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UNION-NEGOTIATED LIFETIME RETIREE HEALTH BENEFITS: PROMISE OR ILLUSION

William T. Payne and Pamina Ewing

INTRODUCTION

Healthcare coverage looms large in the life of retirees. Historically, many employers provided their retirees with lifetime medical coverage – or so retirees believed. As medical costs have dramatically increased more and more employers have sought to reduce or terminate retiree benefits. In the ensuing litigation, the federal courts have developed some basic principles that control how these cases are resolved.

In the typical case, an employer modifies its program, thus reducing benefits, shifting premium costs to retirees, or terminating coverage altogether. Termination or significant benefit reduction frequently occurs in connection with a plant shutdown, a facility sale, or a strike at contract expiration. An employer’s bankruptcy or other financial pressures can also lead to cost-cutting measures.

The number of employers reducing or terminating benefits has been increasing since the early 1990s, when the Financial Accounting Standards Board issued Financial Accounting Standard (“FAS”) 106.\(^1\) FAS 106 required for the first time that companies report retiree medical benefit obligations on their

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balance sheets, and required them to do so on the assumption that benefits would remain unreduced and would last for the life of the retirees.\textsuperscript{2} To stave off the new debt on their balance sheets, which in many cases was enormous, many employers have responded by attempting to reduce or even eliminate their retiree benefit obligations. Some employers have even taken the unusual step of suing their own retirees the same day benefits were terminated or reduced, preemptively asking the courts to declare their modifications lawful. Most often such suits have been followed by countersuits by retirees, sometimes in conjunction with the unions that had represented them while they were employed.

Much hinges on the outcome of these cases. From the employer's perspective, cases involving just a few hundred retirees can involve billions of dollars. For example, in recent litigation involving General Motors, the UAW, and approximately 500,000 retirees and spouses, a proposed settlement requires payments by General Motors that will probably exceed $35 billion.\textsuperscript{3}

Because the United States, in contrast to Canada and many other industrialized countries, lacks a comprehensive national healthcare program, the annual cost of individual coverage for retirees can be substantial and even prohibitive. Accordingly, the outcome of litigation discussed in this article (where employer-paid retiree coverage is at stake) can dramatically affect retirees' lives.\textsuperscript{4} Due to preexisting medical conditions and other factors, many retirees cannot obtain affordable alternative coverage in the event they lose their benefits. These retirees then must live with the prospect of a catastrophic injury or illness depleting their life savings, if they have savings. Additionally,

\begin{itemize}
    \item \textsuperscript{2} See United Steelworkers v. Cooper Tire & Rubber Co., 474 F.3d 271, 274 n.5 (6th Cir. 2007).
    \item \textsuperscript{3} The authors and other attorneys from their law firm were appointed to represent retirees in the predecessor lawsuit leading up to the current tentative GM settlement, Int'l Union, UAW v. Gen. Motors Corp., 497 F.3d 615 (6th Cir. 2007), and they have been appointed as interim counsel to the class in the new proceedings.
    \item \textsuperscript{4} E.g., Frank Swoboda, \textit{No Easy Rx for Retirees' Costly Care}, WASH. POST, July 9, 1989, at C1.
\end{itemize}
retirees without coverage may not have access to medical care that they need.

The importance of these benefits is illustrated by the fact that the Equal Employment Opportunity Commission (EEOC), after years of pondering issues and considering comments, recently issued final regulations addressing whether an employer may, consistent with the Age Discrimination in Employment Act (ADEA), terminate or reduce benefits for its Medicare-eligible retirees while leaving them intact for younger non-Medicare-eligible retirees without violating the Age Discrimination in Employment Act (ADEA). In issuing regulations that allow such termination or reduction for Medicare-eligible retirees, the EEOC emphasized that its rule concerns only the ADEA and does not affect "any non-ADEA obligation" that employers may have to provide health benefits under any other law (i.e., under ERISA and/or Section 301 of the LMRA as described in this article).5

LEGAL THEORIES AND CAUSES OF ACTION

When evaluating employer efforts to cut or eliminate benefits, courts must decide whether coverage was intended to be a "vested" lifetime benefit, and hence not subject to unilateral reduction, or merely "gratuitous," subject to termination at the

5. In its prior interpretation of the ADEA (which it abrogated by issuing the new regulations), the EEOC had ruled that an employer that provided retiree health benefits had to do so for both Medicare and non-Medicare retirees. Likewise, an employer had to prove either that the benefits available to Medicare-eligible retirees were the same as those provided to retirees not yet eligible for Medicare or that the employer was expending the same costs for both groups of retirees. In abrogating the old policy, the EEOC expressed concern about employers that are under no legal or contractual obligation to provide benefits (having reserved a right to terminate or reduce), and noted that its former policy "created an incentive for employers to reduce or eliminate retiree health benefits," since employers could avoid the "complex comparisons" required by the old rule "by simply eliminating retiree health benefits entirely." It therefore "concluded the public interest is best served by an ADEA policy that permits employers greater flexibility to offer these valuable benefits." Age Discrimination in Employment Act; Retiree Health Benefits, 72 Fed. Reg. 72938 (Dec. 26, 2007) (to be codified at 29 C.F.R. pts. 1625, 1627). These new regulations have survived legal challenge. AARP v. EEOC, 489 F.3d 558 (3d Cir. 2007), cert. denied, 76 U.S.L.W. 3510 (2008).
will of the employer. Cases turn on the parties’ intent, as manifested in the documents that govern the benefit plan. If the governing documents are ambiguous, courts scrutinize extrinsic evidence to determine what the parties who agreed on these documents intended.

An important issue in many of these cases is whether the governing documents reserve to the employer the right to unilaterally amend or terminate benefits. Termed “reservation of rights” clauses, these provisions have become increasingly common. If a union agrees to such clauses, or if the employer unilaterally inserts them in a non-union setting, they can defeat retiree claims for persons retiring after the clause appears.

Because federal law generally preempts state law causes of actions in this area, private sector retirees typically sue under federal statutes. All retirees, including former non-union employees, may sue under the Employee Retirement Income Security Act of 1974 (“ERISA”), which requires compliance with “the terms of [any] employee benefit plan.” Former union employees also may sue under Section 301 of the Labor Management Relations Act of 1947 (“LMRA § 301”), which confers jurisdiction in suits alleging violations of labor contracts.

Though courts vary in their degree of acceptance of these theories, all retirees may attempt to bring the following ERISA claims: contract claim for violation of a “plan” under ERISA § 502(a)(1)(B) and (a)(3); ERISA estoppel claim; and breach of

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7. Id. at 305.
8. See generally Roth v. City of Glendale, 614 N.W.2d 467 (Wis. 2000) (citing state or federal constitutional “contract clauses” as legal analysis in a public sector retiree health dispute case).
fiduciary duty claim under ERISA §§ 404 and 502(a)(3) (allowing "other appropriate relief" for such statutory claims).\textsuperscript{13} Former union employees may also bring contract claims for breach of labor agreement and estoppel claims under LMRA § 301.\textsuperscript{14}

Because ERISA plans in the union context stem from labor contracts, a contract breach in violation of LMRA § 301 also constitutes a violation of plan terms actionable under ERISA.\textsuperscript{15} The ERISA and LMRA analyses accordingly overlap.

\textit{WHAT IS THE "GOVERNING DOCUMENT"?}

ERISA provides remedies for violation of the terms of the plan and the terms of the documents governing the plan.\textsuperscript{16} Before deciding whether "documents governing the plan" are ambiguous, courts must determine exactly what documents are governing. In this regard, "governing documents" need not take any special form or be denominated as "the plan."\textsuperscript{17} The test is not what a document calls itself but whether it in fact governs a plan.

Thus, for example, in \textit{Delgrosso v. Spang & Co.}, the court held that a collectively bargained pension agreement was the governing plan document and invalidated a sponsor's effort to adopt a separate "plan" that deviated from the terms of that agreement.\textsuperscript{18} Similarly, in \textit{Halliburton Co. Benefits Comm. v. Graves}, the court held that a merger agreement that promised to continue retiree health benefits governed, despite a provision in

\begin{itemize}
\item[13.] 29 U.S.C. §§ 1132(a)(3).
\item[14.] 29 U.S.C. § 185.
\item[16.] 29 U.S.C. §§ 1132(a)(1)(B), (a)(3) and 1104(a)(1)(D).
\item[17.] Horn v. Berdon, Inc. Defined Benefit Pension Plan, 938 F.2d 125, 127 (9th Cir. 1991).
\item[18.] Delgrosso v. Spang & Co., 769 F.2d 928, 935-36 (3d Cir. 1985); see also Horn, 938 F.2d at 127 ("... there is no requirement that documents claimed to collectively form the employee benefit plan be formally labeled as such.").
\end{itemize}
the official plan document that reserved the right to reduce or terminate benefits.¹⁹

In Deboard v. Sunshine Mining & Refining Co.,²⁰ the Tenth Circuit concluded that employer letters sent to employees considering early retirement constituted governing documents:

In accordance with the terms of the October 3, 1985, letters, we conclude Woods intended to create a new benefit plan for a specific group of employees, i.e., those employees who agreed to participate in the voluntary early retirement subsidy. Although defendants emphasize the letters opened with the phrase "[f]or informational purposes only," the language of the letters clearly indicates an intent on the part of Woods to provide plaintiffs with lifetime health insurance benefits, and thereby to create a new limited benefit plan for plaintiffs. Moreover, the uncontroverted evidence indicates it was precisely the lifetime guarantee of insurance benefits that induced plaintiffs to participate in the voluntary early retirement subsidy.²¹

In Sprague v. Gen. Motors Corp., the Sixth Circuit reached the opposite conclusion in a ruling that addressed whether early retirement releases contained binding plan terms that were independent of the terms included in the formal plan documents.²² Some class members had signed releases that the district court concluded could "contain GM's promise to furnish early retirees with a particular level of health care coverage in exchange for the early retiree's promise to, inter alia, release GM from liability for certain causes of action."²³ The district court ruled that these agreements may be "enforceable under ERISA as independent bilateral contracts, or as modifications of GM's

²¹. Id. at 1238; see also Stevenson v. Milwaukee Forge, 2006 WL 2883256 (E.D. Wis. Aug. 17, 2006) (while employer's official plans arguably gave employer the right to terminate or modify, the early retirement incentive program was a contract independent from the health plans and supplanted any reservation of rights contained therein).
health care benefit plan."\textsuperscript{24} The Sixth Circuit ultimately reversed, ruling that oral and written statements, promises, and representations that health care coverage would be paid in full for life could not be considered contractually binding or effective "amendments" to the plan.\textsuperscript{25} The court explained that reliance on such external promises would undermine ERISA "written plan" requirement.\textsuperscript{26} The court also noted that GM did not profess or suggest that the plan was being modified and that the representations did not constitute "ERISA plans themselves."\textsuperscript{27}

Another document that could be considered "governing" is the "summary plan description," or SPD.\textsuperscript{28} ERISA § 102 requires that SPDs be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.\textsuperscript{29} At a minimum, the SPD must specify "the plan's requirements respecting eligibility for participation and benefits; . . . circumstances which may result in disqualification, ineligibility, or denial or loss of benefits . . ."\textsuperscript{30}

Many courts have held that SPDs are not only are governing documents but that they may take precedence over the plan itself.\textsuperscript{31} Like these other courts, the Sixth Circuit also had long held that where the SPD and plan itself are in conflict,

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\textsuperscript{24} Sprague, 133 F.3d at 413 (quoting Sprague v. Gen. Motors Corp., 843 F. Supp. 266, 299 (E.D. Mich. 1994)).
\textsuperscript{25} Id. at 403.
\textsuperscript{26} Id. at 402-03.
\textsuperscript{27} Id. at 403; see also Stearns v. NCR Corp., 297 F.3d 706, 709-710 (8th Cir. 2002) (releases suggestive of lifetime benefits could not supersede plan document that included a reservation of rights clause that stated that "[t]he Company reserves the right to change or cancel the Plan, or any benefits under the Plan, at any time.").
\textsuperscript{28} Sprague, 133 F.3d at 404.
\textsuperscript{29} 29 U.S.C. § 1022(a).
\textsuperscript{30} 29 U.S.C. § 1022(b); see also 29 C.F.R. § 2520.102-3(j) (Westlaw current through Feb. 13, 2008).
\textsuperscript{31} Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found., 334 F.3d 365, 378 (3d Cir. 2003) (citing decisions, and also finding that participants need not prove reliance); Washington v. Murphy Oil USA, Inc., 497 F.3d 453, 458-59 (5th Cir. 2007).
\end{flushleft}
the SPD will govern. 32 This line of authority was distinguished in the Sixth Circuit's en banc decision in Sprague, 33 which held that where an SPD stated both that benefits are lifetime and that the employer reserves the right to change the plan, it is unambiguous in the employer's favor, and that the reservation controls as a matter of law. 34 Further, even where the SPD stated that benefits are lifetime at no cost to the retirees, and did not contain reservation of rights language, the Sprague majority held that benefits still did not vest. 35 The majority viewed the absence of any reservation language as silence on the vesting question, and stated that "GM was not required to disclose in the summary plan descriptions that the plaintiffs' benefits were not vested." 36 The majority also noted that welfare plan SPDs are not required to inform participants about the vesting of benefits or that the plan's benefits are subject to amendment or termination. 37 The court did not discuss the above cited regulation that requires clear disclosure of "circumstances which may result in the loss of benefits" that the participant may reasonably expect on the basis of the description of benefits. 38

Similarly, in Pisciotta v. Teledyne Indus., Inc., retirees argued that booklets stating that benefits would continue "during the lifetime of you and your spouse" were SPDs. 39 The court concluded that they were not SPDs and therefore not governing plan documents. 40 The court then upheld summary judgment in favor of the employer regarding the employer's "alleged promise to pay lifetime medical benefits," stating: "No plan

33. Sprague, 133 F.3d at 400-01.
34. Id. at 401.
35. Id.
36. Id.
37. Id.
38. 29 C.F.R. § 2520.102-3(l).
40. Id.
documents exist which support such a promise.” 41 Alternatively, the court found that even if the old booklets were deemed SPDs, “the right to the lifetime payment of medical insurance premiums did not become vested. . .” 42 This was because a disclaimer in the booklets stated that “This booklet describes provisions of the group insurance program contained in the contract between the company and the insurance carrier. The contract shall be the controlling document.” 43 The court then found for employer because the contract, the controlling document, “reserves to Teledyne the right to modify or terminate employee welfare benefits.” 44 This part of the Pisciotta decision may have been discredited by the more recent decisions. 45 Courts differ when the actual plan document is more generous to employees than a conflicting SPD provision. Some authorities hold that the SPD trumps the plan only if the SPD is more generous, particularly where the SPD states that the plan will govern. 46

Other court decisions address the issue of whether “master agreements,” insurance policies, or other documents prepared by insurance companies should be considered controlling plan

41. Id.
42. Id.
43. Id. at 1331.
44. Id.
45. See Bergt v. Ret. Plan for Pilots Employed by Markair, Inc., 293 F.3d 1139, 1143-44 (9th Cir. 2002); Banuelos v. Constr. Laborers’ Trust Funds for S. Cal., 382 F.3d 897, 904 (9th Cir. 2004). Compare McKnight v. S. Life & Health Ins. Co., 758 F.2d 1566, 1570-71 (11th Cir. 1985); and Hansen v. Cont’l Ins., 940 F.2d 971, 982 (5th Cir. 1991) (rejecting such clauses stating that “the plan will govern,” and observing: “It is of no effect to publish and distribute a plan summary booklet designed to simplify and explain a voluminous and complex document, and then proclaim that any inconsistencies will be governed by the plan. Unfairness will flow to the employee . . .”).
46. Compare Glocker v. W.R. Grace & Co., 974 F.2d 540, 542-43 (4th Cir. 1992)(“Grace, having represented to its employees that the Plan -- not the handbook [i.e., the SPD] -- governed questions about benefits, cannot now repudiate this representation and rely on statements in the handbook that are less favorable to Mrs. Glocker.”); McGee v. Equicor-Equitable H.C.A. Corp., 953 F.2d 1192, 1201-02 (10th Cir. 1992); Sturges v. Hy-Vee Employee Benefit Plan, 991 F.2d 479, 480-81 (8th Cir. 1993); Hughes v. 3M Retiree Med. Plan, 281 F.3d 786 (8th Cir. 2002) (finding that an SPD unfavorable to the retiree governs); Maurer v. Joy Techs., Inc., 212 F.3d 907 (6th Cir. 2000).
documents.\textsuperscript{47}

**AMBIGUITY OF CONTROLLING DOCUMENTS**

Once a court has identified the controlling documents, the court must determine whether they are ambiguous on the question of vesting. Courts grant judgment for retirees if the governing documents unambiguously require continuation of the benefits throughout retirement.\textsuperscript{48} If governing documents unambiguously specify that the retiree benefits are terminable, retirees have no right to lifetime benefits.\textsuperscript{49}

In *Sprague*, the Sixth Circuit similarly concluded that there was no ambiguity in the governing plan documents, thus justifying its refusal to consider evidence of years of representations to retirees that benefits would be paid "at GM's expense for your lifetime."\textsuperscript{50} Where the controlling language is

\textsuperscript{47} Helwig, 93 F.3d at 249 (holding that general termination clauses in insurance documents did not mean the company could terminate retiree benefits, since the clauses "were included merely to reserve the right of the employer or the carrier to end their commercial relationship," and "even if we assume that the cancellation clauses [of insurance company master agreements] were intended to regulate the obligations of the employer to the employees, this Court has held quite clearly that promises made in SPDs are binding on the employer regardless of conflicting language in a master agreement."); United Steelworkers of Am. v. Newman-Crosby Steel, 822 F. Supp. 862, 865 (D.R.I. 1993) (description prepared by the insurance company "merely describe the coverage purchased by the Company to fulfill its obligation" under the labor agreement; "[t]hey cannot and do not modify that obligation.").

\textsuperscript{48} E.g., United Steelworkers of Am. v. Connors Steel Co., 855 F.2d 1499, 1501 (11th Cir. 1988) (agreement provided: "[Retirees and surviving spouses] shall not have such coverage terminated or reduced (except as provided in this program) so long as the individual remains retired from the company or receives a surviving spouse's benefit, notwithstanding the expiration of this agreement, except as the company and the union may agree otherwise.").

\textsuperscript{49} E.g., Musto v. Am. Gen. Corp., 861 F.2d 897, 903-06 (6th Cir. 1988) (plaintiffs lost, since documents had informed the plaintiffs: "[I]nsurance coverage . . . may be amended or discontinued at any time, and the Company reserves the right to determine new premium contributions at any time," and ". . .since it is not possible to foresee the future, the Company must reserve the right to change or even discontinue these provisions if it becomes necessary," and ". . .the Company does, as it always has, reserve the right to change the Plan and, if necessary, discontinue it.").

\textsuperscript{50} Cf. *Sprague*, 133 F.3d at 409 (some representations quoted at dissent); *Sprague*, 133 F.3d at 400-403 (majority conclusion); Int'l Union v. Skinner Engine Co., 188 F.3d 130 (3d Cir. 1999) (affirming judgment for employer on basis of
ambiguous, courts must consider the use of extrinsic evidence to determine the parties' true intent.51

THE "YARD-MAN INFERENCE"

In determining whether the governing documents are ambiguous, some courts apply an inference in favor of vesting and retirees while others apply an inference in favor of non-vesting and employers.52 Application of the inference can sometimes be outcome-determinative. Because the seminal case adopting the pro-retiree inference is Int'l Union, UAW v. Yard-Man, Inc., this inference is termed the "Yard-Man inference."53 As to retirees, the contract at issue in Yard-Man contained the simple promise that the Company "will provide insurance . . ."54 On summary judgment, the Sixth Circuit looked only within the four corners of the controlling documents to rule in favor of the retirees.55 While the court found the phrase "will provide" to be ambiguous, it concluded that the document as a whole unambiguously granted lifetime benefits when this phrase was considered in the context of the rest of the contract.56

Unremarkably, Yard-Man states that any right to lifetime benefits must find "its genesis" in the agreement.57 Yard-Man then prescribes the usual rules of contract construction.58 These

contract language alone, even though language did not say explicitly that benefits were terminable or that benefits were "lifetime."); Joyce v. Curtiss-Wright Corp., 171 F.3d 130, 132 (2d Cir. 1999) (same); Sengpiel v. B. F. Goodrich Co., 156 F.3d 660, 667-68 (6th Cir. 1998); Senn v. United Dominion Indus. Inc., 951 F.2d 806 (7th Cir. 1992) (finding that complete "silence" on the vesting question is unambiguous in the employer's favor).


52. Yard-Man, Inc., 716 F.2d at 1476.
53. Id.
54. Id. at 1480.
55. Id. at 1480, n.1.
56. Id. at 1480.
57. Id. at 1479.
58. Id. at 1479-80; see also Devlin v. Empire Blue Cross and Blue Shield, 274 F.3d 76, 82, 84 n.4 (2d Cir. 2001) (characterizing retiree health claim under ERISA §
rules include the common principle that courts are to interpret each contract provision as part of the integrated whole, "so that all of the provisions, if possible, will be given effect." Similarly, the "...agreement's terms must be construed so as to render none nugatory and avoid illusory promises." 

Under Yard-Man and traditional contract principles, courts must determine whether the governing documents are "ambiguous" on the vesting question. Only if the governing documents are "ambiguous" will extrinsic evidence such as oral representations be examined to determine the intent underlying the documents.

The "Yard-Man inference" is based in the Sixth Circuit's observation that a retiree benefit constitutes a kind of "status benefit" that carries "an inference that [it] continue[s] so long as the prerequisite status is maintained." While this bare inference does not itself establish a claim of lifetime benefits, it serves to buttress other textual evidence of an enduring right.

The Sixth Circuit relied on two factors in support of this part of its decision. First, the court cited the body of pre-ERISA precedent applying the modern "contractual" view of retirement benefits. Second, the court noted that under federal law, retiree benefits are "permissive" subjects of bargaining because a union cannot require the employer to bargain over continuing the benefits of past retirees. Accordingly, the court observed, "it is unlikely that such benefits, which are typically understood

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502(a)(1)(B), as "[e]ssentially" and assertion of a "contractual right under a benefit plan"); Kerns v. Caterpillar, Inc., 499 F. Supp. 2d 1005, 1019 (M.D. Tenn. 2007) ("The CBA's are contracts and, as a result, the court applies general principles of contract law to determine whether the retiree benefits sought in this case are vested.").

60. Id.
61. Id.
62. Id.
63. Id. at 1482.
64. Id. at 1480-82.
as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." On this point, Yard-Man cited Chem. Workers v. Pittsburgh Plate Glass, where the Supreme Court explained that retirees are not left without protection because "vested retirement rights may not be altered without the pensioner's consent."  

While some cases have treated the Yard-Man inference as akin to a presumption, the Sixth Circuit ruled otherwise in Int'l Union UAW v. Cadillac Malleable Iron Co., Inc. As the Sixth Circuit recently emphasized in Yolton v. El Paso Tenn. Pipeline Co.:  

Yard-Man does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the Yard-Man inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBAs.

The Sixth Circuit in Yolton expressly declined to overrule Yard-Man:  

Under Yard-Man we may infer an intent to vest from the context and already sufficient evidence of such intent. Absent such other evidence, we do not start our analysis presuming anything. If Yard-Man required a presumption, the burden of rebutting that presumption would fall on the defendants. However, under Yard-Man, "[t]here is no legal presumption that benefits vest and that the burden of proof rests on plaintiffs." This Court has never inferred an intent to vest benefits in the absence of either explicit contractual language or extrinsic evidence indicating such an intent. Rather, the inference functions more to provide a contextual

67. Id. at 1482.  
68. Id. (citing Allied Chemical & Alkali Workers of Am., 404 U.S. at 181, n.20).  
69. Int'l Union U.A.W. v. Cadillac Malleable Iron Co., Inc., 728 F.2d 807, 808 (6th Cir. 1984) ("there is no legal presumption based on the status of retired employees...").  
understanding about the nature of labor management negotiations over retirement benefits. That is, because retirement health care benefits are not mandatory or required to be included in an agreement, and because they are “typically understood as a form of delayed compensation or reward for past services” it is unlikely that they would be “left to the contingencies of future negotiations.” When other contextual factors so indicate, Yard-Man simply provides another inference of intent. All that Yard-Man and subsequent cases instruct is that the Court should apply ordinary principles of contract interpretation. There is no need to revise, reconsider, or overrule Yard-Man. (internal citations omitted)\footnote{71}

Recently, in Noe v. PolyOne Corp.,\footnote{72} the Sixth Circuit reiterated the continuing viability of Yard-Man. Reversing entry of summary judgment in favor of the defendant employer, the Court indicated that it was “follow[ing] the instructions of Yard-Man and its progeny by examining the provisions of the EBAs and applying traditional principles of contract interpretation to ascertain whether the parties intended to vest retiree health benefits.”\footnote{73} The Court noted that “of the eleven most pertinent Sixth Circuit cases addressing whether retiree health benefits have vested, this court found evidence of vesting in ten.”\footnote{74}

As the Sixth Circuit observed in Noe, that Court “has approached the vesting issue differently than have many of our sister circuits,”\footnote{75} Other circuits are divided on the question of whether to accept the Yard-Man “inference” in favor of retirees. The Fourth and Eleventh Circuits join the Sixth in applying the inference for union retirees.\footnote{76} The Ninth Circuit may also apply

\begin{footnotes}
\item 71. Id. at 579-80 (citations omitted).
\item 72. Noe v. PolyOne Corp.,-- F.3d --, 2008 WL 723769 (6th Cir. March 19, 2008)
\item 73. Id. at *13.
\item 74. Id. at *13 n.5.
\item 75. Id. at *13.
\item 76. Connors Steel Co., 855 F.2d at 1505 (“We fully concur with the decisions of the Court of Appeals for the Sixth Circuit in [Yard-Man and Weimer].”); Keffer v. H. K. Porter Co., Inc., 872 F.2d 60, 64 (4th Cir. 1989) (recognizing that Yard-Man provides “a more far reaching understanding of the context in which retiree benefits arise...[They] are typically understood as a form of delayed compensation or reward for past services, [which would not] be left to the contingencies of future
\end{footnotes}
the inference. The First Circuit, while rejecting the notion of a Yard-Man "presumption," seemingly does not accept or deny the inference. The Second, Third, Fifth, Seventh, and Eighth Circuits do not apply the Yard-Man inference.

**Presumptions or Inferences Used to Determine if Governing Documents Are Ambiguous**

Whether or not a court recognizes the Yard-Man inference can have a determinative effect on a retiree's claims of a vested benefit. Other presumptions, too, can dramatically impact the assessment of whether or not the governing documents are ambiguous. Presumptions and inferences surrounding whether and what types of extrinsic evidence can be used, the impact of a reservation of rights clause, the nature of vested benefits as fixed or evolving and what qualifies as the triggering event for vesting are all of key import when assessing a retiree medical benefits claim.

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79. Joyce, 171 F.3d at 135 (overturning jury verdict for retirees and granting judgment for employer even though court acknowledged that no contract language limited duration of benefits; court did not cite Yard-Man but cited Sprague statement that "a commitment to vest 'is not to be inferred lightly' and . . . must be found in express language from the plan documents..."); see also Am. Fed'n of Grain Millers v. Int'l Multifoods Corp., 116 F.3d 976, 980 n.3 (2d Cir. 1997).
80. Skinner Engine Co., 188 F.3d at 139 ("We reject both the appellants' invitation to adopt the presumption enunciated in Yard-Man and their interpretation of the relevant contract language.").
81. United Paperworkers Int'l Union v. Champion Int'l Corp., 908 F.2d 1252, 1261 n.12 (5th Cir. 1990); but see Masonite, Corp., 122 F.3d at 231-2 (concluding that Champion merely "questioned the inference.").
82. Rossetto, 217 F.3d at 544. While the Seventh Circuit has adopted what it terms a "presumption against vesting," the court emphasized that this presumption "kicks in only if all the court has to go on is silence. If there is some positive indication of ambiguity, something to make you scratch your head (but the 'something' must be either language in the plan or contract itself or the kind of objective evidence that can create a latent ambiguity under principles of contract law), the presumption falls out." The court further explained that "[t]he presumption is thus a default rule, that is, a rule to be applied when there is no other evidence.").
SHOULD EXTRINSIC EVIDENCE BE CONSIDERED?

In determining whether governing documents are ambiguous, some courts, most notably in the Sixth Circuit, hold that the analysis must be limited to the four corners of the governing documents. These courts do not consider extrinsic evidence when deciding the preliminary question of whether the documents are ambiguous.

In contrast, other courts making the initial determination of ambiguity endorse what is termed the "modern view," which is based on, for example, the common law of Pennsylvania and California. Under this approach, courts may examine the extrinsic evidence as part of the determination of whether the plan or contract is ambiguous.

TYPES OF EXTRINSIC EVIDENCE

Courts, then examine extrinsic evidence once the governing documents have been determined to be ambiguous or, if the court endorses the "modern view" to determine if the governing documents are ambiguous. Extrinsic evidence can take a number of forms. Documents and other materials prepared in connection with contract negotiations are one key type of extrinsic evidence. This can include statements, proposals, and counterproposals from persons negotiating the controlling labor agreements; these materials often shed light on the parties'

84. See Yard-Man, Inc., 716 F.2d at 1479.
85. Id.
86. Skinner Engine Co., 188 F.3d at 142; Alexander v. Primerica Holdings, Inc., 967 F.2d 90 (3d Cir. 1992); Murphy v. Keystone Steel & Wire Co., 61 F.3d 560, 565 (7th Cir. 1995) (finding "extrinsic evidence can be used to show a contract is ambiguous."); Mioni v. Bessemer Cement Co., 1985 WL 6551 (W.D. Pa. 1985) ("According to the practice developed under Pennsylvania law, many courts are reluctant to hold words unambiguous without first examining the circumstances and facts in order to determine whether any variation of the words would be an impermissible rewriting of the contract. . .The intended meaning of even the most explicit language can only be understood in light of the context which gave rise to it.").
Pattern bargaining can also be relevant if a union engages in pattern bargaining across an industry, evidence of intent from bargaining sessions conducted with one employer may aid in constructing industry-wide contracts.88

Oral or written statements to retirees is another form of extrinsic evidence that frequently supports retirees’ claims. Company representatives often explain the nature of future pension and insurance benefits to retirees or prospective retirees. These explanations may be given at benefit meetings to groups of employees, or to individual employees on the eve of retirement, often in connection with exit interviews, and sometimes with the participation of the employee’s spouse. When company interviewers lead retirees or prospective retirees to believe that their benefits will be “for life,” this will constitute strong evidence supportive of vesting.89

An employer’s continuation of retiree insurance during strikes is another common type of extrinsic evidence. For union employees, there typically is no contract in effect during periods of strike, lockout, or plant shutdown. During such periods, employers often terminate active employees’ health insurance but continue retiree insurance. Courts have held that continuation of insurance during strikes is extrinsic evidence that supports retiree claims of lifetime benefits.90

Extrinsic evidence can also take the form of costing analysis prepared by employers in contemplation of plant shutdown. In preparing for a potential plant shutdown, employers frequently

87. Int’l Union v. BVR Liquidating, Inc., 190 F.3d 768 at 771 (6th Cir. 1999)(relying on “affidavits of the negotiators.”).
88. Rossetto, 217 F.3d at 546 (“Another bit of evidence favoring the plaintiffs is that Schlitz Brewing Company, which had a collective bargaining agreement with the machinists’ union that was identical to the agreement at issue in this case, continues to this day to provide health insurance to the retired machinists of its Milwaukee facilities, which it closed in 1981, Jos. Schlitz Brewing Co. v. Milwaukee Brewery Workers’ Pension Plan, 3 F.3d 994, 997 (7th Cir. 1993), after the expiration of the agreement.”).
89. BVR Liquidating Inc., 190 F.3d at 771 n.6 (retirees’ “affidavits state that company agents informed retirees that their health care benefits would be lifetime benefits.”).
90. Bower, 725 F.2d at 1225.
"cost-out" retiree insurance on a "lifetime" basis. Notes in conjunction with such analyses may specifically state that benefits will continue "for life." Such evidence will support retirees.  

Finally, cases suggest that uncontested changes or improvements in benefits for past retirees can be highly relevant extrinsic evidence. In Int'l Union, UAW v. Cadillac Malleable Iron Co., Inc., the court found a lifetime benefit at full coverage—even for those who were already retired at the time the benefit had been created or improved:

The company argues that the extension of newly bargained for benefits to already retired workers is inconsistent with the conclusion that their benefits under previous agreements were vested for life. However, there is nothing inconsistent in granting vested retirement benefits and then modifying those benefits through voluntary bargaining subject to approval by the already retired workers. Since, up until now, the only modifications in retirement insurance benefits have been increases in those benefits, the retirees have never had occasion to object to the voluntary bargaining between the union and the company over their benefits. . . . If the company and the union had previously bargained for a decrease in some benefits paid to already retired workers, and the retirees had agreed to the decrease without protest, this might well be evidence that the parties, including the retirees, did not consider those retirement benefits to be vested. However, when only increases have occurred, this fact does not reflect any intention that those benefits are limited to the term of the collective bargaining agreement under which they were granted.  

As illustrated by this passage from Cadillac Malleable,  

Retirees typically argue that benefit increases for those already retired are consistent with their claim that benefits are vested, while employers often rely on uncontested benefit reductions, arguing that these evidence the bargaining parties' intent not to vest.

In *Laforest v. Former Clean Air Holding Co., Inc.*, the court rejected the employer's argument that the retirees' union had "tacitly" agreed to the employer's reduction of benefit levels insofar as it did not "vigorously" contest that reduction. In *Aluminum Co. of Am.*, the court similarly rejected the employer's argument that changes in the retiree medical package showed that benefits were not vested, particularly since the only change had been the introduction of a new optional prescription drug mail order program.

In several cases from Michigan, courts have held that retirees are not "bar[red] from suing for later changes" in benefits merely because they "tolerated earlier changes." Other courts have viewed such modifications of retiree benefits as evidence that benefits are not vested.

One type of "reduction" or negotiated change that has been the subject of recent litigation are per capita caps on what companies would spend for retiree health benefits. Caps became more prevalent once FAS 106 began requiring companies to report on their balance sheets the present value of all post-retirement health benefit obligations rather than on a pay-as-you-go basis. Some unions, bowing to company pressure, have over the years agreed to set per capita caps on

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94. *Int'l Union, UAW*, 932 F. Supp. at 1010.
96. See, e.g., *John Morrell & Co. v. United Food and Commercial Workers*, 37 F.3d 1302, 1307 (8th Cir. 1994)("[T]he fact that modifications were routinely negotiated is fundamentally inconsistent with the notion that any retirement health benefits were ever vested."); *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 483 (7th Cir. 2006) ("the parties' practice of changing the contractual terms in succeeding agreements lends support to Auburn Gear's claim that neither party understood the benefits to be permanent or inalterable.").
these benefits, at least for future retirees. The Sixth Circuit recently observed that "[b]y setting a cap on retiree healthcare liabilities, companies safeguarded against having to report astronomical amounts in liabilities."  

Unions have argued that cost caps were adopted "merely" for "accounting purposes" and were not intended ever to be applied. In a recent unpublished opinion, Wood v. Detroit Diesel Corp., the Sixth Circuit considered the contention that an employer had exceeded its rights by applying a FAS 106 cap. The court noted that, in consideration of the UAW's acceptance of the cap agreement, the company had sent the union a letter stating that it fully recognizes, acknowledges and hereby confirms that retiree health care benefits for [the UAW-represented] employees have been and will continue to be lifetime benefits and that the establishment of 'contribution limits' in no way modifies or negates this commitment. In addition, UAW negotiators attested in declarations to having sought and obtained express assurances from company representatives that, despite the agreed-to contribution limits, Detroit Diesel would remain liable to provide lifetime health coverage and that retirees would never have to pay out-of-pocket for the benefits.

The UAW also produced a letter which was unsigned but to which the union negotiators stated that the company had agreed, in which the company promised that if certain VEBA assets were insufficient to cover all above-cap premium costs, "Detroit Diesel would make necessary adjustments to [its] contribution level to correct this situation so that there are no out of pocket costs for retirees." Given this extrinsic evidence, the Sixth Circuit concluded that "there are unresolved questions of

98. Cooper Tire & Rubber Co., 474 F.3d at 274.
99. Id. at 274 n.5.
101. Id.
102. Id. at 468.
103. Id.
104. Id. at 469.
fact going to the matter of vesting."\textsuperscript{105}

The court held that the plaintiffs had "some likelihood" of success on the merits – although "[i]t may not be a 'strong' likelihood and "plaintiffs may have difficulty ultimately prevailing on the merits of their claims."\textsuperscript{106}

Another piece of extrinsic evidence may be the summary plan description. As discussed above, in some circuits, the description of benefits contained in an SPD can, in effect, be treated as binding terms of the plan.\textsuperscript{107} Even if a court does not consider SPD representations to be binding, the failure to comply with SPD requirements may still be extrinsic evidence supporting the retirees' interpretation of the plan.\textsuperscript{108} For example, assume the employer claims that retiree benefits were always meant to terminate on plant shutdown, but the plan itself is ambiguous and the SPD fails to disclose shutdown as a "circumstance" which could result in benefit termination. The employer's failure to make the ERISA-mandated disclosure

\textsuperscript{105} Id. at 471.

\textsuperscript{106} Id. See also the district court ruling in \textit{Yolton}, 318 F. Supp 2d at 473, which was not appealed as to this point, where the court stated that, "[a]t this time, the court is not convinced that the FAS-106 letter was merely for accounting purposes and that the UAW and Case therefore did not intend for it to limit Case's obligations to provide future retirees' health care benefits."; and later \textit{Yolton} decision finding that the caps were not meant to shift costs to retirees, 2008 U.S. Dist. LEXIS 17622 *16 ("the evidence demonstrated that the UAW and Case did not intend for the caps in those letter to ever have a substantive effect on retirees and their surviving spouses, but was imposed for accounting purposes only."; see also \textit{Reese v. CNH Global}, 2007 U.S. Dist. LEXIS 63670 * 30 (E.D. Mich. 2007) ("Cap Letters [were meant] to serve only as an accommodation whereby the UAW agreed to allow Case to temporarily reduce the figure for its estimated future costs for retiree medical benefits on its financial records," and citing testimony that "the understanding of Case and the UAW was that the cap never would be reached because its effective date would be moved and therefore retirees and their surviving spouses never would be required to contribute to the cost of their health care benefits"); see also \textit{Trull}, 329 F. Supp 2d at 665-66, 673-75 (denying summary judgment to employer, and holding that there were factual disputes as to whether the company had acted within its rights in applying a FAS-106 cap, since there was strong extrinsic evidence that the company had promised both that it would increase the cap and that the cap would have no application in the event of a plant closing).

\textsuperscript{107} E.g., \textit{Edwards}, 851 F.2d at 136 ("[S]tatements in a summary plan are binding and if such statements conflict with those in the plan itself, the summary shall govern.").

\textsuperscript{108} Id.
suggests that the employer never intended such a disqualifying condition. This analysis is supported by the principle that where a duty to record or publish certain matters exists, the non-existence of the record evidences the converse proposition.

RESERVATION OF RIGHTS CLAUSES

Some courts view "reservation of rights" clauses skeptically, and have readily found them to be ambiguous. Other courts construe such clauses as granting employers unfettered power to reduce or terminate benefits.

On the threshold question of ambiguity, union retirees have a distinct advantage over non-union retirees. Because unions are not likely to agree to reservation of rights clauses, collectively bargained language will rarely grant such a right. Some courts have held that a unilaterally drafted document cannot affect vested rights created by the bargained-for document. Thus, in Masonite the negotiated labor agreement stated that retirees would have health benefits "until death." The employer nonetheless relied upon a unilaterally drafted "reservation-of-rights" clause in its "ERISA Plan document," which purported to give the company the rights to terminate benefits "at any time," i.e., even before the death of the retiree. The Fifth Circuit ruled that "a reservation-of-rights clause must be drafted with specificity to reflect the intention of the parties."
rights clause in a plan document . . . cannot vitiate contractually vested or bargained-for rights. To conclude otherwise would allow the company to take away bargained-for rights unilaterally.116 In contrast to the courts in cases like Masonite, the Sixth Circuit in Maurer held that benefits could be cut for persons retiring after the employer inserted “reservation of rights” language in the plan documents, reasoning that the union should have filed a grievance upon seeing the language.117 However, Maurer was later limited by McCoy v. Meridian, which ruled that “the SPD language on which Meridian relies is not the [type of] unqualified reservation-of-rights language that would fairly prompt a union to protest”118, and Prater v. Ohio Educ. Ass’n, which explained that “a broad reading of [Maurer] would run headlong into the rule that a plan summary ‘cannot vitiate contractually vested or bargained-for-rights.’” 119 Also significant in the union setting is Allied Chemical & Alkali Workers of Am. v. Pittsburgh Plate Glass Co.120 In its central holding in this case, the Supreme Court ruled that unions are not the bargaining representative of retirees once they retire.121 This implies that even if a union purports to agree to decrease benefits for past retirees, that agreement is ineffective because the union does not represent retirees.122 Maurer addresses this issue by concluding that negotiated cuts are only enforceable as to future retirees, not as to persons who have already retired.123

116. Id. at 233; see also Gilbert v. Doehler-Jarvis, Inc., 87 F. Supp 2d 788, 794 (ND Ohio 2000) ("...this Court will not countenance a rule that could permit a company to unilaterally take away contractually bargained-for rights...The reservation of rights clause in the SPD does not provide probative evidence of an intent to end retiree health care benefits at the termination of the CBA."); Asarco, Inc., 2005 U.S. Dist. Lexis 20873.
117. Maurer, 212 F.3d at 919.
118. McCoy, 390 F.3d at 424.
120. Allied Chemical & Alkali Wokers of Am., 404 U.S. at 179, 181 n.20.
121. Id.
122. Id.
123. See generally Maurer, 212 F.3d at 907; see also Yolton, 318 F. Supp 2d at 473 ("Defendants also argue that an injunction should not extend to those employees who retired after October 3, 1993, the date the FAS-106 Letter became effective and
At first, appellate decisions did not explicitly state that standards for union retirees differ from standards for non-union retirees. Indeed, in In re White Farm, the Sixth Circuit declared that even though the retiree insurance claim was brought by non-union retirees solely under ERISA, the court must "look to basic contract law," and it "must, in this case as in Yard-Man and the other collective bargaining agreement cases, interpret the contract's terms."\(^{124}\) The court went on to note that "courts may draw inferences or make presumptions as this court has done in construing collective bargaining agreements providing welfare benefit plans."\(^{125}\)

More recently, in ruling that summary judgment should be entered in favor of union retirees, the Sixth Circuit specifically held that there is a dual standard. In Int'l Union v. BVR Liquidating, Inc.,\(^{126}\) the Court held that Sprague and Sengpiel v. B. F. Goodrich Co.,\(^{127}\) another case involving salaried employees, were "distinguishable" because the court there was confronted with a benefit plan unilaterally instituted by the company:

In this case, the benefit plan was negotiated between the company and the union. The Yard-Man presumption was specifically intended to apply in the context of a collective bargaining agreement. The Yard-Man court noted that '[b]enefits for retirees are only permissive not mandatory subjects of collective bargaining. As such, it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left thus arguably capped Case's retiree health insurance obligations. At this time, the Court is not convinced that the FAS-106 Letter was merely for accounting purposes and that the UAW and Case therefore did not intend for it to limit Case's obligations to provide future retirees' health care benefits. Thus employees who elected to retire after that date are not entitled to a preliminary injunction. However the Court finds this alleged 'cap' ineffective with respect to employees who chose to retire prior to October 3, even if their retirement went into effect after that date, and with respect to employees who elected a Voluntary Lay-Off option prior to the FAS-106 Letter's effective date, but who only 'grew into' retirement after that date.

\(^{124}\) In re White Farm Equipment Co., 788 F. 2d. at 1191.
\(^{125}\) Id. at 1193.
\(^{126}\) BVR Liquidating, Inc., 190 F.3d at 768.
\(^{127}\) Sengpiel, 156 F.3d at 660.
to the contingencies of future negotiations.\textsuperscript{128}

\textbf{WHAT IS THE NATURE OF THE VESTED BENEFIT?}

It is unsettled whether certain changes such as a change to managed care, or shifting costs to retirees while simultaneously adding benefits, infringe upon vested benefits.\textsuperscript{129} Courts parse the language of the governing plan documents to decide this issue.\textsuperscript{130}

In an unusual decision, the Seventh Circuit recently ruled that, even absent specific language suggesting that a lifetime benefit must be an "evolving" benefit, the Court should allow it to evolve.\textsuperscript{131} In Zielinski \textit{v. Pabst Brewing Co., Inc.}, the court found for retirees and concluded that it should "fill in gaps" and create a program that was reasonably commensurate with one in effect in 1981.\textsuperscript{132} The court explained:

In sum, the benefits to which the plaintiff class is entitled are those specified in the shutdown agreement but adjusted—to the extent possible without wild conjecture—for changes to which the parties to the agreement would have agreed had they focused at the outset on the duration of the commitment made by the employers. The district judge will want to pay particular attention to the pharmaceutical-benefits packages that employees in the brewing industry negotiate through their unions today, as the brewers' union did lo these many years ago. Those packages should approximate, at least roughly, the value of the 1971 Blue Cross-Blue Shield plan updated to 2004.\textsuperscript{133}

In the most recent in a series of decisions in \textit{Yolton v. El Paso}

\textsuperscript{128} BVR Liquidating, Inc., 190 F.3d at 773.
\textsuperscript{129} See Diehl, 102 F.3d at 310-11; \textit{Int'l Union, UAW}, 932 F. Supp. at 1008-10.
\textsuperscript{130} See Deboard, 208 F.3d at 1243 ("We conclude plaintiffs are entitled to the same type of coverage, at defendants' expense, as provided to defendants' current salaried employees. If defendants were to change coverage for their current employers, such changes would also affect plaintiffs. Defendants could not, however, place plaintiffs in a low-cost insurance plan while simultaneously providing a higher level of service and benefits to their current employees.").
\textsuperscript{131} Zielinski \textit{v. Pabst Brewing Co., Inc.}, 463 F.3d 615 (7th Cir. 2006).
\textsuperscript{132} \textit{Id.}
\textsuperscript{133} \textit{Id.} at 621.
Tennessee Pipeline, the Court distinguished Zielinski and refused to allow the defendants to make so-called "administrative changes" that would have had the effect of imposing more costs on the retirees. The Court observed that in Zielinski:

the relevant labor agreements did not provide the details (i.e. the specific levels and types) of the plaintiffs’ health insurance coverage. Instead, those details only were outlined in the insurance provider's [old] plan brochure . . . Where specific levels and types of coverage have been negotiated and agreed to (i.e. contracted for), as was done by Case and the UAW, this Court does not believe that changes to those levels and/or types of benefits can be imposed unilaterally by El Paso or the courts.134

In an earlier decision, the Yolton court had observed that the agreements at issue appeared to mean that the retirement package available to someone contemplating retirement will change with the expiration and adoption of collective bargaining agreements ("CBA"), but someone already retired under a particular CBA continues to receive the benefits provided therein despite the expiration of the agreement itself.135

The court added that “[t]his is perhaps where the Yard-Man inference makes the most sense,” because, in the court’s view, it would not make sense for retiree benefits to be “alterable based on the changing whims and relative bargaining power of their former union and employer.”136

In Weimer v. Kurz-Kasch, Inc., the court construed the plan documents “to limit the level of benefits of a retiree’s insurance coverage to that provided by the group policy in effect when he or she retired.”137 Similarly, in In re Ormet Corp., the court concluded that “[t]he rights and benefits for . . .past retirees were what those employees had bargained for under the health


135. Yolton, 435 F.3d at 581 (emphasis added).
136. Id. at 581 n.6.
137. Weimer, 773 F.2d at 674.
benefits for retirees included in the group health insurance plan in effect at the time they retired."\textsuperscript{138} However, the decision in \textit{Weimer} was based on specific plan language, \textsuperscript{139} and the decision in \textit{Ormet} was based on testimony as to the negotiators' intent.\textsuperscript{140} In \textit{Int'l Union, UAW v. Cadillac Malleable Iron Co., Inc.}, the court found a lifetime benefit at full coverage even for those who were already retired at the time the benefit had been created or improved.\textsuperscript{141}

It also is unsettled whether benefits become "vested" when participants attain retirement eligibility, or whether participants actually have to retire for vesting to take place.\textsuperscript{142} In \textit{Devlin v. Empire Blue Cross & Blue Shield}, the Second Circuit addresses this issue, holding that where the "unilateral contract" theory applies, the benefit is "earned" even after "part performance."\textsuperscript{143} Accordingly, implementation of a new reservation of rights clause cannot cut off the rights of those who had not yet retired.\textsuperscript{144}

\textbf{OTHER RULES FOR CONSTRUING GOVERNING DOCUMENTS}

Ambiguity of the controlling document with respect to

\textsuperscript{138} In re Ormet Corp., 324 B.R. 646, 654 (S.D. Ohio 2005).
\textsuperscript{139} Weimer, 773 F.2d at 674.
\textsuperscript{140} In re Ormet Corp., 324 B.R. at 654; see also John Morrell & Co., 37 F.3d at 1307 ("there is no basis for concluding that later modifications to a retiree's initial level of health benefits are vested."); Angotti v. Rexam, Inc., 2006 U.S. Dist. LEXIS 42104 at *42 (N.D. Cal. June 14, 2006) (plaintiffs were "likely to succeed on the merits of their Labor Management Relations Act claim that they have a vested entitlement to the health benefits that they received when they retired," but plaintiffs had not shown "that they likely enjoyed vested rights to all of the benefits they were receiving as of December, 2005.").
\textsuperscript{141} Cadillac Malleable Iron Co., Inc., 728 F2d at 809; see also Jansen v. Greyhound Corp., 692 F. Supp. 1029, 1038 (N.D. Iowa 1987) (The court reasoned that active employees gave up something in later negotiations to benefit retirees; this bargain provided the necessary consideration.).
\textsuperscript{142} See Terrell v. Dura Mechanical Components Inc., 934 F. Supp. 874, 879-882 (N.D. Ohio 1996) (concluding benefit is vested upon attaining retirement eligibility; furthermore, employees gave up the vested benefits through release in a shutdown agreement); Int'l Union, UAW v. Park-Ohio Indus., Inc., 661 F. Supp. 1281, 1310 (N.D. Ohio 1987)
\textsuperscript{143} Devlin, 274 F.3d at 84-85 n. 4-6.
\textsuperscript{144} Id.
vesting can be a pivotal issue for retirees seeking enforcement of what they believed to be lifetime healthcare benefits. Ambiguity, however, is not the only issue impacting the court’s interpretation of the documents governing medical benefits. Rules and presumptions surrounding clauses which specify the duration of benefits, link retiree medical benefits to pension eligibility, specify the relationship between the medical benefit and Medicare eligibility, and indicate that the benefit is "for life" can strongly impact the success of retirees' claims.

GENERAL DURATION CLAUSES

The Sixth Circuit declared in *Yard-Man* that a non-specific general clause such as a general duration clause cannot "take precedence" over a more specific clause such as one promising benefits during retirement. Many courts have addressed this issue.

In *Yard-Man*, the Sixth Circuit stated that "the inclusion of specific durational limitations in other provisions. . .[e.g., provisions concerning disabled or laid-off employees] suggests that retiree benefits, not so specifically limited, were intended to survive. . .".

Courts consider it significant that governing documents link retiree medical benefits to pension eligibility. The court in *Kerns v. Caterpillar, Inc.* summarizes the leading cases:

Significantly, this language links retiree and surviving spouses medical benefits to pension eligibility. The Sixth Circuit has held that this constitutes strong evidence of vesting. For example, in *Yolton*, a 2006 case, the Sixth Circuit affirmed the district court’s finding that the plaintiffs' benefits had vested, explaining that...

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145. *Yard-Man, Inc.*, 716 F.2d at 1483.

.the district court interpreted the language of the agreement and found evidence that the defendants intended to confer lifetime benefits upon the plaintiffs. Of particular significance to the district court was language in the Group Insurance Plan that tied benefits to the pension plans. . .Because the pension plan is a lifetime plan and the health insurance benefits are tied to the pension plan, the district court found that the health insurance benefits were vested and intended to be lifetime benefits.\textsuperscript{147}

In \textit{Golden}, similar language in each of the CBA's tied retiree benefits and surviving spouse eligibility for health insurance coverage to eligibility for vested pension benefits. The Sixth Circuit affirmed the district court's finding that, "[s]ince retirees are eligible to receive pension benefits for life . . . the parties intended that the company provide lifetime health benefits as well."\textsuperscript{148}

Similarly, in \textit{McCoy v. Meridian Auto. Sys., Inc.}, the Sixth Circuit affirmed the district court's finding that the retiree plaintiffs had established a likelihood of success on the merits of their claim. After finding that the collective bargaining agreement in that case incorporated a supplemental agreement, the Court held, "Because the Supplemental Agreement ties eligibility for retirement-health benefits to eligibility for a pension, in other words, there is little room for debate that the retirees' health benefits vested upon retirement under \textit{Golden} . . ." (because . . . the governing contract ties retiree health benefits to pension status, it "constitutes an enforceable contractual promise of lifetime retiree health benefits to accompany lifetime pension benefits.") (internal citations omitted).\textsuperscript{149}

In \textit{Noe v. PolyOne Corp.}, the Sixth Circuit again reiterated the tying principle, explaining that "language in an agreement that ties eligibility for retiree health benefits to eligibility for a

\textsuperscript{147} Kerns, 499 F. Supp. 2d at 1021 (citing Yolton, 435 F.3d at 580).

\textsuperscript{148} Id. (citing Golden, 73 F.3d at 656).

\textsuperscript{149} Kerns, 499 F. Supp. 2d at 1021-22 (citing McCoy v. Meridian Automotive Sys., Inc., 390 F.3d 417, 426 (6th Cir. 2004)).
pension indicates an intent to vest the health benefits."\textsuperscript{150}

Health plans often provide benefits to Medicare-eligible individuals, such as reimbursement of Medicare Part B premiums, which differ from the benefits provided to individuals who are not yet eligible for Medicare. Some courts have found plan language concerning such post-Medicare benefits as supporting an inference of vesting, on the theory that such provisions suggest that benefits will continue to be provided over an expanse of years.\textsuperscript{151} Those cases reason that if benefits could be terminated at any time, or upon expiration of any CBA, provisions regarding benefits to be provided at age 65 would be "illusory."\textsuperscript{152}

Courts disagree about plan documents which state that benefits are "for life" while including a general reservation of a right to terminate. The Sixth Circuit in \textit{Sprague} holds that such documents are unambiguous in the employer's favor\textsuperscript{153}. Other courts disagree.\textsuperscript{154}

\textbf{Estoppel}

Even where the plan itself unambiguously precludes an award of lifetime benefits, retirees may argue that employer misrepresentations give rise to a promissory estoppel or equitable estoppel claim. The alleged misrepresentations usually are in the form of oral statements or statements in an SPD.\textsuperscript{155}

\begin{itemize}
\item \textsuperscript{150} \textit{Noe v. PolyOne Corp.}, 2008 WL 723769 at *8.
\item \textsuperscript{151} See e.g., \textit{Maurer}, 212 F.3d at 918; \textit{Yard-Man, Inc.}, 716 F.2d at 1481; \textit{Pirelli Armstrong Tire Corp.}, 873 F. Supp. at 1100.
\item \textsuperscript{152} \textit{Id.; but see Senior}, 449 F.3d at 219 (language that "defines the level of benefits a retiree may receive at a certain age...[was not] language regarding the duration of the [promise].").
\item \textsuperscript{153} \textit{Sprague}, 133 F.3d at 401.
\item \textsuperscript{154} \textit{Barker v. Ceridian Corp.}, 122 F.3d 628, 635 (8th Cir. 1997).
\end{itemize}
Generally, to prevail under estoppel principles, plaintiffs need to show that the defendant made a material misrepresentation upon which plaintiffs reasonably relied to their detriment. Following these principles, courts deny relief under the estoppel theory where plaintiffs fail to show reasonable reliance, particularly where the plaintiffs knew of the actual plan provision which contradicted the misrepresentation. For a retiree health case where the court concludes that the unambiguous reservation of rights clauses in the SPD made it impossible for retirees to prove "reasonable" reliance.156

As noted above, however, in Edwards v. State Farm,157 the Sixth Circuit held that proof of reliance is unnecessary where the misrepresentation appears in an SPD. In contrast with Edwards, some decisions apply the traditional requirements of promissory estoppel with respect to SPD misrepresentations.158 As noted, the Sixth Circuit in Sprague, distinguishes (and probably limits) the reach of Edwards in retiree health benefit cases—at least in the Sixth Circuit.159

Promissory estoppel can be argued under both LMRA § 301 and ERISA, but there is a split in the authorities as to ERISA.160

156. See In re Unisys Corp. Retiree Medical Benefit “ERISA” Litigation, 58 F.3d 896, 908 (3d Cir. 1995). See also Skinner Engine Co., 188 F.3d at 152 ("there is absolutely no evidence in this record that shows that any of the appellants considered the promise of lifetime health and life insurance benefits in timing their retirements.").

157. Edwards, 851 F.2d at 137.

158. E.g., Anderson, 836 F.2d at 1520 (requiring showing of reliance on SPD misrepresentation); Lee v. Union Electric Co., 789 F.2d 1303, 1308 (8th Cir. 1986).

159. Sprague, 133 F.3d at 388.

160. For promissory estoppel cases decided under LMRA § 301, see, e.g., Armistead, 944 F.2d at 1298-1300; Pirelli Armstrong Tire, Corp., 873 F. Supp at 1102 (finding viable estoppel claim); Hass v. Darigold Dairy Prod. Co., 751 F.2d 1096, 1099-1100 (9th Cir. 1985); Apponi v. Sunshine Biscuits, Inc., 809 F.2d 1210, 1217 (6th Cir. 1987) ("The equitable doctrine of estoppel . . . [is] applicable in a section 301 action to enforce a labor contract."); Acri v. Int’l Ass’n of Machinists, 781 F.2d 1393,
Some decisions allow estoppel claims only where a statement is an "oral interpretation" of an ambiguous ERISA plan. In *Marx v. Loral Corp.*, retirees asserted an estoppel claim on the theory that company representatives had informed them that, if they remained with a sold division, their retiree welfare benefits with would be equal to or better than they had been before. Despite the representations, the employer later reduced plaintiffs' benefits. Based on *Kane* and *Greany*, the retirees lost. Holdings of cases like *Kane* and *Greany* greatly diminish the usefulness of the estoppel doctrine for plaintiffs because, if the plan is ambiguous, the plaintiff can use representations as extrinsic evidence of intent without having to prove reliance and other elements of an estoppel claim.

In its *en banc* decision in *Sprague*, the Sixth Circuit seems to accept the reasoning of cases like *Kane* and *Greany*, thus limiting what seemed to be its acceptance of traditional estoppel principles in *Armistead*. The court explained: "[p]rinciples of estoppel . . . cannot be applied to vary the terms of unambiguous plan documents . . . [but] can only be invoked in the context of ambiguous plan provisions." This is so for two reasons: First, "reliance can seldom, if ever, be reasonable or justifiable if it is inconsistent with the clear and unambiguous terms of plan documents available to or furnished to the party." Second, "to allow estoppel to override the clear terms of plan documents would be to enforce something other than the plan documents themselves [and] [t]hat would not be consistent with ERISA."

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1397 (9th Cir. 1986) ("The equitable doctrine of estoppel is . . . not preempted by section 301."); Local 1330, United Steel Workers v. U.S. Steel Corp., 631 F.2d 1264 (6th Cir. 1980). For cases under ERISA recognizing estoppel as a viable theory, see *Devlin*, 274 F.3d at 85-86.

161. *Kane* v. Aetna Life Ins., 893 F.2d 1283, 1286 n.4 (11th Cir. 1990); *Greany* v. Western Farm Bureau Life Ins. Co., 973 F.2d 812, 821 (9th Cir. 1992).


163. *Id.* at 1052.

164. *Id.* at 1056.

165. *Sprague*, 133 F.3d at 404.

166. *Id.*

167. *Id.*

168. *Id.*
Others cases seem to completely prohibit estoppel under ERISA. These cases generally cite ERISA's requirement that a plan be in writing as evidence of Congressional intent to disfavor relief based on oral or written representations.

**FIDUCIARY CLAIM**

In addition to claims asserting a violation of the plan and estoppel, some claimants can raise a breach a fiduciary duty claim. Proving a breach of the duty to administer the plan according to its terms or refrain from making misrepresentations can afford retirees redress that might not otherwise be available.

*BREACH OF DUTY TO ADMINISTER THE PLAN “IN ACCORDANCE WITH IT’S TERMS”*

Section 404(a)(1) of ERISA states a fiduciary's duties include the duty to administer the plan “in accordance with its terms.” Accordingly, a fiduciary’s refusal to provide benefits in accordance with plan terms (e.g., a term which required coverage throughout retirement) would also appear to constitute a fiduciary breach for which a fiduciary is personally liable. This provision would be most useful for plaintiffs who seek to recover from an individual or parent corporation not signatory to the contract. In this sense, the fiduciary theory would be an alternative to the “corporate veil” theory discussed in *Steelworkers v. Connors Steel, and Keffer v. H.K. Porter Co., Inc.*

However, many decisions now hold that an employer-fiduciary may remove its “fiduciary hat” and put on its “employer hat” before making the decision to “amend or

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170. See also Am. Fed’n of Grain v. Int’l Multifoods Corp., 116 F.3d 976, 980 (2nd Cir. 1997). But see Devlin, 274 F.3d at 85-86.
173. Connors Steel Co., 855 F.2d at 1499; Keffer, 872 F.2d at 60.
terminate" benefits. Under these cases, deciding and acting to amend or terminate the plan are not "fiduciary" functions, and cannot amount to a breach of fiduciary duty.

Employers may find additional support for this defense in *Lockheed Corp. v. Spink*, which states that “[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans” and that they do not act as fiduciaries in those situations.

However, even if there is no fiduciary breach when an employer amends or terminates a plan, and even if amendment or termination of benefits in a particular case would otherwise be proper, the amendment or termination may still be invalid if the plan contains no amendment procedure or if the employer fails to properly follow this procedure.

**Breach of Duty to Refrain From Making Misrepresentations**

An independent fiduciary breach claim could attack the very same misrepresentations which also serve as extrinsic evidence of the parties' intent, or as the basis for a promissory

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175. *Musto*, 861 F.2d at 911-12. *See also Senn*, 951 F.2d at 817; *United Paperworkers Int'l Union v. Jefferson Smurfit Corp.*, 961 F.2d 1384, 1386 (8th Cir. 1992); *Pirelli Armstrong Tire Corp.*, 873 F. Supp. at 1101.

176. *Lockheed Corp. v. Spink*, 517 U.S. 582, 890 (1996). *But see Masonite, Corp.*, 122 F.3d at 228 n.4 (suggesting that "whether an employer, which also acts as plan sponsor, has breached its fiduciary duty, depends on whether the benefits with which it interfered were vested.").

177. *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 84-85 (1995); *Algie v. RCA Global Commc'ns, Inc.*, 60 F.3d 956 (2d Cir. 1995) (seller's failure to formally terminate its severance pay plan before sale resulted in severance pay being paid under seller's plan). *See also Voyk v. Brotherhood of Locomotive Eng'rs*, 198 F.3d 599, 603-04 (6th Cir. 1999) (failure to specify specific amount of contribution imposed on retirees does not violate Schoonejongen).
estoppel claim. The retiree health case *In re Unisys* is instructive.\(^{178}\) The Third Circuit concluded that plan language unambiguously reserved for the employer a right to reduce or terminate retiree health benefits, and the court therefore rejected retirees' claim that the employer breached the terms of the plan.\(^{179}\) The retirees also alleged, however, that the employer had breached fiduciary duties by misrepresenting that benefits were "for life" when in fact the plan language made benefits terminable.\(^{180}\) The court held that a fiduciary's duty to inform "entails not only a negative duty not to misinform, but also an affirmative duty to inform when the trustee knows that silence might be harmful."\(^{181}\) The court concluded that the retirees' complaint stated a claim and it remanded the case for trial.\(^{182}\)

The Supreme Court endorsed the reasoning of *Unisys* in *Varity Corp. v. Howe*.\(^{183}\) There, the plaintiffs alleged that they had been induced to leave the old employer's retiree health plan because of that employer's misrepresentations about the financial condition of the new corporation.\(^{184}\) When the new corporation went bankrupt and they plaintiffs were left without retiree health benefits (benefits they would have had if the employer's misrepresentations had not induced them to leave), they brought an ERISA suit against the old employer.\(^{185}\) The Supreme Court held that employers have a fiduciary duty not to make misrepresentations to participants, that an employer acts in a fiduciary capacity in making such representations, and that there is a remedy available to individuals who are the victims of such misrepresentations.\(^{186}\) The Court added that ERISA

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178. *In re Unisys Corp. Retiree Medical Benefits Litigation*, 57 F.3d 1255 (3rd Cir. 1995).
179. *Id.* at 1263.
180. *Id.* at 1264.
181. *Id.* at 1202.
184. *Id.*
185. *Id.*
186. *Id.* at 1069.
502(a)(3) gave the former employees a right to "appropriate equitable relief . . . to redress" the harm that this deception had caused them individually.\textsuperscript{187} Among other remedies the Court considered to be "appropriate equitable relief" was an order that the defendant reinstate the former employees into its own plan (which had continued to provide benefits to those retiring from defendant's profitable divisions).\textsuperscript{188}

The original panel decision in \textit{Sprague} also cited \textit{Varity} as an alternative ground for upholding judgment for plaintiffs.\textsuperscript{189} However, the \textit{en banc} decision reversed on this and other points, explaining that GM's explanations of its retirement program were not a breach of fiduciary duty under \textit{Varity} when "GM never told the early retirees that their health care benefits were vested upon retirement" but told them that their coverage was to be paid by GM for their lifetimes.\textsuperscript{190} The Sixth Circuit further found that GM did not breach its fiduciary duties by failing to "tell the early retirees at every possible opportunity, that which it had told them many times before—namely, that the terms of the plan were subject to change," explaining there is "a world of difference between the employer's deliberate misleading of employees in \textit{Varity Corp.} and GM's failure to begin every communication to plan participants with a caveat."\textsuperscript{191} ERISA's fiduciary duties do not require disclosure of information that "ERISA's detailed disclosure provisions [for SPDs] do not require to be disclosed"; "[w]e are not aware of any court of appeals decision imposing fiduciary liability for a failure to disclose information that is not required to be disclosed").\textsuperscript{192}

\begin{itemize}
\item \textsuperscript{187} \textit{Id.}
\item \textsuperscript{188} \textit{Id.}; see also \textit{Devlin}, 274 F.3d at 86-90. Retirees however, may have difficulty recovery money damages in a claim for breach of fiduciary duty - which must be brought under ERISA § 502(a)(3). See, e.g., \textit{LaRue v. DeWolff, Boberg & Assoc. Inc.}, 458 F.3d 359, 363 (4th Cir. 2006).
\item \textsuperscript{189} \textit{Sprague v. General Motors Corp.}, 92 F.3d 1425, 1442 (6th Cir. 1996).
\item \textsuperscript{190} \textit{Sprague}, 133 F.3d, at 404-5.
\item \textsuperscript{191} \textit{Id.} at 405.
\item \textsuperscript{192} \textit{Id.}; see also \textit{Skinner Engine Co.}, 188 F.3d at 150 (rejecting fiduciary claim and stating: "The problem with this contention is that there is no competent evidence which suggests that the company made any affirmative misrepresentations concerning the duration of retiree benefits. At best, the evidence indicates that

Sprague, however, was distinguished in *James v. Pirelli Armstrong Tire Corp.*, where the Sixth Circuit reversed a district court finding that the employer had not breached its duty by making misrepresentations about retiree health benefits, noting:

*Sprague* does not stand for the proposition that a reservation of rights provision in a SPD necessarily insulates an employer from its fiduciary duty to provide "complete and accurate information" when that employer *on its own initiative* provides inaccurate and misleading information about the future benefits of a plan. Indeed, *Sprague* explicitly allows for a breach of fiduciary duty claim under such a circumstance. Were it otherwise, an employer or plan administrator could provide, on its own initiative, false or inaccurate information about the future benefits of a plan without breaching its fiduciary duty under ERISA, simply because of the existence of a reservation of rights provision in the plan. However, this would be contrary to the basic concept of a fiduciary duty, which "entails not only a negative duty not to misinform, but also an affirmative duty to inform when the trustee knows that silence might be harmful." 193

CONCLUSION AND COMMENTARY

The authors of this article have represented retirees in many retiree health benefit lawsuits, and they have seen first-hand the hardship that elimination or reduction of benefits can cause retirees. The authors therefore tend to view the issues from the retirees' point of view. Nevertheless, they have attempted in this article to describe the law objectively in a "nuts and bolts" format, and hope they have succeeded.

That said, the authors do note that they strongly disagree with those court decisions that create a presumption against vesting. The authors believe such decisions more often than not

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193. *Pirelli Armstrong Tire Corp.*, 305 F.3d at 454-55.
defeat legitimate expectations of retirees and undermine the contracting parties' intent. Moreover, the courts that have employed the anti-retiree presumption typically do it on the basis of faulty premises.

For example, some of these courts focus on the fact that, in enacting ERISA in 1974, Congress mandated complex vesting rules only as to pensions and it exempted retiree health benefits plans from these vesting requirements. While some courts infer from this a presumption that retiree health benefits are not vested, the better view is that no such inference can be drawn. Indeed, as other courts have observed, the fact that ERISA does not require that health benefits vest does not mean that the parties cannot by agreement or "private design" make these benefits vested. This is particularly true when one considers that, while ERISA wholly preempts state law relating to employee benefit plans, it was not designed to leave plan participants worse off than they were under pre-ERISA state law. And under pre-ERISA precedent that interpreted employer promises to provide retirement benefits that no statute required to be vested, there was never a presumption against vesting; indeed, there was more often a presumption in favor of vesting.

Another faulty premise of some court decisions applying an

196. E.g., Maurer, 212 F.3d at 917; Golden, 73 F.3d at 655; In re White Farm Equip. Co., 788 F.2d at 1192; Masonite, Corp., 122 F.3d at 223.
197. E.g., 29 U.S.C. § 1114; Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987); see also Smith v. CMTA-IAM Pension Trust, 746 F.2d 587, 589 (9th Cir. 1984) ("[t]he underlyng purposes of ERISA are to protect the interests of participants in employee benefit plans."); Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 114 (1989) (rejecting an interpretation of ERISA's enforcement provisions that "would afford less protection to employees and their beneficiaries than they enjoyed before ERISA was enacted.").
198. E.g., Upholsterers' Int'l Union of N. Am., 372 F.2d at 428 ("[W]e deal here with an employee benefit provision which vests when the employee service called for is fully performed."); BENJAMIN AARON, LEGAL STATUS OF EMPLOYEE BENEFIT RIGHTS UNDER PRIVATE PENSION PLANS 10 (Richard D. Irwin, Inc. 1961); Pension Plans and the Rights of the Retired Worker, 70 COLUM. L. REV. 909, 916-919 (1970).
anti-retiree presumption is their assumption that an employer would have been extremely wary of this “huge” liability at the time the benefit was created and the original language negotiated, so that an employer’s commitment to vest benefits should “not to be inferred lightly.” What these cases ignore is that, when the unions and companies first negotiated the benefits (usually in the 1970s or earlier), they were extremely inexpensive. That the employer may not have anticipated that costs would escalate is at best an “unforeseen circumstance,” which—in a contract case—cannot relieve a party from its obligation. In other words, it is wrong for these courts to let the size of today’s health care burden on employers guide their interpretation of contract language negotiated more than thirty years ago. Worse still, many of these decisions look to today’s enormous costs as a justification for applying this anti-retiree “default rule,” while at the same time ignoring strong extrinsic evidence of the parties’ shared intent thirty years ago that benefits were vested.

The error of such court decisions led a concurring judge in one circuit opinion to observe:

Before about 1980, I seriously doubt that it occurred to many employers to grant retiree health benefits on anything less than a lifetime basis. The overwhelmingly prevalent trend of labor contracts was to continue or improve retiree benefits from contract to contract. It was only in the eighties, with spiraling medical costs, heightened foreign competition, epidemic corporate takeovers and the declining bargaining power of labor, that thought was first given to reducing retiree benefits from contract to contract or even (though this seems more implausible) to eliminating such benefits entirely. I think that, at least before the eighties were in full swing, prevailing conditions suggested a presumption among unions and management alike that retiree health benefits vested unless there was agreement to the contrary. Hence, I would lean toward [adopting an inference in favor of vesting]—the position adopted by the Sixth Circuit in

199. *Skinner Engine Co.*, 188 F.3d at 139.
the seminal case, Int'l Union, United Auto, etc. v. Yard-Man, Inc."\(^{200}\)

\(^{200}\) Bidlack v. Wheelabrator Corp., 993 F.2d 603, 613-14 (7th Cir. 1993) (internal citations omitted). See also Keffer v. H.K. Porter Co., (citing Yard-Man as "consistent with a more far-reaching understanding of the context in which retiree benefits arise."); Local Union No. 150-A, United Food & Commercial Workers, etc. v. Dubuque Packing Co., (concluding that benefits vested because “there is simply no evidence that the Company and the Union did not intend to vest the right to benefits in the retirees").