INSIGHT – The Magazine of the Illinois CPA Society – March/April 2005

Bonus Reading

Whose ERISA Plan Is It Anyway?

Dabertin v. HCR Manor Care, et al., sets a precedent in severance plan benefit administration.

By Brian J. Hunt

Corporations often establish severance plans to ensure that their officers feel secure. However, when a disgruntled officer seeks benefits under the severance plan, even when the corporation would not have wanted to encourage that departure, the language of the plan needs to be closely examined.

Just such a scenario was presented in *Dabertin v. HCR Manor Care, et al.*, 373 F. 3d 822 (7th Cir. 2004). For more than 17 years, Dabertin worked for Manor Care, a company that owns and operates skilled nursing facilities across the country. Dabertin worked as one of several VPs of operations. However, when Manor Care merged into another entity, the CEO of the new organization embarked on a strategy to radically alter operations. Specifically, the new CEO required all VPs of operations, including Dabertin, to take on the additional role and title of general managers, which required much greater involvement in day-to-day oversight.

To accommodate the time-consuming nature of these increased hands-on duties, the new CEO reduced the number of facilities to which some VPs were assigned. In particular, Dabertin went from overseeing the Central Division (one of the largest and most complex markets) and the Western Division to overseeing only the Western Division.

Furthermore, her independent capital spending authority was reduced from $6 million to zero; her independent authority to manage her total budget was eliminated; and her budgeted revenue and operating profit were reduced (from $230 million to $114 million and $61 million to $27 million, respectively). In addition, more tasks were added to her plate, under her new title of general manager.

Dismayed by her waning authority, Dabertin gave notice of her departure and made a claim for benefits under the severance plan. This plan had been adopted in preparation for the merger, and designated 39 officers, including Dabertin, as participants. Under its terms, employees were entitled to severance benefits in the following two circumstances: a termination by the company, other than for cause, or a termination by the participant for good reason. The plan defined “good reason” as “a significant reduction in the scope of a Participant’s authority, position, title, functions, duties or responsibilities,” a definition Dabertin felt her situation adhered to.

The new CEO, however, referred to a conversation he had with Manor Care’s former CEO in which the new CEO stated that Dabertin and the other executives were critical to the success of the new entity. Therefore, he did not want the plan to give them an incentive to resign and receive severance benefits. The new CEO and the former CEO had agreed that the changes in operating procedure would not trigger any entitlement to severance benefits. Of course, Dabertin was not privy to these conversations, and the new CEO’s intentions were not recorded in the plan.

Dabertin’s supervisor denied her claim for benefits, and she appealed that denial to the Committee, comprised of the new CEO and three others. The Committee interpreted the plan to be consistent with the new CEO’s pre-merger intention, determining that: "When a Participant continues to have a full range of operational, financial, administrative and other authority, functions, duties and responsibilities with respect to the business unit the Participant manages, the scope of the Participant’s authority, duties, functions and responsibilities would not be affected.”

The Committee further determined that Dabertin’s authority, compensation, title, functions, duties and responsibilities were significantly increased because her title and position were the same under the new operating scheme, and she now had the additional title and responsibilities of general manager for an entity that was twice as large as the pre-merger organization.

Dabertin’s next move was to file suit alleging violation of the Employee Retirement Income Security Act (ERISA). After a bench trial, the judge concluded that the Committee’s definition of “scope” was beyond the ken of “a person of average intelligence and experience,” and defied common sense. The judge also noted that the Committee did not merely interpret the plan, but effectively added the new CEO’s pre-merger intentions as qualifications. He therefore concluded that the Committee’s denial of benefits was arbitrary and capricious and, accordingly, awarded Dabertin $785,000 in benefits, $246,000 in pre-judgment interest and $271,000 in attorney’s fees and costs.

In affirming the trial court’s entry of judgment in Dabertin’s favor, the Appellate Court stated that the Committee must articulate a rational connection between the facts found, the issues to be decided and the choice made. Although noting that the determination of what constitutes a substantial reduction in duties will vary greatly based on the particular facts and circumstances, the Appellate Court noted that an ERISA benefit cannot be a moving target where the plan administrator continues to add conditions precedent to the award of benefits. The Court determined that there was no rational connection between the facts and the Committee’s conclusion.

The *Dabertin* decision is important to plan beneficiaries, as well as to those who draft and implement them. Drafters need to ensure the plan represents the corporation’s intentions. Plan implementers need to ensure there is a rational connection between the pertinent facts and circumstances, and the benefit decisions made. All involved must keep in mind that common sense does apply.

About the Author

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