

4TH CIRCUIT UPHOLDS DISMISSAL OF CLASS ACTION RELATING TO DEFERRED COMPENSATION PLAN

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Computer Sciences Corporation (“CSC”) maintained an unfunded deferred compensation plan for certain of its key employees (“Plan”). The Plan allowed key executives to defer current compensation until their retirement. Amounts deferred by key executives were credited by CSC to a notional account. The notional account was also credited with earnings, based upon a predetermined crediting rate. Upon an executive’s retirement, his or her notional account (adjusted for earnings) would be paid to him or her from CSC’s general assets.

In 2012, CSC amended the Plan to permit key executives to choose from among four investment options that their notional accounts would then be deemed invested in. With the greater flexibility provided under the Plan also came the possibility for key executives’ notional accounts to also lose value. The Plan permitted CSC to amend the Plan, including the earnings crediting rate, so long as the amendment does not decrease a key executive’s notional account at the time of the amendment. In response to the amendment, two retired participants filed a putative class action challenging the amendment on the several grounds, including the fact that their notional accounts could potentially lose value under the amended Plan.

The Supreme Court has held that, in reviewing an ERISA claim for benefits, courts generally should review a plan administrator’s determination under an arbitrary or capricious standard of review. In the context of so-called top-hat plans like the Plan, though, different Courts of Appeals have reached different conclusions on the proper standard of review due to top-hat plans being exempt from ERISA’s fiduciary rules. In this regard, the Third and Eighth Circuit Court of Appeals have adopted a de novo standard of review, which would allow a reviewing court to substitute its judgment for that of the plan administrator. Meanwhile, the Seventh and Ninth Circuit of Appeals have generally adopted an arbitrary and capricious standard of review, under which a reviewing court will not substitute its judgment for that of the plan administrator unless the plan administrator’s determination was arbitrary and capricious. The First and Second Circuit Court of Appeals, in resolving top-hat plan disputes, found it unnecessary to rule on the issue of the proper standard of review in order to resolve the dispute at issue.

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Like the First and Second Circuit Court of Appeals, the Fourth Circuit found it unnecessary to rule on the proper standard of review in the CSC case. In particular, the Fourth Circuit found that, under any standard of review, the amendment was clearly permitted by the Plan and, therefore, upheld the district court's grant of summary judgment to CSC.

With the proper standard of review among the Circuit Courts being potentially different for the same plan, the case serves as a reminder to employers on the importance of deferred compensation plans clearly setting forth the employer's right to amend the plan in its sole discretion. *Plotkin v. Computer Sciences Corporation Deferred Compensation Plan for Key Executives* (4th Cir.).