

cases primarily relied upon by defendants in support of their motion to dismiss, Andes v. Ford Motor Company, 70 F.3d 1332 (D.C. Cir. 1995), where the court stated (at 1337-38):

This is not to say that § 510 can never be implicated in a company's basic organizational decision. If, for example, a plaintiff produced evidence that a particular company determined that 20 of its employees were soon to become eligible for a rich benefits package and noted that 19 of those employees were conveniently located in one subdivision with perhaps only a few other employees – a company shut down of that operation might only be an indirect method of discharging those high benefit employees. In such a situation, the organization's decision merely masks a determination to interfere with the employees' attainment of benefit plan rights. Accordingly, we think that as applied to sale or closure of an entire unit, the plaintiffs can satisfy § 510 only by showing that some ERISA-related characteristics special to the unit (such as its having a clearly above-average proportion of employees with pension rights about to vest) is essential to the firm's selecting the unit for closure or sale."

As this court noted in the Order, "[t]his is precisely what plaintiffs have alleged in the instant case: that HPD was the most senior division with 70% of its employees age 40 or older.

The complaint specifically alleges that Abbott decided to spin-off HPD to prevent the abnormally high number of employees from becoming eligible for retirement benefits by terminating them en masse. In essence plaintiffs allege that the spin-off was just an indirect method of discharging the HPD high benefit employees. Thus, under the Andes decision, plaintiffs have stated a claim under § 510."

The court fully understands that plaintiffs' complaint is not based solely on an amendment to the plan. Any language in the Order should not be taken out of context to indicate otherwise.

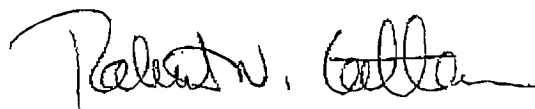
Defendants, in their motion to reconsider, now place a greater emphasis on the decision in Blaw Knox Retirement Income Plan v. White Consolidated Industries, Inc., 998 F.2d 1185 (3rd

Cir. 1993). The court considered that case in its decision to deny the motions to dismiss (see Order at fn 2), and need not revisit the issue at this time.

Finally, the court denies defendants' request to certify this matter for an interlocutory appeal under 28 U.S.C. § 1292. The court of appeals wisely discourages piecemeal appellate practice, and a district court's disagreement with a defendant regarding a motion to dismiss is not extraordinary enough to violate this principle.

For these reasons, defendants' motions to reconsider or to certify an interlocutory appeal are denied.

ENTER: June 30, 2005



Robert W. Gettleman
United States District Judge

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