



# EMPLOYEE BENEFITS CLIENT ALERT

May 24, 2010

## **Supreme Court Reaffirms Deferential Standard Applied to Plan Interpretation by Plan Administrators**

### **Executive Summary**

In *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), the United States Supreme Court held that when a retirement plan administrator has discretionary authority to interpret a plan, courts must give deference to that interpretation. On April 21, 2010, the Supreme Court decided *Conkright v. Frommert*, 130 S.Ct. 1640, and held that a single mistake in plan interpretation does not justify stripping a plan administrator of that deference for subsequent related interpretations of the plan. Following the Court's decision in *Conkright*, district courts will likely choose to remand benefit disputes to plan administrators for further deliberation instead of routinely deciding against the plan.

### ***Conkright v. Frommert***

*Conkright* involves a plan administrator's interpretation of the Xerox Corporation retirement plan. A group of employees who left Xerox Corporation took lump-sum distributions under the Xerox Corporation retirement plan. These employees later returned to employment and challenged the plan administrator's conclusion regarding how to account for their past distributions when calculating their current benefits. The plan administrator denied the challenges, and the employees filed suit in federal court.

The district court applied a deferential standard of review and ruled in favor of the plan. On appeal, the Second Circuit reversed, finding that the plan administrator's interpretation was unreasonable, and remanded the case back to the district court.

On remand, the plan administrator submitted an affidavit proposing an alternate approach to calculating benefits of the rehired employees. The district court did not apply a deferential standard of review to this alternate interpretation and ruled in favor of the employees. The Second Circuit affirmed.

On appeal to the Supreme Court, the plan argued that the district court should have applied deference to the plan administrator's alternate interpretation of the plan. The Supreme Court agreed and concluded that the Second Circuit's "one-strike-and-you're-out" approach had no basis in the Supreme Court's holding in *Firestone*, which established a broad standard of deference without any indication that such standard was susceptible to exceptions.

The Court explained that the deferential standard established under *Firestone* promotes efficiency by encouraging the administrative resolution of disputes. In addition, the deferential treatment creates predictability, allowing employers to rely on the expertise of plan administrators rather than worry about unexpected and inaccurate plan interpretations that might result from *de novo* judicial review. The Court also stated that deference encourages uniformity by preventing varying interpretations of plan provisions, which would result in inefficiencies in operating the plan.

The employees argued that deference to plan administrators' *second* interpretations will encourage plan administrators to adopt unreasonable *first* interpretations, with the thought that they will have another chance to interpret their plans in the event that their initial interpretations are rejected. The Court explained that deference will not be required in such extreme circumstances, where discretion is not being exercised honestly and fairly. Further, the Court stated that applying a deferential standard of review does not mean that the plan administrator will prevail on the merits but, rather, means only that the plan administrator's interpretation of the plan will not be disturbed if reasonable.

## Likely Impact

*Conkright* should reassure plan sponsors. It reduces the threat that a court, rather than the plan administrator, will have the final word on plan interpretation. If a district court rejects a plan administrator's initial interpretation as unreasonable, the court can request alternative interpretations from the plan administrator or remand the matter back to the plan administrator for a new administrative review.

It is important to recognize that the deferential standard of review is applied only when the plan document gives the plan administrator discretionary authority to interpret the plan. Several circuit courts, including the Eighth Circuit, have held that where the discretionary authority appears only in the summary plan description—not in the plan document—deference is not required. *See, e.g., Jobe v. Med. Life Ins. Co.*, 2010 WL 986642 (8th Cir. 2010). Plan sponsors who wish to grant interpretive authority to their plan administrators should make sure their plan documents contain specific language expressing that intent.

## Additional Information

If you wish to visit with us about the discretionary language in your plan, or the impact of *Conkright*, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group listed below. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at [www.kutakrock.com](http://www.kutakrock.com).

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