



The Resource

March 2018 Feature Article

U.S. Supreme Court Scolds the Sixth Circuit for Attempting to Side Step Precedent

[Michael W. Mitchell](#)

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

Three years ago, I co-authored a case summary ([here](#)) about a U.S. Supreme Court decision applying "ordinary principles of contract law." See [M&G Polymers USA, LLC v. Tackett](#), 135 S.Ct. 926 (2015). I thought *Tackett* was worth a short article because it is unusual to see a U.S. Supreme Court case on contract law.

In *Tackett*, the Supreme Court vacated a Sixth Circuit decision because that court had failed to apply ordinary principles of contract law to a collective bargaining agreement. The issue in *Tackett* was whether the agreement, governed by The Employee Retirement Income Security Act of 1974 (ERISA), granted lifetime health benefits to employees even in the face of the agreement's three-year term. In a prior case, *International Union, et al v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), the Sixth Circuit had adopted its "Yard-Man" inference, pursuant to which courts in the Sixth Circuit could construe the grant of health care benefits in a collective bargaining agreement as vested and interminable despite express language setting an expiration date on the entire agreement itself.

It now appears that *Tackett* has exposed a minor rift between the Sixth Circuit and the Supreme Court, because the Sixth Circuit would not take "no" for an answer in *Tackett*. Those who are familiar with how judges speak (and write) when they take a lawyer to the woodshed will recognize that same tone and frustration in the Supreme Court's February 2018 opinion in [CNH Industrial Nv, et al v. Jack Reese, et al](#). In a per curiam opinion, the Supreme Court recognizes that it had addressed the same issues in *Tackett* only "[t]hree terms ago," and then the Court summarizes the case and its holding as follows:

In this case, the Sixth Circuit held that the same Yard-Man inferences it once used to presume lifetime vesting can now be used to render a collective-bargaining agreement ambiguous as a matter of law, thus allowing courts to consult extrinsic evidence about lifetime vesting. 854 F. 3d 877, 882-883 (2017). This analysis cannot be squared with Tackett. A contract is not ambiguous unless it is subject to more than one reasonable interpretation, and the Yard-Man inferences cannot generate a reasonable interpretation because they are not "ordinary principles of contract law," Tackett, supra, at ___ (slip op., at 14). Because the Sixth Circuit's analysis is "Yard-Man re-born, re-built, and re-purposed for new adventures," 854 F. 3d, at 891 (Sutton, J., dissenting), we reverse.

The Supreme Court makes a point of reminding the Sixth Circuit that no other circuit has made this same error: "[t]ellingly, no other Court of Appeals would find ambiguity in these circumstances The approach taken in these other decisions 'only underscores' how the decision below 'deviated from ordinary principles of contract law.'" Ouch.

In judge-speak for "this is not rocket science," the Supreme Court concludes its opinion by remarking that "[s]horn of *Yard-Man* inferences, this case is straightforward." The Court then shows the Sixth Circuit how it could have decided the case in about the length of a single paragraph. The Court's final jab notes that the Sixth Circuit continues to be unreasonable in its approach to collective bargaining agreements: "Thus, the only reasonable interpretation of the 1998 agreement is that the health care benefits expired when the collective-bargaining agreement expired in May 2004." (emphasis added)

The nugget of contract law, quoted from *Tackett*, is that "[w]hen the intent of the parties is unambiguously expressed in the contract, that expression controls, and the court's inquiry should proceed no further." [Do not pass go. Do not collect \\$200!](#)