IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GRANT M. WALKER, EDWARD ZERINGUE, and RICHARD W. DRAKE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE MONSANTO COMPANY PENSION PLAN and THE MONSANTO COMPANY,

Defendants.

GLYNN DAVIS, EUGENE FORNERIS, and JUANITA HAMMOND, individually and on behalf of all those similarly situated,

Plaintiffs,

v.

SOLUTIA, INC. EMPLOYEES' PENSION PLAN,

Defendant.

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.

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

Defendants.

Case No. 03:04-cv-436-DRH

CONSOLIDATED CLASS ACTION COMPLAINT

<u>CONSOLIDATED CLASS ACTION COMPLAINT</u>

General facts relevant to multiple Counts

THE PARTIES

1. At times relevant to this Complaint, Plaintiffs have been participants in one or more of three substantially identical cash balance pension plans sponsored by Defendant Monsanto Company (Monsanto), non-party Solutia, Inc. (Solutia), or Defendant Pharmacia Corporation (Pharmacia).

Plaintiffs asserting claims against the Monsanto Defendants

2. Plaintiff Grant Walker, a resident of Edgard, Louisiana, worked as a maintenance technician at the Monsanto plant in Luling, Louisiana, from September 8, 1975, until February 28, 2003.

3. Plaintiff Edward Zeringue, a resident of Des Allemands, Louisiana, worked at the Monsanto plant in Luling, Louisiana, from April 29, 1973, until December 31, 2001, before retiring as a unit specialist.

4. Plaintiff Richard Drake, a resident of Lebanon, Illinois, in this District, worked at Monsanto's St. Louis headquarters from September, 1975, until retiring from Monsanto as a Senior Database Analyst in August, 2002.

Plaintiffs asserting claims against the Solutia Defendant

5. Plaintiff Glynn Davis, a resident of Belleville, Illinois, in this District, was employed by Monsanto in various non-union, salaried positions at its WG Krummrich facility in Sauget, Illinois, in this District, and other St. Louis area facilities from June 2, 1969, until August 31, 1997, and then was employed by Solutia at the same plant in this District from September 1, 1997, until retiring as a Manufacturing Technologist on July 31, 2002.

6. Plaintiff Eugene Forneris, a resident of Belleville, Illinois, in this District, was employed by Monsanto in various non-union, salaried positions at its WG Krummrich facility in Sauget, Illinois, in this District, from September 24, 1964, until retiring on November 1, 1999.

7. Plaintiff Juanita Hammond, a resident of Belleville, Illinois, in this District, worked in various non-union, salaried positions at the Monsanto/Solutia WG Krummrich plant in Sauget, Illinois, in this District from 1979 until retiring as a Paymaster on or about May 1, 2003.

Plaintiffs asserting claims against the Pharmacia Defendants

8. Plaintiff Fred Donaldson, a resident of Collinsville, Illinois, in this District, was employed by Monsanto at its facilities in St. Louis, Missouri, from 1992 until August 31, 2000, and then by Pharmacia from September 1, 2000, until terminated on August 7, 2006.

9. Plaintiff Albert Walter, III, a resident of St. Ann, Missouri, was employed by Monsanto at its facilities in St. Louis, Missouri, from 1986 until August 31, 2000, and then by Pharmacia from September 1, 2000, until terminated on August 7, 2006.

10. Plaintiff Mary Clawson, a resident of Ballwin, Missouri, was employed by Monsanto at its headquarters in St. Louis, Missouri, from January 2, 1985, until August 31, 2000, and then by Pharmacia from September 1, 2000, until retiring as a Human Resources IT Specialist on February 6, 2004.

11. Plaintiff Sandra Bellon, a resident of Ballwin, Missouri, was employed by Monsanto at its headquarters in St. Louis, Missouri, from 1974, until separating on April 1, 1999.

12. Plaintiff Audrey Sokoloski, a resident of Kirkwood, Missouri, was employed by Monsanto at its headquarters in St. Louis, Missouri, from September 1969, until retiring on May 31, 1997.

13. Plaintiff Carol Thomas, a resident of St. Louis, Missouri, was employed by Monsanto at its headquarters in St. Louis, Missouri, from August 2, 1971, until separating on February 1, 2001.

Defendants

14. Defendants Monsanto Company Pension Plan (the "Monsanto Plan"), Solutia, Inc. Employees' Pension Plan (the "Solutia Plan"), and Pharmacia Cash Balance Pension Plan (the "Pharmacia Plan"), are "defined" benefit plans within the meaning of the Employment Retirement Income Security Act (ERISA), § 3(35), 29 U.S.C. § 1002 (35).

15. Defendant Monsanto, a Delaware corporation, headquartered in Creve Coeur, Missouri, sponsors the Monsanto Plan.

16. Defendant Pharmacia, a Delaware corporation, headquartered in Peapack, New Jersey, sponsors the Pharmacia Plan. Pharmacia is a wholly owned subsidiary of Pfizer, Inc.

17. Defendant Pfizer, Inc. (Pfizer), a Delaware corporation headquartered in New York, New York, also sponsors the Pharmacia Plan.

18. Defendant Pharmacia & Upjohn Company ("P&U Company"), a Delaware limited liability company headquartered in Peapack, New Jersey, also sponsors the Pharmacia Plan. P&U Company is a wholly owned subsidiary of non-party Pharmacia & Upjohn LLC, which is a wholly owned subsidiary of Pharmacia, which is a wholly owned subsidiary of Pfizer.

JURISDICTION AND VENUE

19. This Court has jurisdiction over the subject matter of the claims asserted in this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e).

20. Venue is proper in this District under 29 U.S.C. § 1132(e)(2) because breaches upon which the suit is premised occurred in this judicial district, damages occurred directly to

Plaintiffs in this District, and/or because the Defendants to each claim reside or may be found in this District.

NATURE OF THE ACTION

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

22. 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 the respective Plans to recalculate their pension benefits and the pension benefits of all similarly situated participants in accordance with the requirements of ERISA.

23. 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 the respective Plans to create a common fund from which Defendants may be 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.

24. Alternatively, Plaintiffs seek a judgment pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), against the respective Plans for the unlawful computation of their pension benefits in violation of ERISA 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.

THE ADOPTION OF SUBSTANTIALLY IDENTICAL CASH BALANCE PLANS BY MONSANTO, SOLUTIA, AND PHARMACIA

25. Immediately before and after January 1, 1997, Monsanto consisted of three business units: agricultural, chemicals, and pharmaceuticals/nutrition.

26. Effective January 1, 1997, Monsanto converted to a cash balance pension plan for employees in the above-referenced business units, with the exception of hourly union employees in the chemicals unit.

27. Monsanto's cash balance plan has covered agricultural unit employees continuously since January 1, 1997.

28. Prior to September 1, 1997, the business of Monsanto's chemicals unit was conducted by Solutia as a wholly-owned subsidiary of Monsanto.

29. On September 1, 1997, Monsanto spun Solutia off as an independent corporation.

30. On September 1, 1997, the Solutia Plan was created as a cash balance plan substantially identical to the cash balance plan to which Monsanto had converted on January 1, 1997.

31. The Solutia Plan covered salaried and non-union hourly employees from Monsanto's chemicals business unit.

32. On April 1, 2000, Monsanto split itself into two companies: "New" Monsanto, which conducted the agricultural unit business, and Pharmacia, which conducted the pharmaceutical and nutrition business. New Monsanto was initially a subsidiary of Pharmacia.

33. On September 1, 2000, New Monsanto and Pharmacia separated into independent companies.

34. From January 1, 1997, until December 31, 2001, by agreement between New Monsanto and Pharmacia, the Pharmacia pharmaceutical and nutrition employees continued to participate in the Monsanto Plan.

35. Effective January 1, 2002, the Pharmacia Plan was created as a cash balance plan substantially identical to Monsanto's.

36. On or about June 30, 2002, the Pharmacia cash balance plan was frozen and merged into a new plan known as the Pharmacia Pension Plan, a non-cash balance plan which is not a party to this case.

HOW THE IDENTICAL CASH BALANCE PLANS WORK

37. Unless otherwise indicated, all further references to the "Plan" in this Complaint are intended as references to the common practices or the substantially identical features or practices of the Monsanto cash balance plan since January 1, 1997; of the Solutia cash balance plan since September 1, 1997; and of the Pharmacia cash balance plan from January 1, 2002 through June 30, 2002.

38. At all times relevant to this Complaint, the Plan has been a defined benefit plan within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq*.

39. Unlike defined contribution plans, defined benefit plans offer pensions in amounts which do not depend upon the investment return on the money set aside in a trust to fund the benefits.

40. Immediately prior to January 1, 1997, the Monsanto Plan and related ERISA plans whose participants were transferred into the Monsanto Plan on January 1, 1997, were traditional defined benefit plans.

41. In a traditional defined benefit plan, monthly pension benefits are based upon a formula that takes into account either a specified dollar amount per years of service or a specified percentage of a participant's salary in the final year or years of his employment.

42. Although cash balance plans are considered defined benefit plans, cash balance plans differ from traditional defined benefit plans because the pension benefits provided by cash balance plans are derived from hypothetical participant accounts, rather than the sort of formula used in traditional defined benefits plans, as described in the preceding paragraph.

43. Pension payments made by the cash balance plans involved in this case have been based upon one or both of two hypothetical accounts established for participants on or after January 1, 1997: the Cash Balance Account (CBA) and the Prior Plan Account (PPA).

44. The Plan's stated practice has been to offer participants the option of pension benefits in the form of (a) a lump sum payment equal to the sum of the balances in the CBA and PPA; (b) for single participants who begin receiving pension benefits at age 55 or older, a single-life annuity equal to the sum of the CBA and PPA balances divided by 125; or (c) other types of annuities with reductions in case the participant begins receiving his benefit before age 55 and/or elects a payment option which might continue annuity payments past the participant's lifetime. For example, an unmarried cash balance participant 55 or older with a combined total of $125,000 in his CBA and PPA could choose either a lump sum pension payment of $125,000 or a single-life annuity of $1,000 per month.

THE CASH BALANCE ACCOUNT

45. The initial balance in each participant's CBA is always zero.

46. The Plan provides for each participant's CBA to grow by the addition of three sorts of credits:

a. Contribution credits;

b. Transition credits; and

c. Interest credits.

47. Contribution credits are added to the CBA at the end of each year of employment. Contribution credits range from 3% to 7% of eligible pay, depending upon the participant's age, plus 3% of eligible pay in excess of the Social Security wage base.

48. For cash balance participants who had been active participants in a Monsanto pension plan as of December 31, 1996, transition credits are added to the CBA at the end of the year for up to ten years after January 1, 1997 (depending on prior service), for as long as those participants remain employed by a plan sponsor after that date. Transition credits range from 2% to 6% of eligible pay, depending upon the participant's age.

49. Interest credits are added to the CBA monthly until pension benefits start. CBA interest credits equal a percentage of the amount in the participant's CBA. The CBA interest crediting rate is "the average yield for 30-year Treasury Bonds for the October of the preceding Plan Year; provided that the Interest Rate for any Plan Year shall not be less than 5% nor more than 10%." Plan, § 3.35.

THE PRIOR PLAN ACCOUNT

50. In addition to CBA's, Prior Plan Accounts (PPA's) are maintained for cash balance participants who were active participants in a Monsanto pension plan immediately before January 1, 1997.

51. The PPA began simultaneously with the CBA on January 1, 1997, and initially consisted of the calculated present value of the pre-1997 accrued benefits under the traditional defined benefit plans which were in effect prior to 1997.

52. The Plan provides for eligible participants' PPA accounts to grow by the addition of two types of credits:

a. pay credits

and

b. interest credits.

53. Pay credits are added to the PPA monthly for as long as the participant remains employed by a plan sponsor. PPA pay credits are paid at an annual rate of 4% of the PPA account balance; PPA pay credits are not based upon a percentage of the participant's pay.

54. Interest credits are added to the PPA balance monthly until the participant reaches age 55, or starts his benefits, whichever date is earlier. PPA interest credits are paid at an annual rate of 8.5% of the PPA account balance.

BENEFITS RECEIVED BY PLAINTIFFS WHO HAVE TAKEN PENSION DISTRIBUTIONS

The Monsanto Plaintiffs

55. Following retirement from Monsanto after age 55, Plaintiff Walker opted to receive his pension benefits in the form of a lump sum payment, as permitted by Option 4 under section 7.3(d) of the Plan. Plaintiff Walker received a lump sum payment equal to the sum of the balances in his CBA and PPA.

56. Following retirement from Monsanto at age 53, Plaintiff Zeringue opted to receive his pension benefits in the form of a lump sum payment, as permitted by Option 4 under section 7.3(d) of the Plan. Plaintiff Zeringue received a lump sum payment equal to the sum of the balances in his CBA and PPA.

57. Following retirement from Monsanto after age 55, Plaintiff Drake opted to receive his pension benefits in the form of a Qualified Joint and Survivor Annuity. This annuity equals

the quotient of the sum of the balances in his CBA and PPA, divided by 125, with a reduction for the purpose of providing a 50% annuity to his spouse in case she survives him.

The Solutia Plaintiffs

58. Following retirement from Solutia at age 55, Plaintiff Davis opted to receive his pension benefits in the form of a lump sum payment, as permitted by Option 4 under Section 7.3(d) of the Plan. Plaintiff Davis received a lump sum payment equal to the sum of the balances in his CBA and PPA.

59. Following retirement from Solutia at age 55, Plaintiff Forneris opted to receive his pension benefits in the form of a lump sum payment, as permitted by Option 4 under Section 7.3(d) of the Plan. Plaintiff Forneris received a lump sum payment equal to the sum of the balances in his CBA and PPA.

60. Following retirement from Solutia after age 55, Plaintiff Hammond opted to receive her pension benefits in the form of a lump sum payment, as permitted by Option 4 under Section 7.3(d) of the Plan. Plaintiff Hammond received a lump sum payment equal to the sum of the balances in her CBA and PPA.

The Pharmacia Plaintiffs

61. Following her retirement from Pharmacia at age 65, Plaintiff Clawson opted to receive her pension benefits in the form of a lump sum payment, as permitted by Option 4 under Section 7.3(d) of the Plan. Plaintiff Clawson received a lump sum payment equal to the sum of the balances in her CBA and PPA.

62. Following her separation from Monsanto at age 51, Plaintiff Bellon opted to receive her pension benefits in the form of a lump sum payment, as permitted by Option 4 under

Section 7.3(d) of the Plan. Plaintiff Bellon received a lump sum payment equal to the sum of the balances in her CBA and PPA.

63. Following her retirement from Monsanto at age 55, Plaintiff Sokoloski opted to receive her pension benefits in the form of a Life Annuity, as permitted by Option 1 under Section 7.3(d) of the Plan. This annuity equals the quotient of the sum of the balances in her CBA and PPA, divided by 125.

64. Following her separation from Monsanto at age 50, Plaintiff Thomas opted to receive her pension benefits in the form of a lump sum payment, as permitted by Option 4 under Section 7.3(d) of the Plan. Plaintiff Thomas received a lump sum payment equal to the sum of the balances in her CBA and PPA.

OVERVIEW OF THE ALLEGED ERISA VIOLATIONS

65. As stated in Counts I-III (the Age 55 Cut-off claims), the Plan's discontinuation of PPA interest credits at age 55 violates ERISA's prohibition against causing the rate of benefit accrual and/or accrued benefit to decrease "because of the attainment of any age" or "on account of any increase in . . . age" and provisions regarding the non-forfeitability and accrual of vested pension benefits. These violations have resulted and will continue to result in the underpayment of pension benefits to both lump sum recipients with PPA's and annuitants with PPA's who work past age 55.

66. As stated in Alternative Counts IV-VI (the Backloading claims), the Plan has underpaid and continues to underpay pension benefits to cash balance participants with PPA's. The Plan's rate of benefit accrual violates ERISA backloading provisions, which are designed to ensure that benefits accrue ratably over the course of a participant's employment.

67. As stated in Alternative Counts IV-IX (the Age Discrimination claims), the Plan has underpaid pension benefits to the overall Class of cash balance participants. The actuarial values of non-interest credits to Class Members' accounts are improperly reduced or increase at a reduced rate because of participants' age. This practice violates ERISA prohibitions against age discrimination.

68. As stated in Count X (the Late Lump Sum claim), the Monsanto Plan has violated and continues to violate its own terms requiring that 8.5% PPA interest credits continue "regardless of age" when there is a delay of more than a calendar month in the payment of lump sum benefits.

COUNT I--Age 55 Cut-Off Claim against the Monsanto Defendants

69. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Solutia Plan and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Monsanto Age 55 Cut-Off Class Definition

70. Plaintiffs Walker, Zeringue, and Drake bring Count I individually and on behalf of the Monsanto Age 55 Cut-Off Class defined as follows:

> All current Monsanto Plan participants and all vested former Monsanto Plan participants (and their beneficiaries) who had active Cash Balance and Prior Plan Accounts on and after January 1, 1997.

Excluded from the Monsanto Age 55 Cut-Off Class are participants who terminated employment with Monsanto prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Monsanto Plan and/or Monsanto have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Solutia Plan or Pharmacia

Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Monsanto's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

Substantive Allegations Related to the Monsanto Age 55 Cut-Off Claim

71. The Plan's failure to add future PPA interest credits to participants' Prior Plan Accounts after the age of 55 constitutes unenforceable age discrimination in violation of ERISA. Subsection (H) of 29 U.S.C. § 1054 prohibits "an employee's benefit accrual . . . or the rate of an employee's benefit accrual [from being] . . . reduced, because of the attainment of any age." Subsection (G) of the same statute prohibits "the participant's accrued benefit [from being] . . . reduced on account of any increase in his age[.]"

72. The Plan's failure to add future PPA interest credits to participants' Prior Plan Accounts after the age of 55 has caused and will continue to cause the annuities paid to PPA participants who work after the age of 55, including Plaintiff Drake, to be too low, because the Plan bases those annuities upon the quotient of the sum of the balances in the CBA and PPA accounts, divided by 125.

73. The illegality of the Plan's discontinuation of PPA interest credits at age 55 has caused and will continue to cause the lump sums paid to participants with PPA's (including the lump sums paid to all Plaintiffs who received lump sum distributions) to be too low. The lump sums paid violate ERISA's requirement that any lump sum be at least the actuarial equivalent of the participant's accrued benefit expressed in the form of an annual benefit commencing at "normal retirement age," which is 65 under the Plan. In other words, any lump sum distribution

must equal at least the present value of the stream of pension benefits which the participant would receive if he waited until normal retirement age (65) and then took his benefits in the form of pension payments for the rest of his life. 29 U.S.C. § 1054(c)(3); 1002(23)(A).

74. The Plan itself requires that any lump sum distribution of pension benefits equal at least the "lump sum Actuarial Equivalent of Participant's Accrued Benefit." Plan § 7.3(d) ("Option 4").

75. The Plan provides the following Accrued Benefit formula which takes into consideration the amounts in the participant's CBA and PPA:

> A participant's monthly Accrued Benefit is a single life annuity commencing at Normal Retirement Age equal of the quotient of (a) the Participant's current Accounts plus interest credits added to the Prior Plan Account through age 55 pursuant to Section 6.2(d) and interest credits added to the Cash Balance Account through Normal Retirement Age pursuant to Section 6.3(d) divided by (b) 125.

Plan, § 3.2.

76. Determining the lump sum actuarial equivalent of a participant's accrued benefit involves a three-step process known as a "whipsaw" calculation.

77. The lump sum benefits which the Plan has paid to members of this Age 55 Cut-Off Class, including the lump sum recipient representatives of the Class, have been less than the actuarial equivalent of the Plan's accrued benefit, primarily because the Plan's whipsaw calculations do not include PPA interest through the normal retirement age of 65, as required by ERISA.

78. Paying Plan participants less than the actuarial equivalent of their accrued normal retirement benefit violates the ERISA and parallel IRC provisions regarding both the non-

forfeitability and accrual of vested pension benefits. 29 U.S.C. §§ 1053(a)(2); 1054(b)(1); 26 U.S.C. §§ 411(a)(2) and (b)(1).

Allegations Concerning Certification of the Age 55 Cut-Off Class

79. This Age 55 Cut-Off Class can be identified by objective criteria in records maintained by one or both Defendants.

80. Certification of the Age 55 Cut-Off Class is appropriate under Rule 23(b)(1), Fed.R.Civ.P., because there is a risk that the prosecution of separate actions would establish incompatible standards of conduct for the Plan regarding whether PPA interest credits should continue after age 55.

81. Certification of the Age 55 Cut-Off Class is also appropriate under Rule 23(b)(2), Fed.R.Civ.P., because the Plan has underpaid and continues to underpay pension benefits in the same contested manner by refusing to provide PPA credits past age 55; therefore, the Plan has 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.

82. Alternatively, certification of the Age 55 Cut-Off Class is also appropriate under Rule 23(b)(3), Fed.R.Civ.P., because there are predominant common questions of fact and law as to whether the Plan's discontinuation of PPA interest credits at age 55 is legal.

83. The Age 55 Cut-Off Class is comprised of thousands of current and former Plan participants and is thus so numerous that joinder of all Class Members would be impracticable.

84. Common questions of law and fact exist as to all members of the Age 55 Cut-Off Class and predominate over any questions affecting solely individual members of the Class. The common questions include:

a. whether the Plan should be reformed to require the continuation of PPA interest credits through the normal retirement age of 65;

b. whether injunctive relief is appropriate under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3); and

c. whether members of the Age 55 Cut-Off Class have sustained or will sustain damage.

85. Plaintiffs' claims are typical of the claims of all Age 55 Cut-Off Class Members regarding whether the Plan's discontinuation of PPA interest credits after age 55 complies with ERISA provisions concerning age discrimination, forfeiture, and accrual, in that the Plan is uniform in its practice of not paying PPA interest credits after the age of 55.

86. Plaintiffs are adequate representatives of the Age 55 Cut-Off Class, in that Plaintiffs understand the basic issues in the case, and the undersigned attorneys are experienced and competent to handle complex class action litigation.

87. Plaintiffs have interests identical to and not in conflict with the interests of other Age 55 Cut-Off Class Members regarding the method and legality of the Plan's discontinuation of PPA interest credits after age 55.

88. A class action is superior to other available litigation methods for the fair and efficient adjudication of this controversy, as joinder of all Members of the Age 55 Cut-Off Class is impracticable. Furthermore, many Class Members injured by the Plan's conduct will not be compensated for their injuries in the absence of a class action since it is too expensive for many individual members to prosecute this litigation. Even if individual Class Members could afford to prosecute this litigation alone, individual litigation magnifies the delay and expense to all parties and to the court system of resolving the controversies engendered by the Plan's actions.

By contrast, a class action presents fewer management difficulties and provides the benefits of unitary adjudication, economies of scale and comprehensive supervision by a single court.

COUNT II--Age 55 Cut-Off Claim against the Solutia Plan

89. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Monsanto and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Solutia Age 55 Cut-Off Class Definition

90. Plaintiffs Davis, Forneris, and Hammond bring Count II individually and on behalf of the Solutia Age 55 Cut-Off Class defined as follows:

> All current Solutia Plan participants and all vested former Solutia Plan participants (and their beneficiaries) who had active Cash Balance and Prior Plan Accounts on and after January 1, 1997.

Excluded from the Solutia Age 55 Cut-Off Class are participants who terminated employment with Solutia prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Solutia Plan has no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Monsanto or Pharmacia Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Solutia's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

91. The Solutia Plaintiffs incorporate the substantive and certification-related paragraphs of the Count I Age 55 Cut-Off Claim against the Monsanto Defendants, as if those paragraphs were fully set out here. The incorporated paragraphs are numbers 71-88.

<u>COUNT III--Age 55 Cut-Off Claim against the Pharmacia Defendants</u>

92. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Monsanto Defendants and the Solutia Plan are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

<u>Pharmacia Age 55 Cut-Off Class Definition</u>

93. Plaintiffs Donaldson, Walter, Clawson, Bellon, Sokoloski, and Thomas bring Count III individually and on behalf of the Pharmacia Age 55 Cut-Off Class defined as follows:

> All current Pharmacia Plan participants and all vested former Pharmacia Plan participants (and their beneficiaries) who had active Cash Balance and Prior Plan Accounts on and after January 1, 1997.

Excluded from the Pharmacia Age 55 Cut-Off Class are participants who terminated employment with Pharmacia prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Pharmacia Plan and/or Pharmacia have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Monsanto Defendants or the Solutia Plan; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Pharmacia's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

94. The Pharmacia Plaintiffs incorporate the substantive and certification-related paragraphs of the Count I Age 55 Cut-Off Claim against the Monsanto Defendants, as if those paragraphs were fully set out here. The incorporated paragraphs are numbers 71-88.

THE FOLLOWING COUNTS IV-VI ARE PLEAD IN THE ALTERNATIVE

COUNT IV—Backloading Claim against the Monsanto Defendants

95. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Solutia and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Monsanto Backloading Class Definition

96. Plaintiffs Walker, Zeringue, and Drake bring Count IV individually and on behalf of the Monsanto Backloading Class defined as follows:

> All current Monsanto Plan participants and all vested former Monsanto Plan participants (and their beneficiaries) who had active Cash Balance and Prior Plan Accounts on and after January 1, 1997.

Excluded from the Monsanto Backloading Class are participants who terminated employment with Monsanto prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Monsanto Plan and/or Monsanto have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Solutia Plan or Pharmacia Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Monsanto's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

Substantive Allegations Related to the Monsanto Backloading Claim

97. As a defined benefit plan, the Plan must comply with ERISA backloading provisions whose purpose is to prevent Plan participants from being locked into a particular

employment because their pension benefits are worth relatively little unless participants work for the same employer for many years. IRS Notice 96-8; 26 U.S.C. §§ 411(a), (b)(1); 29 U.S.C. § 1054(c)(3).

98. In order to comply with ERISA backloading requirements, defined benefit plans must satisfy one of the three backloading tests codified at 29 U.S.C. § 1054(b)(1)(A), (B), (C).

99. The only one of the above-referenced backloading tests which the Plan could possibly meet is the "133 1/3%" subsection B test. According to that test,

> A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later play year is not more than 133 1/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year.

29 U.S.C. § 1054(b)(1)(B).

100. Under the 133 1/3% backloading test, the rate of benefit accrual in any later plan year cannot be more as a percentage of compensation than 133 1/3% of the rate of benefit accrual in any prior year. For example, if a participant's rate of benefit accrual in his first year of employment under a defined benefit plan equals 3% of his compensation, there is a violation of the 133 1/3% test if that participant's benefits in any subsequent plan year exceed 4% of his compensation in that year.

101. The Plan violates the 133 1/3% test with respect to members of the Backloading Class.

Allegations Concerning Certification of the Backloading Class

102. This Backloading Class can be identified by objective criteria in records maintained by one or both Defendants.

103. Certification of the Backloading Class is appropriate under Rule 23(b)(1), Fed.R.Civ.P., because there is a risk that the prosecution of separate actions would establish incompatible standards of conduct for the Plan, regarding whether the rate of benefit accrual for the Class is backloaded and how the Plan should remedy any backloading violation.

104. Certification of the Backloading Class is appropriate under Rule 23(b)(2), Fed.R.Civ.P., because the Plan has violated and continues to violate ERISA backloading requirements with respect to members of this Class in the same contested manner; therefore, the Plan has acted or refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

105. Alternatively, certification of the Backloading Class is also appropriate under Rule 23(b)(3), Fed.R.Civ.P., because there are predominant common questions of fact and law as to whether the rate of benefit accrual under the Plan is impermissibly backloaded with respect to members of this Class.

106. The Backloading Class is believed to be comprised of thousands of Plan participants and is thus so numerous that joinder of all Class Members would be impracticable.

107. Common questions of law and fact exist as to all members of the Backloading Class and predominate over any questions affecting solely individual members of the Class. The common questions include:

a. whether the Plan has improperly backloaded benefits in violation of ERISA;

b. how the Plan's alleged backloading violation should be remedied;

c. whether injunctive relief is appropriate under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3); and

d. whether members of the Backloading Class have sustained and will sustain damage.

108. Plaintiffs' claims are typical of the claims of all Backloading Class Members regarding whether the Plan's rate of accrual complies with ERISA's prohibition against backloading, in that the same backloading test applies to the benefits accrued by all Class Members and all Class Members have had both Cash Balance and Prior Plan Accounts.

109. Plaintiffs are adequate representatives of the Backloading Class, in that Plaintiffs understand the basic issues in the case and the undersigned attorneys are experienced and competent to handle complex class action litigation.

110. Plaintiffs have interests identical to and not in conflict with the interests of other Backloading Class Members regarding whether the Plan's rate of benefit accrual is impermissibly backloaded with respect to members of this Class.

111. A class action is superior to other available litigation methods for the fair and efficient adjudication of this controversy, as joinder of all Members of the Backloading Class is impracticable. Furthermore, many Class Members injured by the Plan's conduct will not be compensated for their injuries in the absence of a class action since it is too expensive for many individual members to prosecute this litigation. Even if individual Class Members could afford to prosecute this litigation alone, individual litigation magnifies the delay and expense to all parties and to the court system of resolving the controversies engendered by the Plan's actions.

By contrast, a class action presents fewer management difficulties and provides the benefits of unitary adjudication, economies of scale and comprehensive supervision by a single court.

COUNT V—Backloading Claim against the Solutia Plan

112. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Monsanto and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Solutia Backloading Class Definition

113. Plaintiffs Davis, Forneris, and Hammond bring Count V individually and on behalf of the Solutia Backloading Class defined as follows:

> All current Solutia Plan participants and all vested former Solutia Plan participants (and their beneficiaries) who had active Cash Balance and Prior Plan Accounts on and after January 1, 1997.

Excluded from the Solutia Backloading Class are participants who terminated employment with Solutia prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Solutia Plan has no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Monsanto or Pharmacia Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Solutia's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

114. The Solutia Plaintiffs incorporate the substantive and certification-related paragraphs of the Count IV Backloading Claim against the Monsanto Defendants, as if those paragraphs were fully set out here. The incorporated paragraphs are numbers 97-111.

COUNT VI—Backloading Claim against the Pharmacia Defendants

115. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Monsanto Defendants and the Solutia Plan are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Pharmacia Backloading Class Definition

116. Plaintiffs Donaldson, Walter, Clawson, Bellon, Sokoloski, and Thomas bring Count VI individually and on behalf of the Pharmacia Backloading Class defined as follows:

> All current Pharmacia Plan participants and all vested former Pharmacia Plan participants (and their beneficiaries) who had active Cash Balance and Prior Plan Accounts on and after January 1, 1997.

Excluded from the Pharmacia Backloading Class are participants who terminated employment with Pharmacia prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Pharmacia Plan and/or Pharmacia have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Monsanto Defendants or the Solutia Plan; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Pharmacia's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

117. The Pharmacia Plaintiffs incorporate the substantive and certification-related paragraphs of the Count IV Backloading Claim against the Monsanto Defendants, as if those paragraphs were fully set out here. The incorporated paragraphs are numbers 97-111.

THE FOLLOWING COUNTS VII-IX ARE PLEAD IN THE ALTERNATIVE

COUNT VII—Age Discrimination Claim against the Monsanto Defendants

118. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Solutia and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Monsanto Age Discrimination Class Definition

119. Plaintiffs Walker, Zeringue, and Drake bring Count VII individually and on behalf of the Age Discrimination Class defined as follows:

> All current Monsanto Plan participants and all vested former Monsanto Plan participants (and their beneficiaries) who have had active Cash Balance Accounts at any time since January 1, 1997.

Excluded from the Monsanto Age Discrimination Class are participants who terminated employment with Monsanto prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Monsanto Plan and/or Monsanto have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Solutia Plan or Pharmacia Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Monsanto's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

Substantive Allegations Related to the Monsanto Age Discrimination Claim

120. Regardless of the form in which Plan participants have elected to receive pension benefits, pension payments made to Plan participants have violated and continue to violate ERISA's prohibitions against age discrimination.

121. ERISA prohibits the actuarial value of any Plan participant's accrued benefit from being "reduced on account of any increase in . . . age." 29 U.S.C. § 1054 (b)(1)(G); 29 U.S.C. § 1002 (23)(A).

122. ERISA also prohibits the actuarial value of any Plan participant's "rate of benefit accrual (from being reduced) because of the attainment of any age." 29 U.S.C. § 1054 (b)(1)(H); 29 U.S.C. § 1002 (23)(A).

123. The actuarial value of the amounts credited to the Cash Balance and Prior Plan Accounts of all participants, including Plaintiffs, is reduced or increases at a reduced rate on account of age, in violation of ERISA § 204(b)(1)(G) & (H), 29 U.S.C. § 1054(b)(1)(G) & (H).

124. In order to comply with the above-referenced ERISA prohibitions against age discrimination, the Plan should provide to participants' Cash Balance and Prior Plan Accounts non-interest credits which increase each year as participants grow older.

125. Because Plan participants' pension benefits are based upon the CBA and PPA, all pension benefits paid to Plan participants, including Plaintiffs, have been too low to comply with ERISA.

Allegations Concerning Certification of the Age Discrimination Class

126. This Age Discrimination Class can be identified by objective criteria in records maintained by one or both Defendants.

127. Certification of the Age Discrimination Class is appropriate under Rule 23(b)(1), Fed.R.Civ.P., because there is a risk that the prosecution of separate actions would establish incompatible standards of conduct for the Plan regarding whether the actuarial value of the amounts credited to participants' accounts is reduced or accrues at a reduced rate because of age, in violation of the above-referenced provisions of ERISA.

128. Certification of the Age Discrimination Class is appropriate under Rule 23(b)(2), Fed.R.Civ.P., because the Plan has violated the above-referenced ERISA provisions with respect to each Class Member in the same contested manner; therefore, the Plan has acted or refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

129. Alternatively, certification of the Age Discrimination Class is also appropriate under Rule 23(b)(3), Fed.R.Civ.P., because there are predominant common questions of fact and law as to each Member of the Class regarding the propriety of the identical method which the Plan has used to determine how much to credit to each Class Member's accounts.

130. The Age Discrimination Class is comprised of thousands of current and former Plan participants and is thus so numerous that joinder of all Class Members would be impracticable.

131. Common questions of law and fact exist as to all members of the Age Discrimination Class and predominate over any questions affecting solely individual members of the Class. The common questions include:

a. whether the benefits provided under the terms of the Plan improperly accrue at a reduced rate based on age;

b. whether the benefits earned under the Plan are calculated correctly as required by ERISA;

c. whether injunctive relief is appropriate under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3); and

d. whether members of the Age Discrimination Class have sustained and will sustain damage.

132. Plaintiffs' claims are typical of the claims of all Class Members regarding whether the Plan's cash balance accrual practices comply with ERISA, as alleged in this Age Discrimination claim, in that all Class Members' rights arise under the same Plan document and the same ERISA provisions.

133. Plaintiffs are adequate representatives of the Age Discrimination Class, in that Plaintiffs understand the basic issues in the case and the undersigned attorneys are experienced and competent to handle complex class action litigation.

134. Plaintiffs have interests identical to and not in conflict with the interests of other Class Members regarding the Plan's accrual practices alleged in this Age Discrimination Count.

135. A class action is superior to other available litigation methods for the fair and efficient adjudication of this controversy, as joinder of all Members of the Age Discrimination Class is impracticable. Furthermore, many Class Members injured by the Plan's conduct will not be compensated for their injuries in the absence of a class action since it is too expensive for many individual members to prosecute this litigation. Even if individual Class Members could afford to prosecute this litigation alone, individual litigation magnifies the delay and expense to all parties and to the court system of resolving the controversies engendered by the Plan's actions. By contrast, a class action presents fewer management difficulties and provides the

benefits of unitary adjudication, economies of scale and comprehensive supervision by a single court.

COUNT VIII--Age Discrimination Claim against the Solutia Plan

136. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Monsanto and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Solutia Age Discrimination Class Definition

137. Plaintiffs Davis, Forneris, and Hammond bring Count VIII individually and on behalf of the Solutia Age Discrimination Class defined as follows:

> All current Solutia Plan participants and all vested former Solutia Plan participants (and their beneficiaries) who had active Cash Balance Accounts on and after January 1, 1997.

Excluded from the Solutia Age Discrimination Class are participants who terminated employment with Solutia prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Solutia Plan has no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Monsanto or Pharmacia Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Solutia's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

138. The Solutia Plaintiffs incorporate the substantive and certification-related paragraphs of the Count VII Age Discrimination against the Monsanto Defendants, as if those paragraphs were fully set out here. The incorporated paragraphs are numbers 120-135.

COUNT IX—Age Discrimination Claim against the Pharmacia Defendants

139. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Monsanto and Solutia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Pharmacia Age Discrimination Class Definition

140. Plaintiffs Donaldson, Walter, Clawson, Bellon, Sokoloski, and Thomas bring Count IX individually and on behalf of the Pharmacia Age Discrimination Class defined as follows:

> All current Pharmacia Plan participants and all vested former Pharmacia Plan participants (and their beneficiaries) who had active Cash Balance Accounts on and after January 1, 1997.

Excluded from the Pharmacia Age Discrimination Class are participants who terminated employment with Pharmacia prior to age 55 and who took their pension benefits in some form of annuity. Also excluded from this Class are any individuals for whose pension benefits the Pharmacia Plan and/or Pharmacia have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Monsanto Defendants or the Solutia Plan; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Pharmacia's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

141. The Pharmacia Plaintiffs incorporate the substantive and certification-related paragraphs of the Count VII Age Discrimination Claim against the Monsanto Defendants, as if those paragraphs were fully set out here. The incorporated paragraphs are numbers 120-135.

COUNT X—Late Lump Sum Claim against the Monsanto Defendants

142. All paragraphs of the preceding "General facts" section of this Complaint which are not specific to the claims against the Solutia and Pharmacia Defendants are incorporated as if fully set forth here. The incorporated paragraphs are numbers 1-68.

Monsanto Late Lump Sum Class Definition

143. Plaintiff Zeringue brings Count X individually and on behalf of the Monsanto Late Lump Sum Class defined as follows:

> All former Monsanto Plan participants (and their beneficiaries) with PPA's who have taken a lump sum distribution more than a complete calendar month after their Benefit Commencement Date and all Monsanto Plan participants (and their beneficiaries) with PPA's who have not yet taken a distribution of their pension benefits.

Excluded from this Class are any individuals for whose pension benefits the Monsanto Plan and/or Monsanto have no first party responsibility, including those individuals whose pension obligations are the exclusive first party responsibility of any of the Solutia Plan or Pharmacia Defendants; Defendants; members and staff of the Employee Benefits Plans Committee; any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants; Defendants' legal representatives (including employees of Monsanto's Law Department), assigns, and successors; and any judges assigned to this case and any member of such judge's immediate family.

Exhaustion of Administrative Remedies

144. Plaintiff has exhausted his administrative remedies with respect to this claim.

Substantive Allegations Related to the Late Lump Sum Claim

145. In pertinent part, section 7.3(e)(v) of the Monsanto Plan provides that the Prior Plan Accounts of lump sum recipients who are "paid . . . after the calendar month containing the Participant's Annuity Starting Date . . . shall be credited with Interest Credits in accordance with Section 6.2(d) (regardless of the Participant's age) . . . for each complete calendar month in the period beginning on the first day of the month containing his Annuity Starting Date and ending on the first day of the month in which the Lump Sum Distribution is made to the Participant."

146. Section 3.10 of the Monsanto Plan defines Annuity Starting Date as "[t]he first day of the first period for which an amount is payable under the Plan to a Participant or Beneficiary as an annuity or any other form."

147. In its letter denying Plaintiff Zeringue's administrative claim, the Committee which administers the Monsanto Plan acknowledged that the interest required by section 7.3(e)(v) of the Monsanto Plan is due whenever a lump sum distribution is "paid after the benefit commencement date[,]" which the Committee defines as "[t]he date on which the participant chooses to receive his/her benefit[.]"

148. Despite Monsanto Plan section 7.3(e)(v)'s requirement of 8.5% PPA interest on lump sum distributions paid after the benefit commencement date, the Monsanto Plan Committee acknowledged in its denial letter that it pays only lower PPA interest (typically, around 5%) based upon the average yield of 30-year Treasury Bonds on delayed lump sum distributions.

149. Plaintiff Zeringue received his lump sum distribution on March 1, 2002, more than a complete calendar month after the January 1, 2002, benefit commencement date on which Zeringue chose to receive his benefit.

150. Rather than being credited with the 8.5% PPA interest required by section 7.3(e)(v) of the Monsanto Plan, Plaintiff Zeringue's PPA Account was credited only with interest based upon the above-referenced 30-year Treasury Bond during the two-month delay in the payment of Zeringue's lump sum distribution.

<u>Allegations Concerning Certification of the Late Lump Sum Class</u>

151. The Monsanto Late Lump Sum Class can be identified by objective criteria in records maintained by one or both Defendants.

152. Certification of the Monsanto Late Lump Sum Class is appropriate under Rule 23(b)(1), Fed.R.Civ.P., because there is a risk that the prosecution of separate actions would establish incompatible standards of conduct for the Monsanto Plan regarding whether members of this Class are entitled to 8.5% PPA interest credits when there is a lag in the payment of their lump sum benefits, as described above.

153. Certification of the Monsanto Late Lump Sum Class is appropriate under Rule 23(b)(2), Fed.R.Civ.P., because the Monsanto Plan has underpaid and continues to underpay the lump sum distributions of Members of the Class in the same contested manner; therefore, the Monsanto Plan has acted or refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

154. Alternatively, certification of the Monsanto Late Lump Sum Class is also appropriate under Rule 23(b)(3), Fed.R.Civ.P., because there are predominant common questions of fact and law as to whether the Monsanto Plan has underpaid and continues to underpay PPA interest credits to Members of the Class during lag periods between their Annuity Starting Date and lump sum distribution date.

155. The Monsanto Late Lump Sum Class is comprised of at least hundreds of Monsanto Plan participants and is thus so numerous that joinder of all Class Members would be impracticable.

156. Common questions of law and fact exist as to all members of the Monsanto Late Lump Sum Class and predominate over any questions affecting solely individual members of the Class. The common questions include:

a. the meaning of Section 7.3(e)(v) of the Monsanto Plan;

b. whether injunctive relief is appropriate under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3); and

c. whether Monsanto Late Lump Sum Class Members have received and will receive the additional PPA credits due under Section 7.3(e)(v) of the Monsanto Plan.

157. Plaintiff Zeringue's claim is typical of the claims of Members of the Monsanto Late Lump Sum Class regarding whether the Monsanto Plan underpays PPA interest credits during "lag periods" prior to the distribution of lump sum benefits, in that all Class Members' entitlement to additional PPA interest credits during such lag periods is based upon the same provision of the Monsanto Plan.

158. Plaintiff Zeringue is an adequate representative of the Monsanto Late Lump Sum Class, in that Plaintiff understands the basic issues in the case and the undersigned attorneys are experienced and competent to handle complex class action litigation.

159. Plaintiff Zeringue has interests identical to and not in conflict with the interests of other Monsanto Late Lump Sum Class Members regarding their entitlement to additional interest credits to their PPA accounts under Section 7.3(e)(v) of the Monsanto Plan.

160. A class action is superior to other available litigation methods for the fair and efficient adjudication of this controversy, as joinder of all Members of the Monsanto Late Lump Sum Class is impracticable. Furthermore, many Class Members injured by the Monsanto Plan's conduct will not be compensated for their injuries in the absence of a class action since it is too expensive for many individual members to prosecute this litigation. Even if individual Class Members could afford to prosecute this litigation alone, individual litigation magnifies the delay and expense to all parties and to the court system of resolving the controversies engendered by the Monsanto Plan's actions. By contrast, a class action presents fewer management difficulties and provides the benefits of unitary adjudication, economies of scale and comprehensive supervision by a single court.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. Regarding Plaintiffs Walker's, Zeringue's and Drake's claims for Class certification:

1. Certification under subsections (b)(1), (b)(2), or (b)(3) of the Classes proposed in Counts I, IV, VII, and X;
2. Approval of all three Plaintiffs as representatives of the Classes with respect to the claims stated in Counts I, IV and VII and approval of Plaintiff Zeringue as representative of the Late Lump Sum Class with respect to the claim stated in Count X; and
3. Appointment of the undersigned attorneys as Counsel for the Classes proposed in Counts I, IV, VII, and X.

B. Regarding Plaintiffs Davis', Forneris' and Hammond's claims for Class certification,

1. Certification under subsections (b)(1), (b)(2), or (b)(3) of the Classes proposed in Counts II, V, and VIII;

2. Approval of all three Plaintiffs as representatives of the Classes with respect to the claims stated in Counts II, V, and VIII; and

3. Appointment of the undersigned attorneys as Counsel for the Classes proposed in Counts II, V, and VIII.

C. Regarding Plaintiffs Donaldson's, Walter's, Clawson's, Bellon's, Sokoloski's, and Thomas' claims for Class certification,

1. Certification under subsections (b)(1), (b)(2), or (b)(3) of the Classes proposed in Counts III, VI, and IX;

2. Approval of all six Plaintiffs as representatives of the Classes with respect to the claims stated in Counts III, VI, and IX.

3. Appointment of the undersigned attorneys as Counsel for the Classes proposed in Counts III, VI, and IX.

D. Regarding Plaintiffs' substantive claims on behalf of all proposed Classes:

1. Judgment against the Plan and in favor of Plaintiffs and the Classes on all claims herein, including:

a. An order declaring the Plan's practices to be unlawful, as alleged in Counts I-X;

b. An order permanently enjoining the Plan from continuing to engage in the unlawful practices described in Counts I-X;

c. An order requiring the Plan to be reformed to the extent necessary to correct the unlawful practices and Plan provisions, as described in Counts I-X.

d. In accordance with the equitable relief requested in preceding subparagraphs a-c, an order requiring the Plan to recalculate and pay former Plan participants the difference between the pension benefits which those former participants have received and the pension benefits which they should have received, as alleged in Counts I-X;

e. In conjunction with the order requested in the preceding subparagraph d, an order creating a common fund equal to the amount of pension benefits due former Plan participants;

f. Pre- and post-judgment interest and costs;

g. Reasonable attorneys' fees; and

h. Any other relief this Court deems just, proper and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2006, I electronically filed Plaintiffs' Consolidated Class Action Complaint with the Clerk of Court using CM/ECF system which will send notification of such filing to the following:

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