

Age**First Union Must Turn Over Documents  
Relating to Allegedly Misleading Release**

**F**irst Union Corp. must turn over documents regarding an allegedly misleading release signed by approximately 2,000 employees discharged by its predecessor CoreStates Financial Corp., a federal judge in Philadelphia has ruled, rejecting the contention that the documents were protected by attorney-client privilege (*Kaminski v. First Union Corp.*, E.D. Pa., No. 98-CV-1623, 7/10/01).

Applying the crime-fraud exception to attorney-client privilege, Judge James McGirr Kelly of the U.S. District Court for the Eastern District of Pennsylvania decided a reasonable factfinder could believe that CoreStates drafted the release with the intent of deceiving the laid-off workers and causing them to believe that they had waived their rights under the Age Discrimination in Employment Act. The judge granted the plaintiffs' motion to compel production and ordered First Union to turn over documents and communications regarding the drafting of the release and a "Question and Answer" document provided to the employees laid off in March 1995.

Kelly also decided attorney-client privilege did not apply to any documents viewed by, or communications with, CoreStates' reorganization consultant because the consultant did not play any role in facilitating communications with the company's attorneys.

First Union waived the attorney-client privilege regarding a document titled "Key Human Resources Issues" that the company twice filed mistakenly with the court, Kelly ruled. The document includes a discussion of an attorney's opinion of the effectiveness of the release.

The decision came in an ADEA opt-in collective action that includes approximately 190 discharged workers, according to plaintiffs' attorney Carol A. Mager of Mager & White in Philadelphia. The plaintiffs are attempting to defeat First Union's contention that they waited too long to sue by showing that the release misled them into believing they had waived their right to sue under the ADEA, Kelly said.

**Employer Waived Privilege on Certain Documents.** The attorney-client privilege protects confidential disclosures by a client to an attorney as part of obtaining legal assistance and can be waived by communications to someone outside the attorney-client relationship, Kelly explained.

First Union sought return of the "Key Human Resources Issues" document, arguing it inadvertently provided the document to the court. However, Kelly found the filing of a document with a court "creates a presumption of public access to the document." He ruled the company waived the attorney-client privilege regarding that document.

First Union also argued the privilege protected documents and communications revealed to Aston Limited Partners, a reorganization consultant used by CoreStates that had signed a confidentiality agreement.

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