Publications

Troubling 9th Circuit Decision Expands Anti-Cutback Rule to Protect Future Accruals

PUBLISHED
10/23/2001

SERVICES

In Michael v. Riverside Cement Co. Pension Plan, 2001 WL 1078738 (9th Cir., Sept. 17, 2001), a defined benefit plan participant claimed that a plan amendment cut back his benefit in violation of ERISA section 204(g). A divided Ninth Circuit panel acknowledged that the participant "was better off after the amendment than he would have been without it," but still concluded that the amendment violated the anticutback rule.

This troubling decision — which applies the anti-cutback rule to prevent amendments that offset existing benefits against future benefit accruals — is unprecedented. Although we believe that the panel misapplied the anticutback rule, and that other courts are unlikely to follow the Ninth Circuit's lead, the decision may prompt participants to challenge typical plan amendments that reduce future accruals by "wearing away" the value of existing accruals or early retirement subsidies.

A. Background

The facts in Riverside are as follows. The plaintiff participant retired in 1983, after qualifying for a fully-subsidized early retirement benefit of $607.82 per month. He received over $30,000 in annuity payments until 1988, when he was rehired and distributions were suspended. He continued to accrue benefits under the same benefit formula through 1991. Under the terms of the pre-1991 plan, his benefit upon subsequent retirement would be "calculated as if the Pensioner were then first retired, but [would] be based upon the sum of his Credited Service at his earlier prior retirement plus his Credited Service since rehire." The court characterized this language as providing that "reemployment with Riverside [would] not otherwise impair the early retirement benefits Michael had received" and that there would be "no deduction for benefits received during the period of early retirement. If the participant had "re-retired" in 1991, he would have received benefits of $689.94 per month.

In 1991, the plan sponsor amended the plan to significantly enhance benefits. However, the enhanced formula also included, for the first time, an offset for the value of any prior distributions. Without taking into account the offset, the participant would

have received, upon his re-retirement in 1996, monthly benefits of $1,796.51. Taking into account the offset, the participant's benefit increased only to $1,035.53 per month.

B. The Decision

The participant argued that the anticutback rule afforded to him a right to accrue benefits under the new formula without having the future accruals reduced on account of prior payments. The plan argued that the anticutback rule protected only benefits accrued through the date of amendment, without entitling a participant to any particular level of future accruals.

The plan prevailed at the district court level, but the Ninth Circuit reversed.

It is difficult to make sense of the court's analysis. The court appears to have read pre-amendment plan language describing how benefits would be calculated following reemployment as a kind of guarantee (not specifically contained in the plan) that the plan would never change that method of calculation in the future. The court stated: "[The anticutback rule] precludes an amendment that nullifies the condition on which the early retirement benefits were paid — the condition that they would not cause a reduction in benefits from a second retirement." The court claimed that its decision in Shaw v. Int'l Ass'n of Machinists & Aerospace Workers Pension Plan, 750 F.2d 1458 (9th Cir. 1985), supported an expansive reading of the anticutback rule. However, the Shaw decision applied the anticutback rule in the traditional way — to protect already-accrued benefits. There, the plan sponsor had attempted to eliminate a "living pension" feature (i.e., a feature that linked benefits to post-termination pay increases applicable to the position previously held by a terminated participant) as applied to already-accrued benefits. The court concluded that changing the plan's formula with respect to already-accrued benefits violated the anticutback rule. This conclusion provides no support for the proposition that the anticutback rule imposes obligations on plans with respect to future accruals.

A strong dissent in Riverside argued that the Ninth Circuit panel misapplied the anticutback rule:

In short, although the amendment at issue may not have enhanced Michael's second periodic retirement benefit as much as it enhanced all the other plan participants' benefits, he was better off with the amendment than he would have been had Riverside Cement not amended the plan. Under these circumstances, I am unable to conclude that there has been a violation of ¤ 204(g).

C. Observations

We believe that other courts are likely to apply the dissent's traditional anticutback rule interpretation, rather than the panel's new approach. Perhaps other courts would agree that the panel's analysis should be narrowly applied to situations in which participants commence distributions in reliance on plan language indicating that their choice will not affect the calculation of future benefits. However, we also suspect that participants are likely to claim that Riverside restricts a plan sponsor's freedom to amend its plan in other more fundamental ways — including the typical "wear-away" amendment that has generally been considered. We understand that efforts are underway to obtain a rehearing of the decision.