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Company Assumed Successor Liability for Retiree Health Care Benefits

6/11/2012 By Jasmin M. Rojas

Based on its conduct, a company was bound as a successor, liable under earlier collective bargaining agreements to which it was not a party, and was required to provide vested retiree benefits, according to the 6th U.S. Circuit Court of Appeals.

The retirees were bargaining unit members at a Michigan-based plant. During the relevant time period, they were represented by one union, UAW Local 797. However, between 1981 and 2000, the plant changed ownership on various occasions. In 1998, Newell Co., which owned the plant at the time, essentially merged with another entity and formed Newell Window. In 2000, Newell Window closed the plant pursuant to a shutdown agreement that it negotiated with the union.

In 2005, Newell Window announced that it would consolidate all retiree health care plans for administration by CIGNA Healthcare, and that a premium of $40 per month would be charged to all retirees across the board, effective Jan. 1, 2006.

Anticipating litigation, Newell Window filed an action, seeking a declaration from the court that the changes were lawful. Soon after, the union and four retirees also filed a lawsuit, individually, and as a class, in federal court, alleging that the changes violated the federal Employee Retirement Income Security Act of 1974 (ERISA) and the federal Labor-Management Relations Act. Newell Window's suit was ultimately dismissed. Thereafter, the retiree plaintiffs filed an amended class-action complaint, adding new claims for full reimbursement of Medicare Part B premiums.

The district court determined that Newell Window was liable as a successor for any retiree health care benefits that had vested under the pre-1998 collective bargaining agreements (CBAs) entered into between its predecessors and the union. Accordingly, the district court found for the plaintiffs and awarded damages, plus interest, to the individual plaintiff retirees for medical insurance and/or Medicare reimbursement. With respect to the class, the district court also held that some of the class members were entitled to vested lifetime health care benefits. Further, the district court found that the benefits must be provided at no cost to most of the retirees, and that some retirees were entitled to coordination (rather than integration) of their Medicare Part B benefits.

On appeal, the district court's decision was upheld. The court recognized the general rule that a successor corporation is not liable for its predecessors' liabilities unless expressly assumed. However, the court found that in this instance, there was sufficient evidence to conclude that even though it had not been a party to them, Newell Window had, in fact, assumed the liabilities under the previous CBAs.

First, the court agreed that when Newell Window filed its original complaint asking the court for a declaration that its actions where lawful, it made statements that admitted that it was a successor to the plant's previous owners. In addition, the court concluded that the company's "due diligence" memorandum, created at the time of the plant's transfer, and other documentary evidence confirmed that Newell Window was a successor in interest. Further, the court found that the language in the purchase and sale agreement expressly assumed the previous liabilities under the CBAs. Accordingly, because of that language, the court rejected Newell Window's argument that the reservation-of-rights clause in the 1997 purchase and sale agreement relieved the company of successor liability.

Finally, the court concluded that Newell Window's course of conduct demonstrated that it was a successor in liability. To illustrate, in 1997, Newell Window sent correspondence to its predecessor's retirees stating "Because Newell has assumed [the previous company's] ongoing commitments to its retirees for medical coverage, your benefits will not be changed."

Holding that the district court correctly found that Newell Window was a successor in liability, the appeals court next agreed that the retiree health benefits had, indeed, vested. Unlike welfare benefit plans under ERISA, retiree health benefits are not subject to mandatory vesting requirements. Rather, they only vest by contractual agreement. Therefore, an employer is free to terminate any unvested welfare benefits upon the expiration of the CBA.

Essentially, Newell Window argued that the benefits could not have vested because the summary plan descriptions of the retiree benefits (SPDs) contained a reservation-of-rights clause, where the company reserved the right to amend the plan, and presumably, terminate or alter the benefits. The company argued that the SPDs were incorporated by reference into the CBAs and therefore, gave the company any right to change the benefits. The incorporation language stated that the "benefits of the program are set forth in a booklet and policy, a copy of each to be available to every employee." Although the court did agree that SPDs may be considered as evidence of the parties' contractual intent, it found that the alleged incorporation language was too vague. Because it was not sufficiently explicit, then the company could not overcome other evidence that the parties intended the benefits to vest. Accordingly, the company was required to provide the benefits.

Bender v. Newell Window Furnishing Inc., 6th Cir., No. 11-1335 (May 3, 2012).

Professional Pointer: This case, which is a departure from the general rule about successor liability under previous CBAs, provides an important cautionary tale regarding employee benefit plans after an asset sale. Companies that have predecessors are urged to consult with counsel about potential successor liability.

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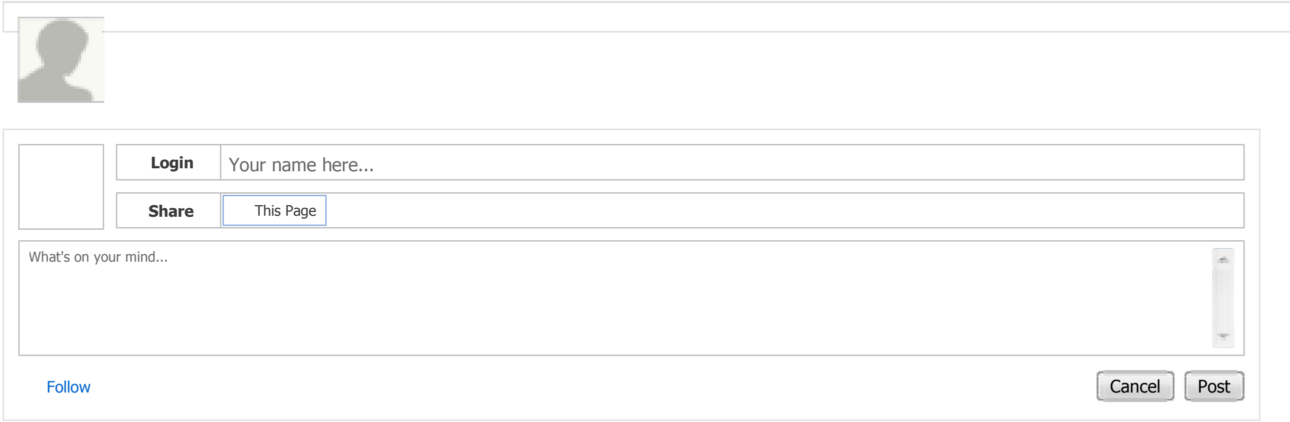

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