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## **Hartford Firm Wins Key Ruling in National Pension Controversy**

### *FleetBoston Decision Reinforces Ruling Against IBM*

On April 3, 2006, a federal judge in Bridgeport, Connecticut became the second judge to uphold an age discrimination claim against a cash balance pension plan. In a 52-page ruling, Judge Janet Hall refused to dismiss age discrimination claims brought by long-time FleetBoston employee Donna Richards, alleging that the cash balance formula adopted by FleetBoston and dozens of other major companies provides smaller retirement benefits to older workers relative to younger workers. Hall's ruling adopts and elaborates on a similar holding about IBM's plan by an Illinois federal judge in 2003 that set off a national controversy about cash balance pension plans. That case *Cooper v. IBM* is now before the U.S. Court of Appeals for the Seventh Circuit in Chicago.

Cash balance pension plans cover more than 40 million Americans. They feature hypothetical pension accounts that mimic 401(k) plans but are legally annuity-based plans similar to traditional pension plans. Advocates of the plans tout the portability of cash balance benefits while critics point out that cash balance benefits provide workers, particularly older workers, with substantially less benefits than previous pension plans.

At issue in Judge Hall's ruling was the correct interpretation of a federal law that prohibits pension plans from reducing employees' benefits based on their "attainment of any age". FleetBoston (now owned by Bank of America which also has a cash balance plan), IBM and other cash balance advocates have urged courts to interpret this law as applying only to employees over age 65 and permitting cash balance sponsors to apply the law using benefit accrual rules normally applicable to plans like 401(k)s. Rejecting FleetBoston's arguments, the Court refused "to read the statute other than as its plain meaning suggests," holding that the law prohibits discrimination at any age and that because of its legal status the FleetBoston plan must comply with traditional pension plan laws not those that apply to pension plan accounts.

According to Richards's attorney Thomas G. Moukawsher of Hartford's Moukawsher & Walsh LLC, Judge Hall's ruling should ensure an outcome like that in IBM because the fate of the plan turns on the statutory interpretation, "Judge Hall enforced the statute as it was written, not as FleetBoston wanted it written. Her ruling is a victory not just for older workers but all cash balance plan participants who have found their benefits dramatically cut, often without warning, by these highly complicated and deceptive plans."

Damages in the IBM case have been agreed at \$1.4 billion. No estimate on the impact of a similar ruling on FleetBoston has been made yet.

*The full text of the Ruling may be found at [www.benefitlawyers.com](http://www.benefitlawyers.com)*

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