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Recent
Developments

COURT DECLARES THAT LAYOFFS ARE NOT TERMINATIONS "FOR CAUSE," THUS STOCK OPTIONS VESTED FOR LAID OFF EMPLOYEES (May 14, 2001)

Summary

In this time of economic slowdown, many companies are implementing (or considering) employee layoffs as a means to cut costs and remain competitive. Layoffs can raise many thorny issues given the threat of lawsuits by exiting employees. A recent court decision has just added one more issue for companies to think about before implementing a layoff – does your stock option plan, or do your individual stock option agreements, clearly define what happens to unvested options upon a layoff? If not, employees who are laid off may have accelerated vesting rights that your company never intended.

The Case: *Scribner v. WorldCom, Inc.* (May 8, 2001)

The plaintiff, Donald Scribner, was a former Vice President for WorldCom who lost his job in a layoff when the company sold part of its operations to ILD Communications, Inc. Scribner's stock option agreement stated that if his employment was terminated "without cause" his unvested options would automatically vest. Scribner had 10,000 unvested options at the time he was laid off. Unfortunately – for WorldCom – neither the stock agreement nor its stock plan defined the term "without cause." And, as would be expected, a difference of opinion arose over whether Scribner's layoff was "without cause."

WorldCom steadfastly argued that it did not intend for layoffs to be considered terminations "without cause" under the stock option agreement. It also pointed to a provision in the stock plan giving a committee of its managers final authority to decide whether an employee's termination was "for cause." Scribner argued that the plain meaning of "without cause" is termination for some reason other than performance problems. He also argued that it would violate his rights under the stock option agreement if WorldCom's committee could unilaterally change the common-sense meaning of the term "without cause."

The court agreed with Scribner and declared that layoffs are not terminations "for cause." The court reasoned that the language of the contract was plain and clear, and that the parties' reasonable expectations of the meaning of the term "without cause" was termination for reasons other than employee performance problems, short comings or deficiencies. Because Scribner was laid off due to no fault of his own, WorldCom terminated his employment "without cause," thus he was entitled to the 10,000 options.

Although the court did not invalidate WorldCom's contractual right to have its committee interpret the stock agreement, it emphasized that the contractual language can only be stretched "so far." To get its point across, the court cited a passage from Lewis Carroll's "Through the Looking Glass," where Alice and Humpty Dumpty are discussing the elasticity of language:

"I don't know what you mean by 'glory,' " Alice said. Humpty Dumpty smiled contemptuously. "Of course you don't till I tell you... When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean—neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things."

The court sided with Alice, stating, "we are of the opinion that language is not infinitely elastic."

What This Means

If your company issues stock options to its employees, you should review the stock option agreements and stock plan to ensure that they clearly define what happens to unvested options upon a layoff. Any undefined terms or ambiguous language should be clarified.

If you have any questions about this or wish to learn about Paul Plevin & Sullivan's Summer Seminar Series on Layoffs Without Lawsuits, please contact Denise Nash dnash@paulplevin.com or at (619) 744-3654 at Paul Plevin & Sullivan.

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