

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

**FILED**  
**OCT 16 2000**  
CLERK, U. S. DISTRICT COURT,  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

Kathi Cooper, Beth Harrington, and )  
Matthew Hillesheim, Individually and on Behalf )  
of All Those Similarly Situated, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 99-829 GPM  
 )  
The IBM Personal Pension Plan, and )  
IBM Corporation, )  
 ) CLASS ACTION  
Defendants. )

SECOND AMENDED COMPLAINT

Parties, Jurisdiction and Venue

1. Plaintiff Kathi Cooper is a citizen of the United States who resides in Madison County, Illinois.
2. Plaintiff Beth Harrington is a citizen of the United States who resides in Rochester, Minnesota.
3. Plaintiff Matthew Hillesheim is a citizen of the United States who resides in Rochester, Minnesota.
4. Defendant the IBM Personal Pension Plan (the "Plan") is a "defined benefit plan" within the meaning of Employment Retirement Income Security Act ("ERISA") § 3(35), 29 U.S.C. § 1002(35).
5. Defendant IBM Corporation ("IBM") is Delaware corporation with its principal place of business in New York. IBM is the "administrator" and "plan sponsor" of the Plan within the meaning of ERISA §§ 3(16) and (17), 29 U.S.C. § 1002(16) and (17).

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 29 U.S.C. § 1132(e)(1).

7. Venue is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2), in that the breach upon which the suit is premised occurred in this judicial district and/or because IBM and/or the Plan may be found in this judicial district.

Allegations of Fact

8. Ms. Cooper commenced full-time employment with IBM on May 21, 1979, and she remains so employed today.

9. Ms. Cooper commenced participation in the Plan effective as of May 21, 1979, and she continues to participate in the Plan as of today. Ms. Cooper is a "participant" in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7)

10. Ms. Cooper has obtained several statements from the Plan which calculate both her current accrued benefit as well as her projected accrued benefit under the terms of the Plan.

11. The benefit statements provided to Ms. Cooper understate the accrued benefit and the projected accrued benefit to which she is legally entitled by ignoring the application of the accrual and vesting rules imposed by ERISA on all defined benefit plans.

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

13. Ms. Harrington commenced full-time employment with IBM in approximately 1990, and terminated her employment with IBM in August 2000.

14. Ms. Harrington commenced participation in the Plan effective as of 1990. Ms. Harrington's benefits under the Plan accrued pursuant to the Cash Balance Retirement Account formula. Ms. Harrington is a "participant" in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

15. Ms. Harrington has obtained statements from the Plan which calculate both her current accrued benefit as well as her projected accrued benefit under the terms of the Plan.

16. The benefit statements provided to Ms. Harrington understate the accrued benefit and the projected accrued benefit to which she is legally entitled by ignoring the application of the accrual and vesting rules imposed by ERISA on all defined benefit plans.

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

18. Mr. Hillesheim commenced full-time employment with IBM in approximately 1996. He terminated employment with IBM in March 2000.

19. Mr. Hillesheim worked less than five years for IBM and, therefore, the benefits he accrued in the Plan did not vest under the Plan's vesting schedule. Mr. Hillesheim is a "participant" in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

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

### Class Action Allegations

21. Plaintiffs seeks class action certification, in that: (a) the conduct complained of is widespread, affecting as many as 140,000 active Plan participants, making joinder of all claims impracticable; (b) Plaintiffs' claims are typical of those of the class; and (c) there are common questions of law and fact which predominate. The common questions of law and fact include, among others: (i) whether the benefits earned by the Plan participants have been calculated correctly as required by ERISA; (ii) whether the benefits provided under the terms of the Plan accrue at a rate which is reduced because of age; and (iii) whether the adoption of the 1999 amendment (effective July 1, 1999) increased the potential that defendant IBM will receive a reversion on termination of the Plan.

22. 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 class action and complex litigation involving pension plans.

23. Plaintiffs request that this Court certify the following Class pursuant to Fed. R. Civ. P. 23(b)(2):

“All individuals who have participated in the IBM Personal Pension Plan at any time after December 31, 1994.”

### COUNT I

24. Plaintiffs Cooper and Harrington incorporate by reference the allegations of paragraphs 1-23 above in this Count.

25. The Plan's 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:

a. Effective as of January 1, 1995, and at all times thereafter, benefits accruing under the terms of the Plan do not satisfy any of the three rules found in subparagraphs (A), (B) or (C) of ERISA § 204(b)(1), 29 U.S.C. § 1054(b)(1);

b. Effective as of January 1, 1995, and at all times thereafter, benefits provided under the terms of the Plan are reduced on account of increases in age or service, and therefore the Plan does not comply with the accrual rule of subparagraph (G) of ERISA § 204(b)(1), 29 U.S.C. § 1054(b)(1)(G); and

c. Effective as of January 1, 1995, and at all times thereafter, benefits provided under the terms of the Plan accrue at a rate which is reduced because of age or the attainment of any age, and therefore the Plan does not comply with the accrual rules of subparagraph (H) of ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H).

26. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs are entitled to a judgment enjoining the Plan and IBM from continuing to violate the foregoing provisions of ERISA and to determine and calculate their benefits in a manner which is consistent with such provisions.

27. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs are entitled to appropriate equitable relief to redress the Plan's violations of the foregoing provisions of ERISA and to enforce such provisions.

## COUNT II

28. Plaintiffs Cooper and Harrington incorporate by reference the allegations of paragraphs 1-27 in this Count.

29. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), plaintiffs are entitled to a judgment clarifying their right to receive future benefits from the Plan, calculated under the terms of the Plan, to the extent those terms are not inconsistent with the applicable provisions of ERISA.

## COUNT III

30. Plaintiffs Cooper, Harrington and Hillesheim incorporate by reference the allegations of paragraphs 1-29 in this Count.

31. IBM amended the Plan effective July 1, 1999 (the “1999 Amendment”) to reduce the rate of future benefit accruals provided by the Plan.

32. The adoption of the 1999 Amendment has increased the potential that IBM will receive a reversion on termination of the Plan, resulting in a partial termination of the Plan.

33. Pursuant to the terms of the Plan, in the event of a partial termination of the Plan, the rights of all affected participants to benefits accrued as of the date of the partial termination shall be non-forfeitable, to the extent those benefits are funded as of such date.

34. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs are entitled to a mandatory injunction ordering IBM to comply with the terms of the Plan by declaring a partial termination of the Plan effective as of July 1, 1999, treating the accrued benefits of all affected participants as non-forfeitable.

WHEREFORE, plaintiffs pray for the following relief:

1. Certification of this action as a class action with the class defined as aforesaid.
2. Judgment for plaintiffs and the Class against defendants on all claims asserted herein including an amount of money sufficient to satisfy their claims;
3. Pre- and post-judgment interest;
4. Attorneys' fees and costs pursuant to the common fund/benefit doctrine or any other applicable law; and
5. Any other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies that on the 15 day of September 2000, service of the foregoing pleading was made by placing a true and correct copy of same in the United States mail, postage prepaid, addressed as follows:

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