No. 13-1717

United States Court of Appeals for the Sixth Circuit

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION; RONALD STRAIT; DANNY O. STEVENS,

Plaintiffs-Appellees,

v.

KELSEY-HAYES COMPANY; TRW AUTOMOTIVE INC.; TRW AUTOMOTIVE HOLDINGS CORP.,

Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division
District Court Case No. 11-CV-15497.

BRIEF OF THE ERISA INDUSTRY COMMITTEE AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

Christopher Landau, P.C.
Craig S. Primis, P.C.
K. Winn Allen
Kirkland & Ellis LLP
655 Fifteenth St., N.W.
Washington, DC 20005
(202) 879-5000

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The ERISA Industry Committee (ERIC) respectfully submits this brief as *amicus curiae* in support of neither party.[1]

INTEREST OF *AMICUS CURIAE*

ERIC is a nonprofit organization representing the Nation's largest employers that maintain pension, health care, disability, and other employee benefit plans covered by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891. These employers provide benefits to millions of active workers, retired persons, and their families nationwide.

ERIC and its members seek to ensure that voluntary employee benefit plans remain a workable and vital feature of the American employment landscape. The proper interpretation and application of the Supreme Court's recent decision in *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015), is critical to that goal. Accordingly, ERIC files this brief to address *Tackett*'s impact on this Court's prior jurisprudence in this area. ERIC takes no position, however, on the

[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amicus* states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

merits of this particular dispute, and thus submits this brief in support of neither party.

INTRODUCTION

The Supreme Court's decision in *Tackett* expressly overruled this Court's longstanding decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th. Cir. 1983), and a long line of cases based thereon, and thereby wrought a sea change in the law of retiree health care benefits in this Circuit. Under the *Yard-Man* line of cases, this Court over the past three decades had established a series of "inferences" to determine whether such benefits had vested as a matter of law, and thereby survived the expiration of a collective bargaining agreement. Those "inferences," individually and in combination, effectively put a heavy judicial thumb on the pro-vesting side of the scales.

The *Tackett* Court, in one fell swoop, swept away that judge-made web of "inferences" and emphasized that the vesting issue must be analyzed by reference to "ordinary principles of contract law." *Tackett*, 135 S.Ct. 926, 929 (2015). *Tackett* recognized that this Court too had "long insisted that its *Yard-Man* inferences are drawn from ordinary contract law." *Id.* at 933-34. But the Supreme Court expressly

"disagree[d] with the [Sixth Circuit's] assessment that the inferences applied in *Yard-Man* and its progeny represent ordinary principles of contract law." *Id.* at 935. The Court then proceeded (i) to articulate the key "ordinary principles of contract law" that govern in this area and that this Court had not previously acknowledged; and (ii) to reject several of the "inferences" this Court had applied under the *Yard-Man* rubric.

On the one hand, *Tackett* identified two "traditional principle[s]" of contract interpretation that the *Yard-Man* line of cases had "failed even to consider." *Id.* at 936-37. *First*, "courts should not construe ambiguous writings to create lifetime promises." *Id.* at 936. *Second*, "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement." *Id.* at 937. Together, those principles generate a simple rule that applies in every case: "[W]hen a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." *Id.*

On the other hand, *Tackett* specifically rejected several inferences from "*Yard-Man* and its progeny" that do *not* reflect traditional principles of contract law. The Supreme Court thus disapproved of

(i) "placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements," *id.* at 935; (ii) relying on "the premise that retiree health care benefits are not subjects of mandatory collective bargaining," given that "[p]arties ... can and do voluntarily agree to make retiree benefits a subject of mandatory collective bargaining," *id.* at 936, (iii) relying "on the premise that retiree benefits are a form of deferred compensation," which they are not as a matter of law, *see id.*, and (iv) "refus[ing] to apply general durational clauses to provisions governing retiree benefits," *id.* *Tackett*'s reasoning is also fundamentally inconsistent with similar "inferences" previously applied in *Yard-Man* cases (like this one), including the inference that a promise to pay the "full premium" of health care coverage creates a vested right to benefits, and an inference of vesting from the tying of *eligibility* for health care benefits to *eligibility* for pension benefits.

The upshot of *Tackett* is that this Court must now analyze the vesting of retiree health care benefits under an entirely different legal framework than under the previous *Yard-Man* line of cases. Now, if a collective bargaining agreement is "silent" or "ambiguous" about the duration of retiree health care benefits, *id.* at 936, a court cannot infer

that such benefits vested for life. And where the agreement actually speaks to temporal limitations—such as through general durational provisions—those provisions can no longer be disregarded. Fundamentally, many of the collective-bargaining-agreement terms on which this Court previously relied to infer an intent to vest retiree health care benefits have now been rejected by the Supreme Court as having "no basis in ordinary principles of contact law." *Id.* at 935. They thus no longer may be applied in this Circuit or elsewhere.

ARGUMENT

By overruling "*Yard-Man* and its progeny," *id.* at 937, *Tackett* has effectively wiped the slate clean in this Court for determining whether collective bargaining agreements create a vested right to lifetime health care benefits for retirees. Any subsequent consideration of that question in this Circuit must start with *Tackett* and the principles enunciated therein.

Tackett directs lower courts to apply "ordinary principles of contract law" in determining whether collective bargaining agreements create a right to lifetime health care benefits for retirees. *Id.* at 929; *see also id.* at 933 ("We interpret collective-bargaining agreements …

according to ordinary principles of contract law."). The Supreme Court did not attempt to articulate an exhaustive list of all "ordinary principles of contract law" that might apply. Nonetheless, the Court did specifically identify two key "traditional principle[s]" of contract law of particular relevance to this question. *Id.* at 936-37.

First, "courts should not construe ambiguous writings to create lifetime promises." *Id.* at 936. In highlighting that principle, the Court specifically rejected *Yard-Man*'s statement that the "duration of [a] benefit" need not be indicated by a "clear manifestation of intent." *Id.* That statement, the *Tackett* Court explained, cannot be reconciled with this Court's own recognition that "'because vesting of welfare plan benefits is not required by law, an employer's commitment to vest such benefits is not to be inferred lightly; the intent to vest must be found in the plan documents and must be stated in clear and express language.'" *Id.* at 937 (quoting *Sprague v. General Motors Corp.*, 133 F.3d 388, 400 (6th Cir. 1998)). As *Tackett* made clear, *Sprague*—not *Yard-Man*—accurately states the "ordinary principle of contract law" applicable in this context.

Second, "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement." *Id.* at 937 (quotations omitted). This principle requires courts to apply general durational clauses in collective bargaining agreements "to provisions governing retiree benefits," just as they apply such clauses to other provisions. *Id.* at 936. The Supreme Court acknowledged that contracting parties can agree to override that traditional principle, such as by stating in "explicit terms" their intent to extend benefits beyond the contract's expiration. *Id.* at 937 (quotations omitted). "But when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." *Id.* at 937.

The Supreme Court's opinion in *Tackett* thus establishes the twin principles that "courts should not construe ambiguous writings to create lifetime promises" and that if a contract is "silent" as to the duration of retiree benefits, "a court may not infer that the parties intended those benefits to vest for life." *Id.* at 936-37. Applying these two principles, it is impossible to say that a collective bargaining agreement vests retiree health care benefits for life—or is even "ambiguous" on that score—without affirmative evidence of intent to vest within the four corners of

the contract. *See id.* at 936 (citing the "principle of contract law that the written agreement is presumed to encompass the whole agreement of the parties.")

To be sure, in a concurring opinion, Justice Ginsburg (joined by three other Justices) stated that if a court "conclude[s] that the contract is ambiguous" regarding whether health care benefits have vested for life, it can "turn to extrinsic evidence" to resolve that question. *Id.* at 938 (Ginsburg, J. concurring). The key question, however, is whether the agreement is "ambiguous" in the first place. As the unanimous majority opinion makes clear, an agreement is not "ambiguous" as to the vesting of retiree health care benefits if it is silent as to the vesting of such benefits.

In addition to reaffirming these "traditional principles" of contract law, the Supreme Court also specifically rejected a number of "inferences" on which this Court had historically relied to find health care benefits legally vested. As *Tackett* explained, this Court had "long insisted" that these inferences "are drawn from ordinary contrary law." *Id.* at 934-35; *see also, e.g.*, *Yolton v. El Paso Tenn. Pipeline Co.*, 435 F.3d 571, 580 (6th Cir. 2006) ("All that *Yard-Man* and subsequent cases

instruct is that the Court should apply ordinary principles of contract interpretation"). But the Supreme Court expressly "disagree[d] with the [Sixth Circuit's] assessment that the inferences applied in *Yard-Man* and its progeny represent ordinary principles of contract law." *Tackett*, 135 S.Ct. at 935; *see also id.* at 937 (describing "the principles [of] … *Yard-Man* and its progeny" as "inconsistent with ordinary principles of contract law").

In particular, *Tackett* expressly or implicitly rejected the following lines of reasoning from this Court's previous cases:

Presumption In Favor Of Vesting. Prior to *Tackett*, this Court had applied an inference or presumption that the parties to a collective bargaining agreement likely intended for retiree health care benefits to vest. *See, e.g.*, *Maurer v. Joy Tech, Inc.*, 212 F.3d 907, 915 (6th Cir. 2000); *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union v. Kelsey-Hayes Co.*, 750 F.3d 546, 552 (6th Cir. 2014); *Cole v. ArvinMeritor*, 549 F.3d 1064, 1074 (6th Cir. 2008); *Moore v. Menasha Corp.*, 690 F.3d 444, 450 (6th Cir. 2012).[2] The

[2] Although some cases disavowed such a presumption, other cases freely acknowledged that this Court had "gone on to apply just such a presumption" of vesting. *Cole*, 549 F.3d at 1074. At the very least, this

Supreme Court held that those decisions "violate[] ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements." *Tackett*, 135 S.Ct. at 935. Thus, after *Tackett*, no argument can be made that courts should apply any kind of "inference," "presumption," or "nudge" in favor of vesting. *Maurer*, 212 F.3d at 915 (applying an "inference" that parties intended retiree benefits to vest); *Cole*, 549 F.3d at 1074 (recognizing a reasonable argument that the Sixth Circuit had applied a "presumption" of vesting); *Moore*, 690 F.3d at 450 (applying a "nudge" in favor of vesting). Instead, collective bargaining agreements must be construed pursuant to their plain terms in light of the "ordinary principles of contract law" described above.

General Durational Clauses. Prior to *Tackett*, this Court held that general durational clauses in collective bargaining agreements—*i.e.*, provisions stating that the contract will expire on a date certain—were not sufficient to terminate retiree health care benefits at the conclusion of a contract. Instead, this Court required collective

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Court has clearly applied a "nudge in favor of vesting in close… cases," *Moore*, 690 F.3d at 450, as the Supreme Court recognized, *see Tackett* 135 S.Ct. at 935.

bargaining agreements to "include a specific durational clause for retiree health care benefits to prevent vesting." *Tackett*, 135 S.Ct. at 936; *see also Noe v. PolyOne Corp.*, 520 F.3d 548, 555 (6th Cir. 2008) ("Absent specific durational language referring to retiree benefits themselves, a general durational clause says nothing about the vesting of retiree benefits.") (quotations omitted). The Supreme Court expressly rejected those decisions, explaining that they "distort[ed] the text of the agreement and conflict[ed] with … principle[s] of contract law." *Tackett*, 135 S.Ct. at 936. After *Tackett*, "general durational clauses" must be applied "to provisions governing retiree benefits," just as they are applied to other terms of a collective bargaining agreement. *Id.*

Tying of Eligibility for Pension & Health Care Benefits.

Prior to *Tackett*, this Court had often inferred an intent to vest benefits from the tying of eligibility for health care benefits to pension benefits. *See, e.g.*, *Noe*, 520 F.3d at 558 ("According to this court, language in an agreement that ties eligibility for retiree health benefits to eligibility for a pension indicates an intent to vest the health benefits."); *McCoy v. Meridian Auto. Sys., Inc.*, 390 F.3d 417, 422 (6th Cir. 2004) ("Because the Supplemental Agreement ties eligibility for retirement-health

benefits to eligibility for a pension ... there is little room for debate that the retirees' health benefits vested upon retirement."). Indeed, *Tackett* identified that "tying" logic as one of the ways in which the Sixth Circuit had "continued to extend the reasoning of *Yard-Man*." 135 S. Ct. at 935; *see also id*. at 937 (citing the lower court's reliance on the "tying of eligibility for health care benefits to receipt of pension benefits" as one of the ways in which "*Yard-Man* and its progeny affected the outcome" in *Tackett*). The Supreme Court, however, necessarily rejected that "tying" logic—as it did all other inferences from "*Yard-Man* and its progeny"—as being "inconsistent with ordinary principles of contract law." *Id*. at 937; *see also id*. at 935. There is no reason in law or logic to suppose that *eligibility* for health care benefits (which, for administrative convenience, is often tied to *eligibility* for pension benefits) has anything to do with the *duration* for which health care benefits will be afforded.

Full Premium/Contribution. This Court has also held that the use of phrases such as "full premium," "full contribution," or "full cost" to describe a company's retiree health care obligation indicates that the parties intended for those benefits to vest for life. *See Kelsey-Hayes*, 750

F.3d at 554-55 (relying on phrase "full premium or subscription charge" to find vesting); *Tackett v. M&G Polymers USA, LLC*, 733 F.3d 589, 596 (6th Cir. 2013) (relying on phrase "full Company contribution" to find vesting); *Bender v. Newell Window Furnishings, Inc.*, 681 F.3d 253, 262 (6th Cir. 2012) (relying on phrase "[t]he Company agree[s] to pay the cost of [health care] insurance for the retiree and his dependents" to find vesting) (quotations omitted). Although not directly addressed by the Supreme Court, that logic too cannot survive *Tackett*. A company's promise to pay the "full premium" of retiree health care benefits specifies the amount the company has agreed to contribute *during the term of the contract*; it does not suggest that the company has agreed to continue to pay that amount for retirees *after the contract has expired*. Such language thus says nothing at all about the duration for which the company is agreeing to pay retiree health care premiums, and thus does not suggest an intent to vest retirees with lifetime health care benefits.

CONCLUSION

For the foregoing reasons, this Court should apply "ordinary principles of contract interpretation" as identified and applied by the

Supreme Court in *Tackett* to decide this case and other cases involving the vesting of retiree health care benefits.

Respectfully submitted,

/s/Christopher Landau
Christopher Landau, P.C.
Craig S. Primis, P.C.
K. Winn Allen
KIRKLAND & ELLIS LLP
655 Fifteenth Street N.W.
Washington, DC 20005
Telephone: (202) 879-5000
Fax: (202) 879-5200

Counsel for Amicus Curiae

CERTIFICATE OF TYPE-VOLUME COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 2,643 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in fourteen point Century Schoolbook.

/s/ *Christopher Landau*

Christopher Landau, P.C.
KIRKLAND & ELLIS LLP
655 Fifteenth Street N.W.
Washington, DC 20005
Telephone: (202) 879-5000
Fax: (202) 879-5200

CERTIFICATE OF SERVICE

I certify that on February 17, 2015, the foregoing Brief was filed electronically through the Court's CM/ECF system which provides a copy of the materials to all counsel of record.

/s/ *Christopher Landau*
Christopher Landau, P.C.
KIRKLAND & ELLIS LLP
655 Fifteenth Street N.W.
Washington, DC 20005
Telephone: (202) 879-5000
Fax: (202) 879-5200