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N A N C Y J . S P E Z I A
T I M O T H Y J . M C G R A W
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A N T H O N Y S . H A R T I I I
R I C H A R D L . S A N D E R S O N , J R .

August 31, 2007

GOOD NEWS FOR CASH BALANCE PLANS!

The 6th Circuit holds that cash balance plans are not inherently age discriminatory.

Below is a link to an opinion issued earlier this week by the US Court of Appeals for the 6th Circuit (*Drutis v Rand McNally & Co.*, ___ F.3d ___ (6th Cir. Aug. 27, 2007)). It follows the 3rd Circuit in *Register v. PNC Fin. Servs. Group, Inc.*, 477 F.3d 56 (3rd Cir. 2007) and the 7th Circuit in *Cooper v. IBM Personal Protection Plan*, 457 F.3d 636 (7th Cir. 2006) by finding that benefit differences in cash balance plans at normal retirement age due to the interest crediting mechanism are the product of the time value of money, and not of age discrimination.

Frankly, we thought that the 6th Circuit had already decided this issue favorably, in a case called *West v AK Steel Corporation*, 484 F.3d 395 (6th Cir., April 20, 2007). However, the age issue was only part of the decision in the *West* case, although we thought it more than just “dicta”. (“Dicta”[strictly speaking “obiter dicta”] reflects legal discussion in a case which is not essential to the outcome.) We also thought the *Drutis* court could have reached the same result by deciding that the age discrimination amendments applied only to post-65 age discrimination; it declined to rule on this issue.

In any case, we’re pleased the 6th Circuit has interpreted the statute favorably to cash balance plans. This now lines the 6th Circuit up with the 3rd and 7th Circuits, the only other circuit courts which have faced this issue to date. “Three for three” so far.

And the Supreme Court, without comment, refused to hear the appeal of the 7th Circuit decision in *Cooper v IBM Personal Pension Plan*.

There are appeals pending in the 2nd and 9th Circuits, so we will keep you posted of additional developments.

Here’s a link to the court’s opinion in *Drutis v Rand McNally & Co.*:

<http://www.ca6.uscourts.gov/opinions.pdf/07a0340p-06.pdf>.

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