IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LAWRENCE G. RUPPERT and
THOMAS A. LARSON,
on behalf of themselves and on behalf
of all others similarly situated,

ORDER

Plaintiffs,

08-cv-127-bbc

v.

ALLIANT ENERGY CASH
BALANCE PENSION PLAN,

Defendant.

- -

In an order dated July 2, 2012, I granted plaintiff Lawrence Ruppert's and Thomas Larson's motion for summary judgment with respect to the claims of the certified subclasses that defendant Alliant Energy Cash Balance Pension Plan violated the Employment Retirement Income Security Act, 29 U.S.C. §§ 1001-1461, when it used a five-year rolling average to calculate future interest credits and applied a preretirement mortality discount to lump sum distributions of plaintiffs' retirement benefits. I concluded that defendant was required to use an 8.2% projection rate for each class member and could not apply a discount. I asked the parties to prepare a proposed judgment and to file briefs in support of their version if they could not agree on one. (I also asked the parties to address the question whether class members should receive an updated notice before judgment is

entered; I agree with the parties that additional prejudgment notice is not needed.)

Not surprisingly, the parties could not agree on a proposed judgment. With respect to the amount, plaintiffs propose an amount of $18,677,671.33, dkt. #570-1; defendant proposes $17,006.775.62. Dkt. #562.

There seem to be three issues in dispute regarding how the judgment should be calculated. The first is whether it was appropriate for defendant to use a five-year rolling average to calculate the benefits of some of the class members. The obvious answer is no. It is unnecessary to discuss the reasons that defendant made this adjustment because none of them address the fundamental problem: it is inconsistent with this court's previous orders.

The second issue is whether defendant should apply the projection rate to the participant's account balance under the 1998 plan or the balance as it was adjusted by the 2011 plan amendment. There is a difference because of the way the plans award interest credits for the participant's final year in the plan. The 1998 plan awarded a 4% interest credit; the 2011 amendment awarded the actual interest credit for that year, which exceeded 4% some years. Compare 1998 plan, § 3.5(b), dkt. #528-2 at 20, with 2011 amendment dkt. # 528-20 at 3.

Plaintiffs say that defendant must use the amount determined under the 2011 amendment because that is a vested benefit under 29 U.S.C. § 1002(23). Defendant does not develop any argument to the contrary, but argues that it was entitled to use the amount under the 1998 plan because, in the July 2 order, the court dismissed any claims relating to

the way interest credits were calculated in the distribution year. That is not the case. The issue in dispute was whether "the May 2011 amendment required defendant to apply the actual interest credit in the partial year of distribution *to those participants who did not receive corrective payments under the amendment*." Dkt. #554 at 5 (emphasis added). That was the only issue in dispute because defendant already had made the adjustment to participants who received a corrective payment, something it is now trying to "undo" by using the 1998 plan to calculate those participants' cash balance accounts. Because defendant's only argument in support of this approach is a misreading of the July 2 order, I agree with plaintiffs that defendant must use the amount provided by the 2011 amendment.

The third issue is whether defendant may apply a prejudgment interest rate different from the one this court ordered in an order dated March 10, 2011. Dkt. #425. Again, defendant develops no argument for disregarding the March 2011 order, so I see no reason to do so.

Because I am rejecting each of defendant's objections to plaintiffs' calculations, I will adopt plaintiffs' figures and the attachment explaining how the judgment is to be distributed to each class member.

The parties' proposed judgments differ in other ways as well. Oddly, plaintiffs left out a proposed declaration that defendant violated ERISA, which is obviously a prerequisite to an award of damages. Because plaintiffs do not object to defendant's proposed declaration, I will adopt it. I also agree with defendant that no reference to attorney fees should be included in the judgment because those fees have not yet been awarded or even requested.

The court of appeals has made it clear that an award of attorney fees does not need to be included in the judgment, Feldman v. Olin Corp., 673 F.3d 515, 516-17 (7th Cir. 2012), and plaintiffs have identified no reason it is necessary to do so in this case.

Plaintiffs have submitted a proposed class notice to accompany counsel's fee petition, along with a proposed schedule for briefing the petition and a motion to compel related to that petition. Defendant has not objected to the schedule or the form of the proposed notice. I have reviewed the notice and see no problem with it for the most part; it adequately explains what has happened in the case so far and how each class member may object to counsel's fee petition. The only problem I see is that plaintiffs refer to their amended complaint challenging the 2011 plan amendment as a "supplemental complaint." Although that is how plaintiffs have described their amended complaint in their filings, that is misleading because it suggests that plaintiffs' original challenges to the 1998 plan remain part of the case. As both sides and this court have agreed, the claims under the 1998 plan are moot. Accordingly, before counsel sends its notice to the class it should replace all references to "the supplemental complaint" with "the amended complaint."

ORDER

IT IS ORDERED that

1. It is DECLARED that defendant Alliant Energy Cash Balance Pension Plan violated 29 U.S.C. § 1054(c)(3) by underpaying the lump sum retirement benefits of plaintiffs Lawrence G. Ruppert, Thomas A. Larson and all members of the certified

subclasses identified in the July 2, 2012 order.

2. Plaintiffs are AWARDED $7,890,569.75 in additional plan benefits and $10,787,101.58 in prejudgment interest, to be distributed to class members as set forth in the attachment to this opinion.

3. Plaintiffs' proposed class notice is APPROVED with the change discussed in this order.

4. The clerk of court is directed to enter judgment accordingly and close this case.

FURTHER IT IS ORDERED that

1. Plaintiffs may have until August 31, 2012 to file and serve their motion to compel. Defendant may have until September 7, 2012, to file a response.

2. Plaintiffs may have until September 10, 2012, to file their fee petition and send notice to the class members. Defendant may file its response no later than 14 days after the court resolves plaintiffs' motion to compel. Plaintiffs may file their reply no later than seven days after defendant files its response.

Entered this 24th day of August, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge