for all retirees" under the Halliburton umbrella. Halliburton provided very limited medical benefits to its retirees, and the amendments to the Dresser retiree medical program resulted in a substantial reduction in the medical benefits available to Dresser retirees. Halliburton stated in its 2003 annual report that these reductions would save the company approximately $93,000,000 in future medical benefit costs. Halliburton did not make similar changes to the medical program for active Halliburton employees.

Several Dresser retirees submitted written complaints challenging the validity of the amendments. One of the lead retirees was the former Vice President of Human Resources for Dresser, Paul Bryant, who became Halliburton's Vice President of Human Resources after the merger. Bryant issued several documents after the merger and before his retirement (at which time he became a Dresser retiree and a participant in the Dresser retiree medical program) that confirmed the obligations from the merger agreement, at least in Bryant's view. Halliburton eventually filed a lawsuit seeking class certification of all participants in the Dresser retiree medical program and requested a declaratory judgment that its amendments were valid

based on Halliburton's right under the retiree medical program plan documents to amend or terminate the plans. The Dresser retirees counterclaimed seeking an order prohibiting any modification to the Dresser retiree medical program. The district court certified the class and rendered summary judgment for the Dresser retirees on the theory that the merger agreement was a validly executed amendment to the Dresser retiree medical program. Halliburton sought an interlocutory appeal of the summary judgment and the trial court granted the motion.

The Fifth Circuit's Decision

On Halliburton's appeal, the Fifth Circuit affirmed the judgment of the district court holding that the merger agreement precluded Halliburton's amendments to the Dresser retiree medical program. The most important ruling by the Court was that the merger agreement amended the Dresser retiree medical program. The Court noted that the Dresser retiree medical program plan documents included a simple plan amendment procedure requiring that "the company" could amend the plan at any time by a written instrument signed by the Vice President of Human Resources. The Court concluded that the merger agreement, signed by Halliburton and Dresser's top executives and approved by the two companies' boards of directors, was an effective amendment by "the company" to the Dresser retiree medical program plan documents despite the fact that there was no amendment specifically signed by the Vice President of Human Resources. The Court reasoned that these individuals effectively acted for the company under standard corporate law doctrines. This conclusion was supported by the additional fact that Halliburton had amended the Dresser plan twice without the signature of the Vice President of Human Resources.

The Court also ruled that even if Halliburton did not follow the plan procedure for amending the retiree medical program, Halliburton's actions after the merger ratified the amendment so that it nevertheless was effective. The Court determined that this happened in at least two ways. The first ratification occurred when the shareholders of Halliburton and Dresser approved the merger agreement in 1998, which had the effect of ratifying the amendment even if the Halliburton executives who negotiated the merger agreement were not authorized to amend the retiree medical program plan documents. In addition, Halliburton's administration of the Dresser retiree medical program for five years after the merger and certain correspondence by Halliburton executives recognizing the validity of the obligations to the Dresser retirees was sufficient to ratify the amendment. The trial court specifically had referred to correspondence by Bryant, the lawsuit claimant who also had been Dresser's and then Halliburton's Vice President of Human Resources, in finding ratification. *Halliburton Company Benefits Committee v. Graves*, 2004 WL 2938645 (S.D. Tex. Dec. 20, 2004) slip op. at pp. 6-7. The appellate court did not identify the evidence regarding Bryant's actions, which would appear to be a conflict of interest, to support its conclusion of ratification. It is difficult to know from the opinion whether or not Bryant may have had a role in the correspondence that the Fifth Circuit did identify in support of its conclusion regarding ratification.

Halliburton argued that even if the provision in the merger agreement was a valid amendment to the Dresser retiree medical program, a separate clause in the merger agreement stating that the merger agreement did not bestow rights on third parties prevented the Dresser retirees from enforcing it. The Court rejected this argument reasoning that the Dresser retirees were not seeking to enforce a breach of contract claim under the merger agreement, which would be preempted by ERISA. Rather, the Dresser retirees sought "clarification of their rights to future benefits under the terms of the retiree program." The Court concluded that ERISA's remedial scheme allowed such an action by the Dresser retirees under ERISA itself.

Finally, the Court considered Halliburton's argument that giving effect to the amendment caused a vesting of plan participants' rights without a clear intention to do so and in violation of a prohibition against the creation of such rights in the merger agreement. The Court found this argument unpersuasive because the Court reasoned that no rights had actually vested. "Vesting" under ERISA requires the conferral of "unalterable and irrevocable benefits on its employees." In contrast, according to the Court, Halliburton remained free to amend or terminate the Dresser retiree medical program altogether, so long as it did so consistent with the terms of the merger agreement that permitted such actions if Halliburton did the same for its active employees. The Court specifically declined to allow Halliburton the unilateral right to take away "bargained-for rights" that Halliburton and Dresser negotiated in the merger agreement.

Importance for Employers

The Fifth Circuit's decision in this case is difficult to reconcile with the commonly accepted belief that an employer retains the unfettered right to amend or terminate welfare benefit plans if the employer reserves such a right in the benefit plan document. Many employers have used this right in the last 20 years to change benefits available to retirees because of the dramatic increase in the cost of such benefits. The courts generally have been hesitant to recognize informal plan amendments either by oral or even written statements of company officials.

This decision by the Fifth Circuit runs counter to the tendency by the courts to act with caution in finding unintended amendments to ERISA plans. It would appear from the facts of this case that Halliburton and Dresser did not specifically intend to amend the Dresser retiree medical program by their agreement in the merger document, but the Court was willing to find such an amendment. The judicial deference to the integrity of plan documents traditionally has given most plan administrators significant comfort that they would not be faced with the consequences of plan amendment unless there was specific intent for plan amendment. With this decision, plan administrators should be cautious in assuming that the rights of the participants will be safely contained within the four corners of an ERISA plan document.

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With these concerns in mind, we recommend the following:

- Plan administrators should review plan documentation to ensure that the company has reserved the right to amend, interpret, and terminate benefit plans.
- Plan administrators should monitor and review other company documents to determine if the company has made commitments to participants not contained in plan documents. If company officials make statements or issue documents that could be construed as making commitments to participants, the plan administrator should clarify rights under the plan and amend the plan if necessary.
- Company officials should be hesitant to commit to maintaining any type of benefit or compensation plan in merger agreements. While not entirely clear from the *Halliburton* decision, it would appear that Halliburton may not be able to further amend the Dresser retiree medical program plan documents to reverse the amendment found by the Fifth Circuit in the merger agreement except if Halliburton changes its medical program for active employees. Some courts have allowed similar restrictions in the context of collective bargaining agreements with unions. See *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), cert. denied, 465 U.S. 1007 (1984). The courts, however, have seldom recognized limitations on a company's right to amend welfare plan documents based on extra-plan agreements other than in the union context. The *Halliburton* decision is a significant development on this issue.
- Companies should carefully follow plan amendment procedures when amending plan documents because failure to follow such formalities could result in findings that the company amended plans in other situations when amendments may not have been intended by all parties involved.
- Plan administrators should monitor statements of company officials to plan participants because such statements may result in ratification of perhaps unintended plan amendments.

Halliburton has filed a petition for an en banc hearing by the entire Fifth Circuit Court of Appeals. Regardless of the result of that petition, we expect one of the parties to seek review by the Supreme Court.

Kerry E. Notestine is a Shareholder and Timothy A. Rybacki is an Associate in Littler Mendelson's Houston office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Notestine at knotestine@littler.com, or Mr. Rybacki at trybacki@littler.com.

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