

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE J.P. MORGAN CHASE
CASH BALANCE LITIGATION

MASTER FILE: 06-CV-0732 (HB)

THIS DOCUMENT RELATES TO:

All Actions

CONSOLIDATED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiffs Neil Aldoroty, John J. Berotti, Annette Marie Falchetti, Terri Melli, Norman J. Schomaker, and Perry Shapiro (collectively, "Plaintiffs"), all of whom are participants in the JPMorgan Chase Retirement Plan, bring this action on their own behalf and on behalf of all similarly situated participants, their beneficiaries and Estates, pursuant to the Employee Retirement Income Security Act of 1974, as Amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

2. Plaintiffs challenge the cash balance formulas used in the JPMorgan Chase Retirement Plan as discriminatory based on age and for other violations of ERISA.

3. Though the actuarial component of cash balance plans is complex and far beyond the comprehension of most lay people (which is one of the problems with the plans), the pervasive impact of the plans are straightforward. Corporations save money when they convert to cash balance plans from final average pay plans, and older workers shoulder the difference.

Older workers who are subject to cash balance pension plans are suffering from reduced rates of benefit accrual, and retiring with dramatically reduced pension benefits, based solely on their age.

4. While the proponents of cash balance plans have touted the plans as being beneficial for American employees and retirees, in truth, cash balance plans are nothing more than a scheme to slash pension obligations for older workers. The scheme is particularly attractive to corporations like JPMorgan Chase & Co. because, as is well known, under traditional – and *legal* – defined benefit plans, workers with more years of service are more expensive to provide for in retirement. Prior to the advent of the cash balance plan scheme, this pension obligation was considered the *quid pro quo* corporations properly gave for an employee's long-term commitment and loyalty.

5. Plaintiffs ask the Court: 1) to declare that the cash balance formulas in the JPMorgan Chase Retirement Plan and the predecessor plans of the JPMorgan Chase & Co. Predecessor Companies, as defined herein (collectively, the "Plan"), violate ERISA's minimum accrual standards; 2) to enjoin Defendants from enforcing those unlawful formulas; 3) to order Defendants to reform the terms of the Plan to bring them into compliance with ERISA's requirements; 4) to recalculate the accrued benefits of all participants under the terms of the reformed Plan; and 5) to pay pensioners, their beneficiaries and Estates the difference between the benefits paid to them heretofore, and the benefits due under the terms of the reformed Plan.

II. JURISDICTION AND VENUE

6. Jurisdiction over this action is based on:

- (a) ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1);
- (b) 28 U.S.C. § 1331(a), because this action arises under the laws of the United States, namely ERISA.

7. Venue in this District is proper pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered and Defendants can be found in this District.

8. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by ERISA Sections 502(a)(1)(B) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3).

III. PARTIES

Plaintiffs

9. Plaintiff Neil Aldoroty is a “participant” of the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. § 1002(7) and is subject to the Plan’s cash balance formula. He resides in Hilton Head, South Carolina. Plaintiff Aldoroty began working for Chase Manhattan Corporation in 1967 and continued to work for Chase Manhattan Corporation’s successor companies until 2002.

10. Plaintiff John J. Berotti is a “participant” of the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. § 1002(7) and is subject to the Plan’s cash balance formula. He resides in Long Island City, New York. Plaintiff Berotti began working for Chase Manhattan Corporation in 1971 and continued to work for Chase Manhattan Corporation’s successor

companies until 2001.

11. Plaintiff Annette Marie Falchetti is a “participant” of the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. § 1002(7) and is subject to the Plan’s cash balance formula. She resides in New York, New York. Plaintiff Falchetti began working for Chase Manhattan Corporation in 1975 and continued to work for Chase Manhattan Corporation’s successor companies until 2001.

12. Plaintiff Terri Melli is a “participant” of the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. § 1002(7) and is subject to the Plan’s cash balance formula. She resides in Tampa, Florida. Plaintiff Melli began working for Chase Manhattan Corporation in 1997 and continued working for the company’s successor, JPMorgan Chase & Co., until 2005.

13. Plaintiff Norman J. Schomaker is a “participant” of the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. § 1002(7) and is subject to the Plan’s cash balance formula. He resides in Bayside, New York. Plaintiff Schomaker began working for Chase Manhattan Corporation in 1966 and continued to work for Chase Manhattan Corporation’s successor companies until 2005.

14. Plaintiff Perry Shapiro is a “participant” of the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. § 1002(7) and is subject to the Plan’s cash balance formula. He resides in Oceanside, New York. Plaintiff Shapiro began working for Manufacturers Hanover Trust in 1969 and continued to work for Manufacturers Hanover Trust’s successor companies until 2001.

Defendants

15. Defendant JPMorgan Chase Retirement Plan and the predecessor plans of the JPMorgan Chase & Co. Predecessor Companies, as defined herein (collectively, the “Plan”), is an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and a “defined benefit plan” within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). The Plan is administered in this District. The Plan covers employees of JPMorgan Chase & Co. (“JPMC”), which is the successor-in-interest to numerous other companies, including but not limited to, The Chase Manhattan Bank (“Chase”), Chemical Banking Corporation (“Chemical”), Manufacturers Hanover Trust (“MHT”), J.P. Morgan & Co., Inc. (“J.P. Morgan”), and Bank One (collectively, the “JPMC Predecessor Companies” or “JPMorgan Chase & Co. Predecessor Companies”), whose former employees participate in the Plan and/or whose prior retirement plans have been merged with this Plan.

16. JPMC’s Director of Human Resources (or the person, persons, or entity subsequently or otherwise appointed by the Board of Directors of JPMC or JPMorgan Chase Bank, N.A. to serve in this role) is the Plan Administrator within the meaning of ERISA § 3(16)(A)(i), 29 U.S.C. § 1002(16)(A)(i), a Plan fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(a), and is named as a defendant herein. The Plan Administrator’s offices are located in this District.

IV. ERISA DOCUMENT REQUESTS

17. By letters dated April 25, April 27, May 9, and May 25, 2006, Plaintiffs have requested Plan-related documents from the Plan Administrator Defendant and other Defendants

pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), including trust agreements, master Plan documents, Summary Plan Descriptions, Plan amendments, and Summaries of Material Modifications in effect as of December 31, 1988 (the day prior to the conversion of the Chase Manhattan Corporation's retirement plan from a "final average pay" defined benefit plan to a "cash balance formula" defined benefit plan) to the present.

18. By letters dated April 25, April 27, May 9, and May 25, 2006, Plaintiffs have also requested from the Plan Administrator Defendant and other Defendants pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), the most recent Internal Revenue Service Department of Labor Form 5500 filed by the Plan, as well as those filed from January 1, 1989 to the present.

19. On May 4, 2006, Defendants produced to Plaintiffs certain Plan-related documents from the period 1997 to the present. By letters dated May 12 and May 24, 2006, Defendants have corresponded with Plaintiffs regarding their requests, but as of the date of filing this Consolidated Class Action Complaint, Defendants have failed to produce all documents Plaintiffs have requested. As a result of defendants' failure to produce all requested documents, Plaintiffs plead certain allegations regarding upon information and belief.

V. FACTS

Relevant Aspects of the JP Morgan Chase Cash Balance Plan and its Predecessor Plans

20. The Plan applies various formulas, known as "cash balance" formulas, to calculate the pension benefits of eligible employees and former employees of JPMC and JPMC Predecessor Companies, including Plaintiffs.

21. Pursuant to its applicable cash balance formulas, the Plan defines the pension

benefit earned by employees with reference to the balance in his individual, but hypothetical, account (the "Account"). Each year an employee's Account is credited with a percentage of his compensation ("Pay Credits") and an additional amount derived by applying to the Account balance a variable interest rate based on an outside index ("Interest Credits"). While the hypothetical allocation of Pay Credits terminates with employment, the Plan's cash balance formula continues to allocate hypothetical Interest Credits to each Account until benefits are distributed.

22. Although the Plan refers to an individual Account for each participant, the Plan is not a "defined contribution plan," as that term is defined at ERISA Section 3(34), 29 U.S.C. § 1002(34). Instead, it is a "defined benefit plan," which is defined at ERISA Section 3(35), 29 U.S.C. § 1002(35), as "a pension plan other than an individual account plan."

23. Upon retirement, the Account with Pay Credits and Interest Credits accumulated through the date that benefits are to commence is converted to either an annuity benefit, or some other form of qualified benefit, including a lump sum benefit, pursuant to actuarial assumptions specified in the Plan.

24. Normal Retirement Age under the Plan is the later of age 65 or completion of five years of participation in the Plan.

25. Generally, employees eligible to participate in the Plan include those salaried, U.S. payroll employees with at least one year of service.

26. Generally, under the terms of the Plan, participants become 100 percent vested in

their accrued benefits upon the earlier of five years of service or reaching normal retirement age.

27. The Plan year is based upon the calendar year, commencing January 1 and ending December 31.

History of the Plans Sponsored by the JPMC Predecessor Companies

28. On information and belief, the JPMC Predecessor Companies, including but not limited to Chase, Chemical, MHT, and J.P. Morgan, each had their own defined benefit pension plans before their respective mergers with JPMC, or another JPMC Predecessor Company. Upon or soon after their respective mergers, the respective plans of the JPMC Predecessor Companies (the "Predecessor Plans") were directly or indirectly merged with the Plan.

Predecessor Chase Plan, Chemical Plan, and MHT Plan

29. The Chase Plan converted from a traditional final average pay formula to a cash balance formula effective January 1, 1989 (the "Old Chase Plan").

30. In 1991, Chemical merged with MHT, but retained the Chemical corporate name. Effective January 1, 1993, the Cash Plan for Retirement of Chemical Bank and Certain Companies was merged into the Retirement Plan of Manufacturers Hanover Trust and Certain Affiliated Companies. The resulting plan, known as the "The Retirement Plan of Chemical Bank and Certain Affiliated Companies" (the "Chemical Plan") incorporated both a final average pay component and a cash balance component for the accrual of pension benefits.

31. Pay Credits under the Chemical Plan's cash balance component varied according to a participant's years of service and ranged from four to six percent of eligible salary. Interest

Credits under the Chemical Plan were based upon the average rate for one-year U.S. Treasury bills for the months of September, October and November of the previous year.

32. In 1996, Chemical merged with Chase, with the surviving entity retaining the Chase name. On about January 1, 1997, the Old Chase Plan was merged with the Chemical Plan. The new plan, referred to as the "Heritage Chase Plan," was also a cash balance plan and included an amendment to the cash balance formula for benefits accrued after December 31, 1996.

33. Generally, under the Heritage Chase Plan, Pay Credits were based upon years of completed pay-credit service and ranged from four percent for the first three years of service to fourteen percent for 26 or more years of service. Interest Credits were based upon the average rate for one-year U.S. Treasury bills for the months of September, October and November of the previous year, plus one percent, with no minimum rate.

Predecessor Morgan Plan

34. Effective January 1, 1998, Morgan Guaranty Trust Company (a wholly-owned subsidiary of J.P. Morgan), maintained the "Retirement Plan of Morgan Guaranty Trust Company of New York and Affiliated Companies for United States Employees" (the "Morgan Plan") as a traditional, final average pay defined benefit plan for eligible employees of J.P. Morgan and its participating affiliates.

35. Effective January 1, 1999, the Morgan Plan was converted from a traditional final average pay formula to a cash balance formula for the accrual of pension benefits. Accordingly,

the amended Morgan Plan was renamed the "Cash Balance Plan of Morgan Guaranty Trust Company of New York and Affiliated Companies for United States Employees."

36. Under the Morgan Plan, Pay Credits were monthly allocations equal to five percent of eligible compensation for such month (1/12 of annual salary). Interest Credits under the Morgan Plan were based upon the average rate for 30-year U.S. Treasury bills for the months of September, October and November of the previous year, with no minimum rate.

Predecessor Bank One Plan

37. Upon information and belief, the Bank One Corporation Cash Balance Plan (the "Bank One Plan") implemented a cash balance formula effective January 1, 1997.

38. Upon information and belief, effective, January 1, 2000, the First Chicago NBD Corporation Personal Pension Account Plan and the First USA Pension Plan were merged with the Bank One Plan, with the resulting, amended cash balance plan being known as the "Bank One Corporation Personal Pension Account Plan."

39. Pay Credits under the Bank One Plan varied according to a participant's completed anniversary years of service and ranged from 3 to 9 percent of eligible compensation. Interest Credits were allocated monthly based on 1/12 of the average annual yield for one-year Treasury bills published for the month two months prior to the commencement of the applicable calendar quarter, plus one percent. The Bank One Plan provided for a minimum rate of 4.5 percent.

The JPMC Plan Became Effective January 1, 2002

40. On December 31, 2000, J.P. Morgan was merged into Chase by way of a stock for stock transaction. Following the merger, Chase changed its name to JPMorgan Chase & Co. Effective January 1, 2002, the prior "cash balance" pension plan formerly maintained by J.P. Morgan (the "Morgan Plan") was merged into the cash balance plan maintained by Chase (the "Chase Plan"). As described above, the Chase Plan had already incorporated by prior merger the pension plans formerly maintained by Chemical and MHT.

41. To effectuate the merger of the Chase Plan and the Morgan Plan, at the close of business on December 31, 2001, the net assets of the Morgan Plan were transferred to the Chase Plan, which was amended and renamed "The JPMorgan Chase Retirement Plan."

42. On July 1, 2004, JPMC merged with Bank One, but retained its corporate name.

43. Subsequent to its merger with Bank One, JPMC merged the cash balance plan previously maintained by Bank One into the Plan, effective December 31, 2004, and made certain other Plan revisions. The Plan was amended effective January 1, 2005.

Elements of the Plan

44. Article 4.3 of the Plan, as amended effective January 1, 2005, sets forth in Table 4.3(b) that the percentage used to calculate a participant's Pay Credit is based on that participant's completed full years of pay credit service. Those percentages provide for monthly allocations of Pay Credits, ranging from accruing factors of three percent to nine percent of eligible compensation, as follows:

Completed Years of Pay-Credit Service	Accruing Factor
1-4	3 percent
5-9	4 percent
10-14	5 percent
15-19	6 percent
20-24	7.5 percent
25 or more	9 percent

45. For plan years beginning January 1, 2002 and ending prior to January 1, 2005, the percentages for Pay Credits ranged from three percent to ten percent of eligible compensation, based upon the Plan's pay-credit service brackets in effect for such time. Generally, participants who were receiving Pay Credits under the prior Pay Credit schedule receive the greater of: (a) the allocation determined using the Pay Credit percentage under the prior pay credit schedule; or (b) the allocation determined using the Pay Credit percentage under the current Pay Credit schedule, until the current schedule provides a greater Pay Credit percentage.

46. Certain Bank One participants receive supplemental pay-based credits in accordance with levels fixed by the predecessor Bank One Plan.

47. Interest Credits under the Plan are allocated monthly, though compounded annually, and are based upon a variable rate of interest—the average annual yield for one-year U.S. Treasury bills published for the month of October immediately preceding the Plan year,

plus one percent. Effective January 1, 2005, the Plan provides for a guaranteed minimum interest rate of 4.5 percent. Prior to January 1, 2005, the Plan's Interest Credits were based upon the 30-year U.S. Treasury rate, with no minimum rate.

48. Employees who were participants in the Plan immediately prior to its January 1, 2005 amendment have a "Frozen Minimum Benefit" equal to their credit balance as of December 31, 2004, projected with interest credits from such date through the participant's annuity starting date (or, in the case of a lump sum or other non-annuity form of payment, the first day of the month following the date on which the participant is entitled to receive the benefit).

49. Under Article VII of the Plan, generally, the normal method of payment for married participants is a joint and 50 percent survivor annuity, and the normal method of payment for non-married participants is a single life annuity. Optional forms of payment also include: (a) various annuity lump sum distributions equal to a participant's account balance; or (b) the actuarial equivalent of the participant's accrued benefit, determined in accordance with actuarial assumptions set forth in the Plan. Payment alternatives vary for certain participants of Predecessor Plans.

50. Certain participants of Predecessor Plans may be eligible for various transitional, "grandfathered," or "frozen" minimum benefits under the terms of their respective entry into the Plan. However, none of the transitional, "grandfathered," or "frozen" minimum benefit options that may apply to certain participants of Predecessor Plans cure or prevent the fundamental statutory violations of the cash balance formulas described herein. Rather, they may affect the calculation of benefits pursuant to the Plan, but not in a way that cures the illegal nature of the

Plan's cash balance formulas.

VI. CLASS ACTION ALLEGATIONS

51. Plaintiffs bring this action on their own behalf and, pursuant to the provisions of the Federal Rules of Civil Procedure, on behalf of a class of all others similarly situated, defined as all Plan participants, whether active, inactive or retired, their beneficiaries and Estates, whose accrued benefits or pension benefits are based in whole or in part on the Plan's cash balance formulas, from January 1, 1989 to the present.

52. The requirements for maintaining this action as a class action under Rule 23(b)(1) and (b)(2), Federal Rules of Civil Procedure, are satisfied in that:

- (a) The members of the class are so numerous that joinder of all members is impracticable;
- (b) The class is large in number; the exact number and identities of all class members are currently unknown to Plaintiffs, but are known to Defendants. The number of class members is believed to be in the tens of thousands;
- (c) There are questions of law common to all members of the class, such as whether the Plan's cash balance formulas comply with ERISA and, if not, how to reform them to bring them into compliance with the statute;
- (d) Plaintiffs are members of the class as defined above; their claims are typical of the claims of the members of the class and they will fairly and

adequately protect the interests of the class. Plaintiffs' interests are coincident with, and not antagonistic to, those of the remainder of the class, and Plaintiffs are represented by experienced ERISA class action counsel;

- (e) The prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications establishing incompatible standards of conduct for Defendants and a risk of adjudications which as a practical matter would be dispositive of the interests of other members of the class who were not parties; and
- (f) Defendants have acted or refused to act and are likely to act or refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive and other relief with respect to the class as a whole.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Rate of Benefit Accrual Reduced on Account of Age

(For Violation of ERISA Section 204(b)(1)(H)(i), 29 U.S.C. § 1054(b)(1)(H)(i))

53. Plaintiffs repeat and reallege each and every allegation above.

54. ERISA Section 204(b)(1)(H)(i), 29 U.S.C. § 1054(b)(1)(H)(i), provides that a plan's rate of accrual must comply not only with ERISA's anti-backloading provisions, but also avoid reducing the rate of accrual based on increasing age:

Notwithstanding the preceding subparagraphs [i.e., ERISA's three minimum accrual schedules], a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

55. In the case of a defined benefit pension plan, ERISA Section 3(23)(A), 29 USC § 1002(23)(A), defines "accrued benefit" in pertinent part as "[T]he individual's accrued benefit determined under the plan and . . . expressed in the form of an annual benefit commencing at normal retirement age." As required by this definition, the portion of the "accrued benefit" attributable to the Interest Credits is not the amount actually allocated to the Account, but is obtained by projecting the Interest Credits to normal retirement age, i.e., age 65 under the terms of the Plan, based on a projection rate that must be set forth in the Plan. As a consequence, the younger the participant, the greater the value at normal retirement age of the Interest Credits "accrued" each year.

56. Because the value of Interest Credits is inversely proportional to advancing age, Interest Credits are "frontloaded," in contrast to Pay Credits, which are "backloaded," because they decrease with advancing age.

57. Because Pay Credits are backloaded, For example, if Pay Credits increase each year at a 5 percent rate, 5 percent would have to be the maximum interest rate for Interest Credits.

58. In the Plan, however, Pay Credits do not increase each year at a constant rate. As a consequence, the only interest rate that would insure against a reduction in the rate of accrual on account of age would be a zero interest rate. Because the Plan and all prior plans, apply an interest rate greater than zero, there is no way to avoid a reduction in the Plan's overall rate of accrual on account of advancing age.

59. The Plan's cash balance formulas (as in effect in 2005 and in prior years) cause the rate of accrual to diminish with age.

60. For example, under the 2005 cash balance formula, the Plan's overall rate of accrual diminishes from a high of 2.11 percent at age 30 with 10 years of service, to a low of 0.81 percent at age 65 with 45 years of service. Similarly, under the 2002 cash balance formula, the rate of accrual diminishes from a high of 2.92 percent at age 29 with 9 years of service, to a low of 0.90 percent at age 65 with 45 years of service. Two charts showing the year-to-year rate of accrual under the 2005 and 2002 cash balance formulas are attached to this Consolidated Complaint as Exhibit 1.

61. Similar reductions on account of age occurred in the cash balance formulas of the JPMC Predecessor Companies. For example, under the 1997 Chase Plan, the rate of accrual was reduced on account of age from a high of 6.41 percent after one year of service to 1.26 percent at age 65 with 45 years of service. A chart showing the year-to-year rate of accrual under the 1997 Chase cash balance formula is attached to this Consolidated Complaint as Exhibit 2.

62. The reduction in the rate of accrual on account of age in the Plan and in the JPMC Predecessor Plans violates ERISA Section 204(b)(1)(H)(i), 29 U.S.C. § 1054(b)(1)(H)(i).

SECOND CLAIM FOR RELIEF

Plan Transition Offset Creates Impermissible Backloading (“Wear-Away”)

**(For Violation of ERISA Section 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B), and
26 U.S.C. § 411(b)(1))**

63. Plaintiffs repeat and reallege each and every allegation above.

64. Upon information and belief, the Plan and each of its Predecessor Plans were converted from a final average pay formula to a cash balance formula during the Class Period. Upon such conversions, the benefit accrued under the final pay formula was converted into a lump sum and was used as an offset against the benefits accruing to participants under the cash balance formula.

65. For example, prior to January 1, 1989, participants in the Plan who were Chase employees accrued annual benefits under a traditional final average benefit formula. Effective January 1, 1989, however, Chase Manhattan converted its final average benefit formula into a cash balance formula (referred to hereinafter as the “old cash balance formula”).

66. Effective January 1, 1997, Chase adopted an amendment to its cash balance formula for benefits accrued after December 31, 1996 (the “new cash balance formula”). The new cash balance formula did not cover “grandfathered” participants – those whose age and service qualified them to continue accruals under the old cash balance formula.

67. Chase employees who had been participants under the final average pay formula

or the old cash balance formula and remained active participants under the new cash balance formula on or after January 1, 1997, are referred to in the Plan as "Heritage Chase employees."

68. For Heritage Chase employees the Opening Cash Balance Account under the new cash balance formula as of January 1, 1997, consisted of the sum of: (a) the account balance under the old cash balance formula (or, if greater, the value of 1 percent of career average compensation converted to a lump sum), and (b) the vested annuity benefit under the final average pay formula frozen on December 31, 1988, converted into a lump sum based on actuarial factors set forth in the plan.

69. The new cash balance formula also provided that, for Heritage Chase employees, the benefit payable by the plan would be the greater of the 1997 Opening Balance Account or the benefit that would have accrued had the new cash balance account been in effect at all times before January 1, 1997.

70. The 1997 Opening Cash Balance Account became an offset amount for Heritage Chase employees, so that they accrued no additional benefits under the new cash balance formula unless and until the benefit notionally accrued under the new cash balance formula and applied to all years of participation, became greater than the benefit accrued before January 1, 1997.

71. Application of the 1997 Opening Cash Balance as an offset causes the rate of accrual of the new cash balance formula to be zero for some Heritage Chase employees during one or more years of participation. This accrual method is known as the "wear-away" method.

72. As a defined benefit pension plan, a cash balance plan must comply with all of ERISA's minimum standards governing defined benefit pension plans, including at least one of ERISA's three minimum accrual rules known as the "3 percent," the "133 1/3 percent" and the "fractional" rules, set forth at ERISA Sections 204(b)(1)(A), (B) and (C), 29 USC §§ 1054(b)(1)(A), (B) and (C). The main purpose of those rules is to outlaw the "backloading" of benefits, i.e., to keep a plan from providing disproportionately higher benefits for later years of service, thereby circumventing ERISA's early vesting provisions.

73. Both the 3 percent and the fractional rules provide that, where pension benefits are based on compensation, such compensation cannot be averaged over more than 10 years. Because all cash balance formulas provide that Pay Credits are hypothetically credited yearly (or, in some cases, monthly), the compensation on which benefits are based is "career average" compensation. As a consequence, the only accrual rule with which a cash balance formula can comply is the 133 1/3 percent rule.

74. The 133 1/3 percent rule provides in pertinent part that no later rate of accrual can be more than one third greater than any earlier rate, as follows:

A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 1/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year

ERISA § 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B).

75. Because any accrual rate is infinitely greater than zero, a zero accrual rate followed by any future accrual violates the 133 1/3 percent rule.

76. Pursuant to 26 C.F.R. § 1.411(b)-1(b)-1(b)(2)(ii)(B), the 133 1/3 percent rule is violated by the mere possibility that a Plan's benefit formula could yield zero accrual in one or more years, followed by an accrual rate greater than zero.

77. In addition, as of any particular year, "the accrued benefit payable at the normal retirement age" for participants subject to "wear-away" is not "equal to the normal retirement benefit," as required by the 133 1/3 percent rule.

78. The application of "wear-away" to Plan participants, including Heritage Chase employees, causes the cash balance formula to violate the 133 1/3 percent rule, ERISA Section 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B), 26 U.S.C. § 411(b)(1).

THIRD CLAIM FOR RELIEF

Offset Causes Impermissible Forfeiture of Accrued Benefits

(For Violation of ERISA Section 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A), and 26 U.S.C. § 411 (a)(2)(A))

79. Plaintiffs repeat and reallege each and every allegation above.

80. For some Plan participants their benefit accrued under the cash balance formula is payable only if it is larger than the opening balance in their Account upon the Plan's conversion. Therefore, payment of the benefit accrued in any particular year under the cash balance formula is conditioned upon the size of the opening cash balance Account, regardless of vested status (five years of service under the Plan).

81. ERISA Section 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A) (“Nonforfeitability requirements”), and 26 U.S.C. § 411 (“Minimum Vesting Standards”) provide in pertinent part that “an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.”

82. 26 C.F.R. §1.411(a)-4 provides in pertinent part:

For purposes of [26 U.S.C.] Section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right . . . [A] right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right, is a forfeitable right at that time.

83. By conditioning payment of a vested accrued benefit upon the participant’s remaining employed long enough to permit his accrued benefit under the new cash balance formula to become larger than the opening cash balance account, the Plan conditions the nonforfeitability of the accrued benefit upon subsequent events, in violation of ERISA Section 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A) and 26 U.S.C. § 411.

FOURTH CLAIM FOR RELIEF

Failure to Provide Notice of Reduction in Rate of Benefit Accrual

(For Violation of ERISA Section 204(h), 29 U.S.C. § 1054(h))

84. Plaintiffs repeat and reallege each and every allegation above.

85. At all times relevant to this action, ERISA Section 204(h), 29 U.S.C. § 1054(h), required advance notice to participants in a defined benefit pension plan of any amendment whose effect is to “provide for a significant reduction in the rate of future benefit accrual.” 29

U.S.C. § 1054(h)(1). Until December 31, 2001, the notice was to be provided “not less than 15 days before the effective date of the plan amendment,” and was required to “set forth” the plan amendment and its effective date. As of January 1, 2002, additional requirements were added.

86. Both versions of Section 204(h) provide that a plan may not be amended if it fails to comply with these statutory requirements.

87. Upon information and belief, in adopting their respective cash balance formulas, the Plan and all Predecessor Plans during the Class Period affected a significant reduction in the rate of future benefit accrual.

88. Upon information and belief, the timing, content and method of distribution of the notices of the adoption of the cash balance formulas in the Plan and the Predecessor Plan violated ERISA Section 204(h), 29 U.S.C. § 1054(h), and the applicable regulations.

FIFTH CLAIM FOR RELIEF

Failure to Provide Adequate Summary Plan Descriptions

(For Violation of ERISA Section 102(b), 29 U.S.C. § 1022(b), and 29 C.F.R. § 2520.102-2)

89. Plaintiffs repeat and reallege each and every allegation above.

90. ERISA Section 102(a), 29 U.S.C. § 1022(a), requires the Plan administrator to provide all participants and beneficiaries with a summary plan description (“SPD”):

The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan.

91. In turn, ERISA Section 102(b), 29 U.S.C. § 1022(b), provides in pertinent part:

The summary plan description shall contain the following information: . . . the plan's requirements respecting eligibility for . . . benefits; . . . circumstances which may result in disqualification, ineligibility, or denial or loss of benefits . . .

92. Similarly, 29 C.F.R. § 2520.102-2 provides in pertinent part:

(a) *Method of presentation.* The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan ... Consideration of these factors will usually require ... the use of clarifying examples and illustrations, the use of clear cross-references and a table of contents. (b) *General format.* The format of the summary plan description must not have the effect [of] misleading, misinforming or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

93. Upon information and belief, none of the SPDs issued by the Plan Administrator with respect to the Plan or the Predecessor Plans summarize their cash balance formulas in compliance with these requirements.

94. For example, the undated Summary Plan Description, which is attached to this

Complaint as Exhibit 3 (the “Undated SPD”), purports to summarize the 1997 Chase Plan and provides in pertinent part with regard to all participants:

Plan Benefits Your plan benefit is determined by the credits to your account from the time you begin participating to the time your participation ends. Your cash balance account grows through pay credits and interest credits.

Exhibit 3, at 6.

95. The Undated SPD purports to summarize at page 9, for all participants, “how you earn benefits” under the plan. It summarizes the allocation of Pay Credits and Interest Credits “effective January 1, 1997,” but contains no reference or cross-reference to “Appendix I - Heritage Chase Employees,” on page 23 of the Undated SPD. Appendix I, however, attempts to reveal (albeit rather obscurely and unintelligibly, especially to the average plan participant) that the 1997 Opening Cash Balance Account operates as an offset negating the accrual of additional benefits described at page 9 of the Undated SPD for all Heritage Chase employees.

96. Appendix I provides in pertinent part at page 23:

Minimum Benefits

In general, when a pension plan such as the Retirement Plan changes as the result of a plan merger or modification, participants cannot receive less than any amounts they accrued or earned under that plan prior to the date of the merger or modification. This is called the “minimum benefit.” When a participant requests a benefit payment under the Retirement Plan, the amount that would normally be payable is compared to the minimum benefit. If the minimum benefit is greater, a participant will receive the minimum benefit instead of the amount that would have normally been payable under the Retirement Plan.

Undated SPD, Exhibit 3, at 23.

97. Only an ERISA attorney, or similarly knowledgeable individual, would understand that the purpose and effect of the “Minimum Benefits” provision on page 23 of the Undated SPD was to act as an offset against the receipt of additional benefits, rather than as only a safeguard of previously accrued benefits.

98. The only “examples or illustration” of the rate of accrual contained in the Undated SPD pertains to employees whose participation in the Plan commenced on or after January 1, 1997, *i.e.*, those whose benefit formula does not contain an offset of the 1997 Opening Cash Balance Account. There are no examples or illustrations of the new cash balance formula as it pertains to Heritage Chase employees, *i.e.*, those whose rate of accrual for some or all future years of service would be reduced to zero.

99. By describing the new cash balance formula at page 9 of the Undated SPD without a reference or cross-reference to Appendix I, the undated SPD’s format for Heritage Chase employees had the effect of “misleading, misinforming [and] failing to inform participants” as to the rate of accrual, and “minimized, rendered obscure, or otherwise made to appear unimportant” the “description of exceptions, limitations, reductions, and other restrictions of plan benefits.”

100. In short, the Undated SPD did not explain, inter alia, (a) that the rate of accrual under the Plan diminished based on age for all Plan participants as a matter of simple arithmetic; (b) that the new cash balance formula applied retroactively to all years of service with Chase; (c) that the 1997 Opening Cash Balance Account operated as an offset against accrual under the new cash balance formula for Heritage Chase employees; and (d) that the benefit accrued under the

1997 cash balance formula was not applicable to Heritage Chase employees until and unless their benefit under the new cash balance formula became greater than the 1997 Opening Cash Balance Account.

101. On information and belief, omissions of the type detailed with respect to the Undated SPD were pervasive throughout the Class Period with respect to all Summary Plan Descriptions issued for the Plan and the Predecessor Plans.

102. The failure of the Plan's Summary Plan Descriptions, including the Summary Plan Descriptions of the Predecessor Plans, to fully disclose Plan provisions that negatively impacted the benefits participants reasonably expected to receive violates ERISA Section 102(b), 29 U.S.C. § 1022(b), and 29 C.F.R. § 2520.102-2. These failures and omissions prejudiced all Plan participants and render the affected cash balance formulas unenforceable.

SIXTH CLAIM FOR RELIEF

Failure to Provide Summaries of Material Modifications to Plan

(For Violation of ERISA Section 102(a), 29 U.S.C. § 1022(a), and 29 C.F.R. 2520.104b-3)

103. Plaintiffs repeat and reallege each and every allegation above.

104. ERISA Section 102(a), 29 U.S.C. § 1022(a), also provides:

A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section [104(b)(1), 29 U.S.C. §] 1024(b)(1) of this title.

105. 29 C.F.R. § 2520.104b-3 governs in greater detail the timing and content of the

summary of material modifications (“SMM”).

106. Upon information and belief, the Plan Administrator (and the plan administrators of the pension plans of JPMC’s Predecessor Companies) did not provide to participants the SMMs required by ERISA Section 102(a), 29 U.S.C. § 1022(a), and 29 C.F.R. § 2520.104b-3, thereby violating those provisions.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment as follows:

- A. Certifying this action as a class action;
- B. Declaring:
 1. that the cash balance formulas reduce the rate of accrual based on the attainment of any age, in violation of ERISA Section 204(b)(1)(H)(i), 29 U.S.C. § 1054(b)(1)(H)(i) (First Claim for Relief);
 2. that the cash balance formulas, by using an Opening Cash Balance as an offset against accruals under the cash balance formulas violate ERISA Section 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B) (the 133 1/3 percent rule) (Second Claim for Relief), and ERISA Section 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A), and 26 U.S.C. § 411(a)(2)(A) (Third Claim for Relief);
 3. that the advance notice of a significant reduction in the rate of future benefit accruals required by the adoption of the cash balance formulas did not comply with ERISA Section 204(h), 29 U.S.C. § 1054(h), as to timing, content and method of distribution, so that the cash balance formulas did not become effective (Fourth Claim for Relief);

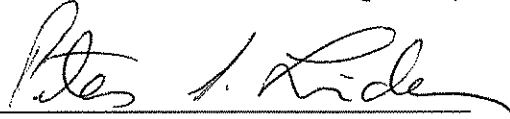
4. that the Summary Plan Descriptions summarizing the new cash balance formulas violated ERISA Section 102(b), 29 U.S.C. § 1022(b), and 29 C.F.R. § 2520.102-2 (Fifth Claim for Relief); and
 5. that the Plan Administrators did not provide the summaries of material modifications of the cash balance formulas required by ERISA Section 102(a), 29 U.S.C. § 1022(a), and 29 C.F.R. § 2520.104b-3, thereby violating those provisions (Sixth Claim for Relief).
- C. Enjoining Defendants from enforcing the Plan's unlawful provisions;
 - D. Ordering Defendants to reform the Plan and those of the Predecessor Companies to cure all ERISA violations;
 - E. Ordering Defendants to recalculate the accrued benefits of all Class members based on the greater of the benefit formula sought to be amended in violation of ERISA Section 204(h), or the pre-amendment formula, after both or either are reformed to cure all ERISA violations;
 - F. Ordering Defendants to pay all pensioners, their beneficiaries and Estates the difference between the amount of pension paid to them heretofore, and the benefit that should have been paid based on the Plan as reformed to cure all heretofore-listed ERISA violations, with interest at the highest allowable rate compounded monthly;
 - G. Awarding Plaintiffs
 1. their costs, disbursements and expenses herein;
 2. reasonable attorneys' fees; and

H. Awarding the Class such other and further relief as the Court may deem just, proper and equitable.

Dated: May 25, 2006

KIRBY McINERNEY & SQUIRE, LLP

By:



Peter S. Linden (PL-8945)
Alice McInerney (AM-5484)
Henry Telias (HT-0853)
Andrew T. Watt (AW-1271)
830 Third Avenue
New York, New York 10022
Telephone: (212) 371-6600
Fax: (212) 751-2540

SCHIFFRIN & BARROWAY, LLP

Joseph H. Meltzer, Esq.
Edward W. Ciolko, Esq.
Joseph A. Weeden, Esq.
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Fax: (610) 667-7056

KELLER ROHRBACK L.L.P.

Lynn Lincoln Sarko (LS 3700)
Derek W. Loeser (DL 6712)
Amy Williams-Derry (AWD 5891)
Erin M. Riley (ER 7673)
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Fax: (206) 623-3384

EDGAR PAUK (EP 1039)

144 East 44th Street, Suite 600
New York, New York 10017
(212) 983-4000

LAW OFFICES OF CURTIS V. TRINKO, LLP

Curtis V. Trinko
16 West 46th Street
Seventh Floor
New York, NY 10036

Attorneys for Plaintiffs