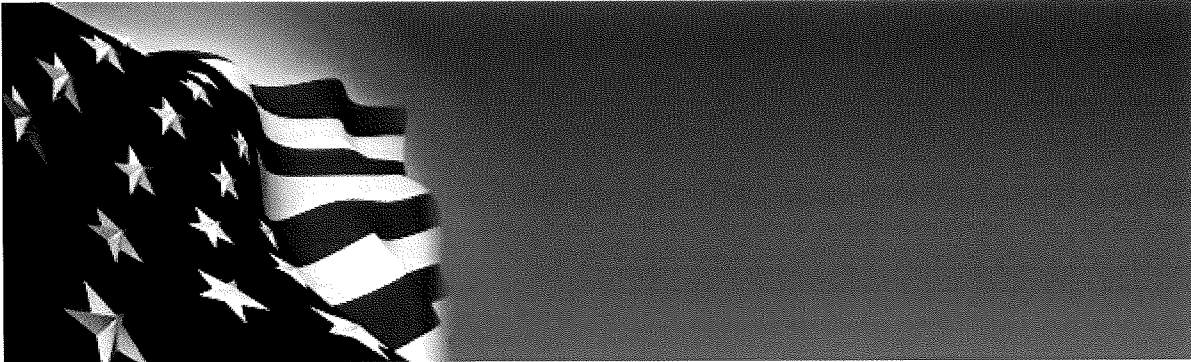


Is this email not displaying correctly?  
[View it in your browser.](#)



# CYPEN & CYPEN NEWSLETTER for OCTOBER 16, 2014

Copyright, 1996-2014, all rights reserved

Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

## **1. NINTH CIRCUIT HOLDS THAT ERISA ANTI-CUTBACK RULE NOT VIOLATING BY ELIMINATION OF TRANSFER OPTION:**

Affirming the district court's dismissal of an action under the Employee Retirement Income Security Act, the court held that DHL's decision to eliminate Andersen's right to transfer his account balances from a defined contribution plan to a defined benefit plan did not violate ERISA's anti-cutback rule. The anti-cutback rule prohibits any amendment of an employee benefits plan that would reduce a participant's accrued benefit. Anderson was a former employee of Airborne Express, who participated in both Airborne's defined benefit pension plan and its defined contribution plan. The defined benefit pension plan was a floor-offset plan. In other words, its benefits were calculated on the basis of a participant's final average compensation and years of service, with an offset for any account balances in the defined contribution plan. Before the challenged amendment, participants could transfer the funds from their defined contribution plan accounts to the defined benefit plan's general pool before the

participant's benefits were calculated. DHL acquired Airborne, and merged the two companies' retirement plans, amending the defined benefit plan to eliminate participants' right to transfer funds into that plan. The appellate court agreed with the district court and the First Circuit that the amendment did not violate the anti-cutback rule, but it took a different path in reaching that conclusion. The court deferred to the *amicus* brief of the government insofar as it interpreted Treasury Regulation A-2, which provides that, without violating the anti-cutback rule, a plan may be amended to eliminate provisions permitting transfer of benefits between and among defined contribution plans and defined benefit plans. The court also gave some weight to the government's statutory interpretation. The court held that the anti-cutback rule was not violated because the plan amendment did not reduce a participant's accrued benefit in either the defined contribution plan or the defined benefit plan. The court declined to decide whether the elimination of the transfer option was a cutback because the transfer option was an optional form of benefit under the anti-cutback rule. The court concluded that if the transfer option were an optional form of benefit, then it would fall within the statutory exception. *Andersen v. DHL Retirement Pension Plan*, Case No. 12-36051 (U.S. 9<sup>th</sup> Cir. September 15, 2014).

**2. REPORT WARNS AGAINST MOVING N.J. WORKERS TO DC PLAN:** A new report claims closing New Jersey's defined benefit retirement plan for public employees and offering a defined contribution plan instead will be costly and would not solve the funding problem. In "How to Dig an Even Deeper Pension Hole," published by the New Jersey Policy Perspective and reviewed by plansponsor.com, the author says phasing out of the state's traditional pension plans and replacing them with 401(k)-type accounts would burden taxpayers with transition costs currently estimated at \$42 billion as well as fail to reduce the state's unfunded pension liability. In addition, moving employees from defined benefit to defined contribution plans has failed in three states that have tried it and was rejected by 13 other states after research concluded that the change would hurt taxpayers and pension recipients. When will the politicians ever learn?

**3. STRICT DEFINITION APPLIED FOR PENSION PURPOSES:** The Ventura County Board of Supervisors has unanimously endorsed a tight definition of the types of pay that should count in calculating new

employees' pensions. According to the Ventura County (California) *Star*, a 2012 California law designed to curb abuses provided only the base or normal rate of pay should count in pensionable compensation. However, the law did not clearly define what those pay categories meant, leaving room for a dispute between Ventura County government managers and the trustees administering the pension system. The managers' attorney said it was base pay with limited exceptions for employees hired starting in 2013. On the other hand, the pension board administering the \$3.6 billion fund said supplements for service and skills should be added. The dispute has been simmering for almost two years, and could have lead to a court battle. The vote by supervisors marked the first time the elected body had taken a formal position in support of base pay. The chairman of the pension board said the significance of the supervisors' vote will not be known until trustees obtain an independent legal opinion. (The trustees decided to hire a San Francisco law firm to advise them on the definition in the law, and whether the trustees had the power to pick pay supplements to be included.) Stay tuned for the final outcome.

#### **4. FAST FACTS AND FIGURES ABOUT SOCIAL SECURITY: Did you know that:**

- 63.2 million people received benefits from programs administered by the Social Security Administration in 2013.
- 5.5 million people were newly awarded Social Security benefits in 2013.
- 65% of aged beneficiaries received at least half of their income from Social Security in 2012.
- 55% of adult Social Security beneficiaries in 2013 were women.
- 53.5 was the average age of disabled-worker beneficiaries in 2013.
- 86% of Supplemental Security Income recipients received payments because of disability or blindness in 2013.

In the long run, Social Security is not sustainable at current benefit and tax rates. In 2010, the program paid more in benefits than expenses it had collected in taxes and other noninterest income, and the 2014 Trustees report projects this pattern to continue for the next 75 years (See C & C Newsletter for August 7, 2014, Item 3 and C & C Newsletter for July 31, 2014, Item 7). The trustees estimate at the

combined OASI and DI trust fund reserves will be depleted by 2033. At that point, payroll taxes and other income will flow into the fund but will be sufficient to pay only about 75% of program costs. As reported in the 2014 trustees report, the projected shortfall over the next 15 years is 2.88% of taxable payroll. So, what is the problem? SSA Publication No. 13-11785 (September 2014).

**5. HOW TO RETIRE HAPPY IN NEW JERSEY:** Through Plus Media Solutions, the State of New Jersey issued the following news release:

Some of us embrace it, others dread its approach, but few escape retirement. No matter how you feel about it, you need to take some steps to make sure you have the mental and monetary resources to make this next phase of life a happy one. Here are six key questions you need to ask yourself about retirement, as well as some practical tips for improving your financial security:

- Am I ready to retire? Many people who are eligible for retirement prefer to keep working. Sometimes it is because they need the money or want to keep their health insurance, but often it is because they like their jobs and the people they work with.
- What will I do when I retire? Retirement can last a long time. At age 65, men are expected to live for another 17.7 years and women for another 20.3 years. If you retire at 65, you could spend many years in retirement - too long to be a couch potato. So, before you retire, decide what you want to do during the years ahead. Pick something that matches your interests, talents and experience.
- How will retirement change my life? You will discover that retirement is the doorway to a new stage of your life, one where you control your time and your activities. Want to go to an afternoon movie in the middle of the week? You can do it! Want to spend a couple of days watching the annual golf tournament? You have got the time!
- What role will my children play? There is a good chance your children will become an ever-increasing part of your life. As you age, your kids may become your lifeline to doctors and hospitals and many other services. So when you plan your retirement, try to reside reasonably close to where they live.
- How do I cope with the downside of retirement? Happiness is

rarely forever, illness and death are part of life's journey. Be comforted by memories of the happiness that you had enjoyed for many years after you retired.

- Can I afford to retire? Add up your estimated monthly income from any pensions, Social Security, and 401 (k) and IRA savings and investments. Then add up your estimated monthly expenses. If your expenses are greater than your income, you may have to work for a few more years.

[Editor's note: as per the next item, do not count on any help from the state of New Jersey.]

**6. NEW JERSEY PANEL SAYS PENSION SYSTEM IN DIRE CONDITION:** The Philadelphia *Inquirer* reports that a Governor Christie-named panel pronounced that the state's public employees' pension plans are in dire condition and likely to worsen if the state does not act. The combined unfunded liability of the state's obligations -the gap between what the state owes employees and the assets available to pay them -- represents a \$90 billion drain on future budgets. For the fiscal year ended June 30, the state's \$696 million pension contribution accounted for more than 10% of New Jersey's \$33 billion budget. Had the state met its full obligations, the costs would have consumed around 20% of the budget.

**7. THREE QUESTIONS TO ASK BEFORE CHOOSING A RETIREMENT PORTFOLIO:** *U.S. News & World Report* sets the stage: the big day has finally arrived. No more waking up early to battle your commute, keeping up with endless emails, fighting to make it to the top of the corporate ladder or leaving the office at 7 p.m. You made it to retirement with a sense of security that your assets will provide you enough income for the rest of your life. (Not so fast, Golf Course Breath.) The only barrier to cruises and endless tee times is figuring out which assets will be distributed first and setting reminders to distribute those assets annually. The following three questions will give you the answers to get the most from your retirement distributions:

- **How much do you spend?** The word "budget" usually recalls the days of your ramen noodles and peanut butter and jelly sandwiches. Since then, many people have not had a strict budget to guide their spending, because most of us have learned

to live without one. Freedom from work may give us time to celebrate, but outlining a budget is crucial to success in retirement. You may have been able to overcome income shortfalls during your career, by postponing a purchase or opting for a cheaper version of the product. But when your retirement income is driven by investable assets, you better have a good understanding of what your expenses are and where they can be reduced, if necessary. Financial planners recommend that clients provide an average of what they have spent per month over the past two years. Your expenses are one of the biggest areas you control in retirement, and if you do not have a solid understanding of what they are, the value of a financial plan could be compromised. Without knowing how much income you need to withdraw, you cannot really know how much you need to make on your investments.

- **What is your required rate of return?** Knowing how much your portfolio needs to make is extremely important. For instance, if you have a portfolio value of \$1 million and you require distributions of \$40,000 to live on, with inflation and taxes you would likely need 6% to 8%. Most often, however, clients take on excessive risk because the majority of their assets are invested in equities and their "conservative" assets are in bonds (which are in a bubble.) As a result, there is too much risk throughout all of their investments, with little downside protection in the event of a market downturn or a prolonged recovery. Your investment allocation must take into consideration many factors, such as time and risk tolerance, but knowing what your required rate of return is what will also guide what your risk tolerance should be. More importantly, it can dictate what your investment allocation should be.
- **When do you need the money?** Investments can be categorized into different time horizons based on when the money is needed and on economic conditions. For instance, some clients like to have one year's worth of income in liquid assets. Most often, it is held in cash or money market funds. They get peace of mind that they will be able to meet their needs independent of how the market performs. Many experts think that six months' expenses held in cash is fine, but the point is retirees should not place money that will be needed in the next six months in a risky investment, such as a small-cap tech company.

Instead, your investments can be segregated into different asset classes based on different time horizons. This composition will be entirely based on your financial plan, but knowing that your investment strategy mirrors your retirement needs will bring you comfort.

**8. FLORIDA DIVISION OF RETIREMENT ANNUAL POLICE OFFICERS' AND FIREFIGHTERS' PENSION TRUSTEES' FALL CONFERENCE:** The 44rd Annual Police Officers' and Firefighters' Pension Trustees Fall Conference will take place on November 17-19, 2014. You may access information and updates about the Fall Conference, including area maps, a copy of the program when completed, and links to register with at the B Resort and Spa in Orlando. Please continue to check the FRS website for updates regarding the program at [www.myflorida.com/frs/mpf](http://www.myflorida.com/frs/mpf). All police officer and firefighter plan participants, board of trustee members, plan sponsors, and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this unique, insightful and informative program.

**9. STUFF YOU DID NOT KNOW:** If a statue in the park of a person on a horse has both front legs in the air, the person died in battle. If the horse has one front leg in the air, the person died because of wounds received in battle. If the horse has all four legs on the ground, the person died of natural causes.

**10. TODAY IN HISTORY:** October 16 was a good day for Supreme Court Justices in 1956, William J. Brennan Jr. became a member of the Supreme Court. In 1962, Bryon R. White was appointed to the Supreme Court.

**11. KEEP THOSE CARDS AND LETTERS COMING:** Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

**12. PLEASE SHARE OUR NEWSLETTER:** Our newsletter readership is not limited to the number of people who choose to enter

a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

\* \* \* \* \*

**777 Arthur Godfrey Road  
Miami Beach, Florida 33140  
Telephone/Miami-Dade: 305.532.3200  
Telephone/Broward: 954.522.3200  
Telephone/Toll Free: 800.332.3200  
Telecopier: 305.535.0050  
[www.cypen.com](http://www.cypen.com)  
[info@cypen.com](mailto:info@cypen.com)**

\* \* \* \* \*

[unsubscribe from this list](#) | [update subscription preferences](#)

This email was sent to [jmorris@city-ftpierce.com](mailto:jmorris@city-ftpierce.com)  
[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)  
Cypen & Cypen · 777 Arthur Godfrey Road · Suite 320 · Miami Beach, FL 33140 · USA

MailChimp