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Making Changes to Your Retiree Health Benefits? Be Careful What You Say

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After almost 15 years of litigation, a federal district court has ordered Unisys Corporation to reinstate free or low-cost health benefits for twelve retirees based on misrepresentations made by the company. The case has a tortured history having been initially filed as a class action and having been considered by the appellate court three times. Following decertification of the class and a recent decision by the appellate court, individual plaintiffs were allowed to proceed with claims of breach of fiduciary duty relating to the company's misrepresentations.

Late last year, a magistrate judge issued a report and recommendation addressing the individual claims finding that, even though Unisys distributed summary plan descriptions (SPDs) to its employees that contained a clause reserving the right to amend or terminate coverage, the SPD language was trumped by misrepresentations made by the company to the employees. Unisys raised a number of objections to the magistrate's report. It argued that the magistrate had "discounted" the terms of the SPD. The court rejected the argument finding that the SPD was outweighed by the company's affirmative misrepresentations. Unisys then argued that the magistrate erred because no retiree was ever promised benefits that were vested, guaranteed, or locked in. However, the court held that, while Unisys may have accurately represented the amount of benefits, it purposefully withheld from the retirees a full and accurate description of their benefits, including the fact that their benefits were subject to the plan's reservation of rights clause. The court wrote as follows:

The alleged misrepresentations made by Unisys may not have been technically false, but the factual findings of the Magistrate Judge establish that they were nonetheless misleading. They were misleading because the company failed to qualify adequately the information it supplied regarding the low cost of the Burroughs plan with an acknowledgement that the company would modify or terminate the retirees' medical benefits. The company knew its employees were confused and that this confusion would benefit the company financially.

The court also held that the claims were not barred by the statute of limitations. With respect to this ruling, the court noted that the SPD did not give the retirees actual knowledge of the breach because the reservation of rights provision was buried on page 28 of a 39-page document. In addition, the court rejected Unisys's contention that the retirees had failed to establish that

Authors' Note:

It is important to note that the court had previously dismissed the class action claims that Unisys was in breach of contract and was equitably estopped from changing retiree health benefits, which decision was upheld by the appellate court. However, in a separate opinion, the appellate court found that the class members could maintain a claim for breach of fiduciary duties. From a procedural standpoint, it is also important to note that Unisys was able to decertify the class on the grounds that each individual plaintiff needed to establish specific proof that misrepresentations were made to him or her and that he or she detrimentally relied on the misrepresentations. Although a majority of the claims against Unisys have apparently been settled, Unisys has had to defend against a number of individual cases.

misrepresentations were made to them by someone with fiduciary status because the retirees did not identify who made the alleged misrepresentations.

Rejecting each of objections asserted by Unisys, the district court adopted the magistrate judge's recommendations and issued a permanent injunction that requires Unisys to pay the twelve retirees health benefits and bars the company from ending their health benefits in the future. While the company may have lost the war, it did win a small victory. The court refused to award the retirees back wages or require Unisys to reimburse the retirees for medical premiums they had paid over the years, reasoning that such relief was not "equitable relief" that could be granted under ERISA.

Although the outcome in this case was highly dependent on the facts, employers should consider the following:

- Making sure the plan and SPD clearly contain a prominent "reservation of rights" clause.
- Not issuing "informal" communications that vary from the terms of the plan and SPD or that fail to include reservation of rights language.
- Cautioning employees who work with the plan from making representations about the plan's terms, coverage, and cost without reinforcing that the plan's reservation of rights clause applies.

If you have any questions about the Unisys case or your plans, please contact one of the [Employee Benefits and Executive Compensation](#) attorneys at Boulton, Cummings, Conners & Berry PLC:

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