

High Court Case May Lead To Retiree Health Benefit Cuts

By **Ben James**

Law360, New York (November 07, 2014, 7:00 PM ET) -- The U.S. Supreme Court will hear oral arguments Monday in M&G Polymer USA LLC's challenge to a Sixth Circuit ruling that left the company on the hook for a class of retirees' lifetime health care benefits, a case that lawyers say could open the door for some employers to reduce potentially crippling legacy costs by scaling back health coverage for former workers.

The lawsuit, launched by the United Steelworkers and unionized retirees who worked at an M&G chemical plant in West Virginia, presents the nation's highest court with a chance to iron out a split in the circuits and pits the needs of companies looking to stay competitive by cutting back on health care contributions against those of aging retirees expecting bargained-for benefits to cover their medical costs.

The Supreme Court has been asked to weigh in on similar retiree health benefit cases many times in the past, and the decision to take up one now speaks to how high the stakes have gotten for companies, said Nancy Ross, a Mayer Brown LLP partner. The case is less about legal principles than it is “about our economy and our ability to compete with foreign companies that don't have these legacy costs,” she added.

“What's really at stake is the ball and chain that these legacy costs have been around the ankles of American companies,” Ross said. “You can see the impact that this has had on American enterprise and our ability to compete. That's why this case, in my view, is so exceptionally important.”

The question posed for the high court in the M&G case is whether courts should hold — as the Sixth Circuit did — that silence in a collective bargaining agreement with respect to the duration of retiree health care benefits means that the parties intended those benefits to vest and continue indefinitely.

The Third Circuit has held that there must be a clear statement that the retiree health benefits are meant to survive the termination of the CBA, and the Second and Seventh circuits have said an agreement must have some language that can reasonably support the position that the benefits are supposed to continue indefinitely.

M&G triggered the class action when it informed retirees in 2006 that they would have to contribute to their health care costs. A district court tossed the case, but the Sixth Circuit partially reversed its ruling, relying heavily on the appeals court's 1983 *Yard-Man* decision that said retirement benefits obtained through a collective bargaining pact are presumed to vest.

The retirees then secured a ruling that they were entitled to free lifetime care and an injunction barring M&G from collecting medical contributions. The Sixth Circuit then affirmed the lower court, prompting the appeal to the high court.

The Supreme Court agreed to hear M&G's appeal in May, setting the stage for a decision that could provide nationwide, uniform guidance on how courts should interpret collective bargaining agreements that don't explicitly address the duration of retiree health benefits.

Management-side lawyers are rooting against the Sixth Circuit and the Yard-Man inference. McDermott Will & Emery LLP partner Bobby Burchfield said the Sixth Circuit has established a legal framework for cases like the M&G matter "in which retirees almost always win and employers almost always lose."

A Third Circuit panel that included current Supreme Court Justice Samuel Alito went the opposite way in its 1999 Skinner Engine Co. decision, concluding that the vesting of retiree health benefits had to be shown through explicit language in the CBA.

Burchfield filed a July 24 high court amicus brief on behalf of the National Association of Manufacturers backing M&G and urging the Supreme Court to adopt the Third Circuit's standard.

"A regime inferring that retiree health benefits are vested would impose oppressive costs on the nation's employers," the brief said.

The NAM brief also pointed out that when it passed the Employee Retirement Income Security Act, Congress made a conscious decision to mandate vesting of pension benefits but not welfare benefits like retiree health care benefits.

According to Burchfield, adopting the Third Circuit's standard and rejecting the Sixth Circuit in the M&G case wouldn't leave retirees completely bereft of health coverage, but it would rather give companies room to maneuver when dealing with unpredictable health benefit costs.

"What that would mean is that the employers have more flexibility to adjust to the rapidly changing health care market," he said. "It does not mean that employers would necessarily eliminate those benefits, it would just allow them to change those benefits over time and not pay the same benefits under the same ossified plan."

United Steelworkers associate general counsel Joe Stuligross, however, said that it was improper for a company to promise workers a benefit and then yank it back when the workers need it most and likely can't return to the workforce.

"The role of the courts is to enforce contracts according to the parties' intent, not to determine who can best afford a particular benefit," Stuligross said in an email.

The retirees said in a Sept. 15 high court brief that the Sixth Circuit's ruling didn't actually rest on any presumption in favor of vesting, but on traditional rules of contract interpretation.

No "special rules" are needed to ascertain whether a CBA requires an employer to keep providing retiree health benefits beyond the agreement's expiration date, they argued, adding that the high court should apply traditional contract interpretation rules and affirm the challenged Sixth Circuit judgment.

According to the Sept. 15 brief, the "Sixth Circuit's case law is not as M&G describes it; instead, it is consistent with the traditional rules for interpreting CBAs. The Sixth Circuit has been emphatic that its decision in *Yard-Man* did not create a presumption in favor of vesting."

Ballard Spahr LLP partner Steven Sufas said that the M&G case would have implications that went beyond disputes over the vesting of retiree health benefits.

"It's actually a broader and more fundamental issue than just retiree health benefits, which in and of itself is important," he said. "Really what the court has to do is come up with a construct for analyzing collective bargaining agreements that everyone can rely on going forward."

--Editing by Jeremy Barker and Philip Shea.

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