



## Retirement Plan Plaintiffs Were Not Required To Exhaust Administrative Remedies Before Filing Their Class Action

02.22.2013

BY: MARK S. THOMAS

The Second Circuit has held that a putative class of ERISA plaintiffs was not required to exhaust a plan's administrative remedies prior to filing claims for a redetermination of future retirement benefits and alleged irregularities in plan amendments.

*Kirkendall v. Halliburton, Inc.*, No. 11-2733-cv (Jan. 29, 2013), resulted from a series of mergers and acquisitions and the effect of such transactions on a pension plan. The plaintiffs contended that a redetermination of their future pension benefits, including an early retirement subsidy, was improper and, after several inquiries, filed suit under the Employee Retirement Income Security Act ("ERISA"). The Second Circuit held that such claims should not be dismissed for failure to exhaust administrative remedies.

The plaintiffs were employees of Dresser-Rand Company, a partnership between Dresser Industries, Inc. and Ingersoll-Rand Company ("Ingersoll") prior to the acquisition by Halliburton, Inc. ("Halliburton") of the interest owned by Dresser Industries. In 2000, Halliburton sold its interest in the partnership to Ingersoll. Employees of the partnership who participated in the pension plan sponsored by Dresser Industries, Inc., and later by Halliburton (the "Dresser/Halliburton Plan"), claimed that they believed that they remained participants in the Dresser/Halliburton Plan after the 2000 transaction.

Plaintiffs also contended that, beginning in July 2002, Halliburton began telling the participants that the 2000 sale terminated the Dresser-Rand Company employees as participants in the Dresser/Halliburton Plan. The plan administrator used a termination date of March 1, 2000 for participation in the Dresser/Halliburton Plan, for purposes of calculating the participants' pension benefits.

The lead plaintiff (Kirkendall) alleged that she lost an early retirement subsidy as a result of this change, despite the fact that she remained an employee of Dresser-Rand Company. She contended that this was improper under the terms of the Dresser/Halliburton Plan. Kirkendall made various inquiries about the matter but did not receive an adequate response. In 2007, she and her co-plaintiffs filed suit without further pursuit of administrative remedies provided by the Dresser/Halliburton Plan. The district court dismissed the claims for failure to exhaust the plan's administrative remedies.

The Second Circuit vacated the district court's dismissal and held that the Dresser/Halliburton Plan was unclear as to whether a participant's question about future benefits had to be resolved by the plan's administrative claims process. The appellate court held that, where the plan was ambiguous and the plaintiff reasonably believed that she was not obligated to pursue administrative remedies under the plan's terms, a suit brought under ERISA should not be dismissed for failure to exhaust administrative remedies.

*Kirkendall* underscores the importance of careful attention to whether an ERISA-governed plan adequately and clearly states when questions about benefits must be brought through the plan's administrative review process. *Kirkendall* follows the Seventh and Eleventh Circuits in giving participant plaintiffs the benefit of the doubt as to whether they must exhaust administrative remedies before filing suit in such circumstances. Plan sponsors who wish to assure that such claims for future benefits are reviewed under the plan's administrative process should be mindful of the need for plainly stated plan terms declaring that policy, and of the need to assure that the plan's summary plan description accurately summarizes such terms.

## Related People

## Related Services

- ERISA - Employee Benefits Litigation