

2. The Class is comprised of all disabled retired General Motors employees or their surviving spouses who receive workers compensation benefits governed by Michigan law and who receive disability retirement benefits pursuant to a General Motors pension plan entered into or renewed after March 31, 1982 and before October 1, 2007 whose workers compensation benefits were reduced by coordination with initial Social Security Disability Insurance Benefits and/or initial disability retirement benefits who retired or whose spouses retired and receive workers compensation benefits commencing prior to October 1, 2007.

JURISDICTION AND VENUE

3. Jurisdiction is premised on Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185 and 28 U.S.C. § 1331 and the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367.

4. Venue is proper in the Eastern District of Michigan pursuant to 29 U.S.C. § 185 and 28 U.S.C. §1391.

PARTIES

5. Plaintiff, Jerrie Rynicki, is a citizen and resident of Tecumseh, Michigan.

6. Defendant, GM is a Delaware corporation with its principal place of business in Detroit, Michigan.

SUBSTANTIVE ALLEGATIONS

7. Plaintiff was for 25 years a GM employee.

8. On January 8, 2003, Plaintiff was injured and became disabled while working for GM and was forced to retire.

9. On February 1, 2004, GM determined that Plaintiff was totally and permanently disabled.

10. Because she was injured on the job, disabled as a result of the injury and retired, Plaintiff received benefits, including those pursuant to a pension plan agreement between the UAW and GM dated September 18, 2003 (the “2003 Plan”). Following her injury and retirement, Plaintiff received the following benefits: weekly worker’s compensation benefit, \$582.94; initial Social Security Disability Insurance Benefit, \$1,739.00 per month; and initial disability retirement benefit, \$1,228.80 per month.

11. The 2003 Plan, and all plans in force during the Class Period prior to the 2003 Plan, expressly provided that workers compensation benefits “shall not be reduced by disability retirement benefits” payable under the applicable plans.

12. After Plaintiff retired, the UAW and GM agreed to “an amended pension plan,” the Hourly-Rate Employees Pension Plan (the “2007 Amended Plan”), which was established by GM upon approval by the GM Board of Directors on October 2, 2007.

13. Article I of the 2007 Amended Plan, “ESTABLISHMENT OF THE PLAN,” provides that:

Employees retired with benefits commencing prior to such date [October 1, 2007] or separated prior to such date [October 1, 2007], or eligible surviving spouses of such employees, shall be entitled to the *benefits*, if any, *under the Plan as it existed immediately prior to such date.* (emphasis added).

14. Article II, Section 8 of the 2007 Amended Plan provides that Plaintiff and other employees who retired prior to October 1, 2007 shall be entitled to benefits under the Plan as it existed immediately prior to October 1, 2007. In other words, the benefits Plaintiff and Class

Members received during the period of the 2003 Plan were to continue as they had prior to adoption of the 2007 Amended Plan.

15. On or about September 26, 2007, GM and the UAW agreed to a Supplemental Agreement to the 2007 Amended Plan (the “2007 Supplement”) which was approved by the GM Board of Directors on October 2, 2007.

16. Section 1 of the 2007 Supplement, “Establishment of the Plan,” provides in pertinent part:

Any modification or amendment of either the Plan, or the Plan as modified and supplemented by this agreement, may be made retroactively by the Corporation with the consent of the Union, ***if necessary or appropriate, to qualify or maintain*** the Plan as a plan and trust meeting the requirements of Sections 401 and 501 (a) of the Internal Revenue Code, as now in effect or hereafter amended, or by any other applicable provisions of the federal tax laws, as now in effect of hereafter amended or adopted, and the regulations issued thereunder, ***provided that pension benefits under the Plan are not diminished***. (emphasis added).

17. Following adoption of the 2007 Amended Plan, Plaintiff’s benefits continued as they had existed prior to adoption of the 2007 Amended Plan as provided in the 2007 Amended Plan.

18. Upon information and belief, following adoption of the 2007 Amended Plan, Class Member benefits continued as they had existed prior to adoption of the 2007 Amended Plan as provided in the 2007 Amended Plan.

19. Also on September 26, 2007, the UAW, by and through its Vice President and Director, General Motors Department, Cal Rapson, and GM Vice President of Labor Relations, Diana D. Tremblay, executed a separate “Letter Agreement” (the “2007 Letter”) purportedly

amending the 2007 Plan pursuant to MCL 418.354 (14). The 2007 Letter provided in pertinent part as follows:

for employees who are injured and retire on or after October 1, 2007, *workers compensation payments* for such employees *shall be reduced* by disability retirement benefits payable under the Hourly-Rate Employees Pension Plan to the extent that the combined workers compensation payments, initial Social Security Disability Insurance Benefit amount, and the initial disability retirement benefit (per week) exceed the employee's gross Average Weekly Wage at the time of injury. In no event shall such reduction be greater than the disability retirement benefit payable. (emphasis added).

20. Pursuant to the 2007 Letter, GM did not reduce benefits in 2007 for Plaintiff or other disabled retirees who retired before October 1, 2007.

21. Because Plaintiff and the other Class Members had retired and were no longer employed by GM in 2007, Plaintiff and the Class were not represented in connection with the negotiation or establishment of the 2007 Amended Plan, the 2007 Supplement or the 2007 Letter.

22. On or about May 16, 2009, the UAW, by and through its Vice President and Director, General Motors Department, Cal Rapson, and GM Vice President of Labor Relations, Diana D. Tremblay, executed another separate "Letter Agreement" (the "2009 Letter"), which provided in pertinent part that the 2007 Letter would be amended such that, effective January 1, 2010, the provisions of the 2007 Letter "will be applied to all retirees who retired prior to January 1, 2010, regardless of their date of retirement or injury."

23. Thus, under the 2009 Letter, the UAW and GM purportedly attempted to agree pursuant to MCL 418.354 (14) to amend the 2007 Amended Plan to reduce workers compensation benefits paid to Plaintiff and all other disabled retirees who retired prior to October 1, 2007 by purportedly coordinating those benefits with other disability benefits.

24. Because Plaintiff and the other Class Members had retired and were no longer employed by GM in 2009, Plaintiff and the Class were not represented in connection with the negotiation of the 2009 Letter.

25. MCL 418.354(14) provides that workers compensation benefits shall not be reduced by coordination with disability pension benefits under any disability pension plan entered into or renewed after March 31, 1982 that “provide[s] that payments under that disability pension plan provided by the employer *shall not be* coordinated pursuant to this section.” (emphasis added).

26. Since the 2007 Amended Plan provides that the Plan may not be amended or modified retroactively to reduce pension benefits and, in any event, precludes any modification or amendment that is not necessary or appropriate to qualify or maintain the Plan as a plan and trust meeting the requirements of the Internal Revenue Code, the Plan provides that workers compensation benefits paid to Plaintiff and the Class shall not be reduced or coordinated with disability pension benefits within the meaning of MCL 418.354(14).

27. The 2007 Amended Plan amendment and reduction in benefits purportedly agreed to in the 2009 Letter violated the 2007 Amended Plan and MCL 418.354(14) because it was not *necessary or appropriate, to qualify or maintain* the Plan as a plan and trust meeting the requirements of the Internal revenue Code.

28. The 2007 Amended Plan amendment and reduction in benefits purportedly agreed to in the 2009 Letter violated the 2007 Amended Plan and MCL 418.354(14) because it diminished pension benefits under the 2007 Amended Plan.

29. The 2009 Letter also provides that workers compensation benefits shall be reduced by coordination with initial Social Security Disability Insurance Benefits.

30. Coordination of workers compensation benefits with initial Social Security Insurance Disability Benefits is illegal in violation of MCL 418.354 (11).

31. GM and the UAW recognized that the reduction in benefits purportedly agreed to under the 2009 Letter could violate Michigan Law in that Ms. Tremblay on behalf of GM prepared a draft Letter Agreement with Mr. Rapson on behalf of the UAW which provided that in the event a Michigan appellate court found that the 2009 Letter violated MCL 418.354(14), GM agreed to cease the workers compensation benefit reductions, and further agreed that the UAW would not support any claim challenging the 2009 Letter, further demonstrating that the UAW acted adverse to the interests of Plaintiff and the Class.

32. Pursuant to the 2009 Letter and in violation of the 2007 Amended Plan, effective January 1, 2010, GM reduced Plaintiff's weekly workers compensation benefit by \$254.32.

33. GM has reduced the benefits of all other Class Members pursuant to the 2009 Letter and in violation of the 2007 Amended Plan.

34. As a result of this illegal and improper reduction in benefits, Plaintiffs and Class members have suffered damages.

CLASS ACTION ALLEGATIONS

35. Plaintiff seeks to bring this case as a class action, pursuant to Rules 23(a) and (b)(1) and/or (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and all others similarly situated as members of the proposed class, defined as follows:

all disabled retired General Motors employees or their surviving spouses who receive workers compensation benefits governed by Michigan law and who receive disability retirement benefits pursuant to a General Motors pension plan entered into or renewed after March 31, 1982 and before October 1, 2007 whose workers compensation benefits were reduced by coordination with initial Social

Security Disability Insurance benefits and/or initial disability retirement benefits who retired or whose spouses retired and receive workers compensation benefits commencing prior to October 1, 2007.

36. The exact number of class members is unknown to plaintiff at this time, but, upon information and belief, there are more than one thousand Class Members. Plaintiff is informed and believes and on that basis alleges that the members of the class are so numerous that individual joinder of all members is impracticable.

37. Common questions of law and fact affect the right of each class. Common relief by way of damages and injunctive relief is sought for the members of the class.

38. The questions of law and fact common to the class members predominate over questions affecting only individual class members, and include, but are not limited, to the following:

- a) Whether Class Members were paid workers compensation benefits prior to October 1, 2007;
- b) Whether Class Members received workers compensation benefits pursuant to a General Motors pension plan entered into or renewed after March 31, 1982;
- c) Whether GM reduced benefits pursuant to the 2009 Letter;
- d) Whether GM violated the 2007 Amended Plan; and
- e) Whether GM violated Michigan workers compensation statutes.

39. Individual issues will not predominate as all liability issues are common as to all Class Members.

40. Plaintiff's claims are typical of the claims of the class members. Plaintiff was subjected to the same conduct of GM as each class member, was harmed in the same way and has claims for relief under the same legal theories as each class member.

41. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has common interests with all members of the class and will vigorously protect the interest of the class through qualified counsel experienced in handling class action litigation. Neither the named plaintiff nor class counsel has any interests which would conflict with the interests of the class members.

42. Prosecution of separate actions by members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

43. Common questions of law and fact predominate. Given the common questions to be resolved, class litigation is the superior method of resolving these legal challenges in one proceeding, thus avoiding a multiplicity of parallel suits. A class action will avoid the possibility of inconsistent adjudications of the same legal and factual issues.

FIRST CLAIM – VIOLATION OF MICHIGAN LAW

44. The allegations of paragraphs 1-43 are realleged and incorporated herein by reference.

45. GM has breached the 2007 Amended Plan.

46. GM has violated MCL 418.354 (14).

47. GM has violated MCL 418.354 (11).

48. Plaintiff and the Class have been injured as a result of these breaches and violations.

49. Plaintiffs and the Class are entitled to Declaratory Relief, resumption of their full workers compensation benefits, damages equal to unpaid workers compensation benefits and/or statutory interest pursuant to MCL 418.801(6).

SECOND CLAIM – SUIT UNDER THE LMRA

50. The allegations of paragraphs 1-49 are realleged and incorporated herein by reference.

51. A retired employee may bring suit under state law or pursue a federal remedy under Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, for breach of the 2007 Plan.

52. In the alternative to the First Claim, Plaintiff brings this claim under the LMRA.

53. GM has breached the 2007 Amended Plan.

54. Plaintiff and the Class have been injured as a result of these breaches and violations.

55. Plaintiffs and the Class are entitled to Declaratory Relief, resumption of their full workers compensation benefits, damages equal to unpaid workers compensation benefits and/or statutory interest pursuant to MCL 418.801(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

(a) For an order certifying the Class alleged above with Plaintiff as Class

Representative and Plaintiff’s Counsel as Class Counsel;

(b) for a declaratory judgment, including a declaration that GM has violated the 2007 Amended Plan, MCL 418.354 (14) and MCL 418.354 (11);

(c) for a preliminary and permanent injunction, including an order that GM pay future workers compensation benefits as required by the 2007 Plan;

(d) for actual damages in the amount to be proven at trial;

(e) for attorneys' fees, expenses and costs; and

(f) for such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, hereby demands trial by jury as to all issues properly so triable.

Dated: April 14, 2011

Respectfully Submitted,

/s/ Ronen Sarraf (admitted to E.D. Mich.)

Ronen Sarraf (NY Bar No. 3938040)

Joseph Gentile (NY Bar No. 4232039)

SARRAF GENTILE LLP

One Penn Plaza, Suite 2424

New York, NY 10119

Telephone: (212) 868-3610

Facsimile: (212) 918-7967

Email: ronen@sarrafgentile.com

joseph@sarrafgentile.com

Robert A. IZARD (CT Bar No. 306377)

William Bernarduci (CT Bar No. 411247)

IZARD NOBEL LLP

29 South Main Street, Suite 215

West Hartford, CT 06107

Telephone: (860) 493-6292

Facsimile: (860) 493-6290

Email: rizard@izardnobel.com

wbernarduci@izardnobel.com

Counsel for Plaintiff

Barry D. Adler (MI Bar. No. 30557)
ADLER STILMAN PLLC
30300 Northwestern Hwy., Suite 304
Farmington Hills, MI 48334
Telephone: (248) 855-5090
Facsimile: (248) 855-0424
Email: badler@adlerfirm.com

Local Counsel for Plaintiff