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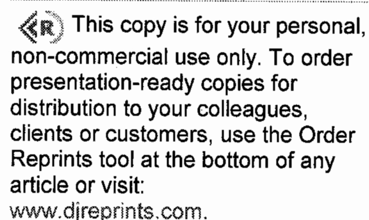
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Cigna Loses in Case on Change In an Older Employee's Pension

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A federal appeals court ruled Wednesday that **Cigna** Corp. had wrongly forced an older employee to switch to a cash-balance pension plan, a move that reduced his pension significantly.

The court, reversing a lower-court decision in favor of Cigna, ruled that the company had adopted a rule that retroactively prevented certain long-service employees from qualifying for a "grandfather" clause, which would have allowed them to remain under the older, more-generous pension formula.

"This case is a by-product of corporate America's recent effort to curb costs by ... scaling back the benefits provided under pension plans," wrote Circuit Judge Max Rosenn in the decision by the three-judge panel in the Third Circuit in Philadelphia. The ruling doesn't involve age discrimination, which is a central issue in several suits regarding cash-balance pensions.

"We believe [the appeals-court ruling] really impacts only the one plaintiff," said Joseph Mondy, Cigna spokesman, though he adds that the company is reviewing whether other people would be affected by the ruling.

The plaintiff, John Depenbrock, began working for Cigna in 1983, when it had a traditional pension, which calculates benefits by multiplying years of service and average salary.

In 1998, the company converted the pension to a cash-balance plan, which freezes the pension growth under the old pension, so that additional years on the job don't boost the pension. Instead, the pension grows only with annual "credits" based on pay, plus interest.

When longer-service employees are switched to a cash-balance plan, their expected pensions are typically reduced by 20% or more. To protect older workers, some companies adopt "grandfather" clauses, allowing older workers to stay in the prior pension and earn higher benefits.

Mr. Depenbrock would have qualified for the grandfather provision, but he resigned from Cigna Jan. 2, 1998. He was rehired by Cigna Nov. 30, 1998.

Twenty-two days after Mr. Depenbrock returned to work, Cigna adopted a "rehire rule," which stated that long-term employees who left Cigna but were re-employed Jan. 1, 1998, or later would

immediately be transferred into the cash-balance plan.

This rule prevented Mr. Depenbrock from qualifying to remain under the prior pension. The court decision notes that one of Cigna's actuaries estimated that transferring Mr. Depenbrock from the prior pension plan to the cash-balance plan would result in his losing $800,000 in benefits, assuming he continued to work at Cigna until age 55.

Cigna argued that even though it hadn't formally implemented the rehire rule until Dec. 21, 1998, it had planned to adopt the rehire rule, and had informed employees about it the prior year. As a result, the company said, the rule was effective Jan. 1, 1998, the day before Mr. Depenbrock resigned.

Mr. Depenbrock, who said he was never informed of the company's plan to implement the rehire rule, sued Dec. 11, 2001, and sought to compel Cigna to produce documents regarding its decisions with respect to the cash-balance plan.

Cigna argued that because it was a fiduciary, the documents were protected by attorney-client privilege. The lower court subsequently denied Mr. Depenbrock's motion to compel discovery of the documents, "without offering any explanation for its finding," the appeals-court decision said, and granted judgment in favor of Cigna on July 31, 2003.

The appeals court criticized the lower court's finding. It noted that while the law allows companies to cut benefits going forward, it doesn't allow companies to cut benefits retroactively. And it concluded that the "rehire rule" was effective Dec. 21, 1998.

Meanwhile, Cigna is defending a pending class-action suit alleging that its cash-balance plan violated age-discrimination and other provisions.

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