



AMERICAN BENEFITS COUNCIL

April 22, 2008

Dear Senator:

I am writing on behalf of the American Benefits Council (the Council) to express concern regarding S. 1843, which would overrule the U.S. Supreme Court's decision in *Ledbetter v. Goodyear Tire and Rubber Co.*

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans. The Council's area of expertise is in the employee benefit area and, accordingly, we limit this letter to the possible effect of the proposed legislation on benefit programs.

The proposed legislation could raise serious retirement plan issues that we believe are unresolved in the current draft S. 1843. Under the bill, each payment of compensation or benefits that is lower as a result of past discrimination is deemed a new act of discrimination and thus an employee could file a charge or sue many years after the original action giving rise to the claim actually occurred.

We appreciate that the legislation includes a finding that the bill is not intended to change the law in effect as of May 28, 2007, concerning when pension benefits are considered paid. As we understand it, this provision in Section 2 of the bill was intended to clarify that, for purposes of the legislation, pension payments are treated as paid when at the time an employee retires, rather than upon the issuance of each annuity check. Such a clarification would help address the concern that an individual who has been retired for many years could file a charge or sue based on acts that occurred during his or her active service. However, in order to be effective, we believe the finding in Section 2 must be reflected in the actual bill language. As currently drafted, the finding and bill language appear to conflict.

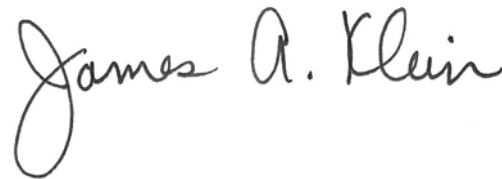
Moreover, the underlying significant concern as to how a judgment in favor of a plaintiff would affect an employer-sponsored retirement plan still remains unaddressed and raises several questions. For example, if a company maintains a defined benefit

pension plan that calculates benefits based on an employee's final average pay, would the plan need to recalculate the plaintiff's benefit based on the revised pay that the plaintiff is seeking? Should (and how) would such a recalculation possibly be performed if the lawsuit is a class action, so that large numbers of plan participants could be making the same or similar claim? What if such a recalculation of benefits caused the plan to become seriously under-funded or resulted in the employer being forced to terminate the plan? The possible answers to any of these questions could result in undermining the retirement security of other participants as a result of a claim now being made based upon alleged discrimination that occurred many years before.

In addition, we continue to be concerned about the possible effect of the proposed legislation on 401(k) plans, 403(b) plans (those plans maintained by schools and charities generally), and 457 plans (maintained by state and local governments). To what extent would such plans have to recalculate benefits payable to the plaintiffs? If the employer needs to fund significant additional benefits for the plaintiffs, would the employer effectively have to reduce or eliminate contributions for others?

We urge that this legislation not be considered by the Senate until the possible ramifications of the bill are fully understood. We are very mindful of the concerns that led to the drafting of this proposed legislation but we continue to have reservations about its application to employer-sponsored retirement plans in its current form. It would be very unfortunate to risk the retirement security of pension plan participants as a result of the failure to address the question of how a judgment in favor of a plaintiff affects the employer's retirement plans.

Sincerely,

A handwritten signature in cursive script that reads "James A. Klein". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

James A. Klein
President