

For Opinion See [2009 WL 2044665](#) , [636 F.Supp.2d 774](#) , [252 F.R.D. 450](#) , [101 Fair Empl.Prac.Cas. \(BNA\) 990](#) , [42 Employee Benefits Cas. 1312](#) , [472 F.Supp.2d 1053](#) , [2006 WL 2802051](#)

United States District Court, S.D. Illinois.

Grant M. WALKER, and Edward Zeringue, on behalf of themselves and all other similarly situated, Plaintiffs,

v.

THE MONSANTO COMPANY PENSION PLAN and the Monsanto Company, Defendants.

No. 04-436-DRH.

June 23, 2004.

Class Action Complaint

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Plaintiffs make the following allegation on personal knowledge as to facts concerning themselves and on information and belief, based upon investigation of counsel, as to all other matters:

FACTS RELEVANT TO BOTH COUNTS

THE PARTIES

1. Plaintiffs are individuals who are current or former employees of Monsanto Company, a global agricultural products provider.

pension contract between Monsanto and Plan participants. A copy of the Plan contract is attached as Exhibit A to this Complaint.

2. Each Plaintiffs brings his claim both individually and as a representative of a class of similarly situated participants in the Monsanto Company Pension Plan.

3. Defendant Monsanto Company (MNonsanto), a Delaware corporation, administers the Monsanto Company Pension Plan (the Plan).

4. The Plan, which is also a Defendant, provides pension benefits to Plan participants. In addition to using the term "Plan" to refer to the Monsanto entity which provides pension benefits, Plaintiffs at times also use the term "plan" to refer to the pension contract between Monsanto and Plan participants. A copy of the Plan contract is attached as Exhibit A to this Complaint.

MONSANTO'S DEFINED BENEFIT PLAN

5. 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.*

6. ERISA requires defined benefit plans to offer vested participants (*i.e.*, employees with over 5 years of service) a “normal retirement benefit” in the form of an annual lifetime pension starting at “normal retirement age,” which is 65 under the Monsanto Plan. 29 U.S.C., § 1053(a)[(a)(2)(A)]; 29 U.S.C. § 1002(22)[(23)(A)]; Plan § 3.37.
7. In a conventional defined benefit plan, the normal lifetime retirement benefit equals a specified percentage of a participant's salary in the final year or years of his employment.
8. Effective January 1, 1997, Monsanto converted from a conventional defined benefit plan to a type of defined benefit plan called a cash balance plan.
9. In cash balance plans, including Monsanto's, the normal lifetime retirement benefit is based upon a hypothetical account called the cash balance account.
10. Each Monsanto Plan participant's Cash Balance Account (CBA) grows by a specified percentage of a participant's income for each year of employment (contribution credits), plus interest posted to the CBA monthly (interest credits).
11. For participants who had been enrolled in Monsanto's Plan before the institution of the Cash Balance Account on January 1, 1997, the normal retirement benefit is also based upon a separate account called the Prior Plan Account (PPA)
12. The PPA began simultaneously with the Cash Balance Account on January 1, 1997, and initially consisted of the present value of the pre-1997 accrued benefits under the conventional defined benefit plan which was in effect prior to 1997.
13. Since January 1, 1997, the balance in each pre-1997 participant's PPA has grown by a specified percentage of the opening account balance (pay credits), plus interest posted to the PPA monthly (interest credits).
14. The Monsanto Plan calls for interest credits to the PPA to cease by the time that a participant reaches the age of 55, at the latest.
15. Like other cash balance plans, Monsanto's Cash Balance Plan calculates a participant's normal retirement benefit based upon a formula which takes into consideration the amounts in the participant's CBA and PPA. The formula used by the Monsanto Plan is stated in section 3.2 of the Plan.
16. The formula provided in section 3.2 of the Monsanto Plan yields an “accrued benefit” payable on a monthly basis, *i.e.*, the formula determines the amount of the monthly pension payments which a vested participant is entitled to receive starting at age 65 and continuing for the rest of his life.
17. For a participant who leaves Monsanto before normal retirement age, the normal retirement benefit required by ERISA is the benefit that the participant has “accrued” through the date of his leaving Monsanto. 26 U.S.C. § 411(c)(3); 29 U.S.C. § 1054(c)(3); 26 U.S.C. 411(a)(7)(A)(i); 29 U.S.C. § 1002(23)(A); 26 C.F.R. §§ 1.411(a)7(a)(1), 1.411(c)-1(e).

JURISDICTION AND VENUE

18. 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).

19. Venue is proper in this District under 29 U.S.C. § 1132(e)(2) because the Plan resides and may be found in this District and because terms of the Plan which track legal requirements have been breached in this District.

20. At times relevant to this Complaint, Defendant Monsanto has operated a plant and other facilities which have employed numerous Plan participants in this District.

21. At times relevant to this Complaint, many Monsanto Plan participants have accrued pension benefits within this District.

22. At times relevant to this Complaint, many Monsanto Plan participants who work at Monsanto's world headquarters in St. Louis, Missouri, have commuted to and from this District, which is just across the Mississippi River from St. Louis.

23. At times relevant to this Complaint, the Monsanto Plan has underpaid pension benefits to many Plan participants who have resided in this District.

OVERVIEW OF THE PLAN'S VIOLATIONS

24. As stated in Count I, the Monsanto Plan has underpaid the pension benefits of all participants who have elected to receive their benefits in the form of a lump sum, rather than in the form of monthly annuity payments for life. The Plan's underpayment of lump sum benefits violates ERISA and Internal Revenue Code (IRQ accrual and anti-forfeiture provisions; Treasury Department regulations; an Internal Revenue Service (IRS) Notice; and the Plan's own terms which track some or all of these legal requirements. The Plan's underpayment of lump sum benefits also violates ERISA prohibitions against age discrimination to the extent that the Plan calls for no interest credits to be posted to pre-1997 participants' Prior Plan Accounts after those participants reach the age of 55.

25. As stated in Count II, the actuarial value of contributions to participants' Cash Balance Accounts is reduced and/or increases at a reduced rate because of participants' age. This practice violates ERISA prohibitions against age discrimination.

COUNT I

26. Plaintiff Grant M. Walker incorporates Paragraphs 1- 24 into this Count, as if the incorporated paragraphs were fully set forth here.

27. Plaintiff 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.

28. Upon retirement from Monsanto past the age of 55, Plaintiff Walker opted to receive his accrued pension benefits immediately in the form of a lump sum payment, as permitted by Option 4 under section 7.3(d) of the Plan.

29. Any lump sum distribution of accrued pension benefits must be the actuarial equivalent of the participant's normal retirement benefit, *i.e.*, any lump sum distribution must equal 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 be-

nefits in the form of pension payments for the rest of his life. 29 U.S.C. § 1054(c)(3); 26 U.S.C. § 411(c)(3); 26 C.F.R. § 1.411(c)-1(e); IRS Notice 96-8 “Cash Balance Pension Plans,” 1996-1 C.B. 359 (Feb. 5, 1996).

30. 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”).

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

32. The first step in the whipsaw calculation requires adding “future interest credits” to the participant's Cash Balance and Prior Plan Accounts. Future interest credits are those credits which would have been posted to a pre-age 65 retiree's CBA and PPA between the time that the early retiree left Monsanto and the date on which he would have reached the age of 65.

33. Adding future interest credits to a vested participant's CBA and PPA is necessary because the Monsanto Plan is “front-loaded,” which means that “future interest credits to an employee's hypothetical account balance are not conditioned upon future service.” IRC Notice 96-8; Plan § 6.3(d).

34. Adding future interest credits to a vested participant's Prior Plan Account is also necessary because discontinuing interest credits on this Account by age 55, as section 6.2(d) of the Plan provides, constitutes unenforceable age discrimination in violation of ERISA. 29 U.S.C. § 1054(b)(1)(G)[H] prohibit any ERISA plan participant's pension benefits from ceasing or being reduced or increasing at a reduced rate because of the participant's age.

35. The interest rate at which future interest credits are added to the CBA and PPA in Step 1 of the whipsaw calculation is commonly called the “projection rate.”

36. Section 6.3(d) of the Plan supplies the projection rate for future interest credits to a participant's Cash Balance Account.

37. Section 6.2(d) of the Plan supplies the projection rate for future interest credits to a participant's Prior Plan Account.

38. Step 2 of the whipsaw calculation requires converting the amount calculated in Step 1 (the projected age-65 sum of the balances in a participant's CBA and PPA) into a life annuity, using an annuity conversion rate inherent in the formula provided by section 3.2 of the Plan.

39. Step 3 of the whipsaw calculation requires discounting the life annuity calculated in Step 2 to present value based upon mortality tables and an interest rate (commonly known as the “discount rate”) provided in section 3.3(c)(iii)(A)[B] of the Plan and required by Treasury Regulations found in 26 CFR sections 1.411(a)-11 and 1.417(e)-1.

40. Rather than determining lump sum distributions by performing the above-described whipsaw conversion to present value, the Monsanto Plan simply pays participants, including Plaintiff Walker, lump sum pension benefits equal to the amount in participants' Cash Balance Accounts, plus any amount in pre-1997 participants' Prior Plan Accounts without interest rate credits.

41. Paying Plan participants lump sums equal to the amounts in their Cash Balance and Prior Plan Accounts vi-

olates ERISA if:

- a. The projection rate used in Step 1 of the whipsaw calculation is greater than the discount rate used in Step 3 of the calculation; or
- b. The annuity conversion rate inherent in Step 2 of the whipsaw calculation is greater than the discount rate used in Step 3 of the calculation.

42. For most of the time since the Monsanto Plan switched to the Cash Balance format in 1997, the Step 1 projection rate has exceeded the Step 3 discount rate.

43. Throughout the time since the Monsanto Plan switched to the Cash Balance format in 1997, the Step 2 annuity conversion factor has exceeded the Step 3 discount rate.

44. Since January 1, 1997, the Monsanto Plan's failure to use the whipsaw calculation has therefore caused the lump sum distributions (*i.e.* the sum of the amounts in a participant's CBA and PPA) to all retired Plan participants, including Plaintiff Walker, to be less than the actuarial equivalent of their accrued normal retirement benefit.

45. Paying Plan participants less than the actuarial equivalent of their accrued normal retirement benefit violates the ERISA and parallel I.R.C. 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 \(b\)\(1\)](#).

46. Simultaneous with the filing of this Complaint, Plaintiff Walker and other similarly situated Plan participants submitted to the Monsanto Employee Benefits Plan Committee and to Monsanto, in its capacity as Administrator of the Plan, claims for the relief sought in this Court. These claims were filed in accordance with the procedure set out in Section 10.2 of the Plan. However, insofar as the remedies sought in connection with this Court are concerned, exhaustion of remedies is both unnecessary and futile. The relief which Plaintiff Walker seeks is for the Plan's violations of the law and violations of Plan terms which track applicable legal requirements. There are no disputed factual issues for the Plan to resolve and no need for interpretation of any Plan terms.

Class Allegations relevant to Count I

47. Plaintiff Walker seeks certification of the following Class:

All current Cash Balance Account participants and all former CBA participants who opted for a lump sum distribution of their pension benefits.

48. Certification of this 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 the proper way to calculate lump sum benefits.

49. Certification of this Class is also appropriate under [Rule 23\(b\)\(2\), Fed.R.Civ.P.](#), because the Plan has miscalculated and continues to miscalculate lump sum payments 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 declaratory relief with respect to the Class as a whole.

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

51. There are common questions of fact and law as to each Member of the Class regarding the manner in which the Plan determines lump sum pension benefit payments and the respects in which the Plan's method of determining lump sum payments is illegal and otherwise improper.

52. Plaintiff Walker's claims are typical of the claims of all Class Members regarding whether the Plan's determination of lump sum pension payments is legal, in that the Plan has used and continues to use a uniform method to determine lump sum payments for all Class Members.

53. Plaintiff Walker is an adequate representative of the Class. Plaintiff Walker understands the basic issues in the case, and the undersigned attorneys are experienced and competent to handle complex class action litigation.

54. Plaintiff Walker has interests identical to and not in conflict with the interests of other Class Members regarding how the Plan determines lump sum pension benefits and whether the Plan's method of determining lump sum pension benefits is legal.

55. 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 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

56. Plaintiff Edward Zeringue incorporates Paragraphs 1-25 into this Count, as if the incorporated paragraphs were fully set forth here.

57. Plaintiff 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.

58. Upon retirement from Monsanto at age 53, Plaintiff Zeringue opted to receive his pension benefits in the form of an immediate lump sum payment.

59. Regardless of the form in which participants have elected to receive pension benefits since Monsanto's Cash Balance Plan began on January 1, 1997, pension payments made by the Plan since that date have violated ERISA's prohibitions against age discrimination.

60. 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\(23\)\(A\)](#).

61. 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 \(23\)\(A\)](#).

62. Since Monsanto adopted its Cash Balance plan on January 1, 1997, the actuarial value of the amounts credited to the Cash Balance and Prior Plan Accounts of all participants, including Plaintiff Zeringue, is reduced on account of age, in violation of subparagraph (G) of ERISA § 204(b)(1)(G), [29 U.S.C. § 1054\(b\)\(1\)\(G\)](#).

63. Since Monsanto adopted its Cash Balance plan on January 1, 1997, the actuarial value of the amounts credited to the Cash Balance and Prior Plan Accounts of all participants, including Plaintiff Zeringue, accrues at a rate which is reduced because of age, in violation of subparagraph (H) of ERISA 204(b)(1), [29 U.S.C. 1054 \(b\)\(1\)\(H\)](#).

64. For example, a hypothetical Plan participant who earned \$40,000 per year from ages 30 through 32 would experience a decrease in the actuarial value of the annual credits to his Cash Balance Account (measured in terms of the present value of an annuity commencing at age 65) from \$70.60 at age 30 to \$67.24 at age 31 and to \$64.04 at age 32.

65. In order to comply with the above-referenced ERISA prohibitions against age discrimination, the Monsanto Plan should have contributed more to participant's Cash Balance and Prior Plan Accounts as participants grow older.

66. Because Monsanto Plan participants' pension benefits are based upon the CBA and PPA, all pension payments made to Plan participants, including Plaintiff Zeringue, since January 1, 1997 have been too low to comply with ERISA.

67. Simultaneous with the filing of this Complaint, Plaintiff Zeringue submitted to the Monsanto Plan Committee a claim for the relief sought in this Court. The claim was filed in accordance with the procedure set out in Section 10.2 of the Plan. However, insofar as the remedies sought in connection with this Court are concerned, exhaustion of remedies is both unnecessary and futile. The relief which Plaintiff Zeringue seeks is solely for the Plan's violations of the law. There are no disputed factual issues for the Plan to resolve and no need for interpretation of any Plan terms.

Class Allegations relevant to Claim II

68. Plaintiff Zeringue seeks certification of the following Class:

All current and former employees who participated in Monsanto's Cash Balance plan for at least one month after January 1, 1997.

69. Certification of the 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 administrator of the Plan regarding whether the actuarial value of the amounts credited to participants' Cash Balance Accounts is reduced or accrues at a reduced rate because of age, in violation of the above-referenced provisions of ERISA and the IRC.

70. Certification of the Class is appropriate under [Rule 23\(b\)\(2\), Fed.R.Civ.P.](#), because the Plan has violated the above-referenced ERISA and IRC accrual rules 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.

71. The 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.

72. There are 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 Cash Bal-

ance Account.

73. Plaintiff Zeringue's claims are typical of the claims of all Class Members regarding whether the Plan's Cash Balance Account accrual practices comply with ERISA, in that all Class Members' rights arise under the same Plan document and the same ERISA provisions.

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

75. Plaintiff Zeringue has interests identical to and not in conflict with the interests of other Class Members regarding the Plan's Cash Balance Account accrual practices.

76. 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 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.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. Regarding Plaintiffs' claims for class certification:

1. Certification under subsections (b)(1) and/or (b)(2) of [Rule 23](#) of the Classes proposed in Counts I and II;
2. Approval of the Plaintiffs named in Counts I and II as representatives of their respective Classes; and
3. Appointment of the undersigned attorneys as Counsel for each of the proposed Classes.

B. Regarding Plaintiffs' substantive claims on behalf of the 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 and II;
 - b. An order permanently enjoining the Plan from continuing to engage in the unlawful practices described in Counts I and II;
 - 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 and II;
 - d. Pre- and post-judgment interest and costs; e. Reasonable attorneys' fees pursuant to the common fund doctrine or any other applicable law; and
 - f. Any other relief this Court deems just, proper and equitable.

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THE MONSANTO COMPANY PENSION PLAN and the Monsanto Company, Defendants.
2004 WL 3112273 (S.D.Ill.) (Trial Pleading)

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