

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINIOS**

FRED DONALDSON, ALBERT WALTER III,)
MARY CLAWSON, SANDRA BELLON,)
AUDREY SOKOLOSKI and CAROL THOMAS,)
individually and on behalf of all those)
similarly situated,)

Plaintiffs,)

v.)

Case No. 06-03-GPM

PHARMACIA CASH BALANCE PENSION PLAN,)
PHARMACIA CORPORATION,)
PHARMACIA & UPJOHN COMPANY and)
PFIZER INC.,)

and)

MONSANTO COMPANY PENSION PLAN and)
MONSANTO COMPANY,)

Defendants.)

FIRST AMENDED COMPLAINT

The Parties

1. Plaintiff Fred Donaldson is a citizen of the United States who resides in this District in Collinsville in Madison County, Illinois, in this District.

2. Plaintiff Albert Walter III is a citizen of the United States who resides in St. Ann in St. Louis County, Missouri.

3. Plaintiff Mary Clawson is a citizen of the United States who resides in Ballwin in St. Louis County, Missouri.

4. Plaintiff Sandra Bellon is a citizen of the United States who resides in Ballwin in St. Louis County, Missouri.

5. Plaintiff Audrey Sokoloski is a citizen of the United States who resides in Kirkwood in St. Louis County, Missouri.

6. Plaintiff Carol Thomas is a citizen of the United States who resides in the City of St. Louis, Missouri.

7. Defendant Pharmacia Cash Balance Pension Plan (the “Pharmacia Plan”) is a “defined benefit plan” within the meaning of the Employment Retirement Income Security Act, (“ERISA”) § 3(35), 29 U.S.C. § 1002(35). The Pharmacia Plan, in effect from January 1, 2002, through June 30, 2002, is a partial successor to the Monsanto Company Pension Plan.

8. Defendant Pharmacia Corporation (“Pharmacia”) is a Delaware corporation with its headquarters in Peapack, New Jersey, registered and doing business in Illinois, and is “administrator” and “plan sponsor” of the Pharmacia Cash Balance Pension Plan within the meaning of ERISA §§ 3(16) and 17, 29 U.S.C. §§ 1002(16) and (17). Pharmacia is a wholly owned subsidiary of Pfizer, Inc.

9. Defendant Pharmacia & Upjohn Company (“P & U Company”) is a Delaware corporation with its headquarters in Peapack, New Jersey, registered and doing business in Illinois, and is “administrator” and “plan sponsor” of the Pharmacia Cash Balance Pension Plan within the meaning of ERISA §§ 3(16) and 17, 29 U.S.C. §§ 1002(16) and (17). P & U Company is a wholly owned subsidiary of Pharmacia.

10. Defendant Pfizer, Inc. (“Pfizer”) is a Delaware corporation with its headquarters in New York, New York, registered and doing business in Illinois, and is “administrator” and “plan sponsor” of the Pharmacia Cash Balance Pension Plan within

the meaning of ERISA §§ 3(16) and 17, 29 U.S.C. §§ 1002(16) and (17). Pfizer is the parent corporation of both Pharmacia and its wholly owned subsidiary P & U Company.

11. Defendant Monsanto Company Pension Plan (the “Monsanto Plan”) is a “defined benefit plan” within the meaning of the Employment Retirement Income Security Act, (“ERISA”) § 3(35), 29 U.S.C. § 1002(35). The Monsanto Plan is the predecessor plan to the Pharmacia Cash Balance Plan.

12. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation with its headquarters in Creve Coeur, Missouri, registered and doing business in Illinois, and is “administrator” and “plan sponsor” of the Monsanto Company Pension Plan within the meaning of ERISA §§ 3(16) and 17, 29 U.S.C. §§ 1002(16) and (17).

Jurisdiction and Venue

13. This is a civil enforcement action brought pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a). This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

14. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), in that the breach upon which the suit is premised occurred in this judicial district, damages occurred directly to Plaintiffs in this District and/or because the Plan may be found in this judicial district.

Nature of this Action

15. Plaintiffs seek injunctive relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), in the form of a declaration that Defendants’ method of computing their pension benefits and the pension benefits of all similarly situated participants was unlawful.

16. Plaintiffs seek injunctive relief pursuant to ERISA § 502(a)(3), 29 U.S.C. §1132(a)(3), in the form of a court order requiring Defendants to recalculate their pension benefits and the pension benefits of all similarly situated participants in accordance with the requirements of ERISA.

17. Incidental to the injunctive relief sought pursuant to ERISA § 502(a)(3), 29 U.S.C. §1132(a)(3), and mechanically flowing from that injunctive relief, Plaintiffs also seek a court order requiring Defendants to create a common fund from which Defendants are ordered to make a retroactive payment of pension benefits to Plaintiffs and all other similarly situated participants in an amount equal to the difference between what Plaintiffs and class members were paid under the unlawful method of computing their pension benefits and what the court-ordered recalculation of pension benefits shows they should have been paid.

18. Alternatively, Plaintiffs seek a judgment pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), against Defendants for the unlawful computation of their pension benefits in violation of ERISA as set out in Counts I-IV below and seek damages in the form of a common fund to recover pension benefits due them based upon a lawful computation of their pension benefits.

General Allegations of Fact

19. Prior to January 1, 1997, Plaintiffs, along with numerous other participants in this District, were employed by Monsanto Company, headquartered in St. Louis, Missouri.

20. Prior to January 1, 1997, Monsanto Company had a “defined benefit plan” within the meaning of ERISA known as the Monsanto Company Pension Plan. ERISA § 3(35), 29 U.S.C. § 1002(35).

21. Prior to January 1, 1997, Plaintiffs were “participants” in Monsanto’s defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto’s plan.

22. Effective January 1, 1997, Monsanto converted its employees’ pension plan from a conventional defined benefit plan in which the retirement benefit equals a specified percentage of a participant’s salary in the final years of employment to a cash balance plan in which the normal retirement benefit is based upon a hypothetical account balance.

23. From January 1, 1997, through December 31, 2001, Plaintiffs were participants in and accrued benefits under the terms of the Monsanto Plan.

24. In the spring of 2000, the Monsanto Company split into two companies: Pharmacia (Old Monsanto) and Monsanto Ag which later became Monsanto Company (New Monsanto). The Pharmacia employees continued to be participants in and accrue benefits under the terms of the Monsanto Plan.

25. On September 1, 2000, Pharmacia and Monsanto entered into an agreement known as the “Separation Agreement By and Between Pharmacia Corporation and Monsanto Company Dates as of September 1, 2000” (the “Separation Agreement”). The Separation Agreement set forth the terms and conditions under which Monsanto (New Monsanto) would formally separate as an independent company from Pharmacia (Old Monsanto).

26. On September 1, 2000, Pharmacia and Monsanto also entered into an agreement known as the “Employee Benefits and Compensation Allocation Agreement between Pharmacia Corporation and Monsanto Company dated as of September 1, 2000” (the “Allocation Agreement”).

27. The Allocation Agreement provided that Pharmacia would establish a cash balance pension plan identical to the Monsanto Plan effective as of January 1, 2002, and accept from the Monsanto Plan the transfer of all the assets and the assumption of all the liabilities for current and former participants in the Monsanto Plan from some point in time prior to January 1, 1997, until September 1, 2000, as well as the assets and liabilities for all current participants employed by Pharmacia as of September 1, 2000, going forward.

28. As of January 1, 2002, the Monsanto Pension Plan split into two plans: the Monsanto Plan and the Pharmacia Plan.

29. In spite of the terms and conditions of the Allocation Agreement, the Pharmacia Plan defines a participant in such a manner as to not include former participants in the Monsanto Plan who separated from Monsanto prior to September 1, 2000, and opted to take their accrued benefit in the form of a lump sum, or were not otherwise “active” participants.

30. On or about June 30, 2002, the Pharmacia Plan (the cash balance plan) was frozen and merged into a new plan known as the Pharmacia Pension Plan.

31. On or about April 16, 2003, Pfizer acquired Pharmacia and its wholly owned subsidiary, P & U Company.

32. At all relevant times Pharmacia and its successor companies had a “defined benefit plan” within the meaning of ERISA known as the “Pharmacia Cash Balance Pension Plan.” ERISA § 3(35), 29 U.S.C. § 1002(35).

33. At all relevant times, Plaintiffs were “participants” in Pharmacia’s defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia’s plan, either by being employed by Pharmacia or by virtue of the terms and conditions of the Separation Agreement and Allocation Agreement between Pharmacia Corporation and Monsanto Company.

General Allegations of Fact Regarding the Plan

34. Defined benefit plans are required to offer vested participants a “normal retirement benefit” in the form of an annual lifetime pension starting at “normal retirement age.” ERISA §§ 3(22) and (23)(A), 29. U.S.C. §§ 1002(22) and (23)(A); ERISA § 203(a), 29 U.S.C. § 1053(a).

35. The Pharmacia Plan and the Monsanto Plan (hereafter the “Defendant Plans”) define “normal retirement age” as the date on which the participant attains age 65.

36. The Defendant Plans established for each participant including Plaintiffs a Cash Balance Account (“CBA”).

37. Each participant’s CBA is credited with (a) an annual “contribution credit” equal to a specified percentage of that participant’s eligible pay for each year of employment ranging from 3% to 7% depending on the participant’s age; (b) a monthly “interest credit” based on the average interest rate on the 30-year Treasury Bonds for October of the prior calendar year with a minimum rate of interest credit of 5% and a

maximum rate of interest credit of 10%; and (c) an annual “transition credit” equal to a specified percentage of that participant’s eligible pay ranging from 2% to 6% depending on that participant’s age and limited to the 10 years from January 1, 1997, through December 31, 2006.

38. For participants who had been enrolled in the Monsanto Plan prior to January 1, 1997, before its conversion to a cash balance pension plan, including Plaintiffs, the Defendant Plans also established a Prior Plan Account (“PPA”).

39. Each participant’s PPA began with a balance that represented the lump sum value of the accrued benefit earned by that participant under Monsanto’s old plan as of December 31, 1996.

40. Each participant’s PPA was credited with (a) monthly “pay credits” at an annual rate of 4% while the participant maintains employment with Pharmacia; and (b) monthly “interest credits” at an annual rate of 8.5% until the participant attains the age of 55.

41. The Defendant Plans are currently adequately funded in accordance with the requirements of ERISA and the Internal Revenue Code.

Specific Allegations of Fact Regarding Plaintiffs

(Fred Donaldson)

42. Plaintiff Fred Donaldson commenced full-time employment with Monsanto prior to December 31, 1996.

43. At all relevant times, Mr. Donaldson was a “participant” in Monsanto’s defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto’s old plan and cash balance plan.

44. Effective on or about March 31, 2000, Mr. Donaldson's employment was transferred to Pharmacia.

45. At all relevant times, Mr. Donaldson was and is a "participant" in Pharmacia's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia's plan.

46. Mr. Donaldson remains employed by Pharmacia.

47. The retirement benefit accrued by Mr. Donaldson from the Plan is less than the accrued benefit to which he is legally entitled because the Plan fails to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans.

48. Mr. Donaldson has not filed a claim for benefits under the Plan's claim procedures because he seeks relief from violations of ERISA statutory provisions which do not require the exercise of discretion by a claims fiduciary, and, in addition, Mr. Donaldson has not attempted to exhaust his administrative remedies because to do so would be futile.

(Albert Walter III)

49. Plaintiff Albert Walter III commenced full-time employment with Monsanto prior to December 31, 1996.

50. At all relevant times, Mr. Walter was a "participant" in Monsanto's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto's old plan and cash balance plan.

51. Effective on or about March 31, 2000, Mr. Walter's employment was transferred to Pharmacia.

52. At all relevant times, Mr. Walter was and is a “participant” in Pharmacia’s defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia’s plan.

53. Mr. Walter remains employed by Pharmacia.

54. The retirement benefit accrued by Mr. Walter from the Plan is less than the accrued benefit to which he is legally entitled because the Plan fails to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans.

55. Mr. Walter has not filed a claim for benefits under the Plan’s claim procedures because he seeks relief from violations of ERISA statutory provisions which do not require the exercise of discretion by a claims fiduciary, and, in addition, Mr. Walter has not attempted to exhaust his administrative remedies because to do so would be futile.

(Mary Clawson)

56. Plaintiff Mary Clawson commenced full-time employment with Monsanto prior to December 31, 1996.

57. At all relevant times, Ms. Clawson was a “participant” in Monsanto’s defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto’s old plan and cash balance plan.

58. Effective on or about March 31, 2000, Ms. Clawson’s employment was transferred to Pharmacia.

59. At all relevant times, Ms. Clawson was and is a “participant” in Pharmacia’s defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia’s plan.

60. Ms. Clawson separated from Pharmacia in April, 2005, and opted to receive her accrued benefit immediately in the form of a lump sum payment.

61. The retirement benefit received by Ms. Clawson was less than the accrued benefit to which she was legally entitled because the Plan failed to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans.

62. Ms. Clawson has not filed a claim for benefits under the Plan's claim procedures because she seeks relief from violations of ERISA statutory provisions which do not require the exercise of discretion by a claims fiduciary, and, in addition, Ms. Clawson has not attempted to exhaust her administrative remedies because to do so would be futile.

(Sandra Bellon)

63. Plaintiff Sandra Bellon commenced full-time employment with Monsanto prior to December 31, 1996.

64. At all relevant times, Ms. Bellon was a "participant" in Monsanto's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto's old plan and cash balance plan.

65. At all relevant times, under the terms and conditions set for the in the Separation Agreement and Allocation Agreement Ms Bellon was and is a "participant" in Pharmacia's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia's plan.

66. Ms. Bellon separated from (Old) Monsanto in April, 1999, and opted to receive her accrued benefit immediately in the form of a lump sum payment.

67. The retirement benefit received by Ms. Bellon was less than the accrued benefit to which she was legally entitled because the Plan failed to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans.

68. Ms. Bellon has not filed a claim for benefits under the Plan's claim procedures because she seeks relief from violations of ERISA statutory provisions which do not require the exercise of discretion by a claims fiduciary, and, in addition, Ms. Bellon has not attempted to exhaust her administrative remedies because to do so would be futile.

(Audrey Sokoloski)

69. Plaintiff Audrey Sololoski commenced full-time employment with Monsanto prior to December 31, 1996.

70. At all relevant times, Ms. Sokoloski was a "participant" in Monsanto's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto's old plan and cash balance plan.

71. At all relevant times, under the terms and conditions set for the in the Separation Agreement and Allocation Agreement Ms. Sokoloski was and is a "participant" in Pharmacia's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia's plan.

72. Ms. Sokoloski separated from (Old) Monsanto in May, 1997, and opted to receive her accrued benefit in the form of monthly annuity payments.

73. The retirement benefit received by Ms. Sokoloski was less than the accrued benefit to which she was legally entitled because the Plan failed to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans.

Ms. Sokoloski has not filed a claim for benefits under the Plan's claim procedures because she seeks relief from violations of ERISA statutory provisions which do not require the exercise of discretion by a claims fiduciary, and, in addition, Ms. Sokolowski has not attempted to exhaust her administrative remedies because to do so would be futile.

(Carol Thomas)

74. Plaintiff Carol Thomas commenced full-time employment with Monsanto prior to December 31, 1996.

75. At all relevant times, Ms. Thomas was a "participant" in Monsanto's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Monsanto's old plan and cash balance plan.

76. At all relevant times, under the terms and conditions set for the in the Separation Agreement and Allocation Agreement Ms. Thomas was and is a "participant" in Pharmacia's defined benefit pension plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and accrued benefits under the terms of Pharmacia's plan.

77. Ms. Thomas separated from (Old) Monsanto in January, 2000, and opted to receive her accrued benefit immediately in the form of a lump sum payment.

78. The retirement benefit received by Ms. Thomas was less than the accrued benefit to which she was legally entitled because the Plan failed to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans.

79. Ms. Thomas has not filed a claim for benefits under the Plan's claim procedures because she seeks relief from violations of ERISA statutory provisions which do not require the exercise of discretion by a claims fiduciary, and, in addition, Ms.

Thomas has not attempted to exhaust her administrative remedies because to do so would be futile.

Class Action Allegations

80. Plaintiffs request that this Court certify the following class:

“All individuals who participated in the Monsanto Company Pension Plan and who currently participate in or who formerly participated in the Pharmacia Cash Balance Pension Plan or its predecessor plans at any time after December 31, 1996, and their beneficiaries.”

81. Certification of this class is appropriate pursuant to Rule 23(b)(1), Fed. R. Civ. P. 23(b)(1), because there is a risk that the prosecution of separate actions would establish incompatible standards of conduct for the Plan regarding the proper method for computing the pension benefits of all similarly situated participants.

82. Certification of this class is also appropriate pursuant to Rule 23(b)(2), Fed. R. Civ. P. 23(b)(2), because the Defendant Plans have miscalculated and continue to miscalculate the pension benefits of all similarly situated participants using the same methodology contested here; and therefore the Defendant Plans have acted or refused to act on grounds generally applicable to the class making appropriate final injunctive relief or declaratory relief with respect to the class as a whole.

83. The conduct complained of is widespread, affecting hundreds of active participants in the Defendant Plans, making joinder of all claims impracticable.

84. Plaintiffs' claims are typical of those of the class in that the conduct complained of is the Defendant Plans' failure to properly apply the accrual and vesting rules imposed by ERISA on all defined benefit plans to all of the Plans' participants.

85. There are common questions of law and fact which predominate. The common questions of law and fact include, among others:

- i. Whether the benefits provided under the terms of the Defendant Plans are reduced as a result of attaining a certain age;
- ii. Whether the method of computing pension benefits earned by the Defendant Plans' participants is unlawful under ERISA; and
- iii. Whether the benefits provided under the terms of the Defendant Plans accrue at a rate which is reduced because of age.

86. Plaintiffs will fairly and adequately represent the interests of the members of the class. Their interests are the same as, and not in conflict with, the other members of the class. Plaintiffs' counsel is experienced in and competent to handle class actions and complex litigation of this type.

COUNT I

(The Defendant Plans, Jointly and Severally, Violate ERISA by Reducing to Zero the Interest Credits Applicable to the Prior Plan Account upon a Participant's Attaining Age 55.)

87. Plaintiffs incorporate by reference the allegations of paragraphs 1-86 above in this Count.

88. ERISA prohibits the actuarial value of any defined benefit plan participant's rate of benefit accrual from being reduced because of the attainment of any age. ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

89. Under the terms of the Defendant Plans, any Plan participant age 55 or older no longer receives the monthly interest credit at an annual rate of 8.5% on his or her Prior Plan Account.

90. The Defendant Plans reduce to zero the rate of benefit accrual on any Plan participant's PPA when the participant attains the age of 55.

91. The Defendant Plans' benefit formula used to compute Plaintiffs' accrued benefit violates the accrual rules contained in ERISA § 204(b), 29 U.S.C. § 1054(b), and Internal Revenue Code Notice 96-8, IRC Notice 96-8 § III.A., in that effective as of January 1, 1997, and at all times thereafter, benefits provided under the terms of the Defendant Plans accrue at a rate which is reduced or forfeited because of age or the attainment of any age, and therefore, the Defendant Plans do not comply with the accrual rules set forth in ERISA § 204(b)(1)(H), 29 U.S.C. §1054(b)(1)(H), and in Internal Revenue Code Notice 96-8, IRC Notice 96-8 § III.A.

92. Pursuant to ERISA § 502(a)(3), 29 U.S.C. §1132(a)(3), Plaintiffs and the class are entitled to appropriate equitable relief from the Defendants, jointly and severally, to redress the Defendant Plans' violations of the foregoing provisions of ERISA and to enforce such provisions, and incidental monetary relief mechanically flowing from that injunctive relief in the form of a common fund equal to the difference between what Plaintiffs and class members were paid under the unlawful method of computing their pension benefits and what the court-ordered recalculation of pension benefits shows they should have been paid.

COUNT II

**(The Defendant Plans, Jointly and Severally, Violate ERISA by
Failing to Provide the Actuarial Equivalent of a Participant's
Accrued Benefit When Providing a Lump Sum Benefit.)**

93. Plaintiffs incorporate by reference the allegations of paragraphs 1-86 above in this Count.

94. ERISA requires that any lump sum distribution of a defined benefit plan participant's accrued pension benefits must be the actuarial equivalent of the defined benefit plan participant's normal retirement benefit. ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3); 26 U.S.C. § 411(c)(3); 26 C.F.R. § 1.411(c)-1(e); IRC Notice 96-8.

95. Under the terms of the Defendant Plans, any lump sum distribution of a Plan participant's accrued pension benefit must at least equal the lump sum actuarial equivalent of a participant's accrued benefit.

96. To determine the lump sum actuarial equivalent of a Defendant Plan participant's accrued benefit, the Defendant Plans must project the accrued benefit out to normal retirement age and then reduce that benefit to present cash value—a process known as a whipsaw calculation.

97. Rather than performing the whipsaw calculation the Defendant Plans simply pays the Defendant Plan participant a lump sum equal to the sum of the balances in the Prior Plan Account and the Cash Balance Account.

98. Simply paying a Defendant Plan participant a lump sum equal to the sum of the balances in the Prior Plan Account and the Cash Balance Account does not take into account periods of time where the interest rate to project out the accrued benefit to

normal retirement age has exceeded the discount rate used to reduce the benefit to present cash value.

99. Simply paying a Defendant Plan participant a lump sum equal to the sum of the balances in the Prior Plan Account and the Cash Balance Account does not take into account periods of time where the “annuity conversion factor” employed by the Defendant Plan to determine the accrued benefit at normal retirement age has exceeded the discount rate used to reduce the benefit to present cash value.

100. The Defendant Plans’ benefit formula used to compute Plaintiffs’ accrued benefit commencing at normal retirement age and to convert it into a present value lump sum violates the present value calculation rules set forth in ERISA § 203(e)(2), 29 U.S.C. § 1053(e)(2), in Internal Revenue Code § 417(e)(3), and in Treasury Regulation 1.417(e)-1(d).

101. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the class are entitled to appropriate equitable relief from the Defendants, jointly and severally, to redress the Defendant Plans’ violations of the foregoing provisions of ERISA and to enforce such provisions, and incidental monetary relief mechanically flowing from that injunctive relief in the form of a common fund equal to the difference between what Plaintiffs and class members were paid under the unlawful method of computing their pension benefits and what the court-ordered recalculation of pension benefits shows they should have been paid.

COUNT III

**(The Defendant Plans, Jointly and Severally,
Violate the Anti-Backloading Provisions of ERISA.)**

102. Plaintiffs incorporate by reference the allegations of paragraphs 1-86 above in this Count.

103. ERISA § 204(b)(1)(A)-(C), 29 U.S.C. § 1054(b)(1)(A)-(C), prohibits a defined benefit plan from “backloading” a participant’s pension benefit by making benefits accrue very slowly over time until the participant nears normal retirement age so that a participant’s vested pension rights have very little value until the participant has completed a very long period of service.

104. ERISA requires that a defined benefit plan must allow a participant to accrue, i.e. earn, benefits no less than ratably over a working career so as to prevent employers from using creative plan designs to avoid the protection afforded by ERISA’s vesting rules.

105. To comply with the anti-backloading provisions, ERISA requires that a plan must satisfy one of three objective tests generally referred to as the “3 percent rule,” the “133½ percent rule,” and the “fractional rule,” set forth in subparagraphs (A), (B) or (C) of ERISA § 204(b)(1), 29 U.S.C. § 1054(b)(1)(A)-(C).

106. The Defendant Plans’ benefit formula used to compute Plaintiffs’ accrued benefit violates the accrual rules contained in ERISA § 204(b), 29 U.S.C. § 1054(b), in that effective as of January 1, 1997, and at all times thereafter, benefits accruing under the terms of the Defendant Plans do not satisfy any of the three rules set forth in subparagraphs (A), (B) or (C) of ERISA § 204(b)(1), 29 U.S.C. § 1054(b)(1)(A)-(C).

107. Pursuant to ERISA § 502(a)(3), 29 U.S.C. §1132(a)(3), Plaintiffs and the class are entitled to appropriate equitable relief from the Defendants, jointly and severally, to redress the Defendant Plans' violations of the foregoing provisions of ERISA and to enforce such provisions, and incidental monetary relief mechanically flowing from that injunctive relief in the form of a common fund equal to the difference between what Plaintiffs and class members were paid under the unlawful method of computing their pension benefits and what the court-ordered recalculation of pension benefits shows they should have been paid.

COUNT IV

(The Defendant Plans, Jointly and Severally, Violate ERISA by Reducing Over Time the Actuarial Value of the Annual Credits to the Cash Balance Account.)

108. Plaintiffs incorporate by reference the allegations of paragraphs 1-86 above in this Count.

109. ERISA prohibits the actuarial value of any defined benefit plan participants' accrued benefit from being reduced by the attainment of any age. ERISA §§ 204(b)(1)(G) and 204(b)(1)(H), 29 U.S.C. §§ 1054(b)(1)(G) and 1054(b)(1)(H).

110. ERISA defines the term "accrued benefit" to mean any defined benefit plan participant's accrued benefit determined under the plan and expressed in the form of an annual benefit commencing at normal retirement age. ERISA § 3(23)(A), 29 U.S.C. §1002(23)(A).

111. Normal retirement age is 65. ERISA § 3(24), 29 U.S.C. §1002(24).

112. Any defined benefit plan participant's "rate of benefit accrual" must be measured by reference to an annuity that commences at age 65.

113. Any defined benefit plan participant's accrued benefit must be measured by reference to the amount of that participant's annual benefit at age 65.

114. Under the terms of the Defendant Plans, a Defendant Plan participant will experience a decrease in the actuarial value of the annual credits to his or her Cash Balance Account, measured in terms of the present cash value of an annuity commencing at age 65, as the participant ages from year to year.

115. The Defendant Plans' benefit formula used to compute Plaintiffs' accrued benefit violates the accrual rules contained in ERISA § 204(b), 29 U.S.C. § 1054(b), in that effective as of January 1, 1997, and at all times thereafter, benefits provided under the terms of the Defendant Plans are reduced by the attainment of any age, and therefore the Defendant Plans do not comply with the accrual rule set forth in ERISA § 204(b)(1)(G), 29 U.S.C. § 1054(b)(1)(G), and in ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H), and in Internal Revenue Code Notice 96-8, IRC Notice 96-8 § III.A.

116. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the class are entitled to appropriate equitable relief from the Defendants, jointly and severally, to redress the Defendant Plans' violations of the foregoing provisions of ERISA and to enforce such provisions, and incidental monetary relief mechanically flowing from that injunctive relief in the form of a common fund equal to the difference between what Plaintiffs and class members were paid under the unlawful method of computing their pension benefits and what the court-ordered recalculation of pension benefits shows they should have been paid.

COUNT V

**(The Defendant Plans, Jointly and Severally, Violate Should
Make Retroactive Payment of Pension Benefits to Plaintiffs.)**

117. Plaintiffs incorporate by reference the allegations of paragraphs 1-86 above in this Count.

118. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), Plaintiffs and the class are entitled to a judgment from the Defendants, jointly and severally, clarifying their right to receive future benefits from the Defendant Plans, calculated under the terms of the Defendant Plans, to the extent those terms are not inconsistent with the applicable provisions of ERISA, and damages paid in the form of a common fund from which retroactive payments of pension benefits may be made to Plaintiffs and members of the class.

WHEREFORE, Plaintiffs and the class pray for the following relief:

1. Certification of this action as a class action with the class defined as set out above;
2. A declaration that the Defendant Plans' method of computing their pension benefits and the pension benefits of all similarly situated participants was and is unlawful;
3. Judgment for Plaintiffs and the class against Defendants, jointly and severally, on all claims asserted herein;
4. A permanent injunction preventing the Defendant Plans from calculating pension benefits in violation of ERISA and ordering a recalculation of the pension benefits in accordance with ERISA;

5. Creation of a common fund equal to the amount of pension benefits due Plaintiffs and the class in accordance with ERISA;
6. Pre- and post-judgment interest;
7. Attorneys' fee and costs pursuant to the common fund/benefit doctrine or any other applicable law; and
8. Any other and further relief as the Court deems appropriate under the circumstances.

Dated: July 7, 2006

Respectfully submitted,

Schlichter, Bogard & Denton

s/ Matthew H. Armstrong

Jerome J. Schlichter

Matthew H. Armstrong

2661 North Illinois, Suite 187

Swansea IL 62226

Tel: 314-621-6115

Fax: 314-621-7151

marmstrong@uselaws.com

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2006, I served this First Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following:

Dawn A. Sallerson
dsallerson@hinshawlaw.com

Priscilla E. Ryan
pryan@sidley.com

Mark. B. Blocker
mblocker@sidley.com

Anne E. Rea
area@sidley.com

William F. Conlon
wconlon@sidley.com

Neil H. Wyland
nwyland@sidley.com

Ryan M. Sandrock
rsandrock@sidley.com

Erin E. Kelly
ekelly@sidley.com

Chris K. Meyer
cmeyer@sidley.com

SCHLICHTER, BOGARD & DENTON

s/ Matthew H. Armstrong
Matthew H. Armstrong