06 NOV 14 PM 1:42

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSEPH L. PIKAS, ON BEHALF OF HIMSELF AND ALL OTHER PERSONS SIMILARLY SITUATED	:	CASE NO. 1:06 CV 778
PLAINTIFFS	:	
V.	:	JUDGE SPIEGEL, J.
THE WILLIAMS COMPANIES, INC., AND ITS BENEFITS COMMITTEE AND ADMINISTRATIVE COMMITTEE, ADMINISTRATOR OF THE WILLIAMS PENSION PLAN,	:	
AND	:	**CLASS ACTION COMPLAINT FOR BENEFITS DUE UNDER THE TERMS OF A PENSION PLAN, AND FOR OTHER RELIEF**
THE WILLIAMS PENSION PLAN	:	
DEFENDANTS	:	

Joseph L. Pikas, as named plaintiff, on behalf of himself and all other members of the class of persons defined herein, states and alleges the following:

JURISDICTION AND VENUE

1. This is a class action to enforce, and to redress violations of, the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq.* The action is brought on behalf of participants in an ERISA-qualified pension plan to recover benefits due them under the terms of the plan, to enforce their rights under the terms of the plan, to clarify their rights to future benefits under the terms of the plan, and to redress violations of ERISA. This Court's subject matter jurisdiction is invoked pursuant to 29 U.S.C. § 1132(a)(1)(B) & (a)(3) and 28 U.S.C. § 1331.

2. Proper venue lies in this district pursuant to 29 U.S.C. § 1132(e)(2) in that one or more defendants may be found in this district.

THE PARTIES

3. Named plaintiff Joseph L. Pikas is a citizen of Texas. On April 18, 1966, he became employed by Transco Gas Pipe Line Corporation, owner and operator of natural gas pipelines throughout the United States. Mr. Pikas worked continuously for Transco or its successors-in-interest from 1966 until his retirement in 2002, during which the company underwent a series of corporate changes. In 1972, Transco Companies, Inc. was created, with Transco Gas Pipe Line Corporation as one of its subsidiaries. In 1992, Transco Companies, Inc. was renamed Transco Energy Company, and in 1995, Transco Energy Company was acquired by The Williams Companies, Inc. ("the Williams Companies" or "Williams"). From then on, Mr. Pikas's employer was a Williams subsidiary now known as Williams Gas Pipeline Company, LLC.

4. During his employment with Transco and Williams, Mr. Pikas was a participant in pension plans that underwent a similar succession. Originally he was a participant in the Transco Energy Company Retirement Plan, which in 1986 was separated into two plans. On January 1, 1999, approximately four years after Transco Energy Company was acquired by the Williams Companies, the Transco pension plan in which Mr. Pikas was a participant was merged into the Williams Pension Plan. From then until his retirement, Mr. Pikas was a participant in the Williams Pension Plan.

5. Mr. Pikas retired on September 9, 2002, and elected to receive his benefits in a lump sum distribution. He received a lump sum distribution in November 2002.

6. Defendant Williams Companies is a Delaware corporation with its principal executive office in Tulsa, Oklahoma. Through its Board of Directors, Benefits Committee, and Administrative Committee, Williams is the plan administrator of the Williams Pension Plan, and controls the administration of the Plan.

7. Defendant Williams Pension Plan ("the Williams Plan") was the pension plan in which Mr. Pikas was a participant at the time of his retirement in 2002. The Williams Plan is also the successor-in-interest to the former Transco pension plans described in Paragraph 4 above (collectively "the Transco Plan").

CLASS ALLEGATIONS

8. The named plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and all other members of the class defined as:

> all vested participants in the Williams Pension Plan ("Williams Plan") and/or the predecessor Transco pension plans ("Transco Plan") who (a) retired or terminated from employment on or after November 15, 1991, (b) were entitled to receive pension benefits consisting, in whole or in part, of a pension benefit under the Transco Plan or a Grandfathered Pension, Early Grandfathered Pension, or Deferred Grandfathered Pension pursuant to Appendix XIX of the Williams Plan, and (c) elected to receive their pension benefits in the lump sum form of payment.

9. The class is so numerous that joinder of all class members is impracticable. The class consists of hundreds of plan participants who retired on or after November 15, 1991, were entitled to receive pension benefits under the Transco Plan or a Grandfathered Pension, Early Grandfathered Pension, or Deferred Grandfathered Pension pursuant to Appendix XIX of the Williams Plan, and elected to receive their benefits in a lump sum distribution.

10. There are questions of law or fact common to the class, including but not limited to the following:

(a) whether the lump sum distributions of pension benefits issued by defendants to the named plaintiff and other class members failed to include automatic COLA increases provided under the terms of the plan.

(b) whether defendants, in issuing lump sum distributions to the named plaintiff and other class members that did not include the value of automatic COLA increases provided by the plan, violated the requirement of ERISA § 204(c)(3) that a participant's accrued benefit, if determined as an amount other than an annuity commencing at the normal retirement age of 65, must be actuarially equivalent to the age-65 annuity.

(c) whether defendants, in issuing lump sum distributions to the named plaintiff and other class members that did not include the value of automatic COLA increases provided by the plan, violated the nonforfeitability rule of ERISA § 203(a)(2)(A) that employees who are vested have a nonforfeitable right to one-hundred percent of their accrued benefits derived from employer contributions.

(d) whether defendants violated the anti-cutback rule of ERISA § 204(g) that participants' accrued benefits may not be decreased by a plan amendment.

(e) whether defendants, in issuing lump sum distributions to the named plaintiff and other class members that did not include the value of automatic COLA increases provided by the plan, failed to pay benefits due under the terms of the plan and the requirements of ERISA.

(f) what amount of unpaid pension benefits is due the named plaintiff and other class members under the terms of the plan and the requirements of ERISA.

(g) what amount of prejudgment interest is due class members on the pension benefits withheld from them.

11. The claims of the named plaintiff are typical of the claims of other members of the class. The named plaintiff's claims arise out of the same uniform course of conduct by defendants, and are based on the same legal theories, as the claims of other class members.

12. The named plaintiff will fairly and adequately protect the interests of the class. The named plaintiff's interests are not antagonistic to, but rather are in unison with, the interests of other class members. The named plaintiff's counsel have broad experience in handling class action litigation, including pension class actions, and are fully qualified to prosecute the claims of the class in this case. The named plaintiff's counsel have successfully litigated numerous major class actions on behalf of tens of thousands of claimants, resulting in substantial compensation to those claimants through both settlements and judgments.

13. The questions of law or fact that are common to the class predominate over any questions affecting only individual members. The primary questions that will determine defendants' liability to the class, listed in Paragraph 10 above, are common to the class as a whole, and

predominate over any questions affecting only individual class members.

14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Requiring class members to pursue their claims individually would entail a host of separate suits, with concomitant duplication of costs, attorneys fees, and demands on court resources. Many class members' claims are sufficiently small that they would be reluctant to incur the substantial cost, expense, and risk of pursuing their claims individually. Certification of this case pursuant to Fed. R. Civ. P. 23 will enable the issues to be adjudicated for all class members with the efficiencies of class litigation.

THE FACTS

A. Classifications of Pension Plans

15. ERISA, and parallel provisions of the Internal Revenue Code, classify pension plans into two categories: "defined benefit plans," and "individual account plans" (also known as "defined contribution plans"). ERISA § 3(34) & (35), 29 U.S.C. § 1002(34) & (35). An individual account plan (or defined contribution plan) is a plan that provides an individual account for each participant, with benefits based solely upon the amount contributed to the participant's account and any income, expenses, gains, or losses thereto. ERISA § 3(34). A "defined benefit plan," on the other hand, is any plan "other than an individual account plan." ERISA § 3(35).

16. This case involves a "defined benefit plan." The Williams Plan, as well as the predecessor Transco Plan, were classified as "defined benefit plans" under ERISA.

B. Protection of Pension Benefits

17. ERISA and the Internal Revenue Code safeguard employees' retirement income by protecting pension benefits and prescribing how such benefits must be valued (or calculated) for distribution to retirees. Two terms define ERISA's protection of benefits under defined benefit

plans: the "normal benefit" and the "accrued benefit."

18. A participant's "normal benefit" is "the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age." ERISA § 3(22), 29 U.S.C. § 1002(22). Defined benefit plans must offer this "normal retirement benefit" in the form of a "qualified joint and survivor annuity," unless the participant (and, if married, his or her spouse) waive the right to receive payment in that form. ERISA § 205(a)(1), 29 U.S.C. § 1055(a)(1).

19. The "accrued benefit" is the portion of the normal retirement benefit which the participant has earned at any given point in time. For defined benefit plans, the "accrued benefit" protected by ERISA is "the individual's accrued benefit determined under the plan ..., expressed in the form of an annual benefit [i.e., an annuity] commencing at normal retirement age" [usually age 65]. ERISA § 3(23)(A), 29 U.S.C. § 1002(23)(A).

20. Accrued benefits are protected by the "nonforfeitability rule" prescribed by ERISA § 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A), and by the parallel section of the Internal Revenue Code, I.R.C. § 411(a)(2). Pursuant to this rule, employees who are vested have a nonforfeitable right to one-hundred percent of their accrued benefits derived from employer contributions.

21. Pension benefits are also protected by the "anti-cutback rule" set forth in ERISA § 204(g), 29 U.S.C. § 1054(g), and I.R.C. § 411(d)(6). The anti-cutback rule provides that participants' accrued benefits may not be decreased by an amendment of the plan. The protection afforded by the anti-cutback rule applies not only to "accrued benefits" as such, but also to early retirement benefits and retirement-type subsidies, which are treated as if they were accrued benefits.

C. Calculation of Optional Forms of Payment Such As Lump Sum Distributions

22. ERISA and the Internal Revenue Code strictly regulate the form in which pension plans may distribute benefits, as well as the "valuation" (or calculation) used by plans to determine

the amounts of the distributions.

23. The general rule, prescribed by ERISA § 3(23)(A), 29 U.S.C. § 1002(23)(A), states that the "accrued benefit" is "the individual's accrued benefit determined under the plan . . . expressed in the form of" an annuity commencing at the normal retirement age of 65. Pursuant to § 3(23)(A), this general rule applies "except as provided in section 204(c)(3)," 29 U.S.C. § 1054(c)(3).

24. Section 204(c)(3), in turn, provides that if a participant's accrued benefit is to be determined as an amount *other than* an annuity commencing at the normal retirement age of 65, then the accrued benefit "shall be the actuarial equivalent" of the age-65 annuity. Thus, if a plan offers an optional form of payment such as a lump sum distribution, the lump sum distribution must be the actuarially equivalent present value of the normal retirement benefit (i.e., an annuity commencing at age 65).

D. Pension Benefits and Lump Sum Distributions Under the Transco Plan

25. The Transco Plan provided pension benefits in the form of an annuity commencing at the normal retirement age of 65. In addition, effective November 15, 1991, the Transco Plan was amended by adoption of its "24th Amendment." After the 24th Amendment was adopted, the Transco Plan offered an optional form of benefit permitting participants to elect to receive their pension benefits under the Plan in a lump sum distribution.

26. For participants who chose to receive their pension benefits in the form of an annuity, the Transco Plan paid monthly annuities that automatically increased as a result of cost-of-living adjustments ("COLA") triggered and calculated under the terms of the Plan.

27. However, for participants who elected to receive their pension benefits under the Plan in the lump sum form of payment, the Transco Plan paid lump sum distributions that were calculated

as the actuarially equivalent present value of the monthly annuities the participant were entitled to receive, but without taking into account the automatic COLA increases of the annuities provided under the terms of the Plan. Consequently, participants who elected to receive their benefits in the lump sum form received lump sum distributions that did not include the value of the automatic COLA increases.

28. The Transco Plan's practice of paying lump sum distributions that did not equal the annuity benefits the participants were entitled to receive under the Plan violated ERISA in several respects.

29. The Transco Plan violated the requirement of ERISA § 204(c)(3) that a participant's accrued benefit, if determined as an amount other than an annuity commencing at the normal retirement age of 65, must be actuarially equivalent to the age-65 annuity.

30. The Transco Plan violated the nonforfeitability rule of ERISA § 203(a)(2)(A) that an employees who are vested have a nonforfeitable right to one-hundred percent of their accrued benefits derived from employer contributions.

31. The Transco Plan's 24th Amendment, providing for lump sum distributions of benefits that did not include the value of the automatic COLA increases conferred by the Plan, violated the anti-cutback rule of ERISA § 204(g) that participants' accrued benefits may not be decreased by a plan amendment.

E. Grandfathered Benefits and Lump Sum Distributions Under the Williams Plan

32. The Transco Plan was merged into the Williams Pension Plan effective January 1, 1999. At that time, the Williams Plan was amended to include Appendix XIX, which covered participants in the Williams Plan who had been participants in the Transco Plan prior to the merger of the plans.

33. Pursuant to Appendix XIX, participants in the Williams Plan who had been participants in the Transco Plan were entitled to "grandfathered" benefits that covered their years of service with Transco. These grandfathered benefits consisted of the Grandfathered Pension, the Early Grandfathered Pension, and the Deferred Grandfathered Pension (collectively "the Grandfathered Benefits").

34. For participants who chose to receive their pension benefits in the form of an annuity, the Grandfathered Benefits under Appendix XIX consisted of monthly annuities that automatically increased as a result of COLA adjustments triggered and calculated under the terms of Appendix XIX.

35. However, for participants who elected to receive their Grandfathered Benefits in the lump sum form of payment, Appendix XIX provided lump sum distributions that were calculated as the actuarially equivalent present value of the monthly annuities the participants were entitled to receive, but without taking into account the automatic COLA increases of the annuities provided by Appendix XIX. Consequently, participants who elected to receive their benefits in the lump sum form of payment received lump sum distributions that did not include the value of the automatic COLA increases.

36. The Williams Plan's practice of paying lump sum distributions of Grandfathered Benefits that did not equal the annuity benefits the participants were entitled to receive violated ERISA in several respects.

37. The Williams Plan violated the requirement of ERISA § 204(c)(3) that a participant's accrued benefit, if determined as an amount other than an annuity commencing at the normal retirement age of 65, must be actuarially equivalent to the age-65 annuity.

38. The Williams Plan violated the nonforfeitability rule of ERISA § 203(a)(2)(A) that employees who are vested have a nonforfeitable right to one-hundred percent of their accrued benefits derived from employer contributions.

39. The January 1, 1999 amendment of the Williams Plan establishing Appendix XIX, which provided lump sum distributions of benefits that did not include the value of the automatic COLA increases conferred by the Transco and Williams Plans, violated the anti-cutback rule of ERISA § 204(g) that participants' accrued benefits may not be decreased by a plan amendment.

CAUSE OF ACTION

40. Plaintiffs incorporate herein by reference each and all of the allegations set forth hereinabove.

41. All class members, including named plaintiff Joseph L. Pikas, were participants in the Transco Plan prior to the merger of the Transco Plan and the Williams Plan on January 1, 1999. During their years of participation in the Transco Plan prior to the merger, Mr. Pikas and all other class members earned accrued benefits under the Transco Plan. Pursuant to the nonforfeitability rule of ERISA § 203(a)(2)(A) and the anti-cutback rule of ERISA § 204(g), Mr. Pikas and all other class members had a nonforfeitable right to the accrued benefits they had earned under the Transco Plan, and such benefits could not be decreased by a plan amendment. Upon electing to receive their pension benefits in a lump sum rather than as an annuity, Mr. Pikas and all other class members were entitled to receive lump sum distributions that were actuarially equivalent to the annuities they would have received under the Transco Plan, pursuant to ERISA § 204(c)(3).

42. Following the merger of the Transco Plan and the Williams Plan on January 1, 1999. the Williams Plan was the successor-in-interest to the Transco Plan, and was obligated to pay the accrued benefits Mr. Pikas and all other class members had earned under the Transco Plan.

43. Many class members, including Mr. Pikas, retired after the merger of the Transco Plan and the Williams Plan on January 1, 1999. Such class members, including Mr. Pikas, earned accrued benefits under the Williams Plan subsequent to the merger, and, in addition, were entitled to Grandfathered Benefits as provided in Appendix XIX of the Williams Plan. Pursuant to the nonforfeitability rule of ERISA § 203(a)(2)(A) and the anti-cutback rule of ERISA § 204(g), Mr. Pikas and other class members had a nonforfeitable right to their Grandfathered Benefits under Appendix XIX, and such benefits could not be decreased by a plan amendment. Upon electing to receive their Grandfathered Benefits under Appendix XIX in a lump sum rather than as an annuity, Mr. Pikas and other class members were entitled to receive lump sum distributions that were actuarially equivalent to the annuities they would have received under the Williams Plan, pursuant to ERISA § 204(c)(3).

44. If they had chosen to receive their pension benefits under the Transco Plan, and/or their Grandfathered Benefits under Appendix XIX of the Williams Plan, in the form of an annuities, Mr. Pikas and all other class members would have been entitled to monthly annuities that automatically increased as a result of COLA adjustments calculated under the terms of the Transco Plan and/or Appendix XIX of the Williams Plan.

45. In fact, having elected to receive their pension benefits in the lump sum form of payment, Mr. Pikas and other class members received lump sum distributions that were calculated as the actuarially equivalent present value of the monthly annuities they were entitled to receive, but without taking into account the automatic COLA increases of the annuities provided under the terms of the Transco Plan and Appendix XIX of the Williams Plan.

46. In issuing lump sum distributions to Mr. Pikas and all other class members that did not include the value of the automatic COLA increases provided by the Transco Plan and Appendix

XIX of the Williams Plan, the Williams Plan violated the requirement of ERISA § 204(c)(3) that a participant's accrued benefit, if determined as an amount other than an annuity commencing at the normal retirement age of 65, must be actuarially equivalent to the age-65 annuity.

47. In issuing lump sum distributions to Mr. Pikas and all other class members that did not include the value of the automatic COLA increases provided by the Transco Plan and Appendix XIX of the Williams Plan, the Williams Plan violated the nonforfeitability rule of ERISA § 203(a)(2)(A) that employees who are vested have a nonforfeitable right to one-hundred percent of their accrued benefits derived from employer contributions.

48. The Transco Plan's 24th Amendment, and the January 1, 1999 amendment of the Williams Plan establishing Appendix XIX, both of which provided for lump sum distributions of pension benefits that did not include the value of the automatic COLA increases conferred by the Transco and Williams Plans, violated the anti-cutback rule of ERISA § 204(g) that participants' accrued benefits may not be decreased by a plan amendment.

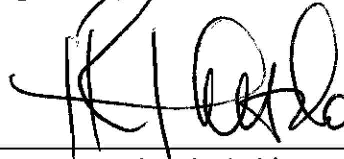
49. In issuing lump sum distributions to Mr. Pikas and all other class members that did not include the value of the automatic COLA increases provided by the Transco Plan and Appendix XIX of the Williams Plan, the Williams Plan failed to pay benefits due under the terms of the Transco and Williams Plans and the requirements of ERISA.

50. Any and all conditions precedent to the maintenance of this action had occurred or were performed or satisfied prior to the commencement of this action. Named plaintiff Joseph L. Pikas exhausted all available administrative remedies prior to commencing this action. Any further pursuit of administrative remedies on the part of the named plaintiff or other members of the class would be futile, and any remedy resulting therefrom would be inadequate.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court (a) certify this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the named plaintiff and other members of the class, (b) enter judgment against defendants and in favor of the named plaintiff and other class members, (c) award the named plaintiff and other class members benefits due under the terms of the plan and the requirements of ERISA and other appropriate relief to enforce the terms of the plan and the requirements of ERISA, and (d) grant plaintiffs their costs and litigation expenses, reasonable attorneys fees, and such other relief as may be deemed just and equitable.

Respectfully submitted,



Thomas R. Theado (Ohio Reg. No. 0013937)
Trial Attorney
Gary, Naegele & Theado, LLC
446 Broadway Avenue
Lorain, Ohio 44052-1740
Phone: (440) 244-4809
Facsimile: (440) 244-3462
E-Mail: TomTheado@aol.com

Of Counsel:

Robert D. Gary (Ohio Reg. No. 0019610)
Jori Bloom Naegele (Ohio Reg. No. 0019602)
Thomas A. Downie (Ohio Reg. No. 0033119)
Gary, Naegele & Theado, LLC
446 Broadway Avenue
Lorain, Ohio 44052-1740
Phone: (440) 244-4809
Facsimile: (440) 244-3462
E-Mails: Office@GNTLaw.com,
Bagel2000@aol.com,
and TDownie@GNTLaw.com

—and—

Jeffrey C. Engerman, Esq. *
Law Offices of Jeffrey C. Engerman, PC
12400 Wilshire Boulevard, Suite 1500
Los Angeles, California 90025-1198
Phone: (310) 207-7777
Facsimile: (310) 207-7779
E-mail: JEngerman@EngermanLaw.com

—and—

Allen C. Engerman, Esq. *
Law Offices of Allen C. Engerman, P.A.
4800 North Federal Highway, Suite 100-D
Boca Raton, Florida 33431-5178
Phone: (561) 392-2222
Facsimile: (561) 393-0646
E-Mail: FLACELaw@Yahoo.com

Counsel for Plaintiffs

* Admissions *pro hac vice* to be sought for Jeffrey C. Engerman and Allen C. Engerman.