RESNICK NIRENBERG & SIEGLER
A Partnership of Professional Corporations
101 Eisenhower Parkway, Suite 300
Roseland, New Jersey 07068
(973) 795 1240
JNirenberg@njemploymentlawfirm.com
Jonathan I. Nirenberg (JIN 2954)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JACK FINLEY, Plaintiff, v. **DUN & BRADSTREET CORP., and THE DUN & BRADSTREET CORPORATION RETIREMENT ACCOUNT** Defendants.	Case No. 2:06-cv-1838 (WJM) **AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER ERISA**

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 of the change in a notice calculated to be understood by average plan participants; (2) by failing to

provide plan participants with an adequate summary plan description; (3) by reducing the rate of benefit accruals on account of age; (4) by misleading plan participants about how and when they earn new benefits under the Cash Balance Terms. Plaintiff seeks appropriate declaratory and injunction 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 Terms") 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 District of New Jersey 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, 1996: (i) were at least age 50 with 10 years of vesting service; (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).

(b) Participated in the Dun & Bradstreet Master Retirement Plan before January 1, 1997, and

(c) Have participated in the Dun & Bradstreet Corporation Retirement Account at any time since January 1, 1997.

12. The proposed class covers all participants under the Cash Balance Terms 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)(1) because the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to

individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

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

STATEMENT OF FACTS

17. Finley was born on May 29, 1947.

18. Finely was hired by Dun & Bradstreet on May 15, 1978.

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

20. For many years prior to January 1, 1997 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").

21. 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, 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.

22. Effective January 1, 1997, Dun & Bradstreet amended the Traditional Plan Terms to substitute a "cash balance" benefit (the Cash Balance Terms).

23. Like the Traditional Plan Terms, benefits under the Cash Balance Terms are defined in terms of an age 65 annuity. The Cash Balance Terms' age 65 annuity, however, is calculated based upon the age 65 annuity that can be bought with the balance of a hypothetical account consisting of an annual payment 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.

24. As under many cash balance plans, pay credits under the Cash Balance Terms 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%

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

26. 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.

27. 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.

28. Unlike the benefits under the Traditional Plan Terms, pension benefits under the Cash Balance Terms 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 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 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

29. Like many Cash Balance plans, the Cash Balance Terms converted the benefits Finley and other employees earned under the Traditional Plan Terms into an opening cash balance account.

30. When Plan administrators calculated the opening account, however, they 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. They also applied a pre-retirement mortality discount (providing for the possibility of death prior to normal retirement) but provided no mechanism for crediting this discount back as participants grow older and the risk of pre-retirement mortality steadily shrinks. They also used a 6.65% interest rate but provided no mechanism to adjust the balance when, as they have over the last five years, interest rates have fallen below the 6.65% rate used in the conversion.

31. The combination of these factors yielded opening account balances for Finley and similarly situated participants that were substantially less than the value of the benefits they had accrued under the Traditional Plan Terms on December 31, 1996.

32. This difference has significant consequences under the Cash Balance Terms because the accrued benefit under the Cash Balance Terms is a "greater of benefit;" it uses the benefits previously accrued under the Traditional Plan Terms to calculate the new benefit accruals under the Cash Balance Terms. The full plan document provides:

> A Member's Accrued Benefit, as determined from time to time hereunder, shall be the largest of the following amounts:
>
> (a) the amount of a single life annuity commencing as of the Member's Normal Retirement Date (or on the date of determination is such date is after the Normal Retirement Date), which is the Actuarial Equivalent Value of the amount credited to such Member's Retirement Account as provided in this Article 4;
>
> (b) the Member's Frozen Accrued Benefit (as such term is defined in Section 4.8 below) commencing as of the Members' Normal Retirement Date (or on the date of determination if such date is after the Normal Retirement Date).

Finley and similarly situated plan participants cannot receive their previously accrued benefits and simply add the new cash balance benefits to them. Instead the Cash Balance Terms grant them only the greater of the two benefits.

33. Because the difference between Finley's opening account balance and his frozen benefit is substantial, Finley has not earned any new retirement benefits in the nine years he has worked under the Cash Balance Terms. This phenomenon is known as the "wear-away effect".

Dun & Bradstreet's Failure to Explain Benefit Cuts.

34. Because benefit accruals decline with age and because of the wear-away effect, the substitution of the Cash Balance Terms for the Traditional Plan Terms, significantly reduced the rate of future benefit accruals and the amount of the future annual benefit commencing at normal retirement age for Finley and similarly situated plan participants.

35. Despite this impact, Dun & Bradstreet did not give plan participants a notice setting forth the amendment in a manner calculated to be understood by average plan participants prior to the effective date of the change.

36. Since the amendment, Dun & Bradstreet also has never distributed to plan participants a summary plan description that explains the Cash Balance Terms in a manner calculated to be understood by average plan participants.

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

37. The Cash Balance Terms violate 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."

38. Accordingly, Finley and similarly situated participants 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 §204(b)(1)(B) by Benefit Accruals that Increase More Than 33 1/3% Over a Prior Year.

39. 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 Terms 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%.

40. Accordingly, Finley and similarly situated participants 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 §204 (h): Failure to Supply Advance Notice of a Significant Benefit Decrease.

41. Dun & Bradstreet's failure to set forth the plan amendment in a notice calculated to be understood by the average plan participant 15 days prior to the January 1, 1997 effective date violated the ERISA §204 (h) prohibition on such plan amendments in the absence of such a notice.

42. Accordingly, Finley and similarly situated participants 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 §102: Failure to Provide an Adequate Summary Plan Description (SPD).

43. Dun & Bradstreet's failure to provide plan participants with a summary plan description that explains the Cash Balance Terms in a manner calculated to be understood by average plan participants violates the minimal requirements for SPDs set forth in ERISA §102 and its implementing regulations found in 29 C.F.R. 2520.102 because, Dun & Bradstreet intentionally, recklessly, or negligently took steps that actively concealed material elements of the Cash Balance Terms causing plan participants to rely on a misunderstanding of the plan terms and suffer likely and/or substantial harm. The steps include but are not limited to publishing summary plan descriptions that fail to adequately explain to Finley and similarly situated plan participants that to earn new benefits they must wait until the difference between their benefits frozen as of December 31, 1996 under the Traditional Plan Terms and their cash balance account wears away. Instead each summary plan description beginning with the one published in 1997 misled employees, including Finley into believing they were earning new benefits when they were not.

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

COUNT FIVE: Breach of Fiduciary Duty.

45. Immediately prior to and since its adoption of the cash balance formula, Dun & Bradstreet has materially misled plan participants including Finley in class-wide written or oral communications by failing to accurately explain when participants earn benefits under the Cash Balance Terms and by failing to mention the disadvantages and benefit reductions caused by the adoption of the cash balance formula, thereby causing the plan participants and Finley in particular likely harm and/or causing them to rely on the misrepresentations or omissions to their detriment. Dun & Bradstreet officials made the misrepresentations and omissions to Plaintiffs and the Class beginning in October 1997 and have continued to make them to the present day. These misrepresentations and omissions include those in an October 1, 1996 letter and a brochure entitled "New D&B. New Benefits. Highlights for 1997" that contained only positive information about the Cash Balance Terms and did not tell participants that they might spend years participating but earning no new benefits under the Cash Balance Terms. These misrepresentations and omissions have continued in regular written and oral communications through the present day, including in quarterly reports to participants such as one entitled "Fourth Quarter 1998 Statement, Planning for Your Future" that falsely shows interest credits steadily building in a "Retirement Account" and shows a misleading "Closing Balance" on the account for

participants like Finley even though the wear away effect means they have not earned any of the new dollars shown and never will. Dun & Bradstreet knowingly, recklessly or intentionally made these misrepresentations and by making them and by failing to comply with ERISA §102 and ERISA §204 (h) Dun & Bradstreet breached the fiduciary duties it owed to Plan participants under ERISA §404.

46. Accordingly, Finley and similarly situated participants 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, Finley asks this Court for the following:

1. A declaration that the cash balance amendment to the Dun & Bradstreet Master Retirement Plan which purportedly took effect on January 1, 1997 was ineffective for, and that the plan in place prior thereto is still in force and effect for, any participants who suffered a reduction of future benefit accruals because of the amendment;

2. A declaration that a participant's rate of benefit accrual under the Dun & Bradstreet Corporation Retirement Account must be measured at all times in terms of the increase in a participant's annual benefit commencing at normal retirement age;

3. An injunction prohibiting the application of the Dun & Bradstreet Corporation Retirement Account plan's reductions in the rate of benefit accruals because of age;

4. 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 of the Dun & Bradstreet Corporation Retirement Account and requiring the payment of additional benefits as appropriate under the Court's ruling;

5. An injunction ordering Dun & Bradstreet to cease publishing misleading information concerning benefits under the Dun & Bradstreet Corporation Retirement Account and ordering Dun & Bradstreet to distribute to plan participants an accurate summary plan description, an accurate statement of plan participants' accrued benefits and ordering the plan to take such other steps as the Court may deem just to ensure that plan participants receive truthful, accurate and complete descriptions of the benefits due to them under the Dun & Bradstreet Corporation Retirement Account.

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,

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

THE PLAINTIFF

Resnick Nirenberg & Siegler

By: /s Jonathan I. Nirenberg
Jonathan I. Nirenberg

Thomas G. Moukawsher Ct 08940 (PRO HAC PENDING)
Moukawsher & Walsh, LLC
21 Oak St., Suite 209
Hartford, CT 06106
(860) 278-7000
tmoukawsher@mwlawgroup.com

Thomas R. Meites
Michael M. Mulder
Josie Raymond
Meites, Mulder, Burger, and Mollica
208 South LaSalle Street, Suite 1410
Chicago, IL 60604
(312) 263-0272