IBM Pension Lawsuit FAQ about Cooper v IBM

Updated 8/8/06

The settlement agreement for Cooper v IBM has been finalized, but class members should not expect payment until at least **3 months after the final appeal is completed.**

The settlement agreement for subclasses 1 and 2 is at:
http://www.coopersettlement.com/subclass1and2/

The settlement agreement for subclass 3, which has already been paid out, is at: http://www.ibmsettlement.com/subclass3/

Some supplemental questions and answers from the Cooper legal team are posted at http://www.allianceibm.org/CooperSettlementLegalFAQ

Judge Murphy's main orders from the lawsuit are posted in the files section of the IBMPension Yahoo group at:
http://finance.groups.yahoo.com/group/ibmpension/files/

The ruling, oral arguments and briefs from the appeal to the 7th Circuit Court of Appeals are posted at http://www.ca7.uscourts.gov
The case number for Cooper v IBM is 05 3588.

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Below is a list of frequently asked questions about the class action lawsuit against IBM's 1995 and 1999 pension plans. The answers are my personal opinions, have not been verified with either IBM or plaintiffs' counsel, and should not be construed as legal advice.

On July 31, 2003, a federal district court judge ruled in favor of the employees in this case.

On September 28, 2004, IBM and the legal team on Cooper v IBM announced that an agreement had been negotiated that settles some of the claims and set the amount of damages that IBM will pay to the class if IBM's appeal of the district court's age discrimination rulings is unsuccessful.

On August 16, 2005, after the August 8 fairness hearing, Judge Murphy issued an order finalizing the settlement agreement.

On August 30, 2005, IBM began the appeals process by issuing their notice of appeal.

Q1: Who is covered by the pension lawsuit?

A: Anyone who worked for IBM U.S. after December 31, 1994, whether or not they are still employed by IBM, is covered by one of the three classes defined in the lawsuit. People who left IBM before this date are not covered by it. People who did not join IBM until after December 31, 2004 are not covered by the lawsuit.

The subclasses are:
Subclass 1: All individuals who have participated in the IBM Personal Pension Plan at any time after December 31, 1994, whose accrued benefits have been or will be determined pursuant to the 1995 Personal Pension Plan formula.

Qualification for membership in the plaintiff class for Cooper v IBM is not based on when you started collecting your pension benefits, but on the last date of employment that your pension calculation was based on. This means that people who left before December 31, 1994 but who bridged to a last date of employment after December 31, 1994 are a member of sub-class 1 and may qualify for a small share of the settlement.

Subclass 2: All individuals who have participated in the IBM Personal Pension Plan at any time after December 31, 1994, whose accrued benefits have been or will be determined pursuant to the 1999 Cash Balance Plan formula.

Subclass 3: All individuals who were employed by IBM as of July 1, 1999, and who have left IBM's employ before meeting the 5-year vesting requirement.

Q1b: Who do I contact to find out if I am covered or make sure I am on the list?
A: If you received a settlement notice, you are on the list. For address updates or to cross check your inclusion on the list, call 1-866-716-4098 to provide your new address, as well as your phone number, Social Security number, and IBM employee number. If you prefer to provide a new address in writing, you may send it to:
Cooper Settlement Office, POB 770003, Cincinnati OH 45277-0064
For eligibility claims or other information on the settlement, send a written inquiry **(do NOT call)** to class counsel:
Douglas R. Sprong, Korein Tillery, LLC, P.O. Box 4310, Fairview Heights, IL 62208
Include your name, your IBM employee number, your social security number, your current address, and your question.

Q1c: Are employees who signed a "General Release and Covenant Not To Sue" when they left IBM excluded from the lawsuit?
A: Many employees who left IBM could only collect severance pay if they signed a "General Release and Covenant Not To Sue" agreement. This agreement does **NOT** impact their status as a class member in Cooper v IBM and will not cause them to be excluded from the lawsuit.

Q2: What does the July 31, 2003 decision in the IBM Pension lawsuit mean?
A: The judge found that several aspects of IBM's 1995 plan (the Pension Credit Formula, or PCF plan) and IBM's 1999 Cash Balance plan violate certain rules set forth by ERISA (the Employees Retirement Income Security Act), the federal law that governs pension plans. Both plans were found to discriminate against older employees. Under the PCF plan, if two employees of different ages were hired on the same day, and worked the same number of years and received the same salary, the younger employee would receive a larger pension benefit than the older employee. This is illegal under ERISA. For a similar set of employees in the cash balance plan, the benefit accrual rate for older employees was found to be less than for younger employees. Again, under ERISA, this is illegal. The judge also found that the formula that IBM used to calculate the opening balance for the cash balance plan, called 'Always Cash Balance,' caused the younger of two employees with equal years of service to be credited with a higher opening balance. The judge ruled that this was also illegal under ERISA.

Q2a: What does the August 7, 2006 decision in the IBM Pension lawsuit mean?

A: The 3 judge panel in the 7th Circuit Cout of Appeals found that IBM's actions were 'age-neutral' and ruled in IBM's favor on both issues being appealed. Following is a statement about the ruling from Doug Sprong, one of the plaintiffs' lawyers:

> **Judge Easterbrook's opinion in Cooper v. IBM ignores the fundamental differences between defined benefit and defined contribution plans and disregards the statutory provisions expressly enacted by Congress to protect older workers from age discrimination. The decision judicially**

creates an "equal cost" defense for defined benefit plans even though Congress expressly chose not to provide such a defense for defined benefit plans. Because of the adverse impact of this decision on the statutory protections Congress provided all workers, young and old alike, plaintiffs intend to ask the entire Court to reconsider the panel's erroneous decision.

The legal team will request an 'en banc' review by the full circuit court. If that is not granted, they will also be requesting cert by the Supreme Court. The courts will have discretion over whether to grant review. If they decide not to review the ruling, then the base $318 million of the settlement will be distributed to class members. If a review is granted, the full $1.7 billion could still be distributed; the review cycle could last several more years.

Q3: Does this mean that all cash balance plans are illegal?

A: Although statements from IBM and some pension consultants have made such a claim, the judge's decision applies only to IBM's plan. Not all cash balance plans work the same way or use the same formula as IBM's plan. Each plan needs to be looked at individually to determine if it has similar problems. Some plans could have the same problem as IBM's and therefore could also be found to be illegal. The ruling in the IBM case came from a federal district court, and district courts in other parts of the country could reach different conclusions for other companies' plans, even if they work the same way as IBM's. This is one reason that many experts believe that this case will ultimately be decided by the Supreme Court. A decision from the Supreme Court would apply to all companies nation wide.

In August, 2006, Congress passed H.R.4, the Pension Protection Act of 2006. This act legalized cash balance conversions prospectively but should have no impact on Cooper v IBM. Full text of the bill is available at http://www.thomas.gov – enter Pension Protection Act of 2006 as the search text.

Q4: Since this decision came from the US District Court for the District of Southern Illinois, does it apply only to IBMers who live in that district?

A: No. The decision applies to all U.S. IBMers nationwide. It was filed in this district court because that is where Kathi Cooper, the lead IBMer who is the named plaintiff, lives.

Q5: What exactly did the settlement agreement include?

A: The settlement agreement is divided into 4 pieces:

1) The 'partial termination' charge related to individuals in sub-class 3 was settled for $20 million dollars. This part of the settlement was finalized and distributed in the first quarter of 2005. Detailed information is available at http://www.ibmsettlement.com/subclass3/. Members of this sub-class will not receive any additional compensation.

2) A number of charges related to the 1995 IBM Personal Pension Plan were settled for $300 million dollars. IBM has agreed not to appeal these charges, but payouts will not occur until after the appeal of the remaining charges is completed. This payout will be divided between individuals in sub-class 1 and individuals in sub-class 2 who were employed at IBM US before July 1, 1999. An interest credit of $14.293 million dollars was added to this settlement amount to account for the fact that it will probably not be paid until at least November 1, 2006. If the final distribution does not happen until after that, additional interest credits will be added.

3) The claim that IBM's cash balance formula is age discriminatory will be appealed. If the appeals court affirms the lower court ruling against IBM, IBM has agreed to pay an additional $780 million. This payout would be divided between individuals in sub-class 2, and individuals in sub-class 1 who were employed at IBM US on July 1, 1999.

4) The "always cash balance" claim, a charge that transition arrangements regarding opening account

balances during the 1999 conversion were age discriminatory, will also be appealed. If the appeals court affirms the lower court ruling against IBM, IBM has agreed to pay an additional $620 million. This payout would be divided between individuals in sub-classes 1 and 2 who were employed at IBM US on July 1, 1999.

Q5a: Was the settlement agreement modified at all before being finalized?
A: The settlement agreement was finalized almost as is. The only major amendment was that the folks IBM sold to AT&T as of May, 1999 were shifted to subgroups 3 and 4, since IBM converted them to the cash balance plan before closing out their pensions in November, 1999. This means they will receive a slightly larger share of the settlement.

Q6: What is my share of the settlement?
A: The formula for how the settlement will be divided among the class members is contained in the settlement agreement, which can be downloaded from http://www.coopersettlement.com/subclass1and2/. Each individual's settlement will be based on individual circumstances and will vary with age, years of service, and salary history. Note that the table included in the Q&A file, at the same site, shows how much each person's pension would increase on an annual basis; to obtain an estimate of the monthly increase, divide the numbers by 12.

Q6a: Is it possible to get an estimate of how much I actually lost in the pension conversion?
There are several useful tools to consider if you are attempting to compare the settlement to what you might have received if IBM had not changed the Pension plan. First, Dave Finlay built a spreadsheet named RETIREQ, which can be downloaded from the files section of the IBMPension board at http://finance.groups.yahoo.com/group/ibmpension/files/ Also, there is a Single Premium Immediate Annuity calculator available on the Berkshire Hathaway web site at http://www.brkdirect.com/

Q6b: How can I judge whether the settlement is fair? It seems very small…
A: Please bear in mind, as you do your analysis, that is not illegal for companies to reduce future pension earnings -- it is only illegal if they do so in an age discriminatory way. Much of what IBM did was inherently unfair, but NOT age discriminatory, so the likelihood that any federal judge would have forced IBM to restore the prior plans is extremely unlikely. One example of an unfairness relates to early retirement subsidies, the extra value that IBM had in their plans that made an immediate annuity worth more than the age 65 annuity. Since early retirement subsidies are not protected, it was legal for IBM to provide opening balances that were equivalent to your age 65 annuity. The only part of the 1999 cash balance conversion that Cooper v IBM found to be specifically illegal was that extra money was added to the opening balances of younger employees, and not older employees -- this is the "Always Cash Balance" issue referred to in the settlement that IBM is appealing. Cooper v IBM also found that the accruals added to the account in subsequent years was discriminatory -- again, it was not illegal that those accruals were substantially lower than they would have been under the prior formula; it was only illegal that younger employees were receiving higher accruals for equivalent service.

Q6c: What should I do if I have a concern or issue with the settlement?
A: The settlement agreement is a legal contract that was finalized by a final order issued by Judge Murphy on August 16, 2005. Judge Murphy carefully considered all of the objections that had been filed with the court before the fairness hearing on August 8, 2005. At this point, no additional objections can be filed.

Q7: I left IBM after December 31, 1994 and am currently receiving a pension payment from IBM. Does this decision mean that I will get a bigger check?
A: Eventually, you will. But first the case has to go through the appeals process. After that, your pension check will be increased by your share of the settlement money, as defined in the settlement agreement. If you are entitled to a share of the settlement money, but you die before payments begin, your beneficiaries will receive your share.

Q7a: I took a lump sum when I left IBM [after December 31, 1994]. Am I still eligible to share in the settlement?
A: Your share of the settlement is not dependent on whether you opted to collect a lump sum or a monthly pension. When the settlement is distributed, you will be given an option of collecting it in the form of a monthly check or a one time distribution.

Q7b: I was eligible to choose between the 1995 plan and the 1999 plan in December of 1999. As part of the settlement, can I now change my selection?
A: Your share of the settlement is not dependent on which plan you chose to participate in, and the settlement will not give you a chance to change that selection.

Q8: When can I expect to see a payment from the settlement?
A: Payments for subclass 3 have already been distributed.

Payments for subclasses 1 and 2 will not occur until the appeals process has been completed. Once the appeals process is complete, the settlement distribution process will begin; details of that process are contained in the settlement agreement at http://www.coopersettlement.com/subclass1and2/SettlementAgreement.pdf Note that interest was added to the base settlement amount using an estimated distribution date of **November 1, 2006**.

Q8a: What is happening now, and when will the appeals be done?

A: On August 7, 2006, the 7th Circuit issued a ruling in IBM's favor. The plaintiffs' now have 14 days to request an 'en banc' review by the entire Circuit Court. 9 of the 17 judges would have to agree to review the ruling. There is no deadline for how quickly they have to decide whether or not to do the review. After an 'en banc' review is denied or completed, whichever party loses then has 14 days to request 'cert' by the U.S. Supreme Court. There is also no deadline for how quickly the Supreme Court Justices would have to decide whether or not to hear the case. Once all appeals are exhausted, the settlement money will be distributed to the class members.

Q8b: Is there a possibility IBM could back out of the paying the settlement?
A: Now that the Settlement Agreement has been finalized by a Federal District Court Order, it constitutes a binding contract between IBM and the class members. IBM **has** to pay a minimum of $314,293,000 to the class members at the conclusion of the federal appeals process. The only open question is whether they will have to pay the additional $1.4 billion. There are only two issues being appealed; whether the cash balance formula itself is age discriminatory, and whether the always cash balance conversion factor was age discriminatory. Under current ERISA law, it is likely that IBM will lose the appeal. After the appeals process is concluded, if IBM decides for any reason not to abide by the Settlement Agreement, we can sue them for Breach of Contract. Under Breach of Contract laws, IBM can be forced to pay attorney fees from their operating funds rather than from the pension trust fund. So the chances that we will not get the base amount are slim to note. What is undetermined is exactly how much each class member will get. The amounts paid to all members of all subgroups will change based on whether we win the appeal as well as on exactly what date the process concludes.

Q8c: I am still an IBM employee and hope to remain at IBM until long past the settlement date. Will I get my share of the settlement at the same time as everyone else?
A: Class members who are still employed at IBM when the settlement is distributed will not receive their share of the settlement until they leave IBM. At that point, a separate settlement amount will be added to their base pension accrual.

Q9: Could a new formula result in me getting less than I am getting now as a retiree?

A: No. ERISA says that once you have earned a benefit, it can not be reduced. The worst that can happen is that you will not get any more than you do now.

Q10: IBM has said that this decision might force them to terminate the pension plan. What would happen to my pension then? Will I stop getting my pension check?

A: Your pension check will definitely keep coming. ERISA requires that IBM must meet all of the obligations that the pension plan has to its employees and retirees. IBM would not be allowed to take the money and run. All current retirees would get the same pension that they get now. All current employees would receive their vested benefits, including early retirement subsidies. Employees with less than 5 years of service who are not yet vested would also become vested at that point and would receive a pension benefit. No one would lose anything that they have earned.

IBM did announce plans to freeze the pension plan as of December 31, 2007; after that date, current employees will no long accrue additional benefits, but those employees will be able to make additional contributions to their 401K plans with a higher match from IBM.. This will have no impact on employees who have left as of that date.

Q11: How likely is it that IBM will terminate the pension plan?

A: It is impossible to say for sure what IBM will do. Some people think that IBM and the pension industry in general are making threats of termination to get Congress and the Treasury Department to change the rules governing pension plans so that they are less expensive for the companies. They were making similar threats even before the court's decision in the IBM pension lawsuit, so this is nothing new. Since IBM has always prided itself on the benefits it provides and acknowledges that such benefits are necessary to attract and retain employees, many people think that IBM would be making a big mistake if it terminated the pension plan. On the other hand, if IBM truly believes that a pension plan that does not discriminate against older employees is too expensive, then it might terminate it and replace it with some other type of plan.

A plan freeze is not the same as a plan termination. If IBM takes the additional step of terminating the plan, they would have to purchase annuities for all plan participants that are equivalent to their current promises. Any remaining funds could then be deposited to IBM's operating fund.

Q11a: When IBM announced that employees hired after January 1, 2005 would not receive any pension benefits, didn't they already partially terminate the pension plan?

A: IBM closed the plan to new employees. This did not count as plan termination so it did not trigger any of ERISA's plan termination rules. IBM is still required to keep the plan fully funded for the benefit of retirees and employees hired before January 1, 2005.

Q11b: I've seen press statements claiming IBM's pension plan is underfunded by as much as $7 billion. Should I be concerned?

A: Someone pulled the $7 billion underfunding number from the 2004 annual report by looking at IBM's worldwide pension obligations. IBM's US pension obligations are covered in a separate trust fund which was fully funded as of December 31, 2004. IBM is required to file a detailed report with the US Department of Labor each year by October 31. This report is called a form 5500 and lists all of the investments held in the pension trust fund, as well as all of the current and future obligations that could be charged against that trust fund. All retirees and employees are allowed to request one free copy of that report each year. Requests for the report can be sent to:

IBM Pension Administrator, IBM Employee Services Center, 3808 Six Forks Road, Raleigh, NC 27609.

Be sure to state that you are asking as a plan participant, include your IBM employee number, and tell them what date of the report you are requesting.

Q12: Will IBM cut other benefits, such as retiree health care, to cover the costs of the lawsuit?

A: IBM could use the Cooper v IBM settlement as a pretext for all sorts of future benefit cuts. But don't kid yourself into thinking that those cuts would not have occurred regardless; the only thing we can be sure will result from Cooper v. IBM is that IBM will be a bit more reluctant to cut benefits in illegal ways... Let's not get into the blame game of letting IBM divide us into little subgroups who think IBM's pot is so limited that any restoration one group gets has to be at the expense of the others. It is instructive to note the following quote from the presentation IBM did for investors on September 29, 2004, available at http://www.ibm.com/investor/ircorner/2004/04-09-29-1.phtml

"With this settlement, IBM has reduced its financial risk associated with these claims. In any event, IBM is in very sound financial condition. The Company has strong cash flows from operations, providing a source of funds which has ranged between $8.8 and $14.6 billion per year over the last five years. IBM provides for additional liquidity through several sources - including a sizable cash balance of $8.2 billion at the end of June, and a near debt-free non-financing business, which gives IBM substantial access to the global capital markets, as well as other global funding sources. Therefore, if an adverse final ruling were to happen today, it would not impact IBM's ability to conduct business as usual."

Since IBM is confident the settlement will not impact IBM's ability to conduct business as usual, it should also not impact IBM's ability to honor their long standing promises to IBM employees and retirees with regards to medical coverage! The only way for workers to have a voice in future benefit decisions is through negotiating a union contract.

Q13: I read comments from several pension industry experts, like Watson-Wyatt and organizations called ERIC (ERISA Industry Council) and ABC (American Benefits Council) that said this decision is wrong and will cause companies to end their pension plans. Aren't they believable experts on this sort of thing?

A: Probably not. Companies like Watson-Wyatt, Towers-Perrin and Hewitt Associates are human resource consulting companies. They are paid millions of dollars by large corporations to help them structure their benefit plans. Watson-Wyatt helped IBM design its cash balance plan. Having the court rule it illegal leaves them with lots of egg on their face. They either were incompetent and didn't know that the advice they were giving IBM was bad, or they knew the plan would be illegal but believed that no one would figure it out. Evidence in the IBM lawsuit suggests it was the latter.

ERIC and ABC are lobbying groups that are funded by large companies, including IBM. They spend their efforts lobbying Congress to change the laws in favor of the corporations. Lately, they have been trying to push through changes that would allow companies to use a higher interest rate when calculating whether their pension plans are fully funded. This would allow many plans that are currently under-funded to magically become fully funded. The lobbying focus of these groups is on changing the laws so that companies can lower the amount of money they spend on benefits. This type of thinking could cause pension plans to have less money than they will need to pay all of their retirees in the future.

If you still have any doubts about whose side these people are on, remember that they are the same sort of people who were caught on tape laughing about how happy employees would be with their cash balance plans until they retired and saw how little they would really get.

Q14: If the decision is upheld and IBM has to fix the pension plans, that is likely to cost the company more money. What effect would that have on IBM's finances? Could it bankrupt the company?

A: In the 2002 annual report, IBM stated in Note O of the Financial Report section:

> "In addition, the company is a defendant in a class action challenge to its defined benefit plan. The suit alleges that the current pension plan formulas violate a number of Employee Retirement Income Security Act (ERISA) provisions including the ERISA age discrimination provision.

> "While it is not possible to predict the ultimate outcome of the matters discussed above, given the unique factors and circumstances involved in each matter, historically, the company has been successful in defending itself against claims and suits that have been brought against it, and payments made by the company in such claims and suits have not been material to the company. The company will continue to defend itself vigorously in all such matters and believes that **if it were to incur a loss in any such matter, such loss should not have a material effect on the company's business, financial condition or results of operations."**

Since this information is filed with the Securities and Exchange Commission and its accuracy is sworn to by IBM's CEO, this statement would seem to be more trustworthy than the unsworn statements that other executives have made to the press about IBM not being able to afford a more costly pension plan.

Also note that IBM was able to make a very large contribution to the pension plan in 2002 to bring it up to a fully funded level and it had no noticeable effect on IBM's financial results for the year.

Q15: Several companies, like US Airways and Bethlehem Steel have gone bankrupt and have had their pension plans taken over by the PBGC (Pension Benefit Guarantee Corporation). Could this happen to IBM as a result of the lawsuit?
A: That is highly unlikely. US Airways and Bethlehem Steel were troubled companies for reasons that had little to do with their pension plans. As a result of the poor financial condition of these companies, their pension plans became highly under-funded over time. When the companies finally went bankrupt, they could no longer afford to contribute to their pension plans. Therefore, the PBGC took over the plans to protect the employees and retirees.

Q16: I've read that when the PBGC takes over a plan, retirees will get less money. Is this true?
A: The PBGC covers pensions up to about $44,000 per year at age 65. In most cases, IBM pensions are below this limit. You might have been reading about pilots for US Airways, who had unusually generous pensions that were above this limit. They did see a reduction in their pension when the PBGC took over. The PBGC does not cover the portion of pensions that can be attributed to an early retirement subsidy. This means that retirees who started collecting their pensions before the reached age 65 could see a substantial reduction in their pensions.

Note that the PBGC only takes over a pension plan in cases of distress, such as bankruptcy. IBM is not anywhere near bankruptcy and its pension plan is fully funded. The company is in very good health financially; its cash reserves contain over 4 times the settlement amount. It is very unlikely that the PBGC will take over IBM's plan as a result of the pension lawsuit.

It is important to understand the PBGC only covers age-65 annuities. This means that people who retired before age 65 would see a reduction in their monthly checks, even if they are already over age 65 and even if they do not receive the maximum $44,000 per year.

Q18: IBM says that its executives are covered by the same pension plans as the employees. Why are they against the court's decision? Wouldn't what is good for the employees be good for the executives, too?
A: Yes and no. While it is true that IBM executives are covered by the same pension plan as the employees, they also have other benefit plans that are worth much more. Executives are covered by two other plans that are not available to regular employees.

One plan is the Supplemental Executive Retention Plan (SERP). While a regular employee in the PCF plan has to work 30 years to get a pension that pays about 30% of their salary, SERP pays an executive 66% no

matter how long they have worked. Between the regular plan and the SERP plan, an executive who works for IBM for 30 years will get almost 100% of their salary when they retire! The Cooper Settlement agreement states that an individual's settlement amount will be offset by the amount they earn from the SERP. This means that most executives will not get anything from the Cooper Settlement.

The second plan is the Executive Deferred Compensation Plan (EDCP) and it is like a second TDSP plan. It is not subject to the $12,000 contribution limit that 401(k)s have. An executive can contribute up to 100% of their salary to this plan and invest it in the same funds as the TDSP plan provides.

Finally, the bonuses that top executives receive are tied to the earnings per share that the company reports each year. Keeping the cost of the regular pension plan low allows IBM to show increased earnings per share, increasing the bonuses that the executives get.

So, when you look at the big picture from the executives' point of view, their share of the settlement would have been peanuts compared to the rest of their compensation.

Q19: IBM says that other courts have ruled that cash balance plans are legal and therefore the judge in the IBM case is wrong. Is this true?
A: There have been several other lawsuits concerning cash balance plans, but none of them were over the same issues raised in the IBM suit. So even though other cases have been decided in favor of the employer and cash balance plans, it doesn't mean that the judge in the IBM case is wrong. Also, the day after the IBM case was decided, a federal appeals court upheld the district court's ruling in favor of Xerox employees over their cash balance plan.

Q20: What will happen when IBM appeals the case? IBM says they are confident they will win. Is that likely?
A: No one can say for sure. IBM also said they were confident they would win in the first round, and they turned out to be wrong. The appeals court that will be hearing the IBM case is the same one that decided in favor of Xerox employees in their cash balance case, so that could be an advantage for the employees. No matter who wins the appeal, the other side will have the option of appealing that decision to the Supreme Court.

Q20a: Could Congress still intervene and legalize IBM's actions?
A: IBM and other industry lobbyists have been spending a lot of time and money trying to convince Congress to do just that. While Congress generally changes rules prospectively (affecting future actions) it is not unheard of for them to issue retroactive legislation. **The Pension Protection Act of 2006 did, in fact, legalize cash balance plans, but only prospectively. Even if Congress goes back and updates the legislation to apply retroactively, the bill has some anti-wearaway provisions that IBM's conversion did not comply with. Additional legislation is possible.** Please watch either the IBMPension Yahoo site or the Alliance@IBM site for future alerts about Congressional activity; if Congress resumes its focus on pension legislation, please take the time to call your Washington representative and senators!.

Q21: Why are the Plaintiffs' attorneys for this lawsuit receiving so much money?
A: If there had not been a settlement or a judgment against IBM, the plaintiffs' attorneys would have gotten nothing. 3 law firms have dedicated thousands of hours over the last 5 1/2 years to this lawsuit, and will have to dedicate thousands more in order to win the appeal. Additionally, they have hired expert actuaries, staff, researchers, law clerks, and legal secretaries and paid court fees for dozens of motions and filings. Without that effort, the plaintiffs would only be getting what IBM decided to cut their pensions to! The fee requested in the settlement agreement is lower than that recommended by the standard bar.

Q21a: Why doesn't IBM have to pay the Plaintiffs' attorneys, instead of deducting the fees from the

settlement?

A: All of the settlement money comes from the defendant (IBM). Some of it gets paid out to the plaintiffs, and some of it gets paid to the plaintiffs' attorneys. It is all reported as 'settlement money'. While it feels like the plaintiffs are losing part of their fees to pay the attorneys, IBM is actually making the payment.

Q22: I have more questions about the settlement. Who can I call?

A: For general information about the settlement, call 1-866-716-4185 Monday through Friday (excluding holidays recognized by the New York Stock Exchange) between 9:00 a.m. and 6:00 p.m., Eastern time. If you would just like to discuss the settlement, or see what others are saying about it, join us on the IBMPension Yahoo group at http://finance.groups.yahoo.com/group/ibmpension/ If you have a question that should be added to this FAQ file, send it to Janet Krueger at janet.krueger@prodigy.net, or enter it on the Alliance@IBM web site at http://www.allianceibm.org/contact.html

Cash Balance Myths

- There is a document named CB-Myths-Facts 8-16-05.doc in the Files area of the IBMPension Yahoo board... It is another useful resource for fighting the legalization of cash balance plans. Feel free to extract bits and pieces to use in letters to the editor of your local paper. Or hand deliver a copy to the local office of your Representative and Senators whenever they are in your home state campaigning or hosting town hall meetings. Share it with your friends and colleagues... Below are some excerpts; the full document includes some good charts and footnotes that don't paste well into plain text and is available at: An Adobe Acrobat version from www.ibmemployee.com [PDF--32 KB].
  MYTH # 1: EMPLOYERS PROTECT OLDER WORKERS FROM THE ADVERSE IMPACTS OF CONVERSIONS TO CASH BALANCE PLANS.
  FACT: While some employers have protected their employees from some of the worst adverse impacts of a conversion, even cash balance supporters have acknowledged that "it is not unusual in some cash balance conversions for the 40 to 50 year old employee to lose one-third to as much as one-half of his expected pension." A study of actual cash balance conversions conducted by the actuarial firm Towers & Perrin determined that in over one-third of the conversions the employers provided no transition protections whatsoever.
  In 2002, a General Accounting Office (GAO) report documented the dramatic reduction in benefits for older workers: "a 45-year old worker at the time of conversion receives an annual annuity of about $18,500 at retirement from the cash balance plan instead of the $39,800 annuity the worker could have received from the defined benefit plan with a final average pay formula. Likewise, a worker 50 years old at conversion receives an annual annuity of about $17,800 from the cash balance plan rather than the $35,100 annuity the final average pay formula would have provided."---- 2002 GAO Report
  To make matters worse, some employers structure their conversions so that older employees often work for months or years without accruing additional pension benefits while similarly situated younger employees continue to accrue benefits. During a typical conversion, many older workers experience what is referred to as "wearaway," which means that they continue working without earning additional pension benefits until the amount in their cash balance plan reaches the amount they had already earned under their traditional defined benefit plan. The GAO found that the amount of wearaway any employee experiences is tied directly to age. Older workers suffer the longest periods of wearaway, which may last many years. For example, a typical conversion scenario "generated a 2-year lump sum wearaway for a 35-year old worker, a 4-year wearaway for a 45-year old worker, and an 11-year wearaway for a 55-year old worker at conversion." In such an instance, the 55-year old would earn no additional pension benefit before reaching normal retirement age, in effect working the last decade for no corresponding retirement benefit.
  MYTH #2: EMPLOYERS DID NOT REALIZE WHEN THEY CONVERTED TO CASH BALANCE PLANS THAT THE PLANS MIGHT VIOLATE AGE DISCRIMINATION LAWS.
  FACT: From the earliest days of cash balance plans, the employer community recognized the very serious legal issues posed by the age discriminatory aspects of hybrid plans. In fact, as early as the mid-1980s benefits consultants were "writing articles . . . panning cash balance plans, that they are a flash in the pan, that they are a gimmick, that they can't satisfy any of the rules."
  Significantly, following an early meeting of what later became known as the Cash Balance

Practitioner's Group in 1990, attendees—which included representatives from four large pension consulting firms and two major law firms--circulated a memorandum acknowledging that "it is well known that a [cash balance] plan is at risk under a literal reading of" the age discrimination laws. The Working Group Report noted that a "number of practitioners believe that there is a very significant risk that the [Internal Revenue] Service will ultimately take the view that it cannot avoid a literal interpretation of the statute." The group concluded that in the absence of a "legislative fix," the "potential employer exposure is extremely high – potentially increasing the plan liabilities four or five times."

The concerns of the Working Group Report were subsequently confirmed in an Internal Revenue Service document indicating that Onan Corporation's cash balance plan was not in legal compliance: "This plan does not satisfy the clear and straightforward requirement of section 411(b)(1)(H)(i) of the Code because the plan's benefit accrual rate decreases as a participant attains each additional year of age."

MYTH # 3: AUTHORIZING CASH BALANCE PLANS WON'T INCREASE THE PBGC'S LIABILITY EXPOSURE.

FACT: Authorizing cash balance plans will create significant additional liability exposure for the PBGC at the very time Congress is acting to reduce that exposure. It is indeed ironic that cash balance advocates would suggest that provisions encouraging the use of cash balance plans would be added to legislation designed to reduce PBGC liability exposure and suggestions that cash balances plans are "like" 401(k) plans or defined contribution plans are grossly misleading as neither of those plans generate PBGC exposure. Cash balance plans generate significant additional liability exposure to the PBGC because the "leverage" inherent in a cash balance plan creates funding issues should all benefits come due immediately as would happen in the event of a bankruptcy. This is because even though cash balance plans promise to pay participants a benefit at any point in time which is equal to the employee's account balance, the plans are funded by employers on the basis of "actuarial liability." The result is that, even when the plan is considered "fully funded" for PBGC purposes, the actuarial liability used for funding purposes will often be as little as 70% of the plan's current account balance liability thereby creating additional potential liability exposure to the PBGC.

In addition to increasing the liability exposure of the PBGC, authorizing cash balance plans leaves a myriad of issues unresolved in terms of what benefits the PBGC will provide to employees covered by cash balance plans in the event of bankruptcy. Employees should not be left to guess what their benefits would be in the event their company fails and they are forced to look to the PBGC to provide their hard earned retirement benefits.

MYTH #4: EMPLOYERS NEED CASH BALANCE PLANS TO APPEAL TO TODAY'S MORE MOBILE WORKFORCE.

FACT: It is a total fiction that today's work force is more mobile. As Eric Lofgren, an actuary at Watson Wyatt, explained to the Society of Actuaries: "[B]aby boomers have had the same level of mobility as their parents and grandparents when you look at people at the same age... So far the boomers have been staying on the job longer, actually, than their parents and their grandparents." Mr. Lofgren's comments are consistent with a study conducted in 1998 by his firm which concluded that this phenomenon applied as well to younger workers, age 25 to 34, who in 1996 spent a considerably longer time, on average, with one employer than did workers in that same age group in the 1950's. More recently, the authors in the largest research study to date of conversions to cash balance plans concluded that they had "found no support for claims that CB conversions are a response to labor markets with more mobile employees."

MYTH #5: BY CONVERTING TO CASH BALANCE PLANS EMPLOYERS MAKE PENSIONS EASIER FOR THEIR EMPLOYEES TO UNDERSTAND AND APPRECIATE.

FACT: More frequently, employers use a conversion to cash balance plans to hide benefit cutbacks. In 1986, shortly after the adoption of the first cash balance plan, Eric Lofgren, an actuary with Watson Wyatt, outlined for a conference of actuaries that a primary objective of conversions to a cash balance plan was to "to camouflage a benefit cutback, or remove early retirement subsidies." Mr Lofgren even noted how a company converting to a cash balance plan could use two very different announcements for the same new cash balance plan. The upbeat version most commonly used to announce a conversion optimistically touts the purported virtues of a cash balance plan, describing it as "an exciting, modern, flexible new plan design with the advantages of both defined benefit and defined contribution." He also suggested what he described as an equally accurate, but more candid, definition:

"Dear Employee: We've got for you a cash balance pension plan. It's our way to disguise the

cutbacks in your benefits. First we're going to change it to career average. We'll express the benefits as lump sum so we can highlight the use of the CPI, a sub-market interest rate. What money is left in the plan will be directed towards employees who leave after just a few years. Just to make sure, we'll reduce early retirement subsidies."

This ability to use conversions to mask cutbacks was still being touted in 1998, when an actuary with PricewaterhouseCoopers noted to the annual meeting of the Society of Actuaries that "converting to a cash balance plan does have an advantage of it masks a lot of the changes."

As a practical matter, conversions to cash balance plans also have been used to achieve artificial accounting gains. Existing accounting rules have allowed publicly held corporations to use cash balance conversions to generate "pension income." The company's increased bottom line presents a more attractive financial picture to the investing public. As Mark Beilke, chairman of the Academy of Actuaries Pension Accounting Committee, recently observed, financial statement "gains [from cash balance conversions are] mostly derived from 'accounting gimmicks.'"

Similarly, William Sweetnam, then a member of the Senate Finance Committee staff and later a Treasury Department Tax Benefits Counsel, acknowledged in 1998 that the "primary reason cash balance plans are financially advantageous is the accounting treatment of cash balance plans versus final average earnings plans . . . So the reason that cash balance plans are better is that they make the corporations [sic] financial statement look better since pension liabilities are less."

Warren Buffet has described the practice by some companies of creating "phantom" pension income to inflate reported income as a misrepresentation that "dwarfs the lies of Enron and WorldCom."

MYTH #6: EMPLOYERS DO NOT ADOPT CASH BALANCE PLANS TO REDUCE THEIR COSTS AT THE EXPENSE OF OLDER WORKERS.

FACT: Employers repeatedly have converted to cash balance plans as a way to reduce their costs at the expense of older workers' retirement benefits. For example, Chief Judge Murphy held in IBM v. Cooper that IBM's actuaries projected that IBM's 1999 conversion to a cash balance plan "would produce annual savings of almost $500 million by 2009." Consistent with the voluminous anecdotal evidence, a survey of cash balance plan sponsors found that 56% of firms expected the long-term cost of their defined benefit plans to decrease after conversion. Similarly, the largest study of cash balance conversions documented that "firms with employees who are closer to retirement are more likely to convert to the CB format." It also concluded that "the workplace of firms that undertake conversion to CB plans has had a longer tenure with the firm, on average" lending "credence to the claims of CB conversion opponents that firms benefit from these conversions at the expense of older workers."

MYTH # 7: IF LEGISLATION ALLOWING CONVERSIONS TO CASH BALANCE PLANS IS NOT RETROACTIVE SOME 1,600 LARGE PENSION PLANS WITH HYBRID PLANS ARE LIKELY TO EITHER FREEZE OR TERMINATE THEIR PLANS.

FACT: It is first important to note that even if you define large employers as those as few as 1,000 employees, according to the PBGC there are only approximately 625 such employers with hybrid pension plans.

Putting aside the question of how many large employers have hybrid plans, it is clear that some employers and certain employer groups, such as ERIC, have threatened and will continue to threaten massive terminations in an attempt to scare Congress into giving them immunity for their prior illegal age discrimination. But whatever exposure they have today for their prior age discrimination, they will have the same exposure following the adoption of legislation without regard to whether they terminate or freeze their plan. In other words, prospective cash balance legislation would stop the growth of their future exposure but their existing exposure remains the same without regard to whether they continue, freeze or terminate their plan. In short, while it is a threat that the employers have used in the past and will undoubtedly continue to use, it is a red herring.