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,

Plaintiffs,

ORDER

08-cv-127-bbc

v.

ALLIANT ENERGY CASH BALANCE
PENSION PLAN,

Defendant.

- -

A new issue has cropped up in this case as the parties attempt to resolve the many issues inherent in calculating the damages due plaintiffs. This latest one involves those persons in the class that chose annuities instead of lump sum benefits when they left their employment before their normal retirement dates. It focuses on whether those persons were damaged when they chose an annuity without knowing the true value of the lump sum they could have chosen instead. Although the parties do not say so, I assume that all of the participants in this group are receiving grandparent annuities, that is, annuities that have as their base amount the money credited to those participants who qualified for benefits under either the defendant plan or the plans in which they had been participants before the merger

of the independent utility companies that became Alliant Energy.)

Plaintiffs have moved to preclude defendant from "relitigating" this issue, contending that defendant stipulated to calculating damages without considering either the "subsidy" that defendant provided for those participants who chose to take an annuity based on their grandparent benefit or the discount that was applied when participants chose an annuity based on their cash balance account. Defendant denies that it ever stipulated to any method of calculations and contends that, for those annuitants whose annuity was calculated using grandparent benefits from previous plans instead of the cash balance benefit from the present plan, the subsidy must be taken into account when comparing the relative value of annuities.

A hearing was held on this matter on March 11, 2011. After reading the parties' briefs and hearing their positions on whether defendants must be precluded from raising this issue, I am denying plaintiff's motion to preclude. (The parties have referred to another disagreement about what values should be included when assessing something they call "top up" payments related to participants who received multiple lump sum payments, but they did not raise this issue at the hearing. It may be that they are in accord on this issue. Defendant's Opp. Br., dkt. #412, at 16 n.7 ("Regarding top-up payments and interest, Alliant has agreed that they will not object to your adding the full value of any second payment into the cash balance account value prior to applying whipsaw. We understand

that this may slightly overstate damages, but can live with the minor enhancement."))

I find that defendant did not waive the issue of the proper treatment of the annuitants at trial, is not estopped from asserting it and never "stipulated to" any method of treatment or admitted the propriety or accuracy of the method that plaintiffs now propose. Whether and how annuitants' subsidized grandparent benefits affected the calculation of damages were questions that were not on anyone's radar until after trial.

From the parties' briefing and discussion of the issue at trial, it is apparent the parties are far apart on even fundamental matters related to the calculation of damages for grandparent benefit annuitants. In advance of the telephone scheduling conference scheduled for this afternoon, I thought I would address some of that disconnect. First, plaintiffs contend that the damages amounts for the annuitants should be calculated the same way that damages for lump sum beneficiaries would be calculated, that is, by calculating the difference between the cash balance lump sum as it was calculated at the time the participants took their annuities and the lump sum as it should have been calculated in light of this court's ruling on the proper projection rate.

Defendant contends that the amount should be calculated by taking the grandparent "subsidy" into account. In its brief, defendant explains this subsidy as the calculation of the grandparent benefit without discounting the normal retirement date benefit. In other words, the "subsidy" appears to boil down to the fact that, for annuitants eligible for grandparent

benefits who retired within ten years or so of their normal retirement date, the base amount of the annuity would be equal to or only slightly less than the benefit they would have received at normal retirement age. (All participants in the class took their benefits before normal retirement age.) What defendants mean when they seek to include this "subsidy" in their calculations is that the annuity participants actually received should be compared to the annuity they would have received had the cash balance account been determined properly, and when performing that comparison, an 8% discount rate should be applied against the cash balance benefits because the plan requires that discount.

Both sides seem to be either relying on misconceptions or making certain assumptions about damages, which may be why they are so far apart that they seem to be talking past each other. First, as plaintiffs stated their position, it is untethered from any actual injury the participant might have suffered. Rather, it boils down to paying participants the difference between what they saw on the page as the value of the lump sum (which they didn't take) and what the value stated on the page should have been. What this approach misses is that for those annuitants whose base annuity (the benefit credit from which their annuity is calculated) would *still* have been more valuable than the lump sum properly calculated, it simply does not matter whether they were given the wrong information about the lump sum. Although plaintiffs point out that ERISA requires that information to be correct, they fail to identify any claim they are asserting for the act of providing

misinformation itself or any remedies that might be available for that act in a vacuum. The mere fact that participants may have chosen the lump sum if it had been calculated in accordance with this court's ruling does not matter. If the base annuity was still worth more, they received the better deal; essentially, they were "swindled" into a better deal, albeit less of a better deal than they believed. There are no damages available to those individuals.

Step one of any calculation of damages for the annuitants must begin with determining the comparative values of the lump sum and the amount on which the annuity was based. In other words, the parties should calculate the proper lump sum amount to which the participant would have been entitled at the time of termination (with the court-ordered projection rate and without prejudgment interest). Then they should determine the amount of the participant's credit under the grandfather benefit that the plan would have used as a starting point for calculating an annuity for that participant, including the value of any subsidy to which the participant was eligible. If the credit under the grandfather benefit is less than the participant's properly calculated cash balance account lump sum, then the participant has been damaged in the amount of the difference between the two.

If a participant's credit under the grandfather benefit is greater than or equal to the properly calculated lump sum, that participant can collect damages only if, in step two, the parties determine that the participants received annuity payments under their grandfather benefits that were less than the amount of annuity payments they would have received had

the annuity been calculated on the basis of a properly determined cash balance. In that case, that participant is entitled to the difference between the payments they did and will receive and what they should have received.

In other words, there are two possible ways in which a participant may be eligible for damages: (1) receiving an annuity less valuable than the lump sum as it should have been calculated; or (2) receiving an annuity benefit less valuable than the annuity benefit would have been had it been calculated using the proper cash benefit amount.

The parties should be prepared to address these issues. In addition, plaintiff should be prepared to explain how their theory connects to the actual injury of the participants or why their view on the damages of the annuitants fails to take into account the actual benefit annuitants received instead of the one they chose not to receive (the improperly calculated lump sum). Defendant should be prepared to explain whether there is anything else to their "subsidy" theory than an application of the 8% discount rate to the cash balance lump sum when comparing annuities.

Entered this 14th day of March, 2011.

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