

Alert 10-104



Victory for Plan Administrators: Supreme Court Reinforces Plan Administrator Deference with Regard to Plan Determinations and Prior Mistakes

On April 21, 2010, the U.S. Supreme Court issued a decision in *Conkright v. Frommert* ("*Conkright*") with regard to the deference to be given plan administrators' interpretations under a plan. The Supreme Court held (i) that absent a showing of bad faith in making interpretations about the Xerox Corporation Retirement Income Guarantee Plan (the "Plan"), the administrators of such Plan (the "Plan Administrators") were entitled to undiminished deference from the courts, regardless of whether their previous interpretations were found to violate ERISA, and (ii) that "a single honest mistake" would not remove that deference.

The underlying dispute in *Conkright* is based on the method that the Plan Administrators used to calculate retirement benefits of employees of the Xerox Corporation (the "Company") who left the Company and were subsequently re-hired. All such employees received a lump sum distribution of their accrued retirement benefits under the Plan after first leaving the Company. At the time such employees were re-hired, the Plan provided that no credit was to be given for periods for which lump sum payments were made, but did *not* provide the Plan Administrators with a method to use to deduct this credit if a Plan participant was re-hired. As a result, the Plan Administrators used their general interpretive authority granted under the Plan to establish a "phantom account" method to offset for the prior distributions (i.e., the prior distribution was placed into a hypothetical account and any investment gains are added to that value, which was then subtracted from the total earned benefits). However, this method drastically reduced the benefit amounts accrued during the employees' second employment period.

The employees sued the Company and Plan Administrators in New York District Court on the basis that the "phantom account" method used to calculate their benefits violated ERISA's provisions relating to summary plan description disclosure, notice, and anti-cutback rules (i.e., once benefits are promised under a qualified plan and participants vest in those benefits, those benefits cannot be taken away from the participant). The District Court granted summary judgment to the Company and Plan Administrators, holding that their decision to use the "phantom account" method to offset prior Plan distributions was not arbitrary and capricious, and thus, the District Court would not overrule the Plan Administrators' judgment. However, on appeal, the Second Circuit Court held that Plan Administrators had violated ERISA by failing to appropriately disclose the "phantom account" method to Plan participants, and remanded *Conkright* to determine the proper method to calculate retirement benefits of employees who received prior lump sum distributions. Then on remand, the Plan Administrators proposed a new approach to calculate such benefits.

The Supreme Court agreed to hear the case to answer the question of whether a court must defer to a plan administrator's proposed remedy for an ERISA violation, when the plan administrator was granted specific discretion and deference pursuant to *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989) ("*Firestone*"), but the plan administrator's original interpretation created the ERISA violation. In this regard, *Firestone* directs reviewing courts to defer to a plan administrator's interpretation of an ERISA plan when such plan explicitly gives the administrator discretionary authority to determine eligibility for benefits, or to construe the terms of such plan.

In order to reach a decision on this question, the Supreme Court had to consider whether the Plan Administrators were still entitled to deference under *Firestone* when their original interpretation created the ERISA violation. The Supreme Court held that even if their initial interpretation was a mistake, plan administrators are still entitled to deference for subsequent related plan interpretations under *Firestone*, absent a showing of bad faith in making the mistake. The Plan Administrators' interpretation was deemed "a single honest mistake" and thus, they were still entitled to deference under *Firestone*.

Conkright endorses plan administrators' interpretative authority (especially in plans with deference provided under

Firestone), and arguably expands such authority. In light of the Supreme Court's decision in *Conkright*, plan administrators should review their plan documents and summary plan descriptions for *Firestone* deference language. In addition, administrators should review plan procedures with regard to making changes to benefit formulas and amounts, dealing with potential plan administrator's mistakes, and determining whether participants are given adequate notice.

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If you have any questions about the Supreme Court's opinion or how it will impact your company's benefit plans, please contact one of the members of Reed Smith's employee benefits team listed below, or the Reed Smith attorney with whom you regularly work.

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