4th Circ. Ruling Won't Safeguard Life Insurance Under ERISA

By **Elizabeth Hopkins** (September 9, 2022)

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Death may be inevitable, but an ERISA-governed life insurance benefit for retirees is not. This is because vesting outside of the pension plan context presents unique difficulties under the Employee Retirement Income Security Act.

In its 2018 decision in M & G Polymers USA LLC v. Tackett,[1] the U.S. Supreme Court examined whether benefits under a collectively bargained retiree health care plan had vested and were therefore inalterable. Specifically, the court considered whether the U.S. Court of Appeals for the Sixth Circuit was correct to apply a presumption of vesting to such benefits under a collectively bargained plan.

The court held that silence in a collective bargaining agreement concerning the durational limits of any benefits under that agreement should not be read to create the promise of lifetime benefits.[2] To so find, the court relied on the principle that ERISA does not require welfare benefits — unlike pension benefits — to vest, as well as on ordinary contract law principles, including the principle that contract terms should normally be enforced as written.

The Supreme Court therefore rejected the presumption that the Sixth Circuit had applied and sent the case back to the lower courts to interpret the contract without the application of a presumption of vesting.[3]

Since Tackett, plaintiffs have rarely succeeded in establishing that their health or other welfare plan benefits have vested, particularly where employers have included clauses in the plan documents reserving the right to amend or eliminate such benefits.[4]

The U.S. Court of Appeals for the Fourth Circuit's July 15 decision in Bellon v. PPG Employee Life & Other Benefits Plan, at best, is a partial exception to this strong trend.

In 2018, a number of retirees and surviving spouses filed a class action in the U.S. District Court for the Northern District of West Virginia against their former employer, PPG, a life insurance plan in which they were participants, and the plan administrator after their life insurance coverage was terminated following a corporate merger and spinoff.

The district court granted summary judgment in favor of the defendants, concluding, in relevant part, that the plaintiffs' life insurance benefits had not vested, and ERISA therefore allowed the sponsoring company to terminate these benefits.[5] In so holding, the district court relied on the Supreme Court's decision in Tackett, and similar lower court decisions holding that ERISA generally allows the elimination of welfare benefits.[6]

The Fourth Circuit partially reversed this decision, but not because it read Tackett differently than the district court.[7] Instead, the court of appeals relied on evidence that the plaintiffs discovered months after discovery ended and summary judgment motions were briefed, but before the district court had issued its decision.

This evidence revealed that the company first adopted a reservation of rights clause applicable to retiree life insurance coverage in 1969 but later that same year "took the

extraordinary step of removing the then-existing reservation of rights clause ... to allay employee concern about the security of promised benefits."[8]

Thus, the Fourth Circuit agreed with the plaintiffs that "the purposeful deletion of the pre-1969 reservation of rights clause from the Plan may be seen as a manifestation of PPG's intent to relinquish its right to modify or terminate Plan benefits and voluntarily undertake an obligation to provide vested retiree life insurance coverage" for the employees who retired before 1984, when the company again inserted a reservations of rights clause into the plan.[9]

But the Fourth Circuit otherwise agreed with the district court that the employees who retired after 1984, and their beneficiaries, were out of luck because the company acted within its reserved rights in eliminating their benefits.[10]

Even this modest victory for the plaintiffs engendered controversy and a dissent.

Unlike the majority, U.S. Circuit Judge Allison Jones Rushing concluded that the plan's silence on the issue of vesting was not ambiguous and therefore the majority's reliance on extrinsic evidence was in error,[11] stating, "The absence of a reservation of rights clause in plan documents does not, by itself, create an inference of vesting; rather, the intent to vest must be explicit."[12]

As unusual as the facts of this case are, there are several important takeaways from the Fourth Circuit's decision.

First, considering that the plaintiffs in this case were only barely able to obtain a partial victory due to extraordinary circumstances — in which they discovered that a reservation of rights clause was expressly removed to reassure employees that they could count on their benefits — it is likely to be the rare case indeed when life insurance or other welfare plan benefits will be deemed to have vested.

Second, it appears that the elimination of retiree life insurance benefits is becoming more common, particularly in the context of mergers and spinoffs designed in no small part to transfer and ultimately reduce or eliminate liabilities for companies. The Dow-DuPont merger and subsequent spinoff of Corteva Agriscience presents one example. All of DuPont's retiree obligations were assigned to Corteva Inc. as part of the spinoff in 2019, and Corteva just this year eliminated life insurance benefits for its retirees.

Third, however one views cases such as Tackett about the elimination, or more often reduction, of health care benefits for retirees, the elimination of life insurance benefits for individuals nearing the end of their lives seems fundamentally different.

Unlike health care benefits, which because of the Affordable Care Act and Medicare are not likely to be wholly out of reach for most retirees, life insurance benefits for the elderly are generally not available or affordable in any sense.

Moreover, the very purpose of a whole life insurance policy is to pay benefits upon an insured's death to their beneficiaries, a purpose that is wholly undermined by the elimination of this benefit just as it is about to be paid out. For this reason, even with a reservation of rights clause in their plan or policy, most retirees in their twilight years are likely to be not only surprised, but shocked by the elimination of their coverage.

Indeed, the major difference between term life insurance and whole life insurance is that

with term life insurance it is clear that the coverage may end before death, but with whole life insurance the understanding is that it will not.

For all of these reasons, the fact that courts have read ERISA to generally countenance the elimination of life insurance coverage for retirees is likely to lead more companies to cut costs in this fundamentally unfair manner.

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[1] M & G Polymers USA LLC v. Tackett, 574 U.S. 427 (2018).

[2] Id. at 435.

[3] Id. at 442.

[4] See, e.g., Barton v. Constellium Rolled Products , LLC, 851 F.3d 349 (4th Cir. 2017) (collectively-bargained health benefits did not vest and employer could reduce these benefits); Witmer v. Acument Global Technologies, Inc. 694 F.3d 774 (6th Cir. 2012) (bargaining agreement did not provide lifetime, unchangeable healthcare benefits to retirees); Blankenship v. Dominion Energy Transmission, Inc., 818 Fed. App'x 121 (3d Cir. 2020) (neither bargaining agreement nor plan vested retirees with lifetime, unalterable healthcare benefits); Pacheco v. Honeywell Intern'l, Inc., 918 F.3d 961 (8th Cir. 2019) (reversing grant of preliminary injunction to early retiree's whose healthcare benefits were eliminated). But see Kelly v. Honeywell Intern'l, Inc., 933 F.3d 173 (2d Cir. 2019) (bargaining agreement was ambiguous as to whether it promised lifetime benefits).

[5] Bellon v. PPG Emp. Life & Other Benefits Plan, No. 5:18-CV-114, 2021 WL 2656753 (N.D.W. Va. June 28, 2021).

[6] Id. at *4.

[7] Bellon v. PPG Emp. Life & Other Bens. Plan, 41 F.4th 244 (4th Cir. 2022).

[8] Id. at 249-50 (internal quotation marks and citation omitted).

[9] Id. at 254.

[10] Id. at 255.

[11] Id. at 255-58.

[12] Id. at 256.