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TOPIC: Top Hat Plan Termination that Resulted in Accelerated and Potentially Higher Tax Not Violation of ERISA

CITATION: *Taylor v. NCR Corp.*, No. 1:14-cv-2217-WSD (U.S. Dist. Ct. N.D. Ga., Sept 23, 2015); *Holloman v. Mail-Well Corp.,* 443 F.3d 832 (11th Cir., 2006).

SUMMARY: A federal district court held that the termination of a top hat nonqualified deferred compensation plan and acceleration of the participant's annuity benefits to a present value lump sum does not "adversely affect" the participant's benefit. The court concluded that the fact that the lump sum payment results in accelerated as well as potentially higher taxes to the participant does not give rise to a claim under the Employee Retirement Income Security Act ("ERISA").

RELEVANCE: This case exemplifies the importance of carefully drafting plan documents. Here the court analyzed and followed the plan documents that permitted the plan to be terminated as long as it did not "adversely affect" accrued benefits. Importantly, the court concluded that a deferral of compensation is not a protected benefit under ERISA.

FACTS: Plaintiff, Keith Taylor was a 21-year NCR employee. In 1999 he became a participant of NCR's non-qualified "top hat" plan for senior employees. Mr. Taylor retired in 2006, electing a 100% joint and survivor life annuity benefit, with an annual benefit of approximately $29,000. In 2013, NCR terminated the plan and paid Mr. Taylor a lump sum of approximately $440,000 representing the actuarially calculated net present value of the life annuity. After state and federal income tax withholding, Taylor received $254,063.

The plan documents allowed the plan to be terminated provided that "no such action shall adversely affect … accrued benefits…"

Taylor sued, arguing that the termination of the plan "resulted in a 52.5% reduction …" of his benefit, due to adverse tax consequences and the 5% discount rate applied to calculate the net present value. He contested the application of any discount rate at all, but did not argue that the 5% was the wrong rate.

NCR filed a motion to dismiss. The court dismissed Taylor's claims finding that:

> 1) NCR was permitted to terminate the plan under the terms of the plan document,
>
> 2) the tax impact is not an ERISA protected benefit and,
>
> 3) using a discount rate to calculate the present value of a future benefit is not a reduction of benefits and therefore, does not "adversely affect … accrued benefits" in violation of the plan documents.

Citing *Holloman v. Mail-Well Corp.*, the court concluded that applying a discount rate to calculate the present value of future payments is simply a sensible way of calculating the real value of the benefit, not a reduction.

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