

Labor & Employment Advisory

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Court Finds a Breach of Fiduciary Duty Despite Clear Statement in SPD that Employer Could Amend Retiree Medical Plan

By David J. Laurent

In re Unisys Corporation Retiree Medical Benefits ERISA Litigation, 579 F. 3d 220 (3d Cir. 2009), the fourth decision in the long running Unisys Corporation (Unisys) litigation, held that Unisys breached its fiduciary duty by not informing retirees that Unisys retained the right to change the terms of their retiree medical benefits. In reaching this conclusion, the court rejected Unisys' key arguments that (1) there was no need to inform the individuals of Unisys' right to amend because no amendments were being contemplated at the time, (2) the Summary Plan Description (SPD) Unisys distributed expressly stated that Unisys retained the right to amend the plan, and (3) the injunction compelling Unisys to reinstate the plan without the right to change benefits impermissibly restricted Unisys in its capacity as a settlor. The court reasoned that: in context, Unisys' statements amounted to a misrepresentation; the language in the SPD was irrelevant because Unisys did not distribute the SPD until after the individuals had retired; and the right to equitable relief trumped Unisys' rights as a settlor.

Unisys informed employees who were about to retire that they would be required to pay \$20 per month until age 65, after which there would be no cost to them for the benefits. Unisys argued that this was a true statement because, at the time, Unisys was not considering any changes; however, the court determined that the statement "was a half-truth because there was no mention of Unisys right to amend or terminate the plan at any point in the future. In essence, by failing to qualify its statements, Unisys placed a period where it should have placed a coma in the course of explaining retiree medical benefits to these plaintiffs and, in doing so, misrepresented the cost and duration of the benefits." 579 F. 3d at 231. Additionally, the court concluded that, although Unisys never described the benefits as "vested" or "guaranteed," the words Unisys used created the impression that benefits would remain unchanged for life and, therefore, Unisys misrepresented the true nature of the benefits.

The court also rejected Unisys' reliance on the unambiguous statement in the plan's SPD that Unisys retained the right to amend the plan. The court reasoned that since Unisys had a policy of not distributing the SPD until after an employee had retired and enrolled in the plan, "Unisys' argument that it disclosed its reservation of rights in the summary plan descriptions and other documentation is unavailing because Unisys did not present this information when it was counseling its employees on their retirement decisions." 579 F. 3d at 232.

Finally, the court rejected Unisys argument that, by ordering it to reestablish the plan, but without the language giving Unisys the right to reduce or eliminate benefits, the district court improperly restricted Unisys' authority as a settlor. The court reasoned that "the injunction is designed to remedy Unisys' violation of its fiduciary duty to the plaintiffs for actions it took in its fiduciary capacity, and the specific equitable relief provision of ERISA, which applied in this case, trumps the application of the general principle that ERISA does not regulate settlor activity." 579 F. 3d at 237.

The *Unisys* decision is a good reminder that to preserve a right to amend, modify or terminate retiree medical benefit plans, every effort must be made to ensure that employees are given complete and accurate information before they retire. The *Unisys* decision sends a potentially surprising message that simply inserting unambiguous language in an SPD or other documents may be insufficient, especially if the SPD is not given to the employees until after they have already retired.

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