

**Caterpillar sues United Auto Workers in response to union's role in retiree lawsuits -- LABOR NEWS
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Caterpillar Inc filed two third-party lawsuits last week against the United Auto Workers and seven of its locals, alleging breach of contract in the unions' role in ongoing lawsuits over retiree healthcare benefits.

The Caterpillar complaints, filed July 25 in the US District Court in Nashville, Tennessee, respond to two lawsuits by Caterpillar retirees and surviving spouses who are seeking, according to Caterpillar, lifetime "no cost" health insurance. Earlier this month, both suits were certified by the district court as class actions.

Caterpillar says it filed the suits to ensure that the union lives up to the contract terms that the parties negotiated and agreed to in 1998 and 2004. It alleges breach of bargaining agreements and a separate dispute settlement agreement, and seeks a limitation on its own liability under the retiree suits as well as indemnification and contribution by the union.

"We think it's a breach of contract for the union to support a lawsuit that attacks the very terms the union proposed, negotiated and ratified during bargaining. The United Auto Workers presented itself as the representative of the retiree plaintiffs at the time their contracts were negotiated, including the terms related to retiree healthcare. Yet the union is now actively sponsoring these lawsuits," said Dan Day, Caterpillar corporate humanresources manager, in a statement released by the company. "We are disappointed that instead of abiding by its agreements, the UAW would actively encourage and sponsor the retirees' litigation."

Caterpillar wants UAW to be held responsible for any liability resulting from the pending class action suits over and above the company's financial obligation for retiree healthcare as set forth in these contracts. Even if it is determined that the union had no actual or apparent authority to bind the retiree plaintiffs, the agreements are still enforceable against the union, it contends.

"These agreements included new financial responsibilities and compromises by both sides, which cannot be modified at this point without unraveling the entire contract," Day commented. "We are confident that the courts will recognize these agreements as binding on retirees and the union they empowered to represent them, both as active employees and as retirees throughout the years.

Cap letters enforceable?

"It's a relatively novel issue, but it's a perfectly legitimate exercise" by Caterpillar, attorney Stanley Weiner told CCH. Weiner, a labor attorney in the Cleveland, Ohio, office of management law firm Jones Day, is currently engaged in litigation asserting similar claims against a union. The Caterpillar complaints are "a strategic move, definitely not mere posturing," Weiner said. "There will be motions to dismiss of various types filed, but I think this is a precursor to the type of litigation we're going to see more and more of."

According to Weiner, the crux of the matter in the Caterpillar case and similar litigation is whether certain agreements between the union and employer to enforce a cap on employer contributions to retiree healthcare costs are enforceable. Cap letters typically provide that a company will expend no more than a certain dollar amount per person on retiree medical. The issue becomes whether, as to workers who retired, for example, in 1985, an agreement reached between the union and company in 1992 is enforceable. (The general rule is that unions can't represent retirees with respect to past obligations.)

The union contends these cap letters were never intended to be enforced, but rather, were an accommodation to heightened accounting requirements implemented by the Financial Accounting Standards Board that placed these retiree benefit costs on company balance sheets for the first time. The cap letters were a "workaround" of sorts, not an enforceable term.

In contrast, Caterpillar argues the cap letters were enforceable, that there was a quid pro quo, and that the company reasonably relied on the union's representation that it had the authority to enter into the agreements.

"We're going to see more and more of this kind of litigation," Weiner advised. "The unions are trying to

run away from these cap letters, saying they are not enforceable. And they rely on the National Labor Relations Act to say that even if the cap letters mean what they say, they can't be enforced to negate a promise made to prior retirees, because the union wasn't authorized to modify their deal."

Weiner said these cap-letter disputes mark a second-generation of retiree benefits litigation. The cases have developed over the last few years, emerging only as the negotiated caps are being reached--and companies are refusing to increase them. (In earlier years, Weiner explained, employers have often agreed to increase the cap amounts or to postpone their effective dates in contract negotiations.)

Of the cases that have already made their way through the courts, Weiner notes, there have been rulings where the cap letters have been enforced and others where they have been held unenforceable. "These cases are going circuit by circuit," he explained.

The ongoing litigation between Caterpillar and its retirees (and now, the UAW) is currently in a district court within the Sixth Circuit--which may bode well for the retirees. "If there's a way for plaintiffs to file a retiree medical case in the Sixth Circuit, they will do so," said Weiner. "In the sixth circuit, which has seen so much of this litigation, there is a mindset as to how these cases should go. In other courts, it's viewed more as a pure contract issue."

While it's too late for Caterpillar, Weiner notes there are litigation strategies that employers can use to avoid these suits going forward. "If an employer truly wants to compromise a dispute about retiree medical, having it ratified through a declaratory judgment action by a court is the safest thing to do. It's the only way you'll get finality."

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