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### *Cash Balance Plans*

## **Court Clears AT& T on All ERISA, ADEA Claims Stemming From Its Cash Balance Conversion**

After 12 years of litigation, the U.S. District Court for the District of New Jersey June 7 in an unpublished decision cleared AT& T Inc. on all claims that it violated federal pension and age discrimination laws in the operation of its cash balance pension plan (*Engers v. AT& T Inc.*, D.N.J., No. 98-3660 (SRC), unpublished 6/7/10).

The lawsuit against AT& T is one of the oldest cases launched back in the late 1990s when there was widespread disagreement about the legality of cash balance plans. Over the past several years, the number of legal challenges to cash balance plans has dwindled.

Judge Stanley R. Chesler ruled that AT& T's cash balance plan did not discriminate against older workers in violation of the Age Discrimination in Employment Act. Chesler also ruled that AT& T did not violate the Employee Retirement Income Security Act's anti-backloading rule, or Treasury regulations that require "subsidized early retirement benefits" to be the actuarial equivalent of the subsidized benefit.

The plaintiffs' attorney, Stephen R. Bruce of Stephen R. Bruce Law Offices, Washington, D.C., told BNA June 7 that his clients intend to appeal to the U.S. Court of Appeals for the Third Circuit.

An AT& T spokesman told BNA June 8, "We're gratified with the ruling. We continue to believe, as the court found, that the conversion to our cash balance plan was appropriate and in accordance with all legal obligations."

### **Legal Challenges Mount After Conversion**

AT& T converted its traditional defined benefit plan to a cash balance plan in 1997. The conversion triggered a lawsuit by employees who claimed that the cash balance plan violated ERISA and the ADEA. Through several rounds of amended complaints, the court whittled down the claims and eventually, in its most recent decision, it ruled entirely in favor of AT& T.

Early on in the case, the district court dismissed some of the ADEA claims, finding that AT& T did not deliberately discriminate against older workers when it implemented the cash balance plan (131 PBD, 7/7/00; 27 BPR 1638, 7/11/00). In that same decision, the court ruled that the plan did not violate ERISA's age discrimination prohibition.

In 2006, the district court dismissed additional ERISA claims presented in the employees' lawsuit, including their claim that they had not received sufficient and timely notice about the plan conversion (64 PBD, 4/4/06; 33 BPR 941, 4/11/06; 37 EBC 1482).

However, while the majority of the court's rulings in the case were in favor of AT& T, at one point in 2007 the court gave the employees a small window to pursue some of their claims. Among other things, the court granted conditional approval to an ADEA collective action (106 PBD, 6/4/07; 34 BPR 1312, 6/5/07; 40 EBC 2576).

### **No Age Discrimination**

In its most recent decision, the court granted summary judgment to AT& T on all remaining ADEA and

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ERISA claims.

First, the court found that AT& T did not violate ADEA Sections 623(a) and 626(b). The employees claimed that the plan used a “greater of” transition mechanism that “discriminates on the basis of age by providing that older workers who are eligible for early retirement earn no additional benefits under the cash balance plan in the current year, the near-term and the long-term.”

The court found that AT& T had a “complete defense” to this claim because it was in compliance with ADEA Section 4(i). This provision states that a defined benefit plan will comply with the ADEA so long as the plan does not reduce or cease benefit accruals because of age. “Defendants have pointed to sufficient evidence to persuade a reasonable jury that the Plan complies with the requirements of § 4(i), in that there is neither ‘cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age,’ ” the court said.

The court went on to say that the U.S. Court of Appeals for the Third Circuit in a similar case had likewise ruled that a cash balance plan did not violate the ADEA when measured by looking at the plan sponsor's “inputs” to the plan, rather than the “outputs” participants receive at retirement (*Register v. PNC Financial Services Group Inc.*, 477 F.3d 56, 34 EBC 2409 (3d Cir. 2007) (34 BPR 326, 2/6/07; 20 PBD, 1/31/07)).

Guided by *Register*, the district court said the proper measure to determine whether AT& T's plan violated the ADEA was to look at whether the “inputs” to the plan decreased on account of age. “[I]t is clear that it is the Plan outputs that stop increasing during [the plan's] wear-away period, not the inputs, and *Register* requires that this analysis be done on the inputs,” the court said.

### **Plaintiffs Lose on Backloading Claim**

Second, the court granted summary judgment to AT& T on the employees' claim that the plan violated ERISA Section 204(b)(1)(B)'s anti-backloading rule. The court said that to show that the plan violated this rule, the plaintiffs would need to demonstrate that the annual rate at which a participant can accrue benefits in a particular year is more than  $133 \frac{1}{3}$  percent of any prior year's annual rate.

The court said the employees could not make this showing. The same type of claim was at issue in *Register*, and in that case the Third Circuit said that to show a violation of the  $133 \frac{1}{3}$  percent rule, plaintiffs must calculate the accrual history as if the cash balance plan had been in effect for all years. Saying that *Register* was “on all fours” with the case against AT& T, the district court said the AT& T employees could not make a showing that the plan violated the  $133 \frac{1}{3}$  percent rule.

“[I]n view of the fact that the *Register* Court applied the identical statutory provision to a factual scenario that appears indistinguishable from the instant case, this Court concludes that *Register* requires a rejection of Plaintiffs' position. Defendants have persuaded [the court] that *Register* is controlling authority, and that it establishes that Plaintiffs' calculations involving wear-away periods do not comply with the plan amendment rule,” the court said.

Finally, the court granted summary judgment to AT& T on the employees' claim that AT& T violated Treasury Regulation 1.411(a)-11(a)(2) by using a 6 percent per year reduction when calculating undiscounted age 55 annuities. The employees claimed that this regulation provides that a distribution option to a “subsidized early retirement benefit” must offer at least the actuarial equivalent of the subsidized benefit.

The court said it was not persuaded that the 6 percent reductions for early retirement benefits violated the regulation. Among other things, the court said the employees provided no support for their argument that early retirement benefits paid out at age 54 were an optional form of benefit of an age 55 early retirement benefit.

The employees were represented by Stephen R. Bruce of Stephen R. Bruce Law Offices, Washington, D.C.; Maureen Binetti of Wilentz Goldman & Spitzer, Woodbridge, N.J.; and Jonathan I. Nirenberg of Resnick & Nirenberg, East Hanover, N.J. AT& T was represented by Patricia S. Robinson and Christopher H. Mills of Fisher & Phillips, Murray Hill, N.J.

By Jo-el J. Meyer

The full text of the opinion is at <http://op.bna.com/pen.nsf/r?Open=jmer-868esy>.