UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

United States Courts
Southern District of Texas
ENTERED

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Michael N. Milby, Clerk of Court

HALLIBURTON COMPANY BENEFITS COMMITTEE, §
§
§
Plaintiff, §
versus §
§
JAMES B. GRAVES, *et al.*, §
§
Defendants. §

CIVIL ACTION H-04-280

Opinion on Partial Summary Judgment

1. *Introduction.*

Two companies merged several years ago. The surviving company wants now to change the medical benefits for people who had retired from the subsumed company, but those people say that the merger agreement limits the company's ability to change their benefits. They are right.

2. *Background.*

In February 1998, Dresser Industries, Inc., merged with Halliburton, N.C., Inc., a wholly owned subsidiary of Halliburton Company, creating the world's largest construction and oil-field service company. Dresser shareholders traded one share of Dresser for one share of Halliburton. The combined equity was $7.7 billion.

The merger agreement obliged Halliburton to continue Dresser's benefit programs for its employees and retirees unless the benefits were similarly changed for active employees. Halliburton has maintained those programs for the six years since the merger. This opinion is about the medical plan for retired people. In it, "retirees" means eligible participants in the Dresser Retiree Medical Program.

Health coverage for Dresser retirees is better than that for Halliburton retirees. Halliburton now wants to align benefits for the two sets of retirees. In November 2003, Halliburton altered three sub-plans within the Dresser Retiree Medical Plan – sub-plans 501, 901, and 902.

There were two changes. First, starting in January 2004, Halliburton decided to limit its subsidy of premiums under the Dresser plan to the level that it had paid in 2003. Next, Halliburton announced that it will end the Dresser retiree medical plan, substituting in January 2005 a Halliburton plan to pay $22 a month toward prescription drugs for Dresser retirees over 65 who are eligible for Medicare. No other private medical insurance will be supplied.

Halliburton seeks the court's declaration that, under the merger agreement, it may make these changes. The Dresser retirees have replied with their own claim, saying that Halliburton may not change their benefits like this. Halliburton and the retirees have both said that the issue of the changes in the plan can be decided on the agreed facts, making their interpretation a question of law for the court.

3. *Plan Structure.*

Benefit plans are established to furnish retirement, health insurance, and many other forms of non-cash and indirect compensation. A benefit plan has two authorities – the sponsor and the administrator. The sponsor is the employer. As the label implies, plan administrators manage programs adopted by sponsoring employers.

The operation of a plan has three major components. First, there is the decision to have a plan, what to include, and how much to contribute; these are choices of the sponsor. A court's examination of these decisions is limited to contract interpretation. Existence of a plan is distinct from its administration.

Second, the plan uses the sponsor's – and in many cases the worker's – contribution to acquire mutual funds, insurance policies, and other financial arrangements to furnish the benefits. These choices cannot ordinarily be the subject of a court case unless something truly extraordinary has happened, like a corrupt selection of investments.

Third, the administrator decides whether a particular claim is covered by the plan, whether the charges are proper, and whether to pay it. Claims adjusting – fitting the claim to the plan's conditions – is the last and major responsibility of the administrator. The law limits a court's authority to re-examine this class of decisions; it can change the administrative decision only if no material support in the plan or claims documents exists. When an administrator makes a choice that is not substantially related to the facts, courts

call that an "abuse of discretion;" in other words, it is a failure of sound judgment – arbitrary. *Firestone Tire & Rubber Company v. Bruch*, 489 U.S. 101, 115 (1989).

As with Halliburton here, an administrator is frequently a committee of officers from the company. Often the plan uses a contractor to handle the paperwork and adjusting. The plan may expressly rely, like Halliburton's, on the administrator's judgment in meeting its responsibilities. (*See, e.g.*, ex. 4, Halliburton Welfare Plan, §9.2.) Other plans limit the administrator's role to mechanical processing. The dichotomy between plans with express discretion and those without is exaggerated, for no plan can be applied without the exercise of judgment on the particular claims and terms.

The powers of the administrator are wholly determined by what the sponsor delegates. The sponsor may allow the administrator to modify the plan – in small ways, completely, or not at all. Under the legal framework of worker plans, a court respects decisions by administrators, but this deference is obviously limited to choices that are covered by the sponsor's delegation. A court will not respect a decision beyond the administrator's authority. "Discretionary administration" cannot cover things that are not within the plan. This is parallel to what an arbitrator may do. He is limited to interpreting the contract in dispute; other aspects of the deal – like the wisdom of the contract for a party or the severity of an outcome – are not within his authority.

Halliburton's plan says that the administrator may make minor or inexpensive changes to the plan. (Ex. 4, Halliburton Welfare Plan, §§9.3(n), 10.1.) Under this limit, then, the amendments of November 2003 are beyond the administrator's authority, where he has no discretion. Terminating benefits for an entire class of beneficiaries is a major change. The plan confides responsibility for decisions like this to the company's chief executive officer; this means that the decision belongs to the sponsor rather than the administrator.

4. *Classification.*

The merger agreement between Dresser and Halliburton could be a plan modification, contractual commitment of Halliburton, or both. This distinction does not matter. Halliburton formed a contract with Dresser. If a sponsor commits in a contract that it will not change a plan except in particular ways, it has, in practical effect, modified

the plan. If the contract only benefits workers who will get fringe benefits, it functions as a plan.

Without the complex contractual arrangement in 1998, Halliburton would be free to alter the plans that it offers workers. In exercising his authority to enact major changes to the plan, Halliburton's chief executive officer – through the merger agreement – obligated Halliburton to bear significant costs by maintaining indefinitely retiree benefits that are equal to employee benefits. His signature on the merger agreement modified the Halliburton plan.

The parties argue a great deal about whether the administrator could terminate retiree benefits. This case, however, is not about the discretionary determinations of the administrator – the benefits committee. A decision by the administrator that derogates the company's obligations under the merger agreement is void. The administrator can interpret the plan, but it cannot change the plan, except to the extent that the plan says that the administrator can make changes. This case is about whether the merger agreement did limit Halliburton's opportunity – as the sponsor – to end the sub-plan for these retirees. This plan change altered the scope of the administrator's discretion.

The agreement is also an extra-plan contract. Halliburton – through its owners, directors, and executives – promised that, if Dresser merged with it, it would maintain benefits for Dresser retirees consistent with benefits for Halliburton employees. This promise binds Halliburton.

Whether viewed as a plan amendment or a commitment outside the plan, then, the result is the same: (a) Halliburton is obliged to keep the retiree plan, and (b) the administrator has nothing to decide.

5. *Contract.*

The dispute centers on three sections of the contract. One deals with employee benefits, one deals with retiree benefits, and the third covers enforcement through a subset of the board of directors. The court must give the terms of the agreement their plain and ordinary meaning. *Amory Mfg. Co. v. Gulf, Colorado & Santa Fe Railway Co.*, 89 Tex. 419 (1896). Though the merger agreement is complex, to a disinterested person, it is unambiguous.

A. *Retirees.*

Section 7.09(g)(i) deals with medical benefits for Dresser retirees. Halliburton agreed that the merged company would:

> maintain with respect to eligible participants . . . the Company's retiree medical plan, except to the extent that any modifications . . . are consistent with changes in the medical plans . . . for similarly situated active employees; . . .

Halliburton may cancel the Dresser retirees' benefits as long as it cancels the same program for Halliburton employees. It may adjust Dresser retiree benefits downward only if it makes identical adjustments to benefits for its active employees. It must raise retiree benefits if it raises benefits for active employees.

B. *Employees.*

In Section 7.09(h) Halliburton is obliged to furnish benefits to Halliburton workers who had been Dresser employees. It reads:

> . . . until the third anniversary. . . (the "Benefits Maintenance Period") the Parent shall . . .provide each employee of the Company . . . with employee benefits and compensation after the Effective Time that are substantially comparable to similarly situated employees of the Parent and its Subsidiaries . . . .

Halliburton agreed to furnish Halliburton employees who had been Dresser employees benefits equal to those of Halliburton's similarly situated, active, "original" employees. This obligation ran for three years after September 29, 1998 – or until September 29, 2001. (Ex. 13.) This section follows the retiree section and does not address benefits for them. The structure and the language indicate that the time limit does not apply to retirees.

6. *Enforcement.*

The agreement allowed Dresser to appoint five people to the merged company's board of directors, bringing the total of directors to fourteen. It also gave a majority of those five Dresser appointees the power to enforce the contract. The contract reads:

> . . . a majority to the directors . . . serving on the Board of Directors of the Parent who are designated by [Dresser]. . . shall be entitled during the three-year period . . . to enforce the provisions of 7.09 and 7.13 on behalf of the [Dresser's former] officers, directors, and employees, as the case may be. . . .

(Ex. 1, section 10.07)

Section 7.13 – the other section referred to in the enforcement text – deals with the composition of the post-merger board of directors.

Halliburton relies entirely on section 10.07. It says that the section: (1) eliminates the class's ability to enforce the contract and (2) authorizes Halliburton to change retiree benefits after the three years has passed. Halliburton errs.

A. *Standing.*

Before a person may sue, he must have what lawyers call "standing." This means that enforcement of rights may only be done in court by someone whose relation to the controversy is direct and recognized by the law.

Viewing the merger agreement as a plan amendment, the law allows the retirees to enforce or clarify their rights under the plan. 29 U.S.C. § 1132(a)(1)(B). They relinquish the right to sue only if their waiver is explicit, voluntary, and individual. *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321, 1327 (5th Cir. 1994). The agreement's creation of an additional way that the plan can be enforced does not operate to waive the retirees' original power. Halliburton has also not suggested who – other than the retirees – is suitable to enforce their rights under the plan. The retirees have standing.

Viewing the merger agreement as an extra-plan contract, the law allows the retirees to enforce it. Contracts are ordinarily enforceable only by the parties to them. Courts frequently hear people who are strangers to a contract claim under it. Usually their assertion that they have status as beneficiaries is fictitious. Here we have genuine, express beneficiaries of the merger agreement. The provision about the maintenance of Dresser retiree benefits could only benefit Dresser retirees.

Halliburton says that the board-clique section operates as a "no-third-party-beneficiary clause." Section 10.07 says nothing about excluding alternative enforcement of the contract. Nowhere does the contract say that third-party enforcement is barred.

Halliburton brought this suit, and *it* has standing to seek a declaration of its obligations. The retirees at least have "standing" to be defendants. In addition, Halliburton initiated this action under the statute that allows plan participants to enforce their rights. (First Am. Compl. ¶10.) In its motion, however, Halliburton says that only Halliburton and Dresser may sue. (Halliburton's Mot. Summ. J. at 16.) Halliburton has sued, and Dresser does not exist. Even if the retirees have no standing for their counterclaim, Halliburton has still sought a declaration of its responsibilities, making the counterclaim redundant. The court's negative answer to Halliburton's request for a declaration that it is correct is a positive answer to the retirees's claim that they are correct.

B. *Loyalty.*

Under Delaware law, a minority of a corporation's board has no power. *McLeary v. John S. McLeary, Inc.*, 13 Del. Ch. 329, 332 (Del. 1923); Del. Code Ann. tit. 8, § 141(b). For three years, Section 10.07 authorizes Dresser-appointed directors to enforce the rights of employees who had been at Dresser. This authority would not otherwise be available to them. The provision probably violates corporate law because it allows this sub-set of directors to compromise their loyalty to Halliburton's owners. This section also gives directors an executive – rather than a policy – function.

Once those appointees joined the board, they became Halliburton directors. At that point, they owed undivided loyalty to the owners of that company – the shareholders of Halliburton. This section is a commitment by the Dresser appointees to compromise their fidelity by remaining agents of the former management of Dresser. This assessment does not affect the court's decision. This peculiar authority has expired; that it once existed cannot foreclose the enforcement opportunity of the affected people.

7. *Limitation.*

Halliburton says that the sections with three-year limits on enforcement and for employee benefits imposes that a time limit on its obligations to the retirees under section 7.09(g). It is wrong. Three years is the duration of the enforcement rights and employee plans – not the duration of the retirees' benefits. The enforcement section

authorizes the Dresser directors to act for "officers, directors, and employees" who had been at Dresser; it does not name the Dresser retirees.

In the agreement, the section about retirees comes before the one about employees and enforcement. The retiree section has no limit on Halliburton's obligations. The employee section, however, limits Halliburton's obligations to three years. Structurally as well as substantively, then, the contract says that Halliburton's commitment to the retirees does not end.

If section 10.07's three-year limit applied to the benefits in section 7.09, then the additional three-year limit of section 7.09(h) would merely be duplicative and meaningless. The law counsels against empty terms. *Universal C.I.T. Credit Corp. v. Daniel*, 150 Tex. 513, 518 (1951).

8. *Amendment.*

Halliburton and Dresser merged their welfare benefits plans on December 31, 2002. The Dresser plans did not cease to exist; they became part of the Halliburton welfare plan – as constituent plans – for Halliburton to administer. (Ex. 4, Halliburton Welfare Benefits Plan, §§1.5, 2.1.)

Halliburton has said that the merger amended the Dresser programs. (First Am. Compl. ¶16.) This meant that the Dresser plans – now part of the Halliburton plan – incorporated the parts of the merger agreement about those plans. Halliburton could alter the plans only as the contract allows. At first Halliburton said the dispute is whether it had an unlimited right to alter the plans after three years. In its motion, however, Halliburton argues that the agreement *never* amended the plans, leaving Halliburton free to change those plans as it wanted. (Ex. 4, Halliburton Welfare Benefits Plan, §10.2.)

First, Halliburton would have no authority over the Dresser plans absent all of the commitments in the merger agreement. It has assented to the benefits sections of the merger agreement; the plan terms are just part of the price that Halliburton paid for Dresser. Second, if formal amendment were necessary, Halliburton itself amended the Dresser plans.

9. *Waiting.*

If the agreement never amended the plans as Halliburton later urges, then the three-year limitation would be nonexistent. Halliburton could have altered the plans immediately after the merger. The company, however, waited until November 2003 to change the plans for former Dresser workers. Halliburton's wait shows that it recognized the validity of the plan amendments for employees that stemmed from the merger. The only issue is their meaning.

10. *Writing.*

Halliburton relies on a section of the Dresser welfare plan about amending the plan. That section requires the "Vice President of Human Resources" to write and sign amendments. (Ex. 8, Dresser Plan 750, §9.2.) Halliburton points out that neither Halliburton's nor Dresser's vice president of human resources signed the merger agreement or put the amendments in a separate document. It says that, because of this, the sections about the Dresser plans (a) were not incorporated into the Halliburton plans and (b) did not amend them. Halliburton says that the plans are, therefore, ineffective.

That certainly would have been the better practice, but sloth in human resources does not change the conditions of an $8 billion merger. The boards of directors and shareholders of both companies approved the merger. The chief executive officers of Halliburton and Dresser signed the agreement. The effect of a decision by a company's owners and executives does not turn on the signature of a staff officer in the personnel department.

Even if Halliburton's argument about the requirement were correct, Halliburton would still lose based on the wealth of unconventional internal documents describing the amended plan. These are unconventional because they are not a summary of plan benefits that is usually distributed to participants after a plan is modified. Regardless, the court finds that the requirement for a writing is satisfied. In May 1999, Halliburton's vice president of human resources put in writing Halliburton's obligations under the Dresser programs. (Ex. 14, Mem. of May 14, 1999, from Paul Bryant.) Halliburton fulfilled the Dresser-plan requirement through its own officer.

That officer was Paul Bryant. Bryant had been Dresser's lead negotiator for compensation and benefits in the merger talks. After the merger, he became Halliburton's vice president of human resources. Bryant distributed his memorandum to Halliburton's other senior officers. Halliburton has presented no evidence of those officers' objecting to the memorandum when they received it.

Even if Bryant's actions are wholly discounted, the merger agreement was clearly in writing as were the proxy statements sent to the owners, many of whom are employees and retirees.

11. *Vesting.*

When a contract or property interest becomes fully and unchangeably owned by someone, the law says that it has "vested." Federal law says that pension benefits vest automatically when you have worked at a company for five years. 29 U.S.C. § 1053. Benefits from welfare plans – like medical, disability, or vacation plans – are not covered by that law. *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 934–935 (5th Cir. 1993); *International Union, et al. v. Skinner*, 188 F.3d 130, 137–138 (5th Cir. 1999).

Halliburton argues that the retirees are demanding that the welfare plans vest. They are, but the retirees rely on the contract rather than federal law. Things vest all the time by private agreement. If a company agrees to pay benefits beyond what the law requires, it has to meet its contract regardless of what the law would have said in the absence of an express agreement. The law will not disturb these private agreements. *Wise*, 986 F.2d at 937. If a company agrees to buy a fully paid life insurance policy on a worker as part of his employment package, that benefit in practical effect "vests" for life on the day that he starts.

In addition, the retirees do not ask Halliburton to maintain the Dresser benefits without modification. It recognizes that Halliburton may adjust coverage for eligible participants of the Dresser Retiree Medical Plan as it adjusts benefits for its active employees. The contract conferred permanent parity, and while that sounds close to vesting, it is a contractual rather than statutory version.

12. *Plan.*

Halliburton says that its welfare plan gives its chief executive officer the power to reduce or eliminate the Halliburton plan or its constituent benefit programs. (Ex. 4, Halliburton Welfare Plan, §§10.1, 10.2.) It says, therefore, that Halliburton may terminate the Dresser retiree medical plan. It can. It just has to end the medical plan for employees, too.

In 1998, Halliburton agreed to a series of concessions to persuade Dresser to merge with it. (Ex. 15, Letter of Dec. 8, 2003, from Paul Bryant, at 2.) That agreement constrains Halliburton.

13. *Practice.*

Internal documents show that Halliburton understood its obligations. At a meeting on February 20, 1998 – five days before the merger agreement was final – Halliburton's chief executive officer, David Lesar, agreed to maintain Dresser retiree medical coverage for salaried employees who were eligible for the plan – grandfathered employees – at levels comparable to those received by active employees. (Ex. 14 at RET000078.)

In February 1999, Celeste Colgan, a senior human resources officer for Halliburton, wrote Clint Ables, then Halliburton's vice president and general counsel. They were discussing health coverage for a grandfathered employee who retires. Colgan said that the worker could elect private insurance furnished by Halliburton. Quoting section 7.09(g)(i), she expressed that Halliburton was "mindful of its obligation" to maintain Dresser retiree benefits at levels equal to employee benefits. (Ex. 14 at RET001047).

Bryant's memorandum of May 1999 – written while he was Halliburton's vice president of human resources – confirms Halliburton's appreciation of its commitments.

Finally, in January 2000, John Allen, an internal counsel for Halliburton, assessed Halliburton's responsibility to continue the Dresser executive life insurance program. Relying on Bryant's memorandum, he concluded that Halliburton

> contractually agreed to cause the ELIP to continue to exist, essentially without change, and to bear the expense thereof. There is no evidence of any evidence of intent of Halliburton or Dresser to put limits on the expense of the obligation.
>
> (Ex. 14 at RET0000184.)

Allen also included Bryant's observation that Halliburton's obligations under "the retiree portion will cease when the last covered retirees [sic] dies." (*Id.* at RET0000183.) Allen never discussed a three-year limitation of Halliburton's duties.

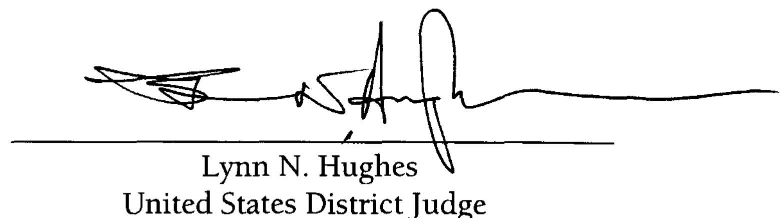
Halliburton argues that these earlier interpretations of the merger agreement are inadmissible. It is wrong. They are admissions that the court may consider. *Fed. R. Evid.* 801(d)(2). The contract is clear; these internal interpretations may not irrevocably bind Halliburton, but they can certainly be used as contemporaneous practice to reinforce the plain-text reading.

14. *Conclusion.*

The cost to Halliburton of this benefit is $93 million. This is about one-half of 1% of Halliburton's revenue totaling $16.3 billion in 2003. This is a lot of money, but if Halliburton now considers it to be somehow too much, the solution is not to change the deal that it made in 1998. Halliburton agreed to this cost as part of its payment for Dresser.

Halliburton's changes of November 2003 violate the merger agreement. Halliburton must maintain the Dresser Retiree Medical Program for eligible participants and may adjust the benefits in that program only if it makes identical changes to benefits for its similarly situated active employees.

Signed December 20, 2004, at Houston, Texas.



Lynn N. Hughes
United States District Judge