

Merger Agreement Amends ERISA Plan

A recent Fifth Circuit Court of Appeals decision has surprised many plan sponsors — particularly those contemplating a merger or acquisition. *Halliburton Company Benefits Committee v. Graves*, 2006 U.S. App. LEXIS 22318.

In *Halliburton*, the court found that a merger agreement that mentioned the continued provision of certain benefits actually amended the selling company's ERISA plan, and thereby limited the acquiring corporation's future actions with respect to those particular benefits. When the corporation later sought to modify the target organization's benefits, the court found that participants in the subject plan had the right to challenge the corporation's actions by exercising their ERISA rights.

Although application of this case is limited to the Fifth Circuit (which includes Louisiana, Mississippi, and Texas), the case is very important in the merger/acquisition context. It serves as a warning to employers that business agreements governing mergers may affect employee benefit plans (and the plan documents that govern those benefits). The *Halliburton* decision is also significant because it generally represents a departure from prior case law. In the past, courts have typically agreed that employers have the right to amend their plans and that employer plan documents were to be given deference over statements outside that context.

Background

Dresser Industries merged with Halliburton in 1998. After the merger, the organizations adopted the Halliburton name and the parties entered into an agreement concerning the continuance of the "Dresser Industries, Inc. Welfare Benefit Plan." The merger agreement stated that the Dresser retiree plan could be amended if the Halliburton plan for active employees was amended. The court interpreted that provision to mean that amending the Dresser plan could now only be achieved if Halliburton's active plan was changed because the merger agreement statement had, effectively "amended" the Dresser plan, despite the reservation of rights clause (permitting the employer to amend or terminate the plan at anytime) in the plan document itself.

Years later, when Halliburton changed the terms of the Dresser Retiree Medical Program in a manner contrary to the terms of the merger agreement — several Dresser retirees challenged Halliburton's actions. A lower court initially found in favor of the Dresser retirees, and based upon that decision, Halliburton appealed to the Fifth Circuit Court of Appeals.

Pre-Merger Retiree Benefits

- *Dresser Benefits*: In 1993 the Dresser retiree benefit program had been amended to exclude additional retirees over the age of sixty-five except for "grandfathered" employees. This select group remained eligible for full medical benefits under the program after they turned sixty-five.
- *Halliburton Benefits*: In 1994 the Halliburton retiree benefit program had been amended to eliminate medical benefits for Medicare-eligible retirees over the age of sixty-five — unless the retiree had reached the age of sixty-five by January 1, 1994. Subsequent retirees received a minor prescription drug benefit and no medical benefits.

Halliburton's Actions

Almost immediately following the merger, Halliburton began making administrative changes that did not affect benefits provided under the former Dresser

benefit plans — but merely moved administrative authority over to Halliburton. Later (more than five years after the merger), Halliburton amended portions of the Dresser retiree medical benefits, reducing the Dresser retiree benefits in order to “achieve parity for all retirees.” It was this action by Halliburton that started the legal dispute about whether or not Halliburton had the right to reduce the Dresser retiree benefits.

The Fifth Circuit’s decision considered several provisions of the merger agreement, but the key issue centered on a statement that limited the plan modifications that could impact the Dresser retiree medical plan. That merger agreement statement required Halliburton to, “maintain with respect to eligible participants (as of the date of the merger) the [Dresser] retiree medical plan, except to the extent that any modifications thereto are consistent with changes in the medical plans provided by [Halliburton] and its subsidiaries for similarly situated *active* employees....” [Emphasis added.]

Before Halliburton’s reduction in retiree benefits was to take effect, the Dresser retirees referred back to the provisions of the merger agreement and claimed that Halliburton did not have the right to modify the retiree benefits unless the active employee benefits were also modified in the same manner.

Was the Plan Amended?

The Court’s determination that the merger agreement represented an enforceable benefit plan amendment was vital for the Dresser retirees to prevail. If Halliburton had violated the terms of the ERISA benefit plan, then the retirees would have a right of action under ERISA to enforce their benefits under the plan. Although the Fifth Circuit had no difficulty in determining that a merger agreement could amend a welfare plan even if the merger agreement is not labeled as a plan amendment — the Court had to first determine whether or not the “amendment” had been executed in accordance with the plan’s procedures.

Ultimately, the Court found that the merger agreement (which spawned what was regarded as a plan amendment) had been signed by individuals vested with the power to amend the terms of the

benefit plan, and further, the merger agreement/plan amendment had been ratified in two ways:

- The shareholders of Halliburton and Dresser had approved the merger agreement four months after the agreement was executed; and
- Halliburton administered its obligations under the Dresser retiree program consistent with the terms of the merger agreement.

Halliburton, having created (albeit inadvertently) a valid plan amendment to the Dresser retiree plan through the language of the merger agreement, was then bound to administer the benefits in compliance with the terms of that plan amendment, and disaffected Dresser retirees then had the right to enforce their benefits under the ERISA plan.

In its concluding remarks, the court said, “We decline to allow Halliburton to unilaterally take away the ‘bargained-for rights’ that Dresser and Halliburton negotiated and made on the retiree program as part of their merger agreement. The parties were free to impose contractual obligations on the right to amend or terminate the Dresser Retiree Medical Program, and they did.” Consequently, the Court ruled that Halliburton’s future actions with regard to the Dresser retiree benefit program were limited (as per the controlling merger agreement) by Halliburton’s conduct governing its group health plan for active employees.

Conclusion

This decision serves as a warning to employers who are involved in corporate mergers/acquisitions. Although the case does not affect all jurisdictions, it is controlling in the Fifth Circuit (which includes Louisiana, Mississippi, and Texas) and may be cited by other jurisdictions considering similar issues. Even if your company is located outside of the Fifth Circuit, this case serves as a reminder that under certain circumstances, plans can be inadvertently amended. Once amended, a plan sponsor may find itself in an awkward position given applicable, controlling ERISA obligations. *Halliburton* offers plan sponsors an important reminder that appropriate care should be taken in structuring any agreements affecting ERISA plans.

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