THREE MORE POST-TACKETT RETIREE HEALTHCARE VESTING DECISIONS

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Employee Benefits

On April 20, 2017, the U.S. Court of Appeals for the Sixth Circuit issued opinions in connection with three lawsuits pertaining to the vesting of retiree health care benefits under collective bargaining agreements with the United Auto Workers. The cases are *United Autoworkers v. Kelsey-Hayes Co.* ("Kelsey-Hayes"); *Reese v. CNH Indus. N.V.* ("CNH Industrial); and *Cole v. Meritor, Inc.* ("Meritor"). The court ruled in favor of the retirees in CNH Industrial and Kelsey-Hayes, and against the retirees in Meritor. The Sixth Circuit's analysis in these cases was guided by U.S. Supreme Court's 2015 decision in *M&G Polymers USA, LLC v. Tackett* ("Tackett") and its own post-*Tackett* opinion in *Gallo v. Moen*. *Meritor* was the only unanimous decision.

In *Kelsey-Hayes*, the court held that the company could not unilaterally terminate or restructure the retirees' health care benefits. Having ruled that the collective bargaining agreement did not unambiguously address the issue of vesting, the court looked to extrinsic evidence (i.e., evidence outside of the four corners of the collective bargaining agreement), which suggested that vesting for life was intended. The court found that representatives of Kelsey-Hayes regularly informed retiring employees, including in letters to employees, that retiree health coverage would be maintained "for life."

Like *Kelsey- Hayes*, the collective bargaining agreement at issue in *CNH Industrial* was determined to be ambiguous. Because the agreement was found to be ambiguous, the court in *CNH Industrial* as in *Kelsey-Hayes*, looked to extrinsic evidence. In this case, the court found that the company's practice of determining retiree health benefits costs taking into account each retiree's life expectancy was evidence of an intent to continue benefits for life. The court also found that company representations repeatedly told employees that retirees would have healthcare coverage for their lifetimes.

In *Meritor*, the court ruled that the collective bargaining agreement unambiguously provided that retiree benefits would not be vested. The agreement in *Meritor* contained an unambiguous general durational clause which provided that the insurance agreement and program "shall continue in effect until the termination of the Collective Bargaining Agreement of which this is a part." The court ruled that language in the agreement to the effect that continued coverage upon retirement or termination after age 65 “shall be continued” did not override the general durational clause.