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If you have questions, please contact your regular Groom attorney or one of the attorneys listed below:

Lars C. Golumbic
lgolumbic@groom.com
(202) 861-6615

Lonie A. Hassel
lhassel@groom.com
(202) 861-6634

Edward J. Meehan
emeehan@groom.com
(202) 861-2602

Michael J. Prame
mprame@groom.com
(202) 861-6633

Ryan C. Temme
rtemme@groom.com
(202) 861-6659

Sarah A. Zumwalt
szumwalt@groom.com
(202) 861-5432

Supreme Court Rejects *Yard-Man* Inference that Retiree Welfare Benefits Extend Beyond the Term of Collective Bargaining Agreements

On January 26, 2015, the Supreme Court handed down its decision in *M&G Polymers v. Tackett*, No. 13-1010, concluding that courts should interpret the retiree health care provisions of collective bargaining agreements according to ordinary principles of contract law. The Court explicitly struck down the Sixth Circuit's so-called "*Yard-man* inference," which courts in and out of the Sixth Circuit have relied on in finding that the bargaining parties intended retiree welfare benefits to extend beyond the term of the collective bargaining agreement ("CBA"), often for the life of the retiree.

Genesis and Prior Application of *Yard-Man*

ERISA prescribes vesting requirements for pension benefits, but employers are given broad discretion to modify or terminate welfare plans, including retiree welfare benefit plans. Importantly, because retiree benefits extend beyond the term of active employment, the duration of benefits provided under these plans is frequently the subject of litigation. Such litigation generally seeks to determine whether the employer intended to bind itself, through some contractual agreement, to provide the benefits for the life of the retirees, *i.e.*, whether the benefits are "vested." Employers can bind themselves contractually in a number of ways, but the disputes frequently revolve around the meaning of language in ERISA plan documents and in CBAs with unions.

United States Courts of Appeals have adopted a variety of standards used to interpret such language in an effort to determine the parties' intent with regard to vesting of retiree health benefits. For example, the Seventh Circuit presumes that "an employee's entitlement to such benefits expires with the agreement" absent some ambiguity more than silence. See *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 543 (7th Cir. 2000). Taking a different approach, the Second Circuit permits the question of vesting to go to a trier of fact if the documents contain language "capable of reasonably being interpreted as creating a promise" to lifetime benefits. *Am. Fed'n of Grain Millers, AFL-CIO v. Int'l Multifoods Corp.*, 116 F.3d 976, 980 (2d Cir. 1997).

The Sixth Circuit's approach favors the vesting of retiree welfare benefits more than any other circuit. In *International Union, United Auto, Aerospace, & Agricultural Implement Workers of Am. v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), the Sixth Circuit held that a lack of explicit termination provisions for the retiree health benefit provision of the CBA, the nature of collective bargaining, and the possibility for an "illusory promise" required the court to infer vesting if language in CBAs regarding the duration of retiree health benefits is determined to be ambiguous.

The *Yard-Man* court claimed to have relied on ordinary principles of contract law when reaching its decision that vesting should be inferred when possible because changes to retiree benefits were unlikely to be left up to further contract negotiations. While the *Yard-Man* inference has been applied numerous times to varying degrees in the three decades since it was announced, the Supreme Court had not opined on whether this inference was an appropriate tool in courts' contractual interpretation.

Supreme Court's Decision

The facts in *M&G Polymers* align closely with those in *Yard-Man*. The employer, M&G Polymers, had contracted with the union to provide retiree health benefits at no cost to the retiree. After the expiration of the CBA in which the employer agreed to pay for retiree health benefits, the employer sought to reduce its benefit liabilities by increasing the contributions it required of retirees. The retirees challenged these changes as a breach of contract under the Labor-Management Relations Act as a failure to provide benefits under ERISA, and as a breach of fiduciary duty under ERISA. The district court dismissed the complaint for failure to state a claim, but the Sixth Circuit reversed based on *Yard-Man*, and the district court ruled in favor of the retirees on those same grounds. The Sixth Circuit affirmed the district court's ruling.

Writing for a unanimous court, Justice Thomas held that the interpretive tools used by the Sixth Circuit in deciding *Yard-Man* and its progeny were inconsistent with ordinary principles of contract law. *M&G Polymers*, 13-1010, slip op. at 1. As a result, the *Yard-Man* inferences are not permissible guide posts for courts to use in interpreting provisions of collective bargaining agreements dealing with welfare benefits because they "distort the attempt to ascertain the intention of the parties." *Id.* at 10 (quotations and citations omitted). The Supreme Court's analysis rest on two premises: (1) that courts should attain to implement contract provisions as written when dealing with ERISA welfare plans; and (2) that courts should rely on ordinary principles of contract law when interpreting collective bargaining agreements, unless federal labor policy dictates otherwise. *Id.* at 6-7. As a result, the plain meaning of unambiguous terms in a collective bargaining agreement that deal with welfare benefit plans should be given effect without reference to external evidence. *Id.*

The Supreme Court took issue with three of the principles used by the Sixth Circuit in developing the *Yard-Man* inference: that generally applicable durational terms do not apply to retiree welfare benefits, that vesting is necessary to avoid contractual problems under the theory of an "illusory promise" which essentially deals with the sufficiency of the contractual considerations, and that the nature of collective bargaining indicates that the parties could not intend to negotiate over retiree welfare benefits in future negotiations.

Justice Thomas' opinion makes clear that any inferences of the type adopted by the Sixth Circuit must be based on facts found in the record, not on the courts "suppositions about the intentions of employees, unions, and employers negotiating retiree benefits." *Id.* at 10 (quotations and citation omitted). Importantly, the analytic framework adopted by the Supreme Court requires that future courts confronting vesting questions conduct a traditional analysis of the contractual language, only relying on extrinsic evidence if a material term is ambiguous.

Implications of *M&G Polymers*

The Supreme Court's ruling in *M&G Polymers* puts an end to the line of cases that places a thumb on the scale in support of vesting of retiree welfare benefits. Employers whose retiree welfare benefits are the subject of union contracts will continue to face lawsuits over any changes that they might make to benefits that retirees believe to be vested. However, without the specter of *Yard-Man*, employers can more easily rely on the contractual language

contained in their collective bargaining agreements and ERISA plan documents in arguing that they retain the authority to amend, modify, or terminate those plans in their sole discretion.

In the course of overturning *Yard-Man*, the Supreme Court also provided employers with some additional tools in arguing that retiree welfare benefits are not vested. First, the opinion makes clear that silence in an agreement cannot serve as the basis for a promise of lifetime benefits. Second, the Court implied that the Sixth Circuit should have considered two traditional principles of contract interpretation that clearly favor employers. The Supreme Court admonished the Sixth Circuit for failing to consider both the traditional principle that courts should not construe ambiguous writings to create lifetime promises, and the traditional principle that contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement. While this language is likely in dicta, it will provide counsel for plan sponsors with additional support for arguing that, absent a clear statement to the contrary, retiree welfare benefits do not vest for the lifetime of the retirees. Finally, the Supreme Court specified that retiree welfare benefits are not, as the *Yard-Man* court determined, a form of deferred compensation, as defined in ERISA. *Id.* at 11.

While *M&G Polymers* will most clearly be felt in the Sixth Circuit, the detail with which the Supreme Court analyzed the *Yard-Man* inference and the statements it made regarding what types of contract principles should apply to a vesting analysis will have broader repercussions. Nevertheless, employers and plan sponsors should be careful to draft ERISA plan documents and CBA provisions that ensure that the parties are explicit about the duration of retiree welfare benefits.

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