

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL C. SMYTH,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 01-5154
	:	
CUMBERLAND FARMS, INC. and	:	
CUMBERLAND FARMS	:	
TRANSFERRED EMPLOYEES'	:	
PENSION PLAN,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

October 8, 2002

Presently before the Court are Plaintiff's Motion for Summary Judgment, Defendants' Opposition thereto, and Plaintiff's Reply Memorandum in Response to Defendants' Opposition. Also before the Court are Defendants' Motion for Summary Judgment, Plaintiff's Opposition thereto and Defendants' Reply Memorandum in Support of their Motion for Summary Judgment. For the reasons stated below, Defendants' Motion for Summary Judgment is **GRANTED**, and Plaintiff's Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

From August 10, 1964 until May 31, 1986, Plaintiff Michael C. Smyth ("Plaintiff" or "Smyth") was employed by Chevron. During this time, Cumberland Farms, Inc. ("CFI") purchased assets of the former Gulf Oil Corporation from Chevron, and, on June 1, 1986, Smyth became an employee of CFI's Gulf Oil Division. Smyth remained an employee of this Division

until December 31, 1993. At this time, his employment with CFI was terminated, because the Gulf Oil Division separated and became its own entity, the Gulf Oil Limited Partnership (“GOLP”). On January 1, 1994, Smyth became an employee of GOLP. Employment with GOLP was not guaranteed after termination with CFI. Smyth was required to apply and be hired by GOLP in order to begin employment there. Smyth’s compensation, benefits and emoluments at GOLP were reduced from that which he received as an employee of CFI.

On September 29, 1986, CFI established the Cumberland Farms Transferred Employees’ Pension Plan (“Plan” or, collectively with CFI, “Defendants”). It is a pension plan for former employees of Chevron who became employees of CFI when CFI bought assets of the Gulf Oil Corporation from Chevron. CFI is both the Sponsor and the Administrator of the Plan. On January 7, 1994, CFI sent a memo to all Plan participants that had joined GOLP. This memo explained that, although these participants were technically terminated from CFI before they joined GOLP, they were not terminated from CFI for purposes of the Plan. As such, these participants were not entitled to distribution of their pension benefits as of the time of their transfer of employment to GOLP. On March 31, 1995, the Plan was frozen.

On March 6, 1995, significant amendments to the Plan were adopted. The resulting Plan is referred to as the Restated Plan. The Restated Plan applied retroactively to October 1, 1989. The Restated Plan contains a different definition for the term “employee” than does the Plan. Section 2.12 of the Plan defined an “employee” as “any person who is employed by the Company”. Section 2.14 of the Restated Plan defines “employee” as “any person who is employed by the Company or, effective as of October 1, 1993, Gulf Oil Limited Partnership”. In both the Plan and the Restated Plan, “Company” is defined as “Cumberland Farms, Inc., and any

successor to all or a major portion of its business which adopts this Plan”. Plan § 2.07, Restated Plan § 2.09. In addition to the change in the definition of “employee,” the Restated Plan includes similar changes which indicate that, for Plan purposes, those participants who transferred from employment with CFI to GOLP, were not terminated from employment with CFI.

On April 2, 2001, Smyth applied to the Plan Administrator to collect the lump sum benefits which he believed he was entitled to as of his termination with CFI.¹ The Plan Administrator denied Smyth’s application, claiming that Smyth was still an employee of CFI, for purposes of the Plan, since GOLP is a member of CFI’s “controlled group.” According to the Tax Code, two entities are part of the same control group if one entity owns at least eighty percent of the other. 26 U.S.C. § 1563(a)(1) and (d)(1). In addition to any actual portion of an entity which a company owns, the company is also considered to own any portion of that entity in which the company has an option to purchase. 26 U.S.C. § 1563(a)(1), (d)(1) and (e)(1).

Pursuant to this definition from the Tax Code, the Plan Administrator found that Smyth is employed by CFI because CFI owns two-thirds of GOLP, with an option to buy the remaining one-third. By combining the actual ownership interest with the option to purchase interest, CFI owns one-hundred percent of GOLP. The Tax Code provides that, for purposes of determining qualified status for pension plans, individuals that are employed by members of a controlled group of corporations are treated as employed by a single employer. 26 U.S.C. §§ 401(a) and 414(b).

1. Based upon a letter dated April 27, 2000 from CFI’s Benefits Manager, estimating Smyth’s accrued benefit, Smyth believed he was entitled to \$312, 871.31 as of May 1, 2000.

According to the Administrator, had Smyth entirely severed his employment with CFI, he would be entitled to his lump sum benefits. However, since he is now employed by GOLP, a controlled group of CFI, he is still an employee of CFI under the Plan. Therefore, he is not entitled to collect benefits at this time. Smyth appealed this decision, as required by the Plan, but he was again denied for the same reason. Smyth has exhausted his administrative remedies under the Plan.

II. STANDARD OF REVIEW

A. Summary Judgment

A motion for summary judgment will be granted where all of the evidence demonstrates “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law”. Fed. R. Civ. P. 56(c). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party”. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Since a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The ultimate question in determining whether a motion for summary judgment should be granted, is “whether reasonable minds may differ as to the verdict”. Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248.

B. Review of Plan Administrator’s Denial of Benefits

In reviewing a plan administrator's decision to deny benefits, the court is to examine each case on its facts. Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 392 (3d Cir. 2000). The court will "apply a sliding scale method, intensifying the degree of scrutiny to match the degree of the conflict". Id. at 379. Where there is no conflict, meaning that the plan administrator is not faced with competing interests which could compromise its judgment, the court will review the plan administrator's decision under an arbitrary and capricious standard. Id. at 393. Under this standard, an administrator's decision will only be overturned if it is "without reason, unsupported by substantial evidence or erroneous as a matter of law. . . . [T]he court is not free to substitute its own judgment for that of the defendants in determining eligibility for plan benefits". Id. at 387. At the other end of the scale is a de novo standard of review, where the court is not to give any deference to the plan administrator's decision. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989). The court is to make its own determination as to whether the beneficiary is entitled to benefits. Id. Several degrees of scrutiny exist between arbitrary and capricious and de novo review. The court is to apply a heightened level of scrutiny, above arbitrary and capricious review, when the company providing pension benefits is both the plan administrator and the plan sponsor. Pinto, 214 F.3d at 387.

"Whether terms in an [Employee Retirement Income Security Act ("ERISA")] Plan document are ambiguous is a question of law. A term is 'ambiguous if it is subject to reasonable alternative interpretations.'" Bill Gray Enters., Inc. Employee Health and Welfare Plan v. Gourley, 248 F.3d 206, 218 (3d Cir. 2001), *citing* Taylor v. Cont'l Group Change in Control Severance Pay Plan, 993 F.2d 1227, 1232 (3d Cir. 1991). "If the reviewing court determines the terms of a plan document are ambiguous, it must take the additional step and

analyze whether the plan administrator's interpretation of the document is reasonable." Bill Gray Enters., 248 F.3d at 218.

III. DISCUSSION

Plaintiff's and Defendants' dispute revolves around when Plaintiff is entitled to collect his pension benefits. Plaintiff believes he has been entitled to collect since his termination of employment with CFI on December 31, 1993; whereas CFI believes that Plaintiff is not entitled to collect until he ceases to work for either CFI or any of its controlled groups, including GOLP. Smyth argues that the Plan Administrator based its decision to deny him benefits on the 1995 Restated Plan, which he believes is ineffective as applied to him. Smyth believes that, but for the Restated Plan, he would have been entitled to collect his benefits upon leaving CFI. CFI claims that, regardless of the Restated Plan, Smyth is not entitled to his benefits. CFI contends that, whether Smyth's denial is evaluated under the Plan or the Restated Plan, he is not entitled to collect while he still works for GOLP.

Smyth makes two arguments for why the Restated Plan is ineffective as applied to him. First, he believes that since the Restated Plan was not adopted until more than a year after he left his job at CFI, it is not appropriate to evaluate his receipt of benefits under the Restated Plan. Second, Smyth believes that the Restated Plan violated the amendment provision of the Plan and the Anti-Cutback provision of ERISA by improperly reducing his accrued pension benefits. The amendment procedure set forth in Section 9.01 of the Plan reads, "the Company shall have no power to amend this Agreement in such manner as . . . would cause any reduction in the Accrued Benefit [of] any Member". Similarly, the Anti-Cutback provision of

ERISA provides that a plan cannot be amended so as to have the effect of eliminating or reducing accrued early retirement benefits. 29 U.S.C. 1054(g). Smyth alleges that the amendments created a reduction in his accrued benefits by including employees of GOLP as employees of CFI, for Plan purposes. Such an inclusion resulted in there being no termination of employment when the participants left CFI and were hired by GOLP. Without a termination of employment, the participants are not entitled to recover benefits from CFI. Since Smyth believes he was previously entitled to his benefits, and now he is not, he contends that the Restated Plan reduced his accrued benefits in violation of the amendment provision of the Plan and the Anti-Cutback provision of ERISA.

CFI agrees that accrued benefits cannot be eliminated or reduced. However, CFI responds to Smyth's arguments by suggesting that Smyth's benefits were not accrued, because they would only become so once he was terminated from employment. Since Smyth was not terminated from employment with CFI at the time the amendments to the Plan were adopted, his benefits never accrued. Therefore, neither the amendment provision of the Plan nor the Anti-Cutback provision of ERISA were violated.

Smyth believes that, for purposes of the Plan, he was terminated from employment once he stopped working for CFI. He argues that, although the Plan does not define "termination from employment", the Plan Administrator must give effect to the plain language of the Plan, and therefore, the Administrator has no discretion to interpret this term. See Hein v. F.D.I.C., 88 F.3d 210, 215 (3d Cir. 1996) and Gaines v. Amalgamated Ins. Fund, 753 F.2d 288, 289 (3d Cir. 1985). CFI disagrees and believes that "termination from employment" is an ambiguous term which can be interpreted by the Plan Administrator, since it is not defined in the

Plan or in the Restated Plan. CFI contends that the Plan Administrator reasonably interpreted “termination of employment” to mean that an employee had ceased working for CFI or any of its controlled groups.

CFI explains that, if the Plan Administrator did not interpret “termination from employment” in this way, the Plan would lose its qualified status under the Tax Reform Code (“Code”) of 1986, because the Code does not treat this type of transfer of employment as a true termination. This would cause the Plan and its participants to suffer significant, adverse tax consequences.

Given these arguments, the key issue in this dispute is whether Plaintiff was “terminated from employment”. If he was, then his benefits under the Plan accrued, and the Plan could not be amended in a way that would deny him his benefits until a later date. If he is not terminated, then his benefits have not accrued, and the Restated Plan does not violate the amendment provision of the Plan or the Anti-Cutback provision of ERISA.

In deciding whether it was correct for the Plan Administrator to determine that Smyth was not terminated from employment for Plan purposes, this Court will adopt a standard of reasonableness. This Court is to apply a heightened standard above arbitrary and capricious review because CFI is both the Plan Administrator and the Plan Sponsor, and so there is an inherent conflict of interest. See Pinto, 214 F.3d at 387. This conflict arises because CFI provides the money for the Plan and it also determines to whom and when this money will be distributed. The most effective way to consider this possible conflict is to “heighten [the] degree of scrutiny, without actually shifting the burden away from the plaintiff.” Pinto, 214 F.3d at 392. Plaintiff presents no evidence to indicate that this conflict influenced the Plan Administrator in

deciding that Smyth is not presently entitled to collect his benefits. However, the “nature and degree of the apparent conflict” will be taken into consideration. See Id. at 393. As such, the Plan Administrator’s decision should be reviewed with higher scrutiny than an arbitrary and capricious standard, but less scrutiny than de novo review. The sliding scale will rest on a reviewing standard of reasonableness.

In light of the Plan and its emphasis on maintaining a qualified status, it was reasonable for the Plan Administrator to interpret “termination from employment” to mean termination from CFI and any of its controlled groups. Smyth could have reasonably expected the Plan Administrator to have come to this conclusion if he had reviewed the provisions of the Plan. The goal in interpreting the Plan to maintain its qualified status has been clear from the beginning. “So far as possible, this Agreement shall be interpreted in a manner consistent with . . . the intent of the Company that the Plan shall satisfy the provisions of the Employee Retirement Income Security Act of 1974, as amended . . . , and those of the Internal Revenue Code of 1986, as amended . . . , relating to qualified employees’ plans, as either of them may from time to time be amended.” Plan § 1.02. In addition, a provision of the Plan indicated that certain amendments may be adopted in order for the Plan to continue to qualify under the Code. “The Company reserves the right to amend this Agreement and the Plan hereunder in such manner as may be necessary or advisable so that the Trust may qualify and continue to qualify as an exempt employees’ trust under the applicable provisions of the Code; and any such amendment may be made retroactively.” Plan § 9.02. Through both of these clauses, it was made perfectly clear that the Plan would be interpreted in a way which would allow it to remain qualified pursuant to the Code.

Smyth was also given additional notice of CFI's intent to delay distribution of his benefits when he was sent a memorandum on January 7, 1994. This memorandum was distributed only seven days after Smyth began working for GOLP. It explained that the Plan Administrator was interpreting termination of employment in a way consistent with the Code, in order for the Plan to maintain its qualified status. Therefore, Smyth would not be entitled to collect pension benefits until he ceased working for GOLP. This was not a memorandum which attempted to improperly amend the Plan. Rather, it was a memorandum indicating how the Plan would be interpreted.

Taking this goal of maintaining a qualified status into account, the Plan Administrator's interpretation of the term "termination from employment" is a reasonable one. Plaintiff is correct in asserting that, typically, the term "termination from employment" is an unambiguous term. However, "a term is ambiguous if it is subject to reasonable alternative interpretations". Bill Gray Enters., 248 F.3d at 218. The sliding scale requires that the specific circumstances of this case be taken into account when scrutinizing the Plan Administrator's decision. See Pinto, 214 F.3d at 392. Given the fact that "termination from employment" is not defined in the Plan, but it is defined in the Code, the term can be given two reasonable interpretations in this case.

In its traditional meaning, technical termination from CFI would also constitute termination from employment under the Plan. However, a second reasonable interpretation is provided by the Code. The Code considers employment with any controlled group as employment with the company itself. These interpretations allow for ambiguity in the terminology. See Epright, 81 F.3d at 340 (holding that, where the plan provided no definition for

the language in question, the plan administrator was reasonable in looking to the Social Security Act for a definition).

Where there is an ambiguous term, the Court can consider extrinsic evidence in determining whether the administrator's decision was reasonable. Bill Gray Enters., 248 F.3d at 218. Since the Plan specifically states that it will be interpreted in accordance with the Code, the Code is the logical extrinsic evidence to be considered. Taking the Code into account when reviewing the Plan Administrator's decision, it was reasonable for the Administrator to conclude that former employees of CFI are not "terminated from employment" until they no longer work for any of its controlled groups, including GOLP. The Plan Administrator reasonably began his evaluation with the Plan. The Plan does not define "termination from employment", but does say that it will interpret the Plan to maintain a qualified status under the Code. Therefore, the Administrator looked to the Code to define "termination from employment," and subsequently used this definition to determine that Smyth was not entitled to recover his benefits because he still worked for CFI.

Smyth argues that the Restated Plan was adopted in an effort for CFI to cover itself and avoid paying out benefits.² In reality, the Restated Plan is merely a reasonable interpretation of the Plan. The Plan does not include the definition of employee that the Restated Plan includes, because CFI did not have ownership over GOLP at the time the Plan was enacted. However, CFI reasonably foresaw that events might arise in the future which it had not provided for in the Plan. To protect the Plan against becoming unqualified as a result of these happenings,

2. Plaintiff believes that the Plan may be underfunded, and so CFI is attempting to avoid paying out benefits which it currently does not have.

the Plan contains clauses providing that amendments may be adopted in order to maintain the qualified status of the Plan. Plan §§ 1.02 and 9.02. The amendments of the Restated Plan were adopted in an effort to clarify an interpretation of the Plan, they were not adopted to provide a totally new benefit distribution scheme.

In light of the fact that the Plan clearly set forth provisions stating that it would be interpreted so as to maintain a qualified status under the Code, it was reasonable for the Plan Administrator to interpret “termination from employment” in the way that it did. Accordingly, denying Smyth his benefits until he no longer works for GOLP is a reasonable decision for CFI.

IV. CONCLUSION

For the foregoing reasons, Defendants’ Motion for Summary Judgment is granted, and Plaintiff’s Motion for Summary Judgment is denied.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL C. SMYTH	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 01-5154
	:	
CUMBERLAND FARMS, INC. and	:	
CUMBERLAND FARMS	:	
TRANSFERRED EMPLOYEES'	:	
PENSION PLAN	:	
Defendants.	:	

ORDER

AND NOW, this 8th day of October, 2002, upon consideration of Plaintiff's Motion for Summary Judgment (Docket No. 11), Defendants' Opposition thereto (Docket No. 16), and Plaintiff's Reply Memorandum in Response to Defendants' Opposition (Docket No. 17); and upon consideration of Defendants' Motion for Summary Judgment (Docket No. 12), Plaintiff's Opposition thereto (Docket No. 13) and Defendants' Reply Memorandum in Support of their Motion for Summary Judgment (Docket No. 18), it is hereby **ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**, and Plaintiff's Motion for Summary Judgment is **DENIED**.

Judgment is entered in favor of Defendants Cumberland Farms, Inc. and Cumberland Farms Transferred Employees' Pension Plan, and against Plaintiff Michael C. Smyth.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.