UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

LAWRENCE G. RUPPERT and

THOMAS A. LARSON

On behalf of themselves and on behalf of All others similarly situated,

Plaintiffs,

v.

ALLIANT ENERGY CASH BALANCE PENSION PLAN,

Defendant.

Case No. 3:08-CV-00127-bbc

Judge Barbara B. Crabb

SUPPLEMENTAL COMPLAINT

1. This pleading supplements the First Amended Complaint (Doc. 15), filed April 28, 2008. All documents referenced are incorporated as if attached hereto. *See* Fed. R. Civ. P. 10(c).

2. The version of the Plan at issue under the First Amended Complaint, sometimes referred to herein as the "1998 Plan," was the Plan as it existed between January 1, 1998 and May 9, 2011, prior to and without regard to the May 10, 2011 amendment to the Plan.

3. In exchange for their service for the Plan's sponsor or an affiliated employer during the period January 1, 1998 to August 17, 2006, participants covered by the 1998 Plan accrued benefits defined by the Plan's express terms as well as Plan terms implied by ERISA that establish the mandatory minimum substantive content of participants' benefits in light of those express terms.

4. During the period January 1, 1998 to August 17, 2006, ERISA's nonforfeitability rules required that participants' Accrued Benefits be determined using a projection to normal retirement age (age 65, under the Plan) at no less than 8.2% per annum given the Plan's express terms under which participants accrued, on a frontloaded basis, interest credits equal to the greater of 4% or 75% of the Plan's annual trust returns. During the period January 1, 1998 to August 17, 2006, ERISA's nonforfeitability and actuarial equivalence rules further required that, if paid in a lump sum form, participants' Accrued Benefits be calculated and paid without application of a pre-retirement mortality discount ("PRMD").

5. On May 10, 2011, via a duly executed Board of Directors resolution, the Plan's sponsor duly adopted a plan amendment (referred to herein as "May 10, 2011 Amendment," "May 2011 Amendment," or "Amendment") that altered the Plan's definition of the Accrued Benefit "retroactively effective as of January 1, 1998" applicable to all persons covered by the Court's Order of February 12, 2009 (Doc. 67) certifying two subclasses in this action.[1]

6. **Exhibit 1** is a true and correct listing of the identities (which for purposes of this Complaint means first names and last names and Defendant-assigned personal identification numbers or "PINs") of the 957 persons, listed in the Excel file that Defendant provided Plaintiffs via Defendant's October 7, 2011 email to Plaintiffs, who are lump sum recipient members of either of the two previously-certified subclasses**,** together with: (a) the date and (b) amount of the lump sum(s) that Defendant represented in that email that Defendant paid the listed persons between January 1, 1998 and August 17, 2006. (All references in this Supplemental Complaint to members of either previously certified subclass shall also be read, or shall alternatively be

[1] Doc. 444, Ex. 1, ECF pages 4-10 of 13, filed by Defendant in this action, is a true and correct copy of the May 10, 2011 Board of Directors Resolution and Amendment. On May 18, 2011, Defendant authenticated Doc. 444, Ex. 1, ECF pages 4-10 of 13 as a true and accurate copy of the May 10, 2011 Board of Directors Resolution and Amendment via Doc. 444 ¶ 4, a May 13, 2011 declaration of Marcia Whelan, Alliant's Total Rewards manager.

read, to mean each such person and Plan participant irrespective of any defense challenge to continuing validity of either previously certified subclass as such.)

7. **Exhibit 2** is a true and correct listing of the identities of the 137 persons, listed in the Excel files attached to Defendant's October 11 and October 21, 2011 emails to Plaintiffs, who are annuitant members of either of the two previously-certified subclasses, together with: (a) the date of birth; (b) the benefit commencement date; (c) the prior cash balance account on benefit commencement date; and (d) the amount of the annual annuity payments based on the participant's (i) grandparent annuity, (ii) cash balance annuity and (iii) job elimination temporary annuity to which each such person was entitled (prior to adjustment for selection of an alternate form of payment) on his or her benefit commencement date, with each such data item shown extracted from Defendant's data files.

8. The version of the Plan which Plaintiffs here allege violated ERISA, as written and/or as administered, and which is sometimes referred to herein as the "2011 Plan" or the "Amended Plan," is the Plan, or the Plan as amended, as it existed from May 10, 2011 to the present, including certain provisions changed via the Amendment, changes which were and are "retroactively effective as of January 1, 1998."

9. The May 10, 2011 Amendment was a voluntary act by the Plan's sponsor. Although the adoption of the Amendment was a condition of the issuance of a favorable tax-qualification determination letter that the Plan's sponsor negotiated with the IRS, the Plan's sponsor was under no obligation to apply for or obtain a determination letter. Moreover, the Plan's sponsor was not required to negotiate with the IRS to obtain a favorable IRS determination letter. For example, the Plan's sponsor could have instead filed suit in Tax Court to obtain relief on more favorable terms. This was an alternative that the Plan raised in a letter to

the IRS dated April 1, 2009, saying "we must continue to hold open the possibility of a Tax Court resolution," *see* Doc. 226-29.

10. The 2011 Amendment reflects the Plan sponsor's attempt to bring the Plan into compliance with the requirements of the law as it applied to the Plan between January 1, 1998 and August 17, 2006. The Plan and its sponsor intended that the 2011 Plan be fully compliant with ERISA and all applicable regulations and guidance during that period and all other periods. The language of the Board resolutions themselves state that it is the sponsor's intention that the Plan "comply with . . . ERISA" and provide for a proper "'whipsaw' calculation addressed in ERISA." May 10, 2011 Amendment (Doc. 444 Ex. 1) at 1. The Plan itself also specifically directs that it be amended as necessary or appropriate "to conform to any requirements of ERISA," Plan § 12.1, again reflecting the sponsor's intention that the Plan as written and administered conform to the requirements of the law.

11. The 2011 Plan required the recalculation of the benefits due to the referenced 957 lump sum recipients and the 137 annuity recipients (and all other persons covered by the Court's Order of February 12, 2009 (Doc. 67) certifying two subclasses in this action, if Defendant has mistakenly omitted them from the data previously provided to Plaintiffs) to determine whether and to what extent under the 2011 Plan's provisions those persons were entitled to a payment or payments in addition to the payments they received (in the case of lump sums) or began receiving (in the case of annuities) between January 1, 1998 and August 17, 2006.

12. Pursuant to this requirement, Defendant recalculated the benefits due to all such persons and, to the extent Defendant determined such persons were entitled to additional payments (and/or increased annuity payments in the case of annuitants), on July 31, 2011

Defendant made, and/or on December 1, 2011 will make, such payments (or catch-up of prior annuity payments and increased future payments in the case of annuitants).[2]

13. Specifically as regards lump sum recipient class members, on July 31, 2011, Defendant made additional payments to 495 of the 957 lump sum recipient class members, and on December 1, 2011, Defendant will make additional payments to another 44 lump sum recipient class members.[3] As regards annuity recipient class members, on December 1, 2011, Defendant will also make additional payments and increased annuity payments to 4 annuity recipient class members. **Exhibit 3** is a true and correct listing of the identities of the 539 (495 + 44) of the 957 lump sum recipient class members, listed in the Excel files that Defendant emailed Plaintiffs on September 13, 2011 and October 7, 2011 who received or who will receive additional payments from Defendant, together with: (a) the date and (b) amount of the additional payments extracted from Defendant's files. **Exhibit 4** is a true and correct listing of the identities of the 4 annuity recipient class members, listed in the Excel files that Defendant provided Plaintiffs via Defendant's October 11 and October 21, 2011 emails to Plaintiffs, who will be receiving additional payments and increased annuity payments from Defendant beginning on December 1, 2011.

14. At the same time it determined that some lump sum recipient and annuity recipient class members would receive additional payments, Defendant determined that 418 of

[2] In connection with these recalculations, Defendant adjusted some participants' account balances in accordance with the Amendment. Defendant has not produced or provided Plaintiffs with participants' adjusted account balances. Without prejudice to a later required correction once Defendant produces the adjusted account balances, for purposes of this Complaint Plaintiffs assume they calculated these increases correctly.

[3] Defendant's October 7, 2011 spreadsheet contains 45 lump sum recipient class members. However, Defendant's October 28, 2011 email to Plaintiff informed Plaintiff that one individual was inadvertently included in the October 7 data, thereby leaving 44 lump sum recipient class members who will receive additional payments on December 1, 2011.

the 957 lump sum recipient class members are not entitled to any additional payments and that 133 of the 137 annuitant recipient class members are also not entitled to any additional payments or increased annuity payments under the 2011 Plan. **Exhibit 5** is a true and correct listing of the identities of these 418 lump sum recipient class members, listed in the Excel files that Defendant emailed Plaintiffs on September 13, 2011 and October 7, 2011 whom Defendant determined were entitled to no additional payments. **Exhibit 6** is a true and correct listing of the 133 annuity recipient class members, listed in the Excel files that Defendant provided Plaintiffs via Defendant's October 11 and October 21, 2011 emails to Plaintiffs, whom Defendant determined were entitled to no additional payments or increased annuity payments.

15. In performing the calculations of the benefits participants are due under the 2011 Plan, Defendant applied a pre-retirement mortality discount ("PRMD"). In so doing, Defendant violated ERISA. In applying a PRMD, Defendant adversely affected the benefits due most members of the two previously certified subclasses. Defendant's application of a PRMD adversely impacted 931 of the 957 lump sum recipient class members. 418 lump sum recipient class members (including Plaintiff Larson) were not entitled to any additional payment based on the manner in which Defendant implemented the 2011 Plan. However, had Defendant not applied a PRMD, 392 of those 418 lump sum recipient class members (including Plaintiff Larson) would have received an additional payment under the 2011 Amendment as Defendant otherwise interpreted and implemented it. 539 lump sum recipient class members (including Plaintiff Ruppert) received or will receive additional payments based on the manner in which Defendant implemented the 2011 Plan (that is, with a PRMD). However, had Defendant not applied a PRMD, all 539 of them (including Plaintiff Ruppert) would have received larger payments than the payments they received on July 31 or will receive on December 1.

16. **Exhibit 7** is a true and correct listing of the identities of these 931 adversely affected lump sum recipient class members, together with the individual amounts by which application of a PRMD caused each of them to be underpaid and such amounts carried forward with prejudgment interest at the average prime rate to March 1, 2012. Had Defendant determined the lump sum benefits due after the Amendment without the use of a PRMD, the Plan would have determined that these 931 lump sum recipient class members were entitled to additional payments from the Plan totaling $13.4 million, compared to the $10.1 million determined by the Plan. In other words, the Plan underpaid lump sum recipient class members, after application of the Amendment, by $3.3 million solely as a result of the application of a PRMD.

17. Of the 137 annuity recipient class members, Defendant's application of a PRMD also directly injured 79 of them if the Court determines that Plaintiffs' previously-proposed alternative method for calculating annuitant damages should be adopted.[4] Reference to Plaintiff's "alternative method" as used herein means the method Plaintiffs previously proposed by which (1) annuitants' "annuity" damage is calculated by projecting the cash balance account to age 65 at no less than 8.2%, converting to an annuity at age 65 using 417(e) assumptions, and converting to an actuarially equivalent annuity payable at benefit commencement date using 8% assumptions – the annuity damage is excess of amount described over the annuity actually paid; and (2) annuitants' "lump sum" damage is calculated by taking the correctly calculated cash

[4] Plaintiffs respectfully reiterate their primary contention, *see, e.g.*, Doc. 469 at 18 n.10, that to truly make participants whole, the law requires that the Court implement Plaintiffs' preferred method for calculating annuitant damages by giving annuitants the option of electing either: (1) lump sum damages calculated by Plaintiffs' expert implementing the Court's March 14, 2011 Order (Doc. 420) ***or*** (2) the right to now convert their annuity to the correctly calculated lump sum. However, Plaintiffs recognize that the Court has already rejected that contention, *see* Doc. 426, 3/14/11 Telephonic Hearing Tr. 28-31, and may not wish to revisit it. Plaintiffs reassert it here, if only to ensure the issue is preserved.

balance lump sum and comparing it to the value of the annuity benefit actually paid (including any early retirement subsidy, any correction for annuity damage and any increase in annuity paid in December), with the value determined using 8% If Plaintiffs' alternative method for calculating annuitants' lump sum damages is determined to be the appropriate, minimum required correction, Plan § 4.8(a) fails to account for lump sum damage that annuity recipients suffered as a result of electing an annuity after not having had the opportunity to elect the correctly calculated lump sum, as detailed in Mr. Lawrence Deutsch's expert report (Doc. 439), and as further explained in Plaintiffs' post-trial annuitant damages submissions (Docs. 438, 462) and at the May 26, 2011 hearing over which this Court presided (Doc. 459).

18. Annuity recipients were damaged to the extent that they were not offered the correct lump sum benefit at the time that they elected to receive their benefit as an annuity. By retroactively changing the determination of the amount of the lump sum benefit to which the participants would have been entitled, the 2011 Plan re-inflicts this damage. In fact, if the damage is equal to the difference between the value of the correctly determined lump sum benefit compared to the value of the benefit actually paid, by retroactively increasing the cash balance lump sum benefit to which the annuity recipients would have been entitled, then the damage increases accordingly.

19. If annuitants' damages are determined by comparing the value of the annuity benefit actually received (and reflecting the retroactive increase in annuity payments which will be made in December 2011 as if part of the annuity benefit actually received) to the correctly determined lump sum benefit to which the participant should have been correctly offered, 79 of the 137 annuity recipient class members were damaged through Defendant's application of a PRMD when determining the lump sum benefit that should have been offered to these

participants. **Exhibit 8** is a true and correct listing of the identities of the 79 annuity recipient class members, together with: (a) the amounts by which application of a PRMD caused injury (according to Plaintiffs' alternative method) and (b) such amounts carried forward with prejudgment interest at the average prime rate to March 1, 2012. Exhibit 8 shows that the Plan damaged annuity recipient class members, after application of the Amendment, by $1,174,180.19 solely as a result of the application of a PRMD.

20. Section 1.2(a) of the 1998 Plan required a projection of future interest credits at the same rate as the Plan's applicable ERISA § 205(g), 29 U.S.C. § 1055(g), and IRC § 417(e) ("417(e)") rate.[5] By contrast, 2011 Plan § 1.2(a) requires a projection "using the applicable projection rate" which is defined as "the 'up-to-5-year average'" of the Plan's annual interest crediting rate. While the up-to-5 year average projection rate is in all years from 1998-2006 higher than the Plan's former 417(e) projection rate, application of an up-to-5-year average projection rate for distributions taken in the years 1998 through 2005 results in a projection rate less than the 8.2% projection rate this Court previously held was the minimum projection rate required here to satisfy ERISA's minimum lump sum distribution and nonforfeitability requirements. *See* Opinion and Order of December 29, 2010 (Doc. 380); Order of December 30, 2010 (Doc. 381); March 30, 2011 Order Denying Reconsideration (Doc. 435).

21. Separate and apart from Defendant's violation of class members' ERISA rights through the application of a PRMD, Defendant's 2011 recalculation and payment of all affected

[5] Doc. 232-2, Ex. A, filed by Defendant in this action on March 1, 2010, is a true and correct copy of the 1998 Plan as of February 26, 2010, prior to its amendment on May 10, 2011. On March 1, 2010, Defendant authenticated Doc. 232-2, Ex. A as a true and correct copy of the 1998 Plan as of February 26, 2010, via a February 26, 2010 declaration of Mary Bearns, *see* Doc. 232 ¶ 1. At trial, on June 24, 2010, Defendant offered, and the Court received, ALLIANT000001-85 as a true and correct copy of the 1998 Plan as of June 24, 2010 as Trial Exhibit 323. *See* Vol. 4B, pp. 68-69.

participants' benefits using a projection rate less than 8.2% violated their rights under ERISA and the Plan interpreted in light of ERISA.

22. 845 lump sum recipient class members who received distributions in 1998-2005 (including Plaintiff Larson) are entitled to an additional payment according to the Court's rulings to date. According to the 2011 Plan, as interpreted by Defendant (in a manner inconsistent with ERISA as interpreted by the Court), 392 of these 845 lump sum recipient class members received no additional payment from the Plan solely as a result of Defendant's application of a PRMD in implementing the 2011 Plan and would receive a payment from the Plan had Defendant not implemented the 2011 Plan using a PRMD. An additional 448 of these 845 lump sum recipient class members who did receive an additional payment from the Plan notwithstanding Defendant's application of a PRMD would have received a larger payment from the Plan had Defendant not implemented the 2011 Plan using a PRMD. Further, had Defendant also used a projection rate of not less than 8.2% in recalculating these participants' benefits, all 845 lump sum recipient class members would have received larger payments had Defendant calculated the benefits under the Amendment as it did, but with no PRMD.

23. **Exhibit 9** is a true and correct listing of the identities of the 845 lump sum recipient class members who received distributions in years 1998 through 2005, extracted from the Excel file that Defendant provided Plaintiffs via Defendant's October 7, 2011 email to Plaintiffs, together with: (a) the lump sum payments to which they were entitled as of their original payment date (without regard to the interest adjustment to which some of them were and are entitled under the 2011 Plan § 3.5(b), discussed below); (b) the amount by which they were underpaid as of their original payment date as a result of Defendant's failure to properly project their account balances to normal retirement age; (c) the amount of the underpayment increased

with prejudgment interest at the average prime rate to the date of their payment on July 31, 2011 or December 1, 2011 (as applicable); (d) the amount of the additional payment made to them on July 31, 2011 or to be made to them on December 1, 2011; (e) the remaining underpayment still due after the payment made on July 31, 2011 or December 1, 2011, as applicable; and (f) the remaining underpayment after the payment made on July 31, 2011 or December 1, 2011, as applicable, with prejudgment interest to March 1, 2012.[6]

24. Assuming Defendant was required to recalculate benefits applying no PRMD and projecting at no less than 8.2%, the total amount due these 845 lump sum recipient class members who received distributions in years 1998 through 2005 is $16.8 million inclusive of prejudgment interest to March 1, 2012.

25. If damages to annuitants are calculated by comparing the amount of the correctly determined lump sum benefit to which the participant was entitled to the value of the benefit actually paid according to Plaintiffs' proposed alternative methodology, an annuity recipient class member is further damaged to the extent that the correctly determined lump sum benefit is understated. In the same way that the correctly determined lump sum benefit for lump sum class members was understated by the failure of the Plan to project the cash balance account at a minimum of 8.2%, 88 annuity recipient class members are further damaged due to the application of a projection rate less than 8.2% when determining the correctly determined lump sum benefit. **Exhibit 10** is a true and correct listing of the identities of the 88 annuity recipient class members who received distributions in years 1998 through 2005 and who would be injured as a result of Defendant's failure to project their cash balance accounts at no less than 8.2%. In

[6] Items (a) and (b) are contained in the Excel file that Defendant provided Plaintiffs via Defendant's October 7, 2011 email to Plaintiffs and item (e) is listed in the Excel files that Defendant emailed Plaintiffs on September 13, 2011 and October 7, 2011 showing who received or who will receive additional payments from Defendant.

total, Defendant's use of less than the Court-ordered ERISA-required minimum 8.2% projection rate for years prior to 2006 improperly reduced the damages due, assuming Plaintiffs' alternative annuitant damages methodology is adopted, to 88 of the 137 annuity recipient class members by a total of $1,986,731.46 (including prejudgment interest), which equals the sums of the amounts shown on Exhibit 10.

26. Sections 1.2(a) and 3.5(b) of the 1998 Plan required that in a participant's year of distribution, he or she only be credited with a partial year's interest credit at the rate of 4% per annum. By contrast, Section 3.5(b) of the 2011 Plan requires that participants receive a partial year's interest credit at the Plan's actual interest crediting rate for that year. *See* Doc. 444, Ex. 1, ECF page 6 of 13, May 10, 2011 Amendment at 3. The May 2011 Amendment thus retroactively increased notional account balances prior to projection by an amount equal to the excess of the interest crediting rate for the Plan year in the participant's year-of-distribution above 4% (if any) for the portion of the year prior to benefit commencement. Thus, for example, if the participant's lump sum or annuity commenced on July 1, 2004, the excess of the interest crediting rate of 8.25% (the actual Plan rate in 2004) over 4% is 4.25%, so the participant's notional account would be increased for six months at approximately 4.25%, or 2.125%.[7]

27. Participants commencing their benefits in plan years 1998-1999 and 2003-2004 when the interest crediting rate exceeded 4% received a retroactive increase in their cash balance account, which, in turn, created a retroactive increase in the accrued benefit payable as an annuity at the participant's normal retirement age. Defendant's application of the 2011 Plan's up-to-5-year average projection rate (when determining the increase in accrued benefit payable at normal retirement age associated with the increase in the cash balance account), instead of the 8.2% projection rate, violated ERISA's minimum lump sum distribution and nonforfeitability

[7] Technically, the actual increase would be (1 + 8.25% * 6/12) / (1 + 4% * 6/12) or 2.0823%.

requirements as regards participants' entitlement to the full value of these retroactive increases in their cash balance account.

28. **Exhibit 11** is a true and correct listing of the identities of the 296 lump sum recipient class members who received distributions in years 1998-1999 and 2003-2004, extracted from the Excel file that Defendant provided Plaintiffs via Defendant's October 7, 2011 email to Plaintiffs, together with: (a) the additional net payments to which they should have been entitled had the increase in their notional account balances been projected at 8.2%; (b) the net payments to which they should have received had Defendant properly determined their benefits in this regard; and (c) those net amounts carried forward with prejudgment interest at the average prime rate to March 1, 2012. Assuming all these steps are required to be performed, these 296 participants are owed, inclusive of prejudgment interest to March 1, 2012, a total of $4.7 million.

29. Defendant's failure to reflect a minimum projection rate of 8.2% adversely affected annuity recipients in two ways. First, this caused Defendant to understate the amount of the correctly determined cash balance lump sum to which the affected participants would have been entitled on their benefit commencement dates. (To reiterate, this is "lump sum" damage under the Court's March 14, 2011 Order, Plaintiffs contend in Docs. 462 at 7-9 and 469 at 2, 7). Second, this also caused Defendant to understate the annuity benefit attributable to the cash balance account. (To reiterate, this is "annuity" damage under the Court's March 14, 2011 Order, Plaintiffs contend in Docs. 462 at 10 and 469 at 2, 7).

30. **Exhibit 12** is a true and correct listing of the identities of the 41 annuity recipients of the 66 who received payments commencing in the years 1998-1999 and 2003-2004, and who would have damage under the Plaintiffs' alternative method, together with: (a) the increase in the correctly calculated lump sum benefit that they should have been offered on their benefit

commencement date had the increase in their notional account balances been projected at 8.2%; (b) the net increase in damage that would have resulted (assuming that the damage was equal to the excess of the value of the correctly determined lump sum over the value of the benefit actually paid); and (c) those net amounts carried forward with prejudgment interest at the average prime rate to March 1, 2012. Exhibit 12 also reflects the identities of the 4 annuity recipients would have received an increase in their annuity payments under the 2011 Plan had the projection rate used been 8.2%, rather than the rate contained in the 2011 Plan compared to the actual increase provided by the Plan for 4 of those 6 annuity recipients (which increase, shown on Ex. 12, is extracted from Defendant's October 21, 2011 email attachment). The remaining data shown in Exhibit 12 is based upon the Excel files that Defendant provided Plaintiffs via Defendant's October 11 and October 21, 2011 emails to Plaintiffs. Exhibit 12 shows that the Plan underpaid annuity recipient class members, after application of the Amendment, by $337,072.20.

31. Participants who commenced their benefits in 2006 received a retroactive increase in their cash balance account on their benefit commencement date and a retroactive increase in their projection rate above the required minimum 8.2% projection rate, which, in turn, created a retroactive increase in the accrued benefit payable as an annuity at the participant's normal retirement age. In the case of participants (including Plaintiff Ruppert) who commenced their benefits in 2006, the lump sum payments determined and made by the Plan still violated ERISA's minimum lump sum distribution and nonforfeitability requirements as regards participants' entitlement to the full value of these retroactive increases to their notional account balances and to a projection of their Accrued Benefits at no less than 8.56% through Defendant's application of a PRMD in the recalculation of these participants' lump sum benefits.

32. 83 of 94 lump sum recipient class members who commenced benefits in 2006 (including Plaintiff Ruppert) were injured due to the Defendant's application of a PRMD. Using Plaintiff Ruppert as a specific example, his vested account balance as of April 1, 2006 was $11,984.17. The effect of the excess of the interest crediting rate of 9.60% over 4% is approximately 5.60%, so his vested account balance would be increased for three months at approximately 5.60%, or approximately 1.40%. Mr. Ruppert's properly re-determined increased vested account balance as of his benefit commencement date is $12,150.29. Defendant properly projected this increased account balance at the required 8.56% projection rate but failed to pay Mr. Ruppert and 82 other class members commencing their benefits in 2006 the legally required minimum amount due, as a result of Defendant's application of a PRMD. **Exhibit 13** is a true and correct listing of the identities of these 83 lump sum recipient class members receiving payment in 2006, extracted from the Excel file that Defendant provided Plaintiffs via Defendant's October 7, 2011 email to Plaintiffs, together with: (a) the amounts by which application of a PRMD caused them to be underpaid and (b) such amounts carried forward with prejudgment interest at the average prime rate to March 1, 2012.

33. **Exhibit 14** is a true and correct listing of the identities of the 13 annuity recipient class members of the 15 commencing payment in 2006, who have lump sum damage under Plaintiffs' alternative method, together with: (a) the amounts by which application of a PRMD in the determination of the correctly determined lump sum benefits caused them to be further damaged under Plaintiffs' alternative theory of annuitant damages and (b) such amounts carried forward with prejudgment interest at the average prime rate to March 1, 2012. Exhibit 14 shows annuity recipient class members are owed a total of $225,356 in damages.

34. With respect to lump sum recipient class members, all told, Defendant's 2011 violations of participants' ERISA rights, via the failure to project participants' increased notional account balances at a minimum of 8.2% (and 8.56% in 2006) and application of a PRMD, injured a total of 934 lump sum recipient class members (including Plaintiffs Ruppert and Larson) in the total amount of $17.8 million. This is the amount still due these participants even after crediting the Plan with the 2011 payments it made on July 31, 2011 or will make on December 1, 2011, as applicable. Together with prejudgment interest at the average prime rate to March 1, 2012, that is a total of $18.3 million still owed to these lump sum recipient class members. **Exhibit 15** is a true and correct listing of the identity, total amount of underpayment, and the total amount of underpayment with prejudgment interest to March 1, 2012 for these 934 lump sum recipient class members.

35. With respect to annuity recipient class members, all told, Defendant's 2011 violations of participants' ERISA rights, via the failure to project participants' increased notional account balances at a minimum of 8.2% (and 8.56% in 2006) and application of a PRMD, injured a total of 102 annuitant class members (based on Plaintiffs' alternative method), in the total amount of $3,937,005.02 exclusive of prejudgment interest and $6,086,620 inclusive of prejudgment interest through March 1, 2012. **Exhibit 16** is a true and correct listing of the identity, the total amount of damages based upon Plaintiffs' alternative method and the total amount of damages based upon Plaintiffs' alternative method with prejudgment interest to March 1, 2012 for these 102 annuitant class members.

Prayer for Relief

WHEREFORE, Plaintiffs pray that the Court:

(1) Enter judgment against Defendant and award all the relief to which Plaintiffs are entitled under the Plan and/or under the law, including judgment for Plaintiffs and all members of the Subclasses against Defendant on all claims expressly asserted and/or within the ambit of this Supplemental Complaint;

(2) Award, declare or otherwise provide Plaintiffs and all members of the Subclasses all other such relief to which they are or may be entitled whether or not specified herein;

(3) Awarding pre- and post-judgment interest;

(4) Award attorney's fees and costs under ERISA § 502(g), 29 U.S.C. § 1132(g) and/or on the basis of the common fund doctrine and/or other applicable law, at Plaintiffs' election, along with the reimbursement of the expenses incurred in connection with this action; and

(5) Award Plaintiffs and all members of the Subclasses all relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law that Plaintiffs and the Subclasses may subsequently specify and/or that the Court may deem appropriate.

Respectfully submitted,

/s/*Eli Gottesdiener*

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