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ERISA PREEMPTS STATE LAW CLAIM FOR BREACH OF CONTRACT OVER ESOP BENEFITS

The Six Circuit Court of Appeals rules that ERISA preempts state law claims against Fifth Third Bank.

In a complicated set of facts, Suburban Bancorp and Fifth Third Bank entered into a merger agreement that contained language covering Suburban's ESOP because the ESOP held shares of Suburban. The merger agreement provided that Suburban obtain determination from IRS that the ESOP satisfied relevant tax regulations and perform several other tasks associated with the ESOP because of a concern of the tax implication of distributing the ESOP shares prematurely. Pending the determination by the IRS, the merger agreement provided that Suburban maintain the ESOP for the benefit of individuals who were ESOP participants on or before the merger (the class members.) The merger agreement also included a contingency plan for the ESOP that provided that if the parties agreed in good faith that allocating the ESOP shares would violate IRS rules, then Suburban would apply to the IRS for approval allowing the ESOP funds to either revert to Fifth Third Bank or be transferred to one of Fifth Third's benefit plans. The merger agreement further provided that if and only if the IRS approved the transaction allowing for the reversion or transfer of shares to Fifth Third, or if Fifth Third proceeded with the reversion or transfer without IRS approval, that Fifth Third would pay class members out of its own corporate assets the amount of money in the ESOP at the time of the merger less administrative costs.

Suburban started the process necessary to distribute ESOP funds to class members, but did not finish the process or obtain the IRS determination regarding the tax issues. After the merger, Fifth Third, which became the successor ESOP sponsor and trustee, made amendments to the ESOP which effectively ensured that class members would no longer recover benefits from the ESOP. Thereafter Fifth Third terminated the ESOP distributing the proceeds to Fifth Third employees, and not to class members.

Hutchison, on behalf of the class members brought three types of claims—two of which were state-law claims relating to Fifth Third's breach of the merger agreement, misrepresentation and negligent misrepresentation as well as conversion and unjust enrichment relating to the alleged taking by Fifth Third of the ESOP's assets. The third claim was an ERISA claim. The lower federal court held that ERISA preempted the state law claims and dismissed the ERISA claim finding that Fifth Third did not breach any fiduciary duties owed to class members.

The appeal to the Sixth Circuit Court of Appeals only concerns the lower court's decision to dismiss the state law claims not the dismissal of the ERISA claim.

The Six Circuit Court affirmed the lower court ruling finding that the state law claims relating to Fifth Third's alleged breach of the merger agreement were preempted by ERISA because the necessary elements of the state law claims (amending the plan to exclude class members) go to the heart of what Congress intended ERISA to govern. They ruled so even though some of the elements of the state law cause of action came into existence before Fifth Third was an ERISA fiduciary to the ESOP. The court concluded that because the class members sought damages for ERISA-regulated actions of an ERISA fiduciary, based on the merger agreement entered into before Fifth Third became a plan fiduciary, the state law contract claim would bind fiduciaries to particular choices, thereby functioning as a regulation of an ERISA plan.

Hutchison v. Fifth Third Bancorp, 6th Cir., No. 05-4389, 11/30/2006.
http://www.ca6.uscourts.gov/opinions.pdf/06a0448p-06.pdf

This is a reminder that as noted by the court here, ERISA is comprehensive and preempts virtually any state law claim relating to an employee benefit plan.

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