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High Court Pans 'Thumb On The Scale' In M&G Retiree Case

By **Ben James**

Law360, New York (January 26, 2015, 7:09 PM ET) -- The U.S. Supreme Court's unanimous ruling in a class action battle between M&G Polymers USA LLC and retirees over the vesting of health care benefits warned courts against putting a "thumb on the scale" when analyzing collective bargaining agreements and will likely lead to a more uniform approach among courts tackling disputes over whether retiree benefits continue after a union contract expires, lawyers say.

The nation's highest court vacated a Sixth Circuit decision that left M&G on the hook for lifetime health benefits for a class of hundreds of retirees, plus dependents and surviving spouses. The high court remanded the matter to the lower court to review the collective bargaining agreements at issue under ordinary principles of contract law.

M&G had urged the Supreme Court to rule, as the Third Circuit has, that there had to be a clear statement that retiree health benefits were intended to survive the agreement's expiration for those benefits to continue. But while Monday's opinion didn't go that far, it did pan the Sixth Circuit's approach to similar cases and its 1983 Yard-Man decision, which inferred that parties to CBAs would intend retiree benefits to vest.

Justice Clarence Thomas, who delivered the opinion, wrote that “when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.”

McDermott Will & Emery LLP partner Bobby Burchfield, who had filed an amicus brief at the high court in July for the National Association of Manufacturers supporting M&G, said the decision brought the Sixth Circuit “more into the mainstream.”

“This decision, without question, eliminates Yard-Man, and in that regard it does bring the Sixth Circuit in line with the rest of the country,” Burchfield said.

The case turns on union agreements M&G entered into when it purchased a polyester plant in West Virginia in 2000. M&G triggered the lawsuit from retirees and the United Steelworkers union when it said, in 2006, that it would require employees to contribute to the cost of their health care benefits.

The union and the retirees argued that the underlying agreements entitled them to lifetime, contribution-free health benefits. Not so, said M&G, claiming that the relevant provisions in the

agreements ended when those pacts expired.

The Sixth Circuit sided with the retirees, relying on Yard-Man. The 1983 ruling dealt with a case alleging an employer had breached a CBA containing language the Sixth Circuit found to be ambiguous. The appeals court inferred that parties to union contracts would intend for retiree benefits to vest for life because they are not mandatory or required to be included in collective bargaining pacts, are understood as delayed compensation or a reward for past services, and are contingent on retirement.

But Yard-Man's assessment of “likely behavior” on the part of parties negotiating retiree benefits was “too speculative” and derived not from evidence but from the appeals court's suppositions about those parties' intentions, the opinion said. Because of that lack of evidentiary grounding, “it is unsurprising that the inferences rest on a shaky factual foundation,” Justice Thomas wrote.

“It's a unanimous, stern opinion telling the court that this is a result-oriented inference with no grounding in any evidence,” Mayer Brown LLP partner Nancy Ross said of Monday's ruling, going on to call it a “game-changing opinion.”

Justice Thomas wrote that “Yard-Man violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements” and distorted efforts to assess what the bargaining parties' intentions were.

Proskauer Rose LLP partner Howard Shapiro, one of the attorneys on a July amicus brief backing M&G that was filed on behalf of the Employee Retirement Income Security Act Industry Committee and the American Benefits Council, said Monday that the Supreme Court's decision was “a wake-up call to the Sixth Circuit” that would cut down on forum-shopping in cases over retiree health benefits.

“This type of litigation advantage in the Sixth Circuit has caused plaintiffs to file their retiree rights cases in the Sixth Circuit,” Shapiro said. “Conversely, the erroneous Yard-Man inference has driven some employers to attempt to avoid litigation in the Sixth Circuit by bringing declaratory judgment action litigation elsewhere.”

Some lawyers said the impact of the M&G decision would be felt most in the Sixth Circuit. Epstein Becker & Green PC partner Stuart Gerson said the high court's decision laid out a “middle ground” approach many circuits had been following anyway.

“The Sixth Circuit was the only circuit that had an inference like that, at least in overt terms. Employers in the Sixth Circuit have long believed that inference was outmoded,” said Gerson, who called the unanimous ruling a “clarifying decision.”

But although the opinion rejected the Yard-Man inference, it will likely have “limited impact” even in the Sixth Circuit, according to Joe Stuligross, associate general counsel at the USW and an attorney for the M&G retirees. That's because the Sixth Circuit almost always relies on actual contract provisions and specific evidence of intent, he said, adding that the M&G case is a good example of that.

In face, the impact may be more pronounced in other circuits, Stuligross said. While Monday's decision faulted the Sixth Circuit for putting a thumb on the scale, circuits like the Third and Eighth put their thumb on the scale to favor employers by requiring clear evidence that benefits were meant to continue, he said.

“It’s hard to justify such special 'clear statement' rules with the justices now focused on ascertaining 'the intent of the parties,'” Stuligross said.

--Editing by Kat Laskowski and Kelly Duncan.
