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Recent Court Of Appeals Case Highlights

Employers Need To Pay Careful Attention To Benefit Provisions In Acquisition Agreements

by Terry M. Connerton, Esq.

In *Evans v. Sterling Chemicals*, 2011 WL 4837847 (5th Cir. 2011), the Fifth Circuit found that language in an asset purchase agreement relating to the provision of retiree medical benefits to the "acquired employees" constituted a valid plan amendment to an ERISA plan enforceable by the affected employees.

In 1996, Cytec sold its acrylic fibers business to Sterling Fibers, a wholly-owned subsidiary of Sterling Chemicals, Inc. In the asset purchase agreement ("APA"), Sterling guaranteed that Cytec's acquired employees who retired would receive a specified level of retiree medical benefits for a certain level of premiums. The APA allowed the level of benefits to be reduced or the premiums increased only if Cytec provided prior written consent, which consent would not be withheld if Cytec reduced its own retirees' benefits or increased its retirees' premiums.

Sterling did provide retiree medical benefits to the acquired employees until 2003 at the same level and for the same premium as required in the APA. However, Sterling filed a Chapter 11 bankruptcy proceeding in 2001 and in its Plan of Reorganization rejected certain executory contracts, including the APA. However, it explicitly did not reject, but assumed, all of its employee compensation and benefit programs, including pension plans. After emerging from bankruptcy, it determined to raise the retired acquired employees' medical premiums to a level consistent with the premiums paid by all its other retired employees without first obtaining Cytec's consent. The retirees who were acquired employees sued Sterling under ERISA.

The Fifth Circuit held as a matter of law that the APA amended the Sterling Plan, even if this result was not intended by the parties. Because the APA was duly signed by the companies' Boards of Directors and the Chairman of each of the companies, the plan amendment procedures were satisfied. The Court, however, declined to opine on whether there would be a different result had the APA contained a statement that no plan amendment was intended.

Moreover, the Court did not accept Sterling's argument that because the APA was rejected in bankruptcy, the amendment was somehow invalidated. The Court held that the rejection of the APA in the Plan of Reorganization affected the enforcement of Sterling's and Cytec's contractual obligations to each other, not Sterling's ERISA obligation under the amended retiree medical plan.

This case illustrates how important it is to review provisions relating to the extension of employee benefits to "acquired employees" in acquisition agreements. Those provisions may in fact amend plans without the parties' knowledge and provide unintended ERISA rights to acquired employees. Also, this case reminds us in the bankruptcy context how necessary it is to *expressly* reject obligations which companies are seeking to get rid of.