FILED
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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JACK FINLEY,

Plaintiff,

v.

DUN & BRADSTREET CORP. and the DUN & BRADSTREET CORPORATION RETIREMENT ACCOUNT,

Defendants.

No. 05C 5134

JUDGE PLUNKETT

MAGISTRATE JUDGE KEYS

CLASS ACTION COMPLAINT

Plaintiff, by and through his undersigned attorneys, complains against Defendants as follows:

NATURE OF THE COMPLAINT

1. This complaint is about Dun & Bradstreet's cash balance retirement plan. It asserts that in adopting and administering the Dun & Bradstreet Corporation Retirement Account, Dun & Bradstreet violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.* in one or more of the following ways: (1) when it amended its pension plan to a cash balance approach, the company failed to notify plan participants that the amendment was significantly reducing their benefits under the

plan; (2) the company failed to provide plan participants with an adequate summary plan description that alerted plan participants that their pension benefits had been reduced, that apparently accruing benefits might never actually be paid, that the rate of benefit accruals decreased with age, and that, in many cases, if they choose to receive cash balance benefits they will lose all of the benefits they accrued prior to the cash balance conversion; (3) by conditioning the amount of benefits payable under the plan based upon the form in which the benefit is taken, and; (4) by reducing the rate of benefit accruals on account of age; (5) by failing to inform many retiring plan participants of the correct amount of their pensions. Plaintiff seeks appropriate relief to enforce the rights he enjoyed under the plan prior to the cash balance amendment and/or the elimination and/or reformation of unlawful plan provisions.

JURISDICTION, VENUE, AND SERVICE OF PROCESS

2. Plaintiff invokes the jurisdiction of this Court pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, *et seq.*

3. Venue in this Court is proper under ERISA Section 502(e)(2), 29 U.S.C. §1132(e)(2), in that Dun & Bradstreet may be found in this District and the breach took place in this District.

4. Service of process is authorized in any district where a defendant resides or may be found. ERISA Section 502(e)(2), 29 U.S.C. §1132(e)(2).

THE PARTIES

5. Plaintiff Jack Finley ("Finley") lives in Geneva, Illinois.

6. Finley is a participant in the Dun & Bradstreet Corporation Retirement Account as the term "participant" is defined in ERISA Section 3(7), 29 U.S.C. §1002(7).

7. Defendant The Dun & Bradstreet Corporation Retirement Account (the "Cash Balance Plan") is an employee benefit plan as defined in Section 3(3) of ERISA, 29 U.S.C. §1002(3), and an "employee pension benefit plan" as defined in Section 3(2)(A), 29 U.S.C. §1002(2)(A). The Plan may be found in the Northern District of Illinois because Dun & Bradstreet employees earn and receive benefits in the District.

8. Defendant Dun & Bradstreet Corp. ("Dun & Bradstreet") is a business corporation organized and existing under the laws of the State of Delaware.

9. At all relevant times, Dun & Bradstreet has been an employer within the meaning of 29 USCS §1002(5), a "plan sponsor" as defined in Section 3(16)(B) of ERISA, 29 U.S.C. §1002(16)(B), a "plan administrator" as defined in Section 3(16)(A) of ERISA, 29 U.S.C. §1002(16)(A), and a fiduciary within the meaning of Section 3(21)(A) of ERISA, 29 USCS § 1002(21)(A).

CLASS ACTION ALLEGATIONS

10. Finley brings this action as a class action in accordance with Federal Rule of Civil Procedure 23 to resolve disputes under the Employee Retirement Income Security Act of 1974. Judicial economy dictates that the issues be resolved in a single action.

11. The proposed class is defined as any and all persons who:

(a) Are former or current Dun & Bradstreet employees other than employees who on December 31, 2001: (i) were at least age 50 with 10 years of vesting service; or (ii) had attained an age which, when added to his or her years of Vesting Service, was equal to or greater than seventy (70); or (iii) had attained age sixty-five (65); and

(b) Participated in the Dun & Bradstreet Master Retirement Plan before January 1, 2002, and

(c) Have participated in the Dun & Bradstreet Corporation Retirement Account at any time since January 1, 2002.

12. The proposed class covers all participants in the Cash Balance Plan who have been harmed by the ERISA breaches set forth below.

13. On information and belief the proposed class covers well over 1,000 individuals. The class is so numerous that joining all members is impractical.

14. There are common questions of law and fact affecting the rights of the members of the class. The claims of the named class representative are typical of the claims of the class. The named representative will fairly and adequately protect the interests of the class.

15. This action is maintainable as a class action under Rule 23(b)(2) because Defendant has acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate final relief in favor of the class.

STATEMENT OF FACTS

16. Finley was born on May 29, 1947.

17. Finley was hired by Dun & Bradstreet on May 15, 1978.

18. Finley's present job title is National Account Manager.

19. For many years prior to January 1, 2002, Dun & Bradstreet provided its employees with traditional defined pension plan terms under which retiring employees received a percentage of their final average pay for life under the Dun & Bradstreet Master Retirement Plan (the "Traditional Plan Terms").

20. Under the Traditional Plan Terms, as employees got older, the rate of their benefit accruals increased. The Traditional Plan Terms rewarded the company's longest serving and presumably most loyal employees by tying their retirement benefit amount to years of service and to salary numbers which are higher in an employee's last years of service. Under the Traditional Plan Terms, as

employees got closer to retirement and enjoyed a higher salary, the company was obliged to put away increasingly larger sums of money so that funds were available to pay the promised benefit at retirement. Employees with less service and more years until retirement correspondingly cost the company less, especially because, given potential investment earnings over time, the longer the company had before having to pay a dollar, the smaller the amount of money it had to put aside to provide the dollar in the future. For this reason, the Traditional Plan Terms were "backloaded"—an employee's last years of service under a plan, close to collecting, with a high salary and many years of service—were the most profitable to employees and most expensive to the company.

21. Effective January 1, 2002, Dun & Bradstreet converted the Traditional Plan Terms to a "cash balance" benefit.

22. The cash balance retirement benefit provided under the Cash Balance Plan is calculated based upon an annual payment to a hypothetical account of a percentage of an employee's pay (the "pay credit" or "company credit") together with a payment of interest on the annual hypothetical account (the "interest credit").

Benefit Accrual Rates Decreasing with Age

23. As under many cash balance plans, pay credits under the Cash Balance Plan are determined by "points" equal to the sum of an employee's age and vesting service. The pay credits are as follows:

POINTS	CREDIT
age +service	
Under 35	3%
35 to 44	4.0%
45-54	5.0%
55-64	7.5%
65-74	9.0%
75-84	10.5%
85 or more	12.5%

24. Interest credits under the Cash Balance Plan are based on 30-Year Treasury Bonds subject to a minimum rate of 3%.

25. If a plan participant's employment terminates before age 65, the plan ceases to make hypothetical pay credit payments but continues through age 65 to make hypothetical interest credits.

26. To determine on any given day the age-65 value of a participant's cash balance pension, interest credit payments on the cash balance are projected each

year from the date of determination through the participant's 65th birthday. That balance (and the annuity that can be created from it) is the benefit provided under the cash balance terms of the Cash Balance Plan.

27. Unlike the benefits under the Traditional Plan Terms, pension benefits under the Cash Balance Plan accrue in relatively stable percentages throughout an employee's career. The benefits do not start out accruing in small amounts and then significantly balloon in the final years like benefits do under the Traditional Plan Terms. The net effect of this difference is that younger employees' pensions relatively gain under the Cash Balance Plan terms and older employees' pensions relatively lose. Under the Cash Balance terms, an older worker with the same rate of pay and years of service as a younger worker, receiving the same dollar amount of contribution to her cash balance account, buys an increasingly smaller age-65 pension annuity with that money because the closer the older worker gets to retirement age the less time the money contributed has to earn annual interest credits under the plan. The rate of benefit accrual thus decreases as a direct result of increases in the employee's age. As the employee gets one year older, the amount of the interest credits to be earned through age-65 is reduced. Therefore, the Cash Balance Plan terms accrue benefits that steadily decrease with advancing age, with the effects partially mitigated, but not eliminated, by the Plan's "points" approach to pay credits.

The Wear-Away Effect

28. Like many cash balance plans the Cash Balance Plan terms converted the benefits employees earned under the Traditional Plan Terms into an opening cash balance account.

29. When Dun & Bradstreet converted the Traditional Plan Term benefits to cash balance benefits it ignored plan participants' valuable rights to subsidized early retirement benefits and instead the opening account balance was derived by computing the benefit under the Traditional Plan Terms as a single life annuity commencing at age 65.

30. Under the Cash Balance Plan's cash balance terms, Finley and other plan participants can only receive the cash balance benefits that accrue after the plan amendment if she gives up the benefits she accrued prior to the amendment. The Cash Balance Plan specifies that an employee's accrued benefit is the greater of her benefit under the Traditional Plan Terms, frozen as of December 31, 2001 and the value of the cash balance account. Finley and other plan participants cannot take their previously accrued benefits and add the new cash balance benefits to them.

31. Because of this "greater of" benefit formula, an employee's cash balance pension benefit does not grow from the frozen amount until her hypothetical account balance under the cash balance plan equals and then becomes

greater than the value of the frozen Traditional Plan Terms benefit. This phenomenon is widely known as the "wear-away" effect.

32. The wear-away effect means that for many years following the cash balance amendment, Finley and other plan participants actually accrued no new pension benefits despite the existence of a hypothetical account showing benefits being added.

33. Upon information and belief, the Cash Balance Plan's calculation of opening balances exacerbates the wear-away effect: (a) by applying a pre-retirement mortality discount (providing for the possibility of death prior to normal retirement) but providing no mechanism for crediting this discount back as participants grow older and the risk of pre-retirement mortality steadily shrinks, and (b) by employing a high interest rate but providing no mechanism to adjust the balance when, as they have over the last five years, interest rates fall below the rate used in the conversion.

Dun & Bradstreet's Failure to Explain Benefit Cuts

34. Because benefit accruals decline with age and because of the wear-away effect, the elimination of the Traditional Plan Terms and the substitution of the Cash Balance terms, significantly reduced the rate of future benefit accruals for many plan participants, including Finley.

35. Despite this impact, prior to the effective date of the change, Dun & Bradstreet gave no notice to plan participants, explaining to them the existence and the extent of a significant reduction of their benefits.

36. Despite this impact, Dun & Bradstreet did not explain the full import of the cash balance plan terms in a summary plan description distributed to plan participants, including but not limited to an explanation of the wear-away effect and a disclosure that benefit accruals under the plan are reduced by advancing age.

37. Instead, despite the totally hypothetical character of the cash balance accounts and the wear-away effect's elimination of years of benefit accruals, Dun & Bradstreet falsely promised plan participants that their cash balance benefits would grow steadily throughout the time they worked at the company.

38. Dun & Bradstreet explained that a key reason it was adopting the cash balance benefit was because it would benefit employees.

COUNT ONE: Violation of Section 204(b)(1)(H) for Decreasing Benefit Accrual Rates with Advancing Age

39. The Cash Balance Plan violates the prohibition in ERISA Section 204(b)(1)(H) against an employer establishing or maintaining plan rules that reduce "the rate of an employee's benefit accrual . . . because of the attainment of any age."

40. Accordingly, Finley and the class are entitled to appropriate equitable relief under ERISA §502 (a)(3) and/or additional benefits under ERISA §502 (a)(1)(B).

COUNT TWO: Violation of ERISA Section 203(a) for Permitting Benefits to be Forfeited

41. Because the Cash Balance Plan conditions Finley's receipt of cash balance benefits on his foregoing the early retirement benefits he earned prior to the adoption of the cash balance amendment, the Cash Balance Plan violates, ERISA §203 (a)'s requirement of non-forfeitability which, under ERISA §3 (19), means that all benefits must be "unconditional."

42. Accordingly, Finley and the class are entitled to appropriate equitable relief under ERISA §502 (a)(3) and/or additional benefits under ERISA §502 (a)(1)(B).

COUNT THREE: Violation of ERISA Section §204(b)(1)(B) by Benefit Accruals that Increase More Than 33 1/3% Over a Prior Year

43. Because the wear-away effect causes plan participants, including Finley, to face years where they accrue zero benefits followed by years where they accrue actual benefits, the Cash Balance Plan violates the "anti-backloading" rule in ERISA Section §204(b)(1)(B) that requires that the value of the benefit accrued in any given year may not exceed the value of a benefit accrued in any previous year by more than 33 1/3%.

44. Accordingly, Finley and the class are entitled to appropriate equitable relief under ERISA §502 (a)(3) and/or additional benefits under ERISA §502 (a)(1)(B).

COUNT FOUR: Violation of ERISA §204 (h): Failure to Supply Advance Notice of a Significant Benefit Decrease.

45. Dun & Bradstreet's failure to notify Finley and other plan participants of a significant reduction in the rate of future benefit accrual 15 days prior to the January 1, 2002 effective date violated the ERISA §204 (h) prohibition on such plan amendments in the absence of such notice.

46. Accordingly, Finley and the class are entitled to appropriate equitable relief under ERISA §502 (a)(3) and/or additional benefits under ERISA §502 (a)(1)(B).

COUNT FIVE: Violation of ERISA §102: Failure to Provide an Adequate Summary Plan Description (SPD).

47. Dun & Bradstreet's failure to explain the full import of the cash balance plan terms in a summary plan description distributed to plan participants, including but not limited to a complete explanation of the wear-away effect and an explicit explanation of how benefit accruals under the plan are reduced by advancing age, violates the minimal requirements for SPDs set forth in ERISA §102 and its implementing regulations found in 29 C.F.R. 2520.102.

48. Accordingly, Finley and the class are entitled to appropriate equitable relief under ERISA §502 (a)(3) and/or additional benefits under ERISA §502 (a)(1)(B).

Prayer for Relief

WHEREFORE, the Plaintiff prays that this Court for the following:

1. A ruling that this matter proceed on a class basis under Rule 23 on behalf of the class as described above;

2. A declaration that the Cash Balance Plan which purportedly took effect on January 1, 2002 was ineffective and that the plan in place prior thereto is still in force and effect;

3. A declaration that Finley's benefit accruals under the Cash Balance Plan must be unconditional and not reduced because of age;

4. An injunction prohibiting the application of the Cash Balance Plan's reductions in the rate of benefit accruals because of age and its conditioning of benefits due under the plan;

5. An injunction ordering appropriate equitable relief to determine plan participant losses caused by Dun & Bradstreet's payment of benefits under the unlawful cash balance terms and requiring the payment of additional benefits as appropriate under the Court's ruling;

6. Attorney's fees pursuant to ERISA §502 (g);

7. Interest;

8. Costs;

9. An order for appropriate equitable and remedial relief to ensure that relief granted hereunder is implemented on a class-wide basis; and

10. Such other equitable and remedial relief as the Court deems appropriate.

Respectfully submitted,

One of the attorneys for plaintiff

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