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Judge Rules IBM Must Make Back Payments in Pension Case

By ARDEN DALE
DOW JONES NEWSWIRES

A federal judge has ruled in a landmark pension lawsuit that **International Business Machines Corp.** must make back payments to workers covered by a 1999 retirement plan that didn't give longer-service workers a fair share of benefits.

IBM, of Armonk, NY, says it shouldn't have to make the payments, which it estimates could amount to \$6 billion in retroactive benefits. The company on Wednesday reiterated that the amount it would have to pay under the decision hasn't yet been determined.

"The \$6 billion is neither a number from the judge or IBM," said IBM spokeswoman Kendra Collins. "It's a plaintiff's estimate of what they believe the relief should be."

IBM calculated the figure based on a formula put forward by plaintiffs in the case.

"We continue to disagree with the Court's ruling on liability, and we disagree with the Court's most recent ruling[s]," said Ms. Collins.

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Judge G. Patrick Murphy of the U.S. District Court in the Southern District ruled last week that IBM must pay the back benefits, but didn't specify an amount. The money would go to workers covered by a cash-balance pension plan that Judge Murphy ruled in July violated the age discrimination provisions of federal pension law.

At the time of that ruling, the judge directed parties in the case to propose damages. Last October,

plaintiffs in the case told the court that they wanted IBM to recalculate pension benefits accrued under the plan with a different formula than was initially used. IBM countered in December with a filing that contended it didn't owe any retroactive benefits.

Judge Murphy's action last week was the latest development in a case that has been seen as a testing ground for cash-balance pension plans, hybrid retirement vehicles that combine elements of traditional plans with 401(k)s. Controversy has swirled around cash-balance plans, with critics saying that longer-service workers often lose benefits when companies convert to the vehicles.

Saying that the IBM workers are "entitled to retroactive relief," Judge Murphy also criticized IBM's legal argument that the company shouldn't be liable for the back benefits.

IBM based that argument on *City of Los Angeles, Department of Water and Power v. Manhart*, a 1978 pension case that involved the issue of age discrimination. IBM argued that, like the city of Los Angeles, it was blind-sided by what it called a drastic change in the law. In the case of IBM, the drastic change was Judge Murphy's contention that the company's plan had violated federal law. IBM, "like hundreds of other companies, reasonably assumed" that its pension plan was legal, according to IBM spokeswoman Ms. Collins.

"There has not been a change in the law," Judge Murphy said. "All that has changed is IBM's clever, but ineffectual, response to law that it finds too restrictive for its business model."

Kathi Cooper, an IBM employee who is a lead plaintiff in the suit, said she wasn't surprised by Judge Murphy's ruling.

"I would expect no less," Ms. Cooper said in an interview. "IBM reached beyond limits to try to pull Manhart over on Murphy, and he caught it."

Cash-balance proponents who criticized Judge Murphy's decision last July again voiced warnings about a potentially dire impact from the judge's more recent ruling. The Erisa Industry Committee, a lobbying group that represents big employers, said the decision "may result in substantial litigation and liability for hundreds of companies that have transitioned from traditional DB plans to cash balance, pension equity and other hybrid plans."

Employers have embraced cash-balance pensions, but a growing controversy over age-discrimination issues has clouded their future. Though the debate dates back years, and even prompted the Internal Revenue Service to stop approving new cash-balance plans in 1999, companies have maintained and adopted the pensions nonetheless.

The ruling by Murphy last July deepened the chilling effect. Companies that had been planning to adopt or expand cash-balance pensions put those plans on hold.

The U.S. Treasury Department earlier this month proposed rules as part of the Bush budget package aimed at ending disputes over whether cash-balance pensions violate age-discrimination rules. But observers said at the time that the Treasury proposal isn't like to resolve the disputes any time soon. In

fact, disagreements over aspects of the proposal immediately arose between actuaries, employers and employee advocates.

Accounting rulemakers have also gotten into the act, with a recent project to revamp the way companies measure the amount of money they must put away to cover cash-balance benefits. Last week, the Financial Accounting Standards Board, a private-sector rulemaker in Norwalk, Conn., decided on a new definition for cash-balance plans, as part of that wider project.

IBM on Wednesday reiterated its intention to appeal Murphy's decisions.

"We stand by our defense and continue to believe that our pension is legal and sound and that we will prevail on appeal once the remedies phase in the District Court is complete."

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