

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE UNISYS CORPORATION RETIREE
MEDICAL BENEFITS LITIGATION**

MDL NO. 969

THIS DOCUMENT RELATES TO:

ALL ACTIONS

MEMORANDUM AND ORDER

Kauffman, J.

February 4 , 2003

Plaintiff retirees brought this class action against their former employer, Unisys Corporation (“Unisys” or “Company”),¹ pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.* Now before the Court is Unisys’s Motion to Decertify the Class.² For the reasons set forth below, the Court will grant the Motion.

RELEVANT FACTS³

In September 1986, Sperry Corporation (“Sperry”) and Burroughs Corporation (“Burroughs”) merged to form Unisys. Before the merger, Sperry and Burroughs had provided

¹ Unisys is the product of a 1986 merger between the Sperry and Burroughs Corporations. The class of Plaintiffs originally included former employees of all three corporations. Unless otherwise stated, the term “Unisys” will refer to all three companies.

² The Court held oral argument on Unisys’s Motion on July 16, 2002.

³ The complete factual and procedural history of this case is extensive and has been recounted elsewhere in detail. *See, e.g., In re Unisys Corp.*, 57 F.3d 1255, 1257-61 (3d Cir. 1995), *cert. denied sub nom., Unisys v. Pickering*, 517 U.S. 1103 (1996); *In re Unisys Corp.*, 957 F. Supp. 628, 631-32 (E.D. Pa. 1997); *In re Unisys Corp.*, 837 F. Supp. 670, 672 (E.D. Pa. 1993), *aff’d*, 58 F.3d 896 (3d Cir. 1995).

their retiring employees with post-retirement medical coverage at little or no cost to the retirees. After the merger, Unisys continued the pre-existing medical benefit plans (“the predecessor plans”) for Sperry and Burroughs retirees. In 1989, Unisys created the Post-Retirement and Extended Disability Medical Plan (“the old plan”) to cover all employees who retired after April 1, 1989, most of whom were former Sperry and Burroughs employees. The predecessor plans continued to cover former employees who had retired before April 2, 1989. On January 1, 1993, Unisys terminated both the predecessor plans and the old plan and replaced them with the new Unisys Post-Retirement and Extended Disability Medical Plan (“the new plan”). The new plan, under which the retirees now are required to pay the full cost of their premiums, sharply contrasts with the old plan and the predecessor plans under which Unisys had paid most or all of the premiums.

RELEVANT PROCEDURAL HISTORY

Eight different lawsuits were filed against Unisys in several jurisdictions in 1992 and 1993. The Judicial Panel on Multidistrict Litigation transferred all lawsuits filed outside this district to the Eastern District of Pennsylvania for consolidated disposition. See 28 U.S.C. § 1407. On June 9, 1993, pursuant to stipulation of the parties and Federal Rule of Civil Procedure 23(b)(2), the Court (Cahn, C.J.) certified the class of approximately 21,000 former non-union employees of Sperry, Burroughs, and Unisys Corporations,⁴ and identified three subclasses: the Sperry retirees, the Burroughs retirees, and the Unisys retirees.⁵ Within each

⁴ On January 5, 1999, the case was reassigned from the Calendar of the Honorable Edward N. Cahn, former Chief Judge, to the Calendar of the undersigned.

⁵ The sub-class of Sperry retirees includes “[a]ll non-union retired, disabled and other eligible former employees and their spouses and dependents who as of November 3, 1992

subclass, the parties identified two subgroups: (1) “regular retirees,” who retired in the normal course; and (2) “early retirees,” who retired pursuant to voluntary retirement incentive plans.

The Court’s Certification Order set forth the substantive issues to be decided in this case as follows:

Whether Unisys violated the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 et seq. by terminating, effective January 1, 1993, the employee welfare benefit plan pursuant to which it has provided medical benefits to class members and replacing those plans with the Unisys Post-Retirement and Extended Disability Medical Plan; whether Unisys must continue to provide coverage to class members under the costs, terms and other conditions in effect prior to that date; and whether class members are entitled to any other relief.

(Pretrial Order No. 4 ¶ 3.) The Order further stated that “[n]othing herein shall limit the ability of the parties to . . . seek or oppose decertification of one or more of the classes as a whole; or to

were participants in or beneficiaries of the employee welfare benefit plans pursuant to which Unisys or its predecessor, Sperry Corporation, has provided medical benefits to former employees of Sperry Corporation (or any division or unit thereof) who retired, became disabled or otherwise became eligible on or before April 1, 1989.” In re Unisys Corp. Retiree Med. Benefits ERISA Litig., 837 F. Supp. 670, 677 n.10 (E.D. Pa. 1993), aff’d, 61 F.3d 896 (3d Cir. 1995).

The sub-class of Burroughs retirees includes “[a]ll non-union retired, disabled and other eligible former employees and their spouses and dependents who as of November 3, 1992 were participants in or beneficiaries of the employee welfare benefit plans pursuant to which Unisys or its predecessor, Burroughs Corporation, has provided medical benefits to former employees of Burroughs Corporation (or any division or unit thereof) who retired, became disabled or otherwise became eligible on or before May 1, 1989.” Id. at 676 n.9.

The sub-class of Unisys retirees includes “[a]ll non-union retired, disabled and other eligible former employees and their spouses and dependents who as of November 3, 1992 were participants in or beneficiaries of the employee welfare benefit plans pursuant to which Unisys has provided medical benefits to former employees of Unisys who retired, became disabled or otherwise became eligible on or after April 2, 1989, in the case of former Sperry employees, and May 2, 1989, in the case of former Burroughs employees.” Id. at 675 n.8.

seek or oppose consolidation, expansion or decertification of defined classes or subclasses.”
(Pretrial Order No. 4 ¶ 5.)

The class members alleged, inter alia, that Unisys should be held liable for a breach of fiduciary duty under 29 U.S.C. § 1132(a)(3)(B) because, although the Company had reserved the right to modify or terminate the medical benefit plans at any time, Company representatives misinformed employees that once they retired, the Company would never modify or terminate their medical benefits.⁶ Plaintiffs contend that these misrepresentations caused them to retire earlier than they otherwise would have, or to make important life decisions that they otherwise would not have made but for their reliance on the misrepresentations.

On March 10, 1997, the Court granted summary judgment in Unisys’s favor on the breach of fiduciary duty claims asserted by: (1) Plaintiffs who retired more than six years prior to the filing of the Complaint, because their claims were barred by the statute of limitations; and (2) Plaintiffs who left the Company involuntarily, because they failed to establish detrimental reliance. In re Unisys Corp., 957 F. Supp. 628 (E.D. Pa. 1997). The Third Circuit Court of Appeals, however, reversed Judge Cahn’s decision and reinstated those claims in March 2001. In re Unisys Corp., 242 F.3d 497 (3d Cir. 2001) (“Unisys III”).

The Court of Appeals concluded in Unisys III that some individuals may have detrimentally relied on the alleged material misrepresentations in reaching important life decisions made after their retirements and thus may have timely claims, depending upon the date and nature of their reliance. Id. at 506. Further, as to those retirees who had left the Company

⁶ Plaintiffs also asserted breach of contract and estoppel claims, which the Court dismissed. In re Unisys Corp., 58 F.3d 896, 904-07 (3d Cir. 1995) (“Unisys II”). Thus, the only claim remaining is Plaintiffs’ breach of fiduciary duty claim.

involuntarily, the Third Circuit held that there may be decisions other than choosing to retire that could support a breach of fiduciary duty claim. Id. at 507-10. After the reinstatement of approximately 13,000 class members pursuant to the Unisys III decision, the class consisted of approximately 15,000 members.

On January 23, 2003, the Court finally approved the settlement and dismissal of the claims of all remaining members of the Sperry sub-class.⁷ The class, therefore, now includes approximately 9000 Unisys and Burroughs retirees.

ANALYSIS

“To be certified, a class must satisfy the prerequisites of Rule 23(a) and the ‘parties seeking certification must also show that the action is maintainable under Rule 23(b)(1), (2), or (3).’” Barnes v. Am. Tobacco Co., 161 F.3d 127, 140 (3d Cir. 1998), cert. denied, 526 U.S. 1114 (1999) (quoting Amchem, 521 U.S. at 614). By Stipulation and Order dated June 9,

⁷ The Court has approved other partial settlements in this case: (1) the settlement of the claims of over 7500 Sperry and Burroughs retirees in October 1994; and (2) the settlement of the claims of over 1000 Sperry retirees in December 1998. In continuing to recognize the stipulated certification of the Sperry sub-class in approving the settlement on January 23, 2003, the Court faced an inquiry distinct from that presented by Unisys’s Motion to Decertify the Class. As Unisys argues in its Motion, the primary obstacles to continued class certification involve the further litigation of Plaintiffs’ breach of fiduciary duty claims and the multitude of individual liability determinations that would have to be made during the adjudication of Plaintiffs’ claims. Cf. Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”) “Moreover, when taking the settlement into consideration for purposes of determining [the appropriateness of] class certification, individual issues which are normally present in . . . litigation become irrelevant . . . [and] do not destroy class cohesion, . . . [likewise] individual issues relating to causation, injury and damage also disappear because the settlement’s objective criteria provide for an objective scheme of compensation.” In re Diet Drugs, 2000 WL 1222042, at *43 (E.D. Pa. Aug 28, 2000). Accordingly, Unisys’s Motion to Decertify the Class as it applies to the Sperry sub-class will be denied as moot.

1993, the Court certified the class in this action under Rule 23(b)(2), finding that Plaintiffs' claims satisfied the requirements of that subsection as well as those of 23(a). (Pretrial Order No. 4 ¶ 2.) Pursuant to Rule 23(c)(1), however, the Court is "required to reassess [its] class ruling as the case develops . . . [and] must define, redefine, subclass, and decertify as appropriate in response to the progression of the case from assertion to facts." Barnes, 161 F.3d at 140 (citing Kuehner v. Heckler, 778 F.2d 152, 163 (3d Cir. 1985)); see also Fed. R. Civ. P. 23(c)(1) (stating that class treatment can be "altered or amended before the decision on the merits"); Richardson v. Byrd, 709 F.2d 1016, 1019 (5th Cir. 1983) ("Under Rule 23 the district court is charged with the duty of monitoring its class decisions in light of the evidentiary development of the case."); Barnes v. Am. Tobacco Co., 176 F.R.D. 479, 498 (E.D. Pa. 1997), aff'd, 161 F.3d 127 (3d Cir. 1998) ("Federal district courts must constantly monitor the progress of the class action cases before them; it is our obligation and duty. A trial court must define, redefine, subclass and decertify the class action before it when the evidentiary development of a case requires such action.").

A class satisfies Rule 23(a) only if: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Unisys does not move to decertify the class on the basis of Rule 23(a). (See Unisys's Reply Mem. at 2 n.2.) Rather, it contends that Plaintiffs no longer meet the requirements of Rule 23(b)(2).

"A class action is maintainable under Rule 23(b)(2) when 'the party opposing the

class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Barnes, 161 F.3d at 142 (quoting Fed. R. Civ. P. 23(b)(2)). Thus, “[s]ubsection (b)(2) class actions are ‘limited to those class actions seeking primarily injunctive or corresponding declaratory relief.’” Id. (quoting 1 Newberg on Class Actions § 4.11, at 4-39).

Additionally, “[w]hile 23(b)(2) class actions have no predominance or superiority requirements, it is well established that the class claims must be cohesive.” Id. at 143. To ensure such cohesiveness, the Third Circuit has “committed to the district court the discretion to deny certification in Rule 23(b)(2) cases in the presence of ‘disparate factual circumstances,’” Geraghty v. United States Parole Commission, 719 F.2d 1199, 1205-06 (3d Cir. 1983) (citation omitted), and has emphasized that the court “must ensure that significant individual issues do not pervade the entire action,” Barnes, 161 F.3d at 143 (citation omitted).⁸ See also Santiago v. City of Philadelphia, 72 F.R.D. 619, 628 (E.D. Pa. 1976) (stating that a court “should be more hesitant in accepting a (b)(2) suit which contains significant individual issues than it should under 23(b)(3)”). Thus, “[i]f proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable.” Newton v. Merrill Lynch, Pierce, Fenner &

⁸ The Third Circuit in Barnes explained:

[T]he court must ensure that significant individual issues do not pervade the entire action because it would be unjust to bind absent class members to a negative decision where the class representative’s claims present different individual issues than the claims of the absent members . . . [T]he suit could become unmanageable and little value would be gained in proceeding as a class action . . . if significant individual issues were to arise consistently.

161 F.3d at 143 (quoting Santiago, 72 F.R.D. at 628).

Smith, Inc., 259 F.3d 154, 172 (3d Cir. 2001); see also Rice v. City of Philadelphia, 66 F.R.D. 17, 20 (E.D. Pa. 1974) (holding that a case should not proceed as a (b)(2) action where “virtually all of the issues would have to be litigated individually in order to determine whether a particular alleged class member was entitled to any damages at all”).

Unisys moves for decertification on the ground that Plaintiffs’ breach of fiduciary duty claims are not appropriate for adjudication as a class under Rule 23(b)(2). Specifically, Unisys alleges that: (1) Plaintiffs’ claims are not sufficiently cohesive; and (2) the relief sought is predominantly, if not exclusively, monetary. In response, Plaintiffs contend that they satisfy the requirements of Rule 23(b)(2) because their claims are cohesive and they seek primarily final injunctive and declaratory relief with respect to the class as a whole.

Unisys argues that Plaintiffs fail to satisfy the cohesiveness requirement of Rule 23(b)(2) because: (1) Plaintiffs will be required to present individual affirmative proof in establishing liability for a breach of fiduciary duty; and (2) many Plaintiffs will be subject to a statute of limitations defense which turns on individual facts, i.e., what decision their claim is based upon and when that decision was made. Plaintiffs concede that factual differences exist among the class members, but argue that these differences do not alter the cohesiveness of their claims because Unisys engaged in a systematic and pervasive common course of conduct of misrepresenting to employees that they would have lifetime retiree medical benefits. Thus, according to Plaintiffs, their claims actually center around a common course of conduct directed at class members, all of whom received the same messages, were led to the same erroneous understanding about the durability of their benefits, made the same kinds of personal decisions, and suffered the same kinds of harm. Additionally, Plaintiffs argue that the statute of limitations

defense does not warrant decertification because it merely involves applying class-wide legal standards established in Unisys III to a relatively small number of uncomplicated factual possibilities presented by the retirees (e.g., left their job, started pension, did not seek other employment or medical coverage, or made an important financial decision).

A. Proof For Establishing A Breach of Fiduciary Duty Claim

In order to establish liability on a breach of fiduciary duty claim, a plaintiff must prove that: “[1] an employer, acting as a fiduciary, [2] made a material misrepresentation that would confuse a reasonable beneficiary about his or her benefits, and [3] the beneficiary acted thereupon to his or her detriment.” Unisys III, 242 F.3d at 505 (citations omitted). As set forth below, each of these elements will require individualized proof with respect to the remaining retirees, and the class thus lacks the cohesiveness required to be litigated as a class action under Rule 23(b)(2).

1. Fiduciary Status

A plaintiff asserting a breach of fiduciary duty claim first must establish that the alleged communication was made by an authorized fiduciary. Daniels v. Thomas & Betts Corp., 263 F.3d 66, 72 (3d Cir. 2001); Unisys III, 242 F.3d at 505. In the instant case, a large number of Plaintiffs base their claims on representations made by their co-workers or supervisors.⁹ In order for those individuals to qualify as fiduciaries, they must have had actual or apparent authority to advise the Company’s employees of their rights under the Plan. Taylor v. People Natural Gas Co., 49 F.3d 982, 988-89 (3d Cir. 1995); In re Unisys Corp., MDL No. 969, 1996 U.S. Dist.

⁹ See, e.g., App. to Unisys’s Mem. In Supp. of Mot. Decertify Exs. 1-12 (excerpts of retirees’ interrogatory responses and deposition testimony).

LEXIS 11781, at *16 (E.D. Pa. Aug. 14, 1996).¹⁰ The Court will therefore have to determine as to each claimant whether a particular co-worker or supervisor possessed the requisite authority to act as a fiduciary when he or she made the alleged misrepresentation.¹¹ Accordingly, the Court finds that this element of Plaintiffs' breach of fiduciary duty claims will require individualized proof as to each retiree.

2. Material Misrepresentation

Additionally, each Plaintiff must establish that the alleged misrepresentation was "material." A misrepresentation is material "if there is a substantial likelihood that it would mislead a reasonable employee in making a decision regarding his benefits under the ERISA plan." Daniels, 263 F.3d at 73. The individual retirees in this case assert a variety of written and oral misrepresentations on which they allegedly relied to their detriment.¹² Thus, the Court will have to examine the circumstances surrounding each communication (i.e., the timing, content, and context) in order to determine whether a particular communication rises to the level of a material misrepresentation. This analysis necessarily will entail individualized evidence,

¹⁰ "It is well settled that apparent authority (1) 'results from a manifestation by a person that another is his agent' and (2) 'exists only to the extent that it is reasonable for the third person dealing with the agent to believe that the agent is authorized.'" Taylor, 49 F.3d at 989 (quoting Restatement (Second) of Agency § 8 cmts. a & c (1958)). "[A]pparent authority arises in those situations where the principal causes persons with whom the agent deals to reasonably believe that the agent has authority." Id. (quoting AT & T v. Winback & Conserve Program, 42 F.3d 1421, 1439 (3d Cir. 1994)).

¹¹ Whether a co-worker or supervisor was acting as a fiduciary when he or she made the alleged misrepresentations is a factual question. See Bixler v. Central Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292, 1302 (3d Cir. 1993).

¹² See, e.g., App. to Unisys's Mem. In Supp. of Mot. Decertify Exs. 13-23 (excerpts of retirees' interrogatory responses and deposition testimony).

including the retiree's own testimony as to what he or she heard or read. See Unisys III, 242 F.3d at 507 (“Because some plaintiffs have stronger cases than others based on their specific inquiries and the information given to them personally, the court finds that subclasses, and possibly even individual hearings, will be necessary to adjudicate these claims.”) (quoting Unisys, 957 F. Supp. at 645). Accordingly, the Court finds that this element of Plaintiffs’ breach of fiduciary claim will also require individualized inquiries.

3. Detrimental Reliance

The final element of a breach of fiduciary duty claim is detrimental reliance.¹³ As the Court has previously stated, this element of Plaintiffs’ claim “has not been proved on a class-wide basis,” and “hearings will be necessary to determine the extent of the reliance by and resulting harm to the [individual] retirees.” Unisys, 957 F. Supp. at 645. Additionally, the Third Circuit recently held in Unisys III that some retirees may be able to show detrimental reliance through decisions other than the decision to retire. Unisys III, 242 F.3d at 506-07. Accordingly, the Court will have to examine the specific decisions allegedly made by the individual retirees in order to determine whether each one is sufficient to establish detrimental reliance.¹⁴ See Unisys

¹³ Contrary to Plaintiffs’ contention, reliance may not be presumed in this case. See Unisys III, 242 F.3d at 509 (stressing that “the character of the decision made and reliance claimed will, of course, play an important role in determining the extent of Unisys’ fiduciary duty and whether that duty was breached”); Apr. 25, 2000 Mem. & Order at 8-9 (“Accordingly, the Court concludes that to prevail at trial, the . . . retirees have the burden of proving that the alleged misrepresentations were ‘a cause-in-fact, as well as a substantial contributing factor in’ causing them to retire prematurely.”) (citations omitted); see also Daniels, 263 F.3d at 73 (“[I]t is thus clear that, in order to make out a breach of fiduciary duty claim . . . a plaintiff must establish . . . detrimental reliance by plaintiff on the misrepresentation.”).

¹⁴ See, e.g., App. to Unisys’s Mem. In Supp. of Mot. to Decertify Exs. 24-29 (excerpts of retirees’ interrogatory responses and deposition testimony).

III, 242 F.3d at 507 (“It is, of course, not clear that the plaintiffs [alleging different types of reliance] will be able to establish their entitlement to relief, but we decline Unisys’ invitation to adopt an across the board prohibition of relief based upon reasonable reliance in contexts other than retirement decisions.”).

As the Third Circuit recently stated in In re Linerboard Antitrust Litigation, 305 F.3d 145 (3d Cir. Sept. 5, 2002), “where a presumption of reliance and loss [is] not available . . . it would be necessary for each plaintiff to prove the essential elements of the cause of action and . . . class action would be unsuitable.” In re Linerboard Antitrust Litigation, 305 F.3d at 156 (citing Newton, 259 F.3d at 172; Binder v. Gillespie, 184 F.3d 1059, 1063-1066 (9th Cir.1999) (upholding class decertification where presumption of reliance and loss unavailable)). Thus, as with the other elements of Plaintiffs’ breach of fiduciary duty claim, the Court finds that proving detrimental reliance will involve factual disparities among the retirees and thus present issues that preclude litigation as a class.

B. Statute of Limitations Defense

Additionally, Unisys moves for decertification on the basis of its statute of limitations defense, contending that “[t]he resolution of the timeliness of each Plaintiff’s claim . . . also requires an individual fact-intensive inquiry.” (Unisys’s Mot. To Decertify at 18.) Plaintiffs, however, argue that there will be a limited number of fact patterns presented by the retirees with respect to the statute of limitations defense, and that these fact patterns can easily be resolved through the class-wide legal standards established in Unisys III. (Pls.’ Mem. in Oppos. to Def.’s Mot. to Decertify at 19.)

“It is fundamental that a plaintiff must bring a claim before the applicable statute

of limitations expires. Determining whether the statute of limitations has expired necessarily involves determining when it began to run.” Barnes, 161 F.3d at 149. With respect to the statute of limitations, ERISA provides:

No action may be commenced under this subchapter with respect to a fiduciary’s breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of

(1) six years after (A) the date of the last action which constituted part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

except that in the case of fraud or concealment, such actions may be commenced not later than six years after the date of discovery of such breach or violation.

29 U.S.C. § 1113.

In deciding whether a retiree’s claim is barred by the statute of limitations, the Court will be faced with a myriad of individual determinations. For example, in each case the evidence may vary as to when a Unisys representative last told the employee falsely that his or her retirement health benefit was secure and when and how he or she ultimately learned that retiree medical benefits were no longer free. Indeed, there may be cases in which the employee learned the truth only when the bill came in the mail. Each of these individualized determinations could affect when the statute of limitations began to run for a given class member. Unisys’s statute of limitations defense thus presents several issues which must be addressed individually by the Court. See Barnes, 176 F.R.D. at 502 (“In determining whether the statute of limitations precludes a plaintiff from suing on his claim, the Court necessarily would

have to examine when plaintiff's injury accrued, and whether plaintiff knew or should have known of the injury and its cause. This is clearly an individual issue.”).

The Court recognizes that “[a]lthough a necessity for individualized statute-of-limitations determinations invariably weighs against class certification, . . . [the Third Circuit has] reject[ed] any per se rule that treats the presence of such issues as an automatic disqualifier.” In re Linerboard Antitrust Litigation, 305 F.3d at 162. See also Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 924 (3d Cir. 1992) (“[T]he presence of the individual issue of compliance with the statute of limitations [may] not prevent[] certification of class actions.”) (citations omitted). In the instant case, however, the statute of limitations defense is clearly not the only factual disparity among the individual retirees. Rather, as discussed above, it is “only one of many matters raising individual issues in this case.” Barnes, 161 F.3d at 147 n.25 (“We acknowledge that the existence of affirmative defenses as to some class members may not by itself [be] enough [to] warrant the denial of certification. . . . But we note that the defenses are only one of many matters raising individual issues in this case.”) (citations omitted). The Court therefore finds that, although the individualized nature of the statute of limitations defense by itself may not warrant decertification, when considered together with the individualized proof required for Plaintiffs’ breach of fiduciary duty claims, it further reveals the lack of cohesiveness among the retirees’ claims and thus further supports the need for decertification in this case.¹⁵

¹⁵ Accordingly, the Court need not reach Unisys’s alternative argument that because Plaintiffs now seek predominantly monetary relief, continued certification under Rule 23(b)(2) is improper.

CONCLUSION

“When the Court looks down the road to determine how this case would be tried, it is obvious that the litigation is unmanageable as a class action and would ultimately splinter into individual issues, which would have to be tried separately.” Barnes, 176 F.R.D. at 502. Thus, the Court finds that the individual issues presented by Plaintiffs’ breach of fiduciary duty claims and Unisys’s statute of limitations defense pervade the entire action and preclude continuing as a class action. See, e.g., Johnston v. HBO Film Management, Inc., 265 F.3d 178, 189 (3d Cir. 2001) (“As proof of two . . . essential elements requires individual treatment, we conclude class certification is unsuitable.”); Holmes v. Pension Plan of Bethlehem Steel, 213 F.3d 124, 137-38 (3d Cir. 2000) (“As already noted, the issue of liability itself requires an individualized inquiry into the equities of each claim. Thus, the District Court did not err by concluding that the proposed Class Two was overly broad and we will affirm denial of certification.”); Barnes, 161 F.3d at 146 (“Because of the individual issues involved in this case . . . we believe class treatment is inappropriate.”).

Accordingly, the Court will grant Unisys’s Motion and will decertify the class previously certified by the June 9, 1993 Stipulation and Order.¹⁶ An appropriate Order follows.

¹⁶ Although Plaintiffs argue in their Responses to Unisys’s Motion that the class also meets the requirements for certification under Rule 23(b)(3), they have not moved for certification under that subsection. Moreover, it appears to the Court on the basis of the present record that Plaintiffs would not satisfy Rule 23(b)(3)’s requirement that “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3) (emphasis added).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE UNISYS CORPORATION RETIREE
MEDICAL BENEFITS LITIGATION**

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MDL NO. 969

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ORDER

_____ **AND NOW**, this _____ day of February, 2003, after hearing and upon consideration of Unisys's Motion to Decertify the Class and Memoranda in Support Thereof (docket nos. 356, 363, 368) and Plaintiffs' Responses Thereto (docket nos. 358, 364, 367), and for the reasons set forth in the accompanying Memorandum, **IT IS ORDERED** that

1. Unisys's Motion as it applies to the Sperry sub-class is **DENIED AS MOOT**.
2. Unisys's Motion as it applies to the remaining retirees in the class is **GRANTED**.
3. This class action is hereby **DECERTIFIED**.

BY THE COURT:

BRUCE W. KAUFFMAN, J.