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Employee Benefits and Executive Compensation Alert

Anheuser-Busch Pension Plan to Pay Change in Control Severance Benefits

Any Lawyer, Consultant, Accountant, Fund Manager and HR Director Who Does Transactional Work Should Read This

The Anheuser-Busch Pension Plan has long included a provision for enhanced pension benefits for any participant "whose employment with the Control Group is involuntarily terminated within three years after [a] Change in Control". Similar provisions were added to many large pension plans in the 1990s when such plans were significantly overfunded, as a way to use the funding surplus to pay the functional equivalent of severance benefits. In 2008, Anheuser-Busch ("AB") merged with InBev, a transaction that AB/InBev agrees was a "Change in Control" under the pension plan. Shortly thereafter, AB/InBev divested several businesses, including Busch Entertainment Corporation ("BEC"), a subsidiary that operated SeaWorld, which was sold to a private equity fund. The employees of BEC did not lose their jobs as a result of the transaction, but their employer did have a new owner and was therefore no longer part of the AB/InBev Control Group.

In Knowlton v. Anheuser-Busch Pension Plan (February 22, 2017), the Eighth Circuit Court of Appeals, sitting in St. Louis, held that when AB/InBev sold BEC, the BEC employees' employment with the "Control Group" was terminated. Thus the employees are entitled to the enhanced pension benefit, which is essentially a severance benefit payable out of the pension plan, even though they continued to work in the same job in the same place with the same corporate entity.

The case is curious for two reasons. First, the court held that because the plan provision was unambiguous, it did not have to defer to the interpretation of the provision by the Plan fiduciary. Under well-established case law, the court would be required to honor the fiduciary's reasonable interpretation of an ambiguous plan provision; but since the court determined the provision to be unambiguous, the interpretation of the fiduciary became irrelevant. The plan fiduciary had denied the claim on the basis that an actual break in employment was required.

The provision is surely ambiguous. The employees were not employed by a "group" of companies. The employment relationship is with a single entity within that group and the sale of that entity did not terminate the employment relationship. What was terminated was the entity's relationship with the group. In our view, the term is subject to different interpretations, is therefore ambiguous and the fiduciary's reasonable interpretation of it should have been upheld.

Second, the court relies on Adams v. Anheuser-Busch (Sixth Circuit 2014) as presenting the "identical issue". The Adams case involved AB/InBev's sale of several factories out of its Metal Container Corporation ("MCC") subsidiary. In relying on Adams the court confuses the fundamental differences between an asset deal and a stock deal. In Knowlton, the employees did not terminate employment. They worked for the same entity before and after the deal. In Adams, the employees were terminated from MCC (and therefore more clearly their employment with the control group was terminated) and hired immediately thereafter by the buyer entity.

Accordingly the issues are not identical and the Adams/MCC analysis should not have summarily applied to BEC.

The two cases portend entitlement to enhanced pension and severance benefits where one would not have thought they would be payable, and are, therefore, important considerations for dealmakers.

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