



Pension and Employee Benefit Law
Toll Free (888) 489-9904

PROVIDED BY LEXIS-NEXIS

*2002 U.S. Dist. LEXIS 25947, **

JANICE C. AMARA, individually and on behalf of others similarly situated, Plaintiff, v.
CIGNA CORPORATION AND CIGNA PENSION PLAN, Defendants.

Civil No. 3:01CV2361 (DJS)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

2002 U.S. Dist. LEXIS 25947

December 20, 2002 Decided
December 20, 2002, Filed

DISPOSITION: Plaintiff's motion to certify class granted. Defendant's motion to supplement record granted.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff, a former employee of defendant employer, commenced a putative class action against the employer, pursuant to the Employee Retirement Income Security Act (ERISA) and the Age Discrimination in Employment Act, seeking equitable relief for the employer's alleged failure to comply with ERISA's

non-forfeiture and age discrimination provisions. The employee moved to certify the proposed class.

OVERVIEW: The employee's claims arose from the employer's conversion of its prior traditional defined benefit pension plan into a defined benefit cash balance pension plan. The employee contended that the conversion resulted in a plan that did not meet the requirements governing defined benefit plans. In seeking class certification, the employee had to satisfy the four prerequisites of Fed. R. Civ. P. 23(a). As for numerosity, the employee submitted evidence that there were 25,000 class members. Joinder of 25,000 plaintiffs was impracticable, and so the employee established the first prerequisite. As for commonality and typicality, the employee presented claims with common questions of law and fact to those of each class member. Thus, she established the second and third prerequisites. Finally, as for adequacy, the employee proved herself to be an adequate class representative by stating her dedication to pursuing the lawsuit and selecting competent counsel to prosecute her claim on behalf of the class. Thus, she satisfied the fourth prerequisite. Because the employee demonstrated the prerequisites to class certification, the class was certified under Fed. R. Civ. P. 23(b)(2).

OUTCOME: The employee's motion to certify the putative class was granted.

CORE TERMS: class certification, prerequisite, conversion, account balance, hypothetical, annuity, legal question, pension plan, misleading, adequacy, prevail, age discrimination, equitable relief, proposed class, impracticable, typicality, numerosity, joinder, calculation, method of calculating, motion to certify, injunctive relief, questions of law, defined benefit, class member, participated, non-forfeiture, predetermined, commonality, class-wide

LexisNexis (TM) HEADNOTES - Core Concepts -

In order to obtain class certification, a plaintiff must satisfy each of the four prerequisites set forth in Fed. R. Civ. P. 23(a). Once those prerequisites are satisfied, the plaintiff must also establish the requirements set forth in Fed. R. Civ. P. 23(b).

Fed. R. Civ. P. 23(a) requires satisfaction of the following four factors. First, the class must be so numerous that joinder of all members is impracticable. Second, there must exist questions of law or fact common to the class. Third, the claims or defenses of the representative parties must be typical of the claims or defenses of the class. Fourth, the representative parties must be able to protect the interests of the class fairly and adequately. These four elements are often referred to, respectively, as numerosity, commonality, typicality, and adequacy of representation.

The first prerequisite of class certification, numerosity, requires that the proposed class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1).

The second and third requirements of Fed. R. Civ. P. 23(a) are the existence of questions of law or fact common to the class, and whether the named plaintiff's claims are typical of the claims of the class. In such circumstances, the presence of even an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy the required typicality of the class as well as bring into question the adequacy of the named plaintiff's representation.

In order to certify a class, a plaintiff must demonstrate that he or she will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.

Fed. R. Civ. P. 23(b)(2) states that class certification is appropriate when the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2).

COUNSEL: [*1] For JANICE C. AMARA, plaintiff - Jeffrey M. Sklarz, Zeisler & Zeisler, P.C., Bridgeport, CT. Thomas G. Moukawsher, Moukawsher & Walsh, Hartford, CT. Stephen R. Bruce, Washington, DC.

For CIGNA CORP, CIGNA PENSION PLAN, defendants: James A. Wade, Erin K. O'Brien, Robinson & Cole, Hartford, CT. Christopher A. Parlo, Joseph J. Costello, Jeremy P. Blumenfeld, Morgan, Lewis & Bockius, New York, NY.

JUDGES: DOMINIC J. SQUATRITO, UNITED STATES DISTRICT JUDGE.

OPINION BY: DOMINIC J. SQUATRITO

OPINION: MEMORANDUM OF DECISION

Plaintiff has commenced the above-captioned lawsuit, styled as a putative class action, pursuant to the Employee Retirement Income Security Act ("ERISA") and Age Discrimination in Employment Act ("ADEA") seeking equitable relief for alleged failure to comply with ERISA's non-forfeiture and age discrimination provisions. Pending before the court is plaintiff's motion to certify the proposed class. n1 For the reasons set forth herein, this motion (dkt. # 23) is **GRANTED**.

- - - - - Footnotes - - - - -

Also pending is CIGNA's motion to supplement the record (dkt. # 36). This motion is **GRANTED.**

----- End Footnotes----- [*2]

FACTS

The amended complaint, memoranda, and affidavits submitted in support of the motion for class certification and the response thereto reveal the following facts material to the court's decision.

----- Footnotes-----

The court offers this brief discussion of plaintiff's claims by way of summary only; plaintiff's claims are in no way limited or construed by this discussion.

----- End Footnotes-----

Plaintiff's claims arise from defendant CIGNA's conversion of its prior traditional defined benefit pension plan, CIGNA Pension Plan Part A ("Part A"), into a defined benefit cash balance pension plan, CIGNA Pension Plan Part B ("Part B") This conversion changed the method of calculating and accounting for annuity benefits by basing the amount of the annuity upon a hypothetical individual account balance.

This hypothetical balance is derived from "credits" reflecting a predetermined percentage of the employee's salary ("benefit credit") and interest at a predetermined rate ("interest credit"). Thus, the cash balance plan resembles a defined [*3] contribution plan, but remains a defined benefit plan. Plaintiff challenges this conversion and contends that Plan B fails to meet the requirements governing defined benefit plans set forth in ERISA, the Internal Revenue Code ("IRC"), and the ADEA. n3

----- Footnotes-----

n3 Employers' conversion of their traditional pension plans to cash balance plans has incited vigorous commentary within the practice area, which has just begun to permeate into courts throughout the country. See, e.g., Edsen v. Bank of Boston, 229 F.3d 154 (2d Cir. 2000); Eaton v. Onan Corp., 117 F. Supp. 2d 812 (S.D. Ind. 2000)

----- End Footnotes-----

Specifically, plaintiff claims that the conversion of the pension plan necessarily conditioned receipt of further benefits under the provisions of Part B upon her acceptance of CIGNA's valuation of her accrued benefit under the prior plan. Upon conversion, plaintiff's annuity benefit was no longer based upon the formula set forth in Part A, but rather was transformed into a hypothetical individual account, [*4] with a particular "balance." This "initial retirement account" was based upon the

present actuarial value of the annuity benefit due plaintiff at her normal retirement age, which is sixty-five years of age, under Part A. Part B provides that when plaintiff elects to receive her benefit, she would receive the greater of the account balance, or the "minimum benefit" as that term is defined under Part B.

In layman's terms, as a result of these calculations plaintiff experienced a period where benefits "constructively" accrued in her cash balance account. This is so because the minimum benefit payable to plaintiff was greater than her hypothetical account balance, which means that plaintiff would not begin to realize the accrual of benefits under Plan B until her hypothetical account balance exceeded the amount of the minimum benefit. Thus, under Part A, plaintiff would have received a certain amount upon her retirement. When the plan converted to Part B, plaintiff's annuity benefit would remain constant for a certain period of time even though she is technically accruing additional benefits under Part B. Plaintiff contends that this methodology violates either ERISA's non-forfeiture provision, [*5] 29 U.S.C. § 1053(a), or the IRC's "133 & 1/3" rule, 29 U.S.C. § 1054(b)(1). As a remedy, plaintiff seeks equitable relief pursuant to 29 U.S.C. § 1132(a).

In addition, plaintiff also contends that CIGNA's summary plan description ("SPD") is misleading, and that Plan B impermissibly discriminates on the basis of age in that it provides for decreasing benefits commensurate with increasing age. She also seeks equitable relief as a remedy for these claims as well.

DISCUSSION

In order to obtain class certification, plaintiff must satisfy each of the four prerequisites set forth in Rule 23(a) of the Federal Rules of Civil Procedure. See *Caridad v. Metro-North Commuter Railroad*, 191 F.3d 283, 291 (2d Cir. 1999). Once those prerequisites are satisfied, plaintiff must also establish the requirements set forth in Rule 23 (b)

Rule 23(a) requires satisfaction of the following four factors. First, the class must be so numerous that joinder of all members is impracticable. Second, there must exist questions of law or fact common to the class. Third, the claims or defenses of the representative [*6] parties must be typical of the claims or defenses of the class. Fourth, the representative parties must be able to protect the interests of the class fairly and adequately. These four elements are often referred to, respectively, as "numerosity," "commonality," "typicality," and adequacy of representation."

CIGNA's principal objections to class certification do not relate to the specific requirements set forth in Rule 23, but rather are premised upon prudential considerations. First, CIGNA argues that it is bound to, or has agreed to, provide any relief ordered by the court on a class-wide basis, thereby rendering class certification superfluous. CIGNA's legal requirements and proposed agreements do not render the question of class certification moot. Should plaintiff prevail, the court must, consistent with its obligations under ERISA, administer appropriate relief notwithstanding CIGNA's assurances.

Second, CIGNA claims that providing the relief requested in the complaint on a class-wide basis may actually harm some members of the class. Specifically, CIGNA argues that provision of this relief could actually reduce benefit allocations to members of the class. If CIGNA is correct, [*7] this problem can be addressed when the court determines what remedy should be provided if plaintiff prevails on

the merits of her claims. Further, this problem could also be addressed by members of the class asserting these arguments once the class has been certified. At any rate, certification of the class is the first step toward fashioning a solution to this problem, if the problem indeed exists.

CIGNA's prudential objections do not persuade the court that class certification is not warranted. Further, as discussed below, plaintiffs have met their burden under Rule 23(a) and have demonstrated that their putative class meets the four factors set forth therein.

A. Numerosity

The first prerequisite, numerosity, requires that the proposed class be so "numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Plaintiff has submitted evidence that there are at least 25,000 class members. (See Bruce Dec. PP 4-5). Joinder of 25,000 plaintiffs is impracticable, and plaintiff has established the first prerequisite.

B. Commonality & Typicality

The second and third requirements of Rule 23(a) are the existence of questions of law or fact common to the [*8] class, and whether the named plaintiff's claims are typical of the claims of the class. See generally *Caridad v. Metro-North Commuter Railroad*, 191 F.3d 283, 293 (2d Cir. 1999) (explaining that the commonality criterion often merges with the typicality requirement and that the disputed issue of law or fact must "occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class"). In such circumstances, "the presence of even an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy the required typicality of the class as well as bring into question the adequacy of the named plaintiff's representation." *J.H. Cohn & Co. v. American Appraisal Assocs.*, 628 F.2d 994, 999 (7th Cir. 1980); see also *Kline v. Wolf*, 88 F.R.D. 696, 699 (S.D.N.Y. 1981) ("The members of [a] class are entitled to representatives unencumbered by unique defenses.")

Plaintiff Amara has presented claims with common questions of law and fact to those of each class member. Adjudication of the first count of the class action complaint turns upon the pure legal [*9] question of whether CIGNA's pension plan violates ERISA. The second count of the class complaint also turns upon a common legal question generally applicable to all members of the class: whether CIGNA's SPD is misleading. n4 Finally, the third count of the class complaint also turns upon a legal question concerning the applicability of the parallel age discrimination provisions of the ADEA, ERISA, and the IRC to CIGNA's pension plan. Regardless of whether the answer to each of these inquiries is affirmative or negative, the answer is identical as to each member of the class. Thus, plaintiff has established the second and third prerequisites.

- - - - - Footnotes - - - - -

n4 The parties dispute whether, in order to prevail on this claim, each plaintiff must make an individualized showing of detrimental reliance upon the misleading SPD provision. The U.S. Court of Appeals for the Second Circuit has not yet decided this

issue. However, the threshold inquiry on this claim, whether the SPD was misleading, is a legal question common to each class member. Therefore, class certification to decide this question is appropriate. Should plaintiffs prevail on this threshold question, and the court accept defendant's interpretation of the law on this point, the court will revisit class certification on this issue as appropriate.

- - - - - End Footnotes- - - - - [*10]

CIGNA's contentions to the contrary are without merit. The fact that plaintiff Amara left the employ of CIGNA for a brief period and then returned does not render her claim fundamentally different from those of the other class members. The key provision in this analysis is the provision dictating the method of calculating the participant's initial account balance. The relevance of the timing of this calculation is not readily apparent. Further, any specialized knowledge about the requirements of ERISA does not render plaintiff Amara's claims atypical because her knowledge has no bearing on the common legal questions prevalent in the class complaint.

C. Adequacy

In order to certify a class, the plaintiff must demonstrate that he or she will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625, 138 L. Ed. 2d 689, 117 S. Ct. 2231 (1997) Here, plaintiff Amara is an adequate class representative. Plaintiff Amara has affirmatively stated her dedication to pursuing this lawsuit, [*11] and has selected competent counsel to prosecute her claims on behalf of the class. CIGNA's argument to the contrary regarding a potential conflict of interest involving counsel for the plaintiff fails to detract from this conclusion because the purported conflict is, first, highly speculative, and, second, not obviously relevant to the claims being asserted by these plaintiffs.

D. Rule 23(b)

Having found that plaintiff has demonstrated the prerequisites to class certification set forth in Rule 23(a), the class shall be certified under Rule 23(b)(2). Rule 23(b)(2) states that class certification is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . ." Fed. R. Civ. P. 23(b)(2). Plaintiffs' claims fall squarely within the purview of this provision because they seek injunctive relief, pursuant to ERISA, generally applicable to the entire class.

CONCLUSION

For the reasons set forth herein, plaintiff's motion to certify the putative class (dkt. # 23) is **GRANTED**. The certified [*12] class is defined as follows:

Any and all persons who:

- 1. Are former and current CIGNA employees;**
- 2. Participated in the CIGNA Pension Plan before January 1, 1998; and**
- 3. Have participated in the "Part B" CIGNA Pension Plan at any time since January 1, 1998.**

So ordered at Hartford, Connecticut this 20th day of December, 2002.

DOMINIC J. SQUATRITO

UNITED STATES DISTRICT JUDGE