

## **BENEFITS UNDER SEVERANCE PLAN DETERMINED ON DATE EMPLOYEE STOPPED WORKING**

Fifth Circuit Court of Appeals denies former Sabre, Inc. employee's claim that he was entitled to severance benefits determined on the date he was informed that he was to be terminated and not severance benefits determined on the date he actually stopped working.

Although the severance plan did not define the term "termination of employment" or explain when a termination of employment occurs, the Court found that the plan administrator was proper in its interpretation of the plan when it determined that Chacko's termination occurred when he officially separated from Sabre. Because of this, the severance plan that applied to Chacko was the one in effect on the date he officially separated from Sabre.

Ninan Chacko worked for Sabre, Inc. since 1990. In September 2003, he learned that the company intended to implement a company-wide layoff and on September 29, 2003 Chacko was informed that he would be offered a severance package. Chacko and his superior planned for Chacko's last day to be October 13, 2003. Soon after September 29, 2003, Chacko accepted an offer of employment by one of Sabre's competitors.

On September 29, 2003 Sabre maintained the Sabre, Inc. Severance Plan (the "General Severance Plan" or GSP) which provided for up to twenty-six weeks of salary benefits payable in a lump sum conditioned upon the execution by the terminated employee of an agreement and general release ("Agreement and General Release" or AGR) that released all causes of action and claims against Sabre and related parties. The GSP gave Sabre the right to terminate or amend the GSP at any time and further provided that participants had no vested right to benefits under the severance plan.

On September 30, 2003, Chacko received a separation summary outlining the terms of his severance package which stated that he would be offered thirty-two weeks of salary benefits payable over an eight-month period conditioned upon his signing a general release containing non-compete and non-solicitation provisions (the "Expanded AGR".) Chacko refused to sign the Expanded AGR believing that the non-compete and periodic payment provisions to be contrary to the terms of the GSP, On October 7, 2003, Sabre's Benefits Committee adopted a resolution amending the GSP to grant Sabre the discretion 1) to include

non-compete and non-solicitation provisions in the terminated employee's AGR; and 2) to pay severance benefits in periodic installments (the "Amendment".) The resolution provided that the Amendment was effective immediately.

On October 17, 2003, Chacko officially separated from Sabre. On November 3, 2003 he filed a claim for severance benefits in which he indicated he was willing to sign an AGR that was consistent with the pre-amendment GSP (without the non-compete and non-solicitation provisions) and that he demanded payment of his benefits in a lump sum as opposed to periodic payments allowed by the Amendment.

On November 6, 2003, Sabre informed Chacko that the Plan Administrator had denied his claim for benefits based on the fact that on his termination date, the plan as in effect allowed for both the non-compete and non-solicitation provisions as well as payment of benefits in periodic installments. Chacko appealed to an independent appeals committee which denied his appeal on the grounds that 1) he had no vested rights under the plan in effect on September 29, 2003; 2) that the GSP granted Sabre the right to amend or terminate the GSP at any time; 3) that the October 7, 2003 amendment was validly executed; 4) Sabre had complied with ERISA's notice requirements regarding the amendment; and 5) Chacko was not eligible for the GSP in effect on October 17, 2003 because he refused to sign the Expanded AGR.

Chacko sued Sabre, the GSP, the Benefits Committee, the Plan Administrator and others claiming that he was wrongfully denied benefits under the GSP in violation of ERISA Section 502(a)(1)(B) which provides an ERISA plan participant or beneficiary a cause of action to recover benefits due him under the terms of the plan, enforce his rights under the plan or clarify his right to future benefits under the plan.

The district court granted Sabre's motion for summary judgment finding that the Plan Administrator's denial of benefits was not an abuse of discretion. Chacko appealed to the Fifth Circuit court claiming that Sabre et.al. engaged in "inequitable conduct" by offering him a severance package one day before the change adding the non-compete and non-solicitation provisions and changing the benefit payout option to installments. He also alleged that Sabre et al. breached their fiduciary duty of loyalty and engaged in self-dealing by conditioning his receipt of severance benefits upon his execution of a non-compete agreement. Chacko also challenged the Administrator's denial of benefits under the terms of the GSP, claiming that he should receive the benefits in effect as of the date he was told he would be offered a severance package (September 29, 2003) instead of the amended GSP in effect on the date he stopped working for Sabre (October 17, 2003.)

The Fifth Circuit Court affirmed the lower court's decision that the Plan Administrator did not abuse its discretion in amending the plan or in denying benefits to Chacko. The Court explained that in reviewing a plan administrator's plan interpretation for abuse of discretion,

the Court must initially determine whether the administrator's interpretation is legally correct. If the interpretation is legally correct then no abuse of discretion could have occurred. Here, the Court found that the Administrator's interpretation of the term "termination" was consistent with the fair reading of the severance plan. Further, the Court indicated that the interpretation of the term "termination" proposed by Chacko would lead to the unintended result that employees could demand severance plan benefits while they were still receiving regular pay.

*Chacko v. Sabre Inc.*, 5th Cir., No. 05-11445, 12/21/2006. The decision is available at <http://caselaw.lp.findlaw.com/data2/circs/5th/0511445cv0p.pdf>

Practice Pointer—Employers should take the time to review and understand the terms of their benefit plans, including the process and timing requirements for making plan amendments.

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