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BUSINESS LAW & LITIGATION

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TO: Clients & Interested Parties

FROM: NLG Professional Staff

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RE: Health Benefits Cases

The skyrocketing cost of healthcare and health insurance together with longer life expectations and increasing chronic disease in older age means that health benefits promises are worth more than they used to be; and therefore worth litigating about. Two recent Court of Appeals decisions give an overview on how the ERISA rights of retirees can be affected by an employer's merger or restructuring.

RETIREES GET THEIR PLAN BACK

Unisys was on the wrong end of a lawsuit brought by former employees who retired between 1987 and 1989. The plaintiffs were originally employed by Burroughs, which merged in 1986 to form Unisys.

In 1992 Unisys eliminated its existing retiree medical benefits plan and implemented a new plan. Under the Burroughs plan inherited by Unisys, retirees received medical coverage at little or no cost. The new plan gradually increased the levels of retiree health insurance premiums until 1996 when retirees became responsible for the full cost of coverage.

The plaintiffs said Unisys breached its ERISA fiduciary duty by changing their plan in breach of certain promises and without necessary disclosures. Specifically, Unisys misrepresented that retiree medical benefits were vested and could not change despite plan language reserving the right to modify or terminate those benefits. The District Court agreed Unisys violated ERISA and ordered restoration of the terminated plan to twelve of the plaintiffs.

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The issue before the 3rd Circuit was whether the explicit reservation of rights in the plan overrode contrary oral representations made by staffers. Unisys had delegated human resource staffers and other managers to advise employees about retirement benefits.

The evidence was that these company officials said medical benefits would cost \$20 a month until age 65, and nothing after that for the rest of their lives, without also explaining the company reserved the right to alter that arrangement. The 3rd Circuit said this was enough to create ERISA liability. Although the statement was not in and of itself false, it was a misrepresentation because it created the impression the retirees would enjoy those benefits for the remainder of their lifetimes without the possibility of change.

The court concluded the message communicated to the employees in counseling them about retirement was at best a half-truth because there was no mention of the right to amend or terminate the plan at any point in the future. By failing to qualify its statements, the company misrepresented the cost and duration of the benefits.

PROCEDURAL VIOLATION MAY VIOLATE ERISA

Philips Display made CRT's for televisions. In 2001, Philips Display employees became employees of LG Philips.

One result of the merger was that the Ottawa plant closed. In connection with a reduction in force, certain union employees from an Ohio plant and certain salaried employees from a Michigan office retired and began receiving retiree medical benefits under plans that were largely a legacy of Philips Display. In 2006 LG Philips declared bankruptcy and terminated the retiree medical plans.

Both union workers who claimed they had vested rights under both a collective bargaining agreement and the terms of their medical benefit plans, and salaried employees who relied on the language of their plans sued. They argued that the termination of their retiree medical benefits was a breach of ERISA fiduciary duty — not because the company didn't have the right to terminate the plans; because the company failed to properly amend the plans in connection with the formation of Philips LG.

The 6th Circuit decided the plaintiffs had a legitimate claim and reversed summary judgment in favor of Philips LG. The court explained that the decision to transfer the assets and liabilities to LG Philips was part of a business decision, there was no breach of ERISA fiduciary duty when the retiree health care benefits were terminated. However, the fact that the decision to transfer assets was not a fiduciary one under ERISA still triggered ERISA obligations. Even though a company does not act in a fiduciary capacity when amending or terminating a welfare benefits plan, ERISA provides rules on how an employer should properly amend or terminate a plan.

The court also decided the union members might have a right to relief under the Labor Management Relations Act in addition to ERISA claims because the governing collective bargaining agreement did not clearly include a specific durational clause limiting retiree healthcare benefits to the duration of the collective bargaining agreement.