

# SECOND CIRCUIT UPHOLDS DENIAL OF BENEFIT; ARBITRARY AND CAPRICIOUS STANDARD APPLIED

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A group of participants accrued pension benefits under a retirement plan. One of the partners in a business employing the participants adopted the plan and then subsequently sold its interest in the business. The participants asserted that their continued, post-sale service with the business should be counted for purposes of determining whether they became eligible under the plan for an early retirement benefit. The selling partner's committee that continued to serve as plan administrator, however, determined that once the interests in the partnership were sold to the other partner in the business (an unrelated entity), the partnership no longer existed and the plan participants could not "grow into" early retirement eligibility. The participants then sued to enforce their rights.

After a federal district court ruled in favor of the plan sponsor and the plan, the participants appealed to the Court of Appeals for the Second Circuit. While the Second Circuit expressed an opinion that the participants' interpretation of the plan was "more reasonable," it also ruled that the court is obligated to apply the arbitrary and capricious standard of review under which the plan committee's determination can be overturned only where it is "without reason, unsupported by substantial evidence or erroneous as a matter of law." And the Second Circuit found that the participants had not made the case for overturning the plan committee's determination. The court considered whether it could instead apply the *de novo* (i.e., fresh look) standard of review, but concluded it could not do so because the plan had endowed the committee with broad discretionary authority.

The participants further argued that because the sponsor both administers and funds the plan, the outcome should be different. But the Second Circuit ruled that such a categorical potential conflict of interest could not be given weight because the participants failed to provide evidence demonstrating that the conflict of interest actually affected the committee's decision.

For those reasons, the Second Circuit affirmed the judgment of the district court and upheld the determination of the plan committee. *Kirkendall v. Halliburton, Inc.* (2<sup>nd</sup> Cir. 2019).

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Employee Benefits



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