

**IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**Steven C. Tyrakowski**, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

Case No. 23-cv-984

**Conagra Brands, Inc. Pension Plan;  
Conagra Brands Employee Benefits  
Administrative Committee, and John Does 1  
through 10,**

Defendants.

**CLASS ACTION COMPLAINT**

1. Plaintiff is a retiree and participant in the Defendant Conagra Brands, Inc. Pension Plan and is or was a participant in the defined benefit plan of the former conglomerate Beatrice. He asked for a copy of his Beatrice plan document, as he is entitled to under ERISA, from his fiduciary and Plan Administrator, Conagra Brands Employee Benefits Administrative Committee. The Plan Administrator refused, claiming it is lost — a Beatrice plan document that likely covers thousands of people's retirement pensions and which the fiduciary is legally required to refer to when administering the Plan for former Beatrice plan participants. By not relying on the lost Beatrice plan document, Conagra is underpaying benefits under the Beatrice defined benefit plan because it is paying and administering benefits as if retirees cannot collect them until 65, while the actual Plan document required benefits to start at 60. Plaintiff's suit seeks to hold to account everyone

who is responsible under ERISA for this mess, to clarify what benefits he is and others are entitled to, and to recover the benefits and damages due to him and all other similarly situated participants under ERISA.

## **PARTIES**

2. Steven C. Tyrakowski is an individual and citizen of Illinois, residing in Oak Lawn, Illinois.

3. The Conagra Foods Inc., Pension Plan is an employee benefits plan governed by the Employment Security and Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”). It is administered in Chicago, Illinois. It is the successor plan to the Beatrice Retirement Income Plan (“BRIP”) that was also an employee benefits plan governed by ERISA. The BRIP was sponsored first by Beatrice Foods Company, which changed its name in 1984 to the Beatrice Companies, Inc., which was subsequently acquired by BCI Holdings Corporation, and ultimately changed its name to the Beatrice Company. For ease of reference, Plaintiff will refer to this entity simply as “Beatrice.” Beatrice was sold to Conagra Brands Inc., formerly Conagra Foods.

4. The Conagra Brands Employee Benefits Administrative Committee is the Plan Administrator of Conagra Foods Inc., Pension Plan. Per the summary plan description, it is located in Chicago.

5. Does 1 through 10 are fiduciaries who knew or should have known the BRIP was lost and, among other things, did not take proper action to recover or reconstruct the Plan(s).

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction under 28 U.S.C. § 1331 as this matter is brought pursuant to ERISA and 29 U.S.C. § 1132(e) provides subject-matter jurisdiction over the ERISA claims.

7. This Court has personal jurisdiction over the Defendants because they have minimum contacts with, and purposefully avail themselves of the benefits of, this jurisdiction.

8. This District is the proper venue for this case because Defendants reside in and are subject to suit in this District. A substantial portion, perhaps all, of the events that underlie the claims here occurred in this District.

## **STATEMENT OF FACTS**

### **A. The history of the Beatrice Plan.**

9. Conagra Brands, Inc. (“Conagra”) is a Fortune 500 company with over \$1 billion in revenue and more than 15,000 employees, in existence in one form or another since 1919. The current iteration of the company is an amalgam of other, previously purchased companies and brands, stitched together through acquisitions over the last 40 years.

10. One of Conagra’s acquisitions was Beatrice. Beatrice itself was a former conglomerate of brands and companies. In 1986, Beatrice was sold to the leveraged buyout firm Kohlberg Kravis Roberts & Co. (“KKR”). KKR bought Beatrice through a shell corporation, BCI Holdings Corporation, taking it private, along with several other companies. After selling off several divisions, KKR sold Beatrice to Conagra in 1990.

11. Beatrice operated a defined benefit plan for its employees called the Beatrice Retirement Income Plan (BRIP), which covered the employees of the Beatrice, too. When KKR

purchased Beatrice, it assumed the debts and liabilities of that company, including its pension obligations.

12. At some point between 1986 and 1989, the BRIP was amended. Before the amendment, the BRIP required vested participants to wait until age 65 to begin receiving an unreduced retirement annuity; after the amendment, the age was lowered to age 60.

13. In purchasing the Beatrice, Conagra became liable for the promises made under the BRIP.

14. In 1993, the BRIP — whose participants it called the “Participating Group” — merged into the Conagra Foods Inc., Pension Plan for Salaried Employees, which was then renamed and/or merged into the Conagra Foods Inc., Pension Plan (the “Plan” or the “Conagra Plan”).

15. Since its purchase of Beatrice, Conagra has administered the Conagra Plan and the former BRIP in-house, usually using committees of its own employees to serve as the named fiduciary and administrator of the Plan(s). Currently, the name of that committee is the Conagra Brands Employee Benefits Administrative Committee.

16. Between 1990 and the present, the Plan sponsors and/or the Plan fiduciaries lost the BRIP Plan document and its amendments as it existed from 1986-1990.

17. Between 1990 and the present, Conagra amended the BRIP by changing the age at which participants could receive a full, unreduced retirement pension under the BRIP from age 60 to age 65. The fiduciaries knew, or should have known, that this change occurred and that it was not permissible under ERISA’s “anti-cutback” rule.

**B. The Plaintiff's history with the Plan.**

18. Plaintiff began working for the Beatrice Foods Company in September of 1978.

19. As an employee of Beatrice, Plaintiff was a participant in the Beatrice Retirement Income Plan.

20. Plaintiff worked at Beatrice when it was purchased by KKR, but before it was sold to Conagra. In 1987, Plaintiff's pension benefits became vested. Plaintiff had a deferred vested benefit, which was an accrued benefit. Later, Plaintiff was one of the "Participating Group" whose ERISA Plan was eventually merged with the Conagra Foods Inc. Pension Plan for Salaried Employees.

21. Plaintiff left Beatrice in 1988, twenty-seven years before he was entitled to receive his full, unreduced age 60 deferred vested benefit under the BRIP.

22. In March 1989, the Pension Administrator for BRIP sent Plaintiff a document, labeled "official," that notified him that "At age 60 or older, you will be eligible for an unreduced benefit. You must commence receiving payment of your benefit no later than age 65." It then computed his benefits and differentiated between a reduced, early retirement benefit starting at age 55 and a retirement benefit commencing at age 60.

23. Upon information and belief, every other vested participant of the BRIP in or around March 1989, was sent a similar "official" document, notifying each that they were eligible to receive their unreduced deferred vested retirement benefit commencing at age 60, and then calculating that pension amount using age 60 as the commencement date.

24. Upon information and belief, the BRIP Administrator relied upon, reviewed, and accurately summarized the terms of the Beatrice Retirement Income Plan document when creating the “official” documents sent to Plaintiff and other Plan participants in or around March 1989.

25. In February 2022, Plaintiff received a packet from the Conagra Plan that stated he would be able to commence his benefits at age 65.

26. Prior to this, Plaintiff had tried to use Conagra’s online benefit calculator with a benefit starting date prior to his turning 65 in the assumptions. The site responded that Plaintiff was “[n]ot eligible to retire at this date. Please try a later date.”

27. Plaintiff contacted the Plan service center which advised Plaintiff that he could not start his benefit until age 65, that he was not entitled to a retroactive benefit to age 60, and that there would be no upward adjustment in the amount of his pension going forward to compensate him for the benefits that were payable starting at age 60 but had not been paid.

28. On April 15, 2022, Plaintiff appealed the denial of benefits he was entitled to at age 60.

29. The Plan Administrator received Plaintiff’s appeal on April 20, 2022, and on May 10, 2022, the Plan responded to Plaintiff stating it would render a decision within 60 days or, if special circumstances required an extension of time, it would notify Plaintiff.

30. On June 22, 2022, the Plan stated it required an extension of the time to review Plaintiff’s appeal because “the Committee is not able to meet to review your appeal within 60 days of its receipt.”

31. On July 12, 2022, the Plan sent a letter denying Plaintiff’s claim. The letter concedes Plaintiff was entitled to an unreduced deferred vested unreduced pension benefit at age

60, *i.e.*, at any time after May 2017. However, it continues that Plaintiff was “free to contact the Pension Service Center at any time to elect to commence [his] benefit.” In other words, the Plan is taking the position that “you snooze, you lose” and that Plaintiff forfeited five-years’ worth of pension benefits because he did not contact the Plan and elect to receive his unreduced benefit in May 2017.

32. The July 12, 2022 letter denying benefits failed to cite any provision of any Plan, Summary Plan Description, or other Plan documents. At no time did the Plan Administrator refer to the BRIP in computing or denying Plaintiff’s claim for benefits; it couldn’t, because it didn’t have it.

33. There is no provision in the Conagra Plan or the BRIP that stated a participant would forfeit any vested, accrued benefits if he delayed his election of benefits. There is no provision in the Conagra Plan or the BRIP that requires a participant to affirmatively elect to receive a benefit or forfeit all benefits that could have been claimed.

34. On August 12, 2022, Plaintiff requested, among other documents, a copy of the BRIP in effect at the time he terminated employment with Beatrice Company. The request was received by the Plan on August 16, 2022. The Plan failed to produce any version of the BRIP.

35. Plaintiff sent a second request for the Plan document on October 13, 2022. It was received on October 17, 2022. Among the documents requested, Plaintiff sought:

- The full actual BRIP Plan document in effect as of January 1, 1988
- The full actual BRIP Plan document in effect as of December 31, 1992

- Copies of ALL BRIP plan amendments between March 1, 1985 and December 31, 1992 including but not limited to the amendment referred to on page 15 of the BCI Holdings Corporation Form 10-K for the fiscal year ended February 28, 1987
- all restatements, riders, exhibits, addenda, appendixes, side letters, amendments, supplements, attachments, schedules, annexes and similar matters are also provided.

36. On November 14, 2022, the Plan responded that it was “unable to locate copies of the Beatrice Retirement Income Plan (BRIP) prior to its merger into the Conagra Brands, Inc. Pension Plan.” In other words, the Plan fiduciaries have lost relevant Plan documents reflecting Plaintiff’s deferred vested unreduced age 60 benefit and denied Plaintiff’s benefit claim and appeal without ever consulting them.

37. At no time has any Defendant ever communicated to Plaintiff or (on information and belief) any other former participant of the BRIP that it had lost the relevant version of the BRIP document and Plaintiff was not aware of this fact.

38. Except for the letter of July 12, 2022, from the Plan Administrator to Plaintiff, at no time has any Defendant communicated to Plaintiff or any other member of the BRIP that their Plan terms required them to affirmatively elect to receive their retirement benefit at age 60 or else the benefit would not be paid until age 65, with the benefits payable after age 60 but not paid lost forever.

39. Plaintiff did not waive or abandon, and never indicated he was waiving or abandoning, any benefit, and under ERISA’s “anti-alienation” provisions, he was not legally permitted under the present circumstances to alienate or waive his benefit.



## **CLASS ACTION ALLEGATIONS**

40. Pursuant to Rule 23, Plaintiff brings Counts I-V of this action on behalf of himself and a class of similarly situated persons injured by Defendants' unlawful conduct. The Class is defined as follows:

All individuals who were participants or beneficiaries in the Beatrice Retirement Income Plan whose obligations were assumed by Conagra.

41. The Class members are so numerous that joinder of all members is impracticable. As of 1988, the Beatrice had approximately 20,000 employees. The Conagra Plan currently has approximately 27,000 participants. Although not all of these are or would have been participants in the BRIP or had vested deferred benefits, upon information and belief, the Class numbers at least 100 participants. The exact name of each class member is known to Defendants and within documents in their exclusive control.

42. Questions of law and fact are common to the Class and these common questions predominate over any questions affecting individual members. Common questions include:

- a) What the terms of the BRIP document were as of the time Beatrice Company was purchased by Conagra;
- b) whether participants were required to commence deferred vested benefits at age 60 or else forfeit them;
- c) whether participants are entitled to be paid their vested age 60 benefits;
- d) whether the fiduciary Defendants had an obligation to notify vested deferred participants that they could begin their benefits at age 60 and that those benefits would not be paid in full by the Plan if they didn't;
- d) whether the Defendants properly so notified such participants; and
- e) whether the Plan Administrator has violated ERISA by failing to adequately maintain Plan documents;

43. Plaintiff's claims are typical of the claims of the Class.

44. Plaintiff will fairly and adequately protect the interests of the Class. He has retained experienced and competent counsel in ERISA and class actions more generally.

45. A class action is appropriate in this case under Rule 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants or adjudications as to individual class members that would affect the interests of other class members not parties to the adjudications.

46. A class action is appropriate under Rule 23(b)(2) because the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

47. A class action is appropriate under Rule 23(b)(3) because common questions of law or fact predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case.

## **COUNT I**

### **Clarification of rights to future benefits due under the terms of the Plan – ERISA § 502(a)(1)(B) and 502(a)(3) against Defendant the Conagra Foods Inc., Pension Plan (as successor to the BRIP)**

48. Plaintiff restates and re-alleges all other paragraphs of this complaint herein.

49. ERISA § 501(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), authorizes a participant or beneficiary of a plan to bring a civil action to “clarify his rights to future benefits under the terms of the plan.”

50. No one knows all the terms relevant to the participants' future benefits under the terms of the Plan because the Defendants have lost the BRIP Plan document.

51. Defendants never notified Plaintiff and the Class that they had lost the BRIP Plan document or that benefit determinations were being made without reference to the Plan document.

52. Accordingly, Plaintiff seeks equitable relief that will ensure compliance with ERISA in the future and including without limitation an order (1) (a) requiring Defendants to locate and authenticate a copy of the BRIP Plan document in a court proceeding or (b) requiring Defendants and Plaintiff to reconstruct the terms of the BRIP Plan documents through a court proceeding; and (2) thereafter (a) harmonize the Conagra Plan with the BRIP document to ensure no violations of ERISA's anti-cutback rule; (b) notify each and every affected participant of their benefits in a court-approved, plain English, common-sense method; and (c) adequately maintain the BRIP and all Plan documents in accordance with ERISA.

## **COUNT II**

### **Breach of fiduciary duties**

#### **ERISA § 502(a)(2) and § 409 against all fiduciary defendants**

53. Plaintiff restates and re-alleges all other paragraphs of this complaint as if fully set forth herein.

54. ERISA § 501(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary of a plan to seek appropriate relief under § 409 for breaches of fiduciary duty. It makes any person who is a fiduciary and who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by ERISA personally liable to make good to the plan any losses to the plan resulting from the breach. Section 409 also allows the Court to award any other equitable or remedial relief as it deems appropriate, including the removal of the fiduciary.

55. All fiduciary defendants had a duty under ERISA § 404(a)(1) to act in the interests of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries along with defraying reasonable expense of administering the Plan. Each of the fiduciary defendants was required to do this with the care, skill, prudence, of a prudent plan administrator.

56. The Plan Administrator fiduciary defendants breached these fiduciary duties in the following ways:

- (a) losing the BRIP Plan document which was necessary to ensure proper administration of the Plan;
- (b) concealing the fact that the BRIP Plan had been lost;
- (c) knowingly and willfully administering benefits protected by the BRIP without access to or referencing the BRIP Plan document;
- (d) failing to conduct periodic audits of Plan administration to ensure the correct Plan documents were being maintained and utilized;
- (e) failing to implement prudent document retention policies to ensure important Plan documents were not lost;
- (f) failure to oversee or hire competent legal counsel who would have advised on the need for maintenance of the Plan documents at all times;
- (g) failure of legal counsel to review Plan documents when drafting Plan amendments, modifications to the Plan, or summaries; and
- (h) failure of accountants and auditors to review Plan documents when calculating funding targets.

57. As a result of these fiduciary breaches, Defendants have and will cause the Plan to suffer monetary losses through, *inter alia*, and without limitation (1) paying the cost to find or reconstruct the Plan document; (2) paying the cost of defense for this suit; (3) paying any penalties

for failure to provide Plan documents as pled in Count V; and (4) paying any attorney's fees to Plaintiff's counsel pursuant to ERISA § 502(g)(1).

58. Plaintiff and the Class seek: (1) the recovery of all money expended by the Plan and which is recoverable under ERISA including in the categories found in the preceding paragraph; (2) any equitable or remedial relief the Court deems appropriate; and (3) either the removal of the current Plan Administrator as the Plan Administrator and fiduciary and the installing of an independent fiduciary—not connected to or employees of Conagra — to administer the Plan in the future or appropriate relief to ensure compliance with ERISA in the future.

### **COUNT III**

#### **Claim for Benefits – ERISA § 502(a)(1)(B) against Defendant the Conagra Foods Inc., Pension Plan (as successor to the BRIP)**

59. Plaintiff restates and re-alleges the foregoing paragraphs as if fully set forth herein.

60. ERISA § 501(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), authorizes a participant or beneficiary of a plan such as Plaintiff to bring a civil action to recover benefits due under the terms of the plan, to enforce his rights under the terms of the plan, and to clarify his rights to future benefits under the plan.

61. Pursuant to the BRIP Plan, Plaintiff and the Class were entitled to begin receiving benefits at age 60.

62. After the BRIP was incorporated into the Conagra Plan, Defendants altered the benefits such that the Conagra Plan such that it no longer contained the right to receive an unreduced benefit at age 60.

63. Under ERISA, this is prohibited by the anti-cutback rule that protects vested benefits.

64. Plaintiff and the Class were not paid their benefits starting at age 60.

65. Accordingly, Plaintiff asserts this claim on behalf of himself and the Class to enforce their rights under the terms of the Plan and to recover those benefits due to them under ERISA and the terms of the Plan.

#### **COUNT IV**

##### **ERISA § 502(a)(3) against the Conagra Brands Employee Benefits Administrative Committee**

66. Plaintiff restates and re-alleges the foregoing paragraphs as if fully set forth herein.

67. This Count IV is in the alternative to Count III.

68. If the Court determines that the Conagra Plan and/or BRIP required participants to claim benefits at age 60 or forfeit any benefit payments between age 60 and 65 as alleged by the Plan Administrator, then that requirement was material information that should have been disclosed by the Plan Administrator to the relevant participants.

69. The Plan Administrator knew or should have known of the election-at-60-or-forfeit requirement for the affected participants.

70. The Plan Administrator failed to notify participants of the election-at-60-or-forfeit requirement.

71. The Plan Administrator failed to provide a Summary of Material Modifications to the Class regarding the addition of the election-at-60-or-forfeit requirement, as required by ERISA.

72. The Plan Administrator failed to create a Plan document, summary plan description, or any other communication to participants that included language allowing a reasonable person to determine that the election-at-60-or-forfeit requirement existed.

73. The Plan Administrator failed to create a web interface that informed participants of the existence of the election-at-60-or-forefeit requirement.

74. The Plan Administrator failed to provide adequate written instructions to or adequately train any agents, either within the Plan Administrator committee or outside it among people interfacing with participants, regarding the communication of the election-at-60-or-forefeit requirement to participants.

75. Because of the Plan Administrator's failings and breaches of fiduciary duty, Plaintiff and the Class had no knowledge of, and could not reasonably determine, the existence of the election-at-60-or-forefeit requirement.

76. Because of election-at-60-or-forefeit requirement, no reasonable participant would forego electing benefits at age 60 had he known of the requirement.

77. Under ERISA Section 502(a)(3), Plaintiff seeks the following equitable relief to redress the Plan Administrator's violations of ERISA:

- a. Estoppel from enforcing the election-at-60-or-forefeit requirement against the Class;
- b. Reformation of the Conagra Plan to delete the election-at-60-or-forefeit requirement, and an order requiring the Plan Administrator to administer the Conagra Plan in accordance with the reformed document;
- c. Surcharge against the Plan Administrator to make whole the Plaintiff and the Class;
- d. Equitable tolling of election-at-60-or-forefit requirement;
- e. Formation of a constructive trust for the benefit of the Class; and
- f. Restitution of the benefits that would have been paid absent the Plan Administrator's breaches.

**COUNT V**

**Violation of ERISA § 104, 29 U.S.C. § 1024  
Failure to provide Plan documents against  
Conagra Brands Employee Benefits Administrative Committee**

78. Plaintiff restates and re-alleges the foregoing paragraphs as if fully set forth herein.

79. The Plan Administrator is required to maintain Plan documents in order to operate the Plan in accordance with its terms.

80. The Plan Administrator is required to distribute the governing Plan documents to participants on request.

81. Plaintiff repeatedly requested Plan documents for the BRIP. The Plan Administrator has not produced the documents.

82. The Plaintiff seeks relief under 29 U.S.C. § 1132(c) which provides for a daily fine for failing to produce the requested information within 30 days.

83. This fine is warranted as the requested documents include the instrument by which the Plan is to be governed. In addition, the Defendant here knowingly and willfully hid the fact that the Plan document had been lost and did not seek to recover it by reasonable means at any time since it was known, or should have been known, to be missing.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Class, demands judgment against Defendants, for the following relief and any additional relief that is proper under Fed. R. Civ. P. 54(c):

- (a) an order declaring this action to be maintainable as a class action and appointing Plaintiff as the representative of the Class and his counsel as counsel for the Class;
- (b) an award to Plaintiff and the Class of their unpaid benefits, retroactive to age 60;



- (c) an order requiring the Class's future benefits to be computed with a commencement date of benefits of age 60;
- (d) an order requiring the Plan Administrator to locate the BRIP Plan documents, authenticate them through a court procedure, and then requiring the Plan Administrator to send a copy of those documents to the Class, or in the alternative, an order requiring the Plan Administrator and Plaintiff's counsel to reconstruct the BRIP Plan documents and requiring the court-approved version to be sent to the Class, along with an order requiring Conagra as Plan sponsor to amend the Plan to conform with the BRIP to avoid violating ERISA's anti-cutback rule;
- (e) a declaratory judgment that Defendants failed to maintain Plan documents in violation of ERISA and failed to notify Plaintiff and the Class about their entitlement to benefits at age 60 as required and an order requiring Defendants to maintain the Plan documents and notify the Class as requested;
- (f) any equitable relief this Court deems appropriate including, but not limited to, removal of the fiduciaries;
- (g) requiring Defendants to bear all costs associated with this suit;
- (h) pre-judgment and post-judgment interest at the maximum permissible rates, whether at law or in equity;
- (i) The maximum daily statutory penalties for non-production of Plan documents;
- (j) Attorneys' fees, costs, and other recoverable expenses of litigation; and
- (g) Such further and additional relief to which Plaintiff and the Class may be justly entitled and the Court deems appropriate and just under all of the circumstances.

Respectfully submitted,

/s/ Matthew Hurst

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