

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

JOSEPH P. FERET, JAMES CLOUD,	:	
IRINA LEYDERMAN, on Behalf	:	
of Themselves and All Similarly	:	CIVIL ACTION
Situated Persons,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CORESTATES FINANCIAL CORP.,	:	
Its Employee Pension and Welfare	:	No. 97-6759
Benefit Plans, and the Fiduciaries	:	
and Administrators of Each,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Yohn, J.

August , 1998

Joseph P. Feret, James Cloud, and Irina Leyderman bring this action on behalf of themselves and all similarly situated persons against CoreStates Financial Corp., its employee pension and welfare benefit plans, and the fiduciaries and administrators of each plan.¹ In their ten count complaint, plaintiffs seek relief for interference with their attainment of benefits in violation of § 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140 (Count I); breach of fiduciary duty in violation of §§

¹ According to plaintiffs, CoreStates maintains the following compensation and benefit plans: Severance Plan, Medical Plan, Dental Plan, Term and Dependent Life Insurance Plans, Group Universal Life Insurance Plan, Personal Accident Insurance Plan, Short-Term and Long-Term Disability Plans, Benefit Bank Account Plan, Employee Stock Ownership and Savings Plan, Long-Term Incentive Plan, and Retirement Plan. See Amended Complaint ¶ 13.

404, 405, and 502(a)(3) of ERISA, 29 U.S.C. §§ 1104, 1105, and 1132(a)(3) (Count II); failure to provide benefits in violation of § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B) (Count III); denial of benefits in violation of the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 PA. CONS. STAT. § 260.1, *et seq.* (1992 & Supp. 1997) (Count IV); breach of contract (Count V); equitable estoppel (Count VI); violations of § 10(b) of the Exchange Act and Rule 10b-5 (Count VII); violations of § 1-401 and § 1-501(a) of the Pennsylvania Securities Act, 70 P.S. §§ 1-401, 1-501(a) (Count VIII); fraud (Count IX); and negligent misrepresentation (Count X).

Plaintiffs have filed a motion for class certification pursuant to subsections (b)(1) and (b)(2) of Rule 23 of the Federal Rule of Civil Procedure with respect to Counts I through VI of the complaint. For the reasons stated below, the court will grant plaintiffs' motion for class certification pursuant to Rule 23(b)(1) with respect to all of their remaining claims in Counts I, II, III, IV, and V.² Specifically, the court will certify a class consisting of all employees in the Application Development and Maintenance (“ADM”)

² In a memorandum and order, dated July 27, 1998, the court granted defendants' motion to dismiss with respect to plaintiffs' second and third claims in Count I (alleging that CoreStates violated § 510 by amending its severance plan and by rehiring plaintiffs into non-benefit positions); plaintiffs' misinterpretation claim in Count II; all claims concerning ERISA benefits in Counts IV and V; and all claims in Count VI. *See Feret v. CoreStates* (“Feret I”), No. 97-6759, 1998 WL 426560, at *1 (E.D. Pa. July 27, 1998). The court will therefore not address these claims in this memorandum and order.

In *Feret I*, the court also dismissed plaintiffs' fiduciary misrepresentation claim in Count II. However, the court dismissed this claim without prejudice to plaintiffs' right to file an amended complaint within ten days of the date of the memorandum and order. Plaintiffs have filed an amended complaint that contains new allegations in support of this claim. *See Amended Complaint* ¶¶ 30a, 30b, 44a, 62a, 74a. The court will therefore consider plaintiffs' fiduciary misrepresentation claim in deciding plaintiffs' motion for class certification.

portion of the Information Technology Group of CoreStates who were notified that they would be terminated by CoreStates as a result of the alliance between CoreStates and Andersen, including individuals who left CoreStates before they could actually be terminated and transferred to Andersen as well as individuals who nominally became Andersen employees on November 1, 1997, but excluding individuals who were notified before October 31, 1997 that they would be retained by CoreStates.

The court will also exercise its Rule 23(c)(4) power to divide this class into two subclasses.³ The first subclass will consist of all individuals who have signed waivers releasing their claims against CoreStates (“Subclass A”). The second subclass will consist of all individuals who have not signed waivers releasing their claims against CoreStates (“Subclass B”).

I. Background

In March 1997, CoreStates announced to its employees that it was broadening its relationship with Andersen Consulting (“Andersen”) into a long-term contract whereby Andersen would manage CoreStates’ Systems and Technology Group functions. See Amended Complaint ¶ 1.⁴ In a written communication, Terrence A.

³ Rule 23(c)(4) provides, in relevant part: “When appropriate . . . a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.” Fed. R. Civ. P. 23(c)(4).

⁴ In plaintiffs’ more recent submissions to the court, plaintiffs refer to an “Information and Technology Group,” instead of a “Systems and Technology Group.” See Letter to Judge Yohn from Carol A. Mager, Joel C. Schochet, and Stephen G. Console, July 20, 1998 (“Pls’ Letter”) at 2. Plaintiffs have not explained the relationship between the two terms. The court will use the two interchangeably in this memorandum and order.

Larsen (then Chairman of the Board and Chief Executive Officer of CoreStates) and Rosemary B. Greco (then President of CoreStates) assured employees that “[t]his means that people whose jobs are affected will receive benefits according to the CoreStates severance policy.” Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Class Certification of Counts I Through VI of the Complaint (“Pls' Mem.”), Exhibit A at 2.

In response to employee inquiries about the applicable severance pay document, Debra Ricci of the CoreStates Human Resources Department informed class members that the applicable document was on-line. On April 25, 1997, she informed class members via the company-wide e-mail system (“TOSS”) that “[t]he policy that is online (the HR Policy Manual on TOSS) is correct and in place (has been since 9/96) [T]he severance policy in place (the one online) is up to date.” Pls' Mem., Exhibit C at 1.

The on-line policy provided “[b]enefits to employees whose employment [was] involuntarily terminated for reasons other than for Cause and who execute[d] a release and waiver of claims in favor of CoreStates.” Pls' Mem., Exhibit H, § 1.01. The policy defined “involuntary termination” as “a termination initiated entirely by CoreStates for reasons other than for Cause.” *Id.* § 2.10.

On May 1, 1997, CoreStates issued a press release announcing that it had reached an agreement in principle to establish a ten-year information technology alliance with Andersen. See Pls' Mem., Exhibit B at 1. The press release stated that all CoreStates employees in the technology operations division would either be offered positions with Andersen or be retained by CoreStates. See id. at 1-2. The release also

stated that Andersen would manage 40% of CoreStates' technology operations, but that CoreStates would “retain control over its technology strategy, direction, priorities and decision making” Id. at 1.

On May 20, 1997, Ricci informed employees via another company-wide e-mail, “I have not received any directives to change anything in the severance policy that is online, so that is the policy as it stands right now.” Pls’ Mem., Exhibit E at 1. In response to further requests for the current severance plan, she wrote on June 2, 1997 that “[t]he current severance plan is what you see online--the severance pay policy.” Pls’ Mem., Exhibit F at 2.

Plaintiffs allege that, in the spring of 1997--at the same time that Ricci was representing to employees that the current severance policy was on-line--CoreStates amended the policy and made it effective retroactively to September of 1996. See Amended Complaint ¶ 42. The amended policy redefines the term “Involuntary Termination”:

Section 2.11. “Involuntary Termination” shall mean a termination initiated entirely by CoreStates for reasons other than: (i) for Cause; (ii) for Performance Reasons; (iii) by reason of death or a physical or mental condition causing the Employee to be unable to substantially perform his or her duties . . . ; and (iv) by reason of the expiration of an approved leave of absence. An “Involuntary Termination” shall include (i) the rejection of a new position offered to an Employee by CoreStates that is not a Comparable Position and (ii) the lack of a Comparable Position when an Employee returns from a leave of absence approved by CoreStates at the time the Employee commenced the leave.

Exhibit H to Pls’ Mem., at 3. The policy also includes a new section that defines the

term “Comparable Position.”⁵ Plaintiffs allege that they were not given any notice that the plan was being retroactively amended. See id. ¶ 44.

Some time between March 1997--when CoreStates initially announced to its employees that it was broadening its relationship with Andersen into a long-term contract--and August 26, 1997, CoreStates notified some employees in the ADM portion of its Information and Technology Group that they were going to be terminated and transferred pursuant to the CoreStates-Andersen alliance. The record does not indicate precisely when this notification occurred.

On August 26, 1997, Andersen extended offers of employment to individuals who were scheduled to be terminated and transferred pursuant to the alliance. The offers were contingent upon the signing of the contract creating the alliance between CoreStates and Andersen. See id. ¶ 32; Complaint, Exhibit C at 1. In September, the two companies entered into the contract and on November 1, 1997, Andersen assumed responsibility for certain CoreStates' technology and operations functions. See

⁵ This section provides:

Section 2.06. “Comparable Position” shall mean an offer of another job at CoreStates (or a job at another entity which acquires a unit of, or business from, CoreStates or outsources a function of CoreStates, and hires some or all of the employees of such unit, business or function) which, in either situation, meets all of the following conditions, to the extent applicable: (i) for a non-exempt Employee, is located not more than 20 miles from the Employee's present job and, for an exempt Employee, is located not more than 40 miles from the Employee's present job . . . , (ii) has a comparable compensation level, as determined in accordance with CoreStates' then Severance Pay Policy, (iii) does not involve a change from part-time to full-time or vice versa, or from “hourly without benefits” (less than 20 hours per week) to “hourly with benefits” (20 to 29 hours per week) or vice versa, and (iv) does not involve a shift change.

Pls' Mem., Exhibit H at 2 (emphasis added).

Amended Complaint, Prelim. St., at 2. Also on November 1, approximately 170 employees of CoreStates' Systems and Technology Group were terminated and transferred to the payroll of Andersen. See Report on Status of Waiver Requests and Supplemental Memorandum Opposing Class Certification (“Report”) at 1; Plaintiffs' Supplemental Memorandum in Support of Motion for Class Certification (“Pls' Supp. Mem.”) at 2-3. Plaintiffs allege that these employees had no break in service. That is, they left work on October 31, 1997 as employees of CoreStates and returned as nominal Andersen employees the next business day, November 3, 1997. See Amended Complaint ¶¶ 1, 4, 7, 10, 35. They allege that, as Andersen employees, they continue to do the same work that they did as CoreStates employees. See id. ¶¶ 30, 35. However, plaintiffs allege, they have not received any of the benefits that they received while they were CoreStates employees. See id. ¶ 36.

Plaintiffs contend that an additional 40 to 55 employees in the ADM portion of CoreStates' Information Technology Group were notified that they would be terminated and transferred to Andersen pursuant to the alliance, but left CoreStates before they could be so terminated and transferred. See Pls' Supp. Mem. at 2; Pls' Supp. Mem., Exhibit A (Ferret Aff.) ¶ 3. According to plaintiffs, these 40 to 55 individuals left CoreStates some time between May 7, 1997 and November 1, 1997. See id. From defendants' submissions, however, it appears that, as of May 7, 1997, CoreStates had not yet decided exactly which employees were going to be terminated and transferred. See Letter to Judge Yohn from Michael H. Rosenthal, July 24, 1998 (“Defs' Letter”), Exhibit A (CoreStates Andersen Alliance Questions and Answers #2, May 7, 1997) ¶ 1A (“CoreStates has received a commitment from Andersen that employees who are

selected to work for Andersen will receive comparable job offers.” (emphasis added)).

Thus, a smaller number of individuals fall into this category of employees in the ADM portion of CoreStates' Information and Technology Group who were notified that they would be terminated and transferred to Andersen, but who left CoreStates before they could be so terminated and transferred.⁶

Plaintiffs filed this action on November 3, 1997. Approximately two weeks later, on November 18, CoreStates announced that it had entered into a merger agreement with First Union Corporation. See Memorandum of Law in Opposition to Motion for Class Certification (“Defs' Mem.”) at 10. In light of the merger, CoreStates decided to terminate its agreement with Andersen. See id.

On February 24, 1998, plaintiffs filed this motion for class certification. Approximately one month later, on March 20, 1998, CoreStates offered to rehire all of its former employees who were still employed with Andersen. See Defs' Mem. at 1, 10. Of the 170 employees who were terminated and transferred to Andersen on November 1, 1997, 143 were still employed with Andersen on March 20, 1998. See Report at 1.⁷

⁶ According to defendants, CoreStates employed in its Information and Technology Group an additional 66 individuals who were not terminated and transferred pursuant to the alliance:

There were approximately 236 individuals in the CoreStates' Information and Technology Group (“IT”) Group as of October 31, 1997. . . . Only 170 individuals, however, became employees of Andersen on November 1, 1997.

The remainder stayed with CoreStates.

See Defs' Report at 1 (emphasis added). At oral argument, plaintiffs agreed that they are not seeking to certify these individuals as part of the class.

⁷ Twenty-seven (27) employees--including plaintiff Cloud--resigned from Andersen at some point between November 1, 1997 and March 20, 1998, and thus did not receive offers of reemployment. See Report at 1; Pls' Supp. Mem. at 2.

One hundred and thirty-seven (137) of these employees--including plaintiffs Feret and Leyderman--accepted CoreStates' offer of reemployment. See id.

CoreStates also offered to give each of its former employees who had remained with Andersen a lump-sum payment of \$7,500 in return for a waiver of any claims that he or she might have against CoreStates. See Defs' Mem. at 2-3. CoreStates gave these individuals 45 days in which to decide whether to accept this settlement offer. Plaintiffs, however, raised objections to the language used in the notices and waivers sent to these employees before the end of the 45 day period. After discussion between the parties, CoreStates sent out revised notices and waivers, and set a new deadline of June 29, 1998. See id. at 2 n.1. One hundred and nineteen (119) employees --including plaintiff Leyderman--settled their claims with CoreStates by signing these waivers. See Report at 2. Of the 170 employees who were terminated and transferred to Andersen on November 1, 1997, a total of 51--including plaintiffs Feret and Cloud--did not sign waivers releasing their claims against CoreStates.⁸

The named plaintiffs now seek to represent a plaintiff class defined as follows:

All employees in the Application Development and Maintenance portion of the Information Technology Group of CoreStates who were notified that they would be terminated by CoreStates as a result of the Alliance between CoreStates and Andersen, including individuals who became nominally Andersen employees on November 1, 1997, and excluding individuals who were notified before October 31, 1997, that they would be retained by CoreStates.

⁸ These 51 individuals fall into three categories: Twenty-seven (27) individuals--including plaintiff Cloud--resigned from Andersen at some point between November 1, 1997 and March 20, 1998, and thus never received a settlement offer from CoreStates. Eighteen (18) individuals--including plaintiff Feret--accepted CoreStates' reemployment offer, but rejected its settlement offer. Six (6) individuals rejected both CoreStates' reemployment offer and settlement offer. See Pls' Supp. Mem. at 2.

Pls' Letter at 2; Plaintiffs' Motion for Class Certification of Counts I through VI of the Complaint ("Pls' Motion"), at 1.⁹ Plaintiffs propose that the class be divided into two subclasses: (1) a subclass consisting of individuals who have signed waivers (Subclass A); and (2) a subclass consisting of individuals who have not signed waivers (Subclass B). See Pls' Supp. Mem. at 1-2.

Plaintiffs Feret, Cloud, and Leyderman seek to be the designated class representatives of the main class. In addition, Leyderman seeks to represent Subclass A, and Feret and Cloud seek to represent Subclass B. Plaintiffs propose Carol A. Mager, Esq. of The Mager Law Firm, P.C., and Stephen G. Console, Esq. of the Law Offices of Stephen G. Console as class counsel.

II. Discussion

In deciding a motion for certification of a class action, the court does not examine the merits of plaintiffs' underlying claims. See Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-78 (1974). Rather, the court focuses on the requirements of Rule 23 of the Federal Rules of Civil Procedure. In order to obtain class certification, plaintiffs must show that the action satisfies all four prerequisites of Rule 23(a) and at least one part of

⁹ Plaintiffs have also submitted the following more detailed definition of the proposed class:

All employees in the Application Development and Maintenance portion of the Information Technology Group of CoreStates including (a) individuals who voluntarily terminated prior to October 31, 1997, and (b) individuals who became nominally Andersen employees on November 1, 1997, and (c) individuals who subsequently left the employ of Andersen and excluding individuals who were retained by CoreStates.

Pls' Letter at 2.

Rule 23(b). See id. at 162-63; In re Prudential Ins. Co., 1998 WL 409156, at *19 (3d Cir. July 23, 1998); Baby Neal v. Casey, 43 F.3d 48, 55 (3d Cir. 1994).

A. Rule 23(a): Prerequisites to a Class Action

Federal Rule of Civil Procedure 23(a) mandates a showing of (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Specifically, the rule provides:

One or more members of a class may sue or be sued as representative parties on behalf of all 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). Although these four prerequisites overlap, the Third Circuit has noted that there is a conceptual distinction between the first two prerequisites--numerosity and commonality--which evaluate the sufficiency of the class itself, and the last two prerequisites--typicality and adequacy of representation--which evaluate the sufficiency of the named plaintiffs. See Hassine v. Jeffes, 846 F.2d 169, 176 n.4 (3d Cir. 1988). The court will consider each of these prerequisites in turn.

(1) Numerosity

Rule 23(a)(1) requires the potential class to be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Although Rule 23(a)(1) is often characterized as imposing a “numerosity” requirement, it “is not a numerosity requirement in isolation.” 1 NEWBERG ON CLASS ACTIONS § 3.03, at 3-10 (3d ed. 1992)

[hereinafter NEWBERG]. In reality, this subsection imposes an “impracticability of joinder requirement, of which class size is an inherent consideration within the rationale of joinder concepts.” Id. at 3-11. The practicability of joinder must be evaluated in light of the circumstances of the particular litigation. See id.; Gurmankin v. Costanzo, 626 F.2d 1132, 1135 (3d Cir. 1990) (“We believe that the numerosity requirement must be evaluated in the context of the particular setting . . .”). When the class size is large, numbers alone are generally dispositive. See 1 NEWBERG at 3-17. When the class size is small, however, factors other than the actual or estimated number of purported class members may be relevant to the “numerosity” question. See id.; Zeidman v. J. Ray McDermott & Co., Inc., 651 F.2d 1030, 1038 (5th Cir. 1981). These factors include judicial economy arising from avoidance of a multiplicity of actions, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, the size of individual claims, the financial resources of class members, and the ability of claimants to institute individual suits. See 1 NEWBERG § 3.06, at 3-27 to 3-28; Zeidman, 651 F.3d at 1030 (citing 7 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 1762, at 600-03 (1972)).

Because of the particularized nature of the Rule 23(a)(1) inquiry, no definitive pattern has emerged in terms of the number of purported class members. Although “the numerosity requirement is [generally] satisfied where the class exceeds 100 members,” Kromnick v. State Farm Ins. Co., 112 F.R.D. 1224, 1226 (E.D. Pa. 1986), classes numbering less than one hundred have been certified, as well. See, e.g., Weiss v. York Hospital, 745 F.2d 786, 808 (3d Cir. 1984) (affirming the district court's ruling that a class of 92 members met the numerosity requirement); Dameron v. Sinai

Hospital of Baltimore, Inc., 595 F. Supp. 1404, 1407-08 (D. Md. 1984) (certifying a class estimated at 47 to 51 persons); Klamberg v. Roth, 473 F. Supp. 544, 558 (S.D.N.Y. 1979) (certifying at least 70 beneficiaries of a plan); see also 7A CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 1762, at 175-178 (citing cases in which courts have certified classes with less than one hundred members). Indeed, classes with as few as 25 or 30 members have been certified by some courts. See, e.g., Philadelphia Elec. Co. v. Anaconda Am. Brass Co., 43 F.R.D. 452, 462 (E.D. Pa. 1968) (“While 25 is a small number . . . it is a large number when compared to a single unit. I see no necessity for encumbering the judicial process with 25 lawsuits, if one will do.”). A leading treatise has concluded, based on prevailing precedent, that the difficulty in joining as few as 40 class members should raise a presumption that joinder is impracticable, and “the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone.” 1 NEWBERG § 3.05, at 3-25.

As noted above, plaintiffs seek to certify a class consisting of all employees in the ADM portion of the Information Technology Group of CoreStates who were notified that they would be terminated by CoreStates as a result of the alliance between CoreStates and Andersen, including individuals who left CoreStates before they could actually be terminated and transferred to Andersen as well as individuals who nominally became Andersen employees on November 1, 1997, but excluding individuals who were notified before October 31, 1997 that they would be retained by CoreStates. See Pls' Letter at 2. Plaintiffs also seek to certify two subclasses: (1) a subclass consisting of individuals who have signed waivers releasing their claims against CoreStates

(Subclass A);¹⁰ and (2) a subclass consisting of individuals who have not signed waivers releasing their claims against CoreStates (Subclass B). See Pls' Supp. Mem. at 2. According to plaintiffs, the main class consists of approximately 210 to 225 individuals; Subclass A consists of 119 individuals; and Subclass B consists of approximately 91 to 106 individuals. See Pls' Supp. Mem. at 2-3. More specifically, plaintiffs contend that Subclass B consists of 51 individuals who nominally became Andersen employees on November 1, 1997, as well as approximately 40 to 55 individuals who left CoreStates after learning that they were going to be terminated and transferred pursuant to the alliance, but before they could actually be so terminated and transferred. See Pls' Supp. Mem. at 2.

As explained above, the court finds that the number of individuals in the ADM portion of CoreStates' Information and Technology Group who were notified that they would be terminated and transferred pursuant to the alliance, but who left CoreStates before they could be so terminated and transferred is less than 40 to 55. See Background, supra, Part I. Consequently, the court finds that Subclass B consists of between 51 and 105 individuals, and that the main class consists of between 170 and 224 individuals. However, the court nonetheless finds that--given the size of the

¹⁰ Plaintiffs contend that the court “has the obligation to examine the 'settlement' offered by defendants (and accepted by the 119 members of the first subclass) with regard to whether the settlement was adequate, and [whether] the procedure by which defendants offered the settlement was proper.” Pls' Supp. Mem. at 1. Plaintiffs further contend that the court “should determine whether the notice given by defendants was sufficient to permit the members of the class to knowingly and voluntarily enter into the settlements.” Id. Plaintiffs agreed at oral argument that if these issues concerning the adequacy of the settlement and the validity of the waivers are resolved against plaintiffs, the members of Subclass A will have no further claims against defendants.

individual claims and the gains to be made in judicial economy--the main class as well as both subclasses satisfy the requirements of Rule 23(a)(1).

(2) Commonality

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The commonality requirement will be satisfied “if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994).¹¹ Common

¹¹ Defendants argue that the court should not apply the low threshold of commonality set forth in Baby Neal, but rather should apply the heightened standard set forth in Georgine v. Amchem Products, Inc., 83 F.3d 610, 626 (3d Cir. 1996), aff'd sub nom. Amchem Products, Inc. v. Windsor, 117 S. Ct. 2231 (1997). In Georgine, plaintiffs sought to settle the claims of between 250,000 to 2,000,000 individuals who had been exposed to asbestos products manufactured by one or more of 20 companies. Plaintiffs sought to achieve global settlement of current and future asbestos-related claims. See Georgine, 83 F.3d at 617. The district court certified the class for settlement, and enjoined class members from separately pursuing asbestos-related personal-injury suits in any court, pending the issuance of a final order. However, the Third Circuit vacated the district court's order, holding that the class certification failed to satisfy the requirements of Rule 23. See id. at 626. Specifically, the court held that plaintiffs failed to satisfy subsections (a)(3) (typicality), (a)(4) (adequacy of representation), and (b)(3) (predominance and superiority). See id. Because Rule 23(b)(3)'s predominance requirement is more difficult to satisfy than Rule 23(a)(2)'s commonality requirement, and because the court found that the class could not “conceivably meet” the more difficult predominance requirement, the court did not reach the question of whether the class satisfied Rule 23(a)(2). See id. at 627. In dicta, however, the court stated: “We believe that the commonality barrier is higher in a personal injury damages class action, like this one, that seeks to resolve all issues, including noncommon issues, of liability and damages.” Id. at 627.

The court rejects defendants' argument that this higher commonality standard governs the instant case. Unlike Georgine, which was a personal injury damages class action, this case is an employment class action that seeks, primarily, equitable relief. See Amended Complaint, Prayer for Relief, at 32-33. Moreover, unlike the instant case, which involves a plaintiff class of approximately 170 people who were treated in the same way by the same employer, Georgine involved a class of 250,000 to 2,000,000 people, whose individual circumstances all differed greatly. See Georgine,

questions are those which arise from a “common nucleus of operative facts.” Schutte v. Maleski, 1993 WL 218898, at *5 (E.D. Pa. June 18, 1993) (internal quotations omitted). Because Rule 23(a)(2) requires only a single issue common to all members of the class, the requirement is easily met. See 1 NEWBERG § 3.10, at 3-50. The fact that class members must individually demonstrate their right to recovery, or that they may suffer varying degrees of injury, will not bar a class action. See id. at 3-69. Nor is a class action precluded by the presence of individual defenses against class plaintiffs. See id. Moreover, the court may certify the class initially and then, if appropriate under all the circumstances, decertify the class after an adjudication of liability. See id. at 3-70.

a. Count I

Count I asserts a claim on behalf of the entire employee class against CoreStates for interference with benefits in violation of § 510 of ERISA, 29 U.S.C. § 1140. See Amended Complaint ¶¶ 69-72.¹² In order to prevail under this section,

83 F.3d at 626 (noting that “[c]lass members were exposed to different asbestos-containing products, for different amounts of time, in different ways, and over different periods” and that “[t]he future plaintiffs especially share little in common, either with each other or with the presently injured class members”). For these reasons, the court holds that the Baby Neal standard governs this case. See Bunnion v. Consolidated Rail Corp., No. 97-4877, 1998 WL 372644, at *3 n.4 (E.D. Pa. May 14, 1998) (finding the Georgine standard inapplicable to a Rule 23(a)(2) analysis in a class action alleging violations of ERISA).

¹² This section provides, in relevant part:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the

plaintiffs must show: “(1) prohibited employer conduct; (2) taken for the purpose of interfering; (3) with the attainment of any right to which the employee may become entitled.” Dewitt v. Penn-Del Directory Corp., 106 F.3d 514, 522 (3d Cir. 1997). In support of their § 510 claim, plaintiffs allege that CoreStates entered into an alliance with Andersen and terminated class members pursuant to this alliance for the purpose of interfering with their attainment of benefits. See Amended Complaint ¶ 70.

The court finds that the class proposed by plaintiffs--consisting of all individuals in Subclasses A and B--satisfies the commonality requirement with respect to this claim. Common questions to individuals in both of these subclasses include whether CoreStates entered into an alliance with Andersen; whether CoreStates notified plaintiffs that they would be terminated and transferred to Andersen as a result of the alliance; whether CoreStates terminated plaintiffs pursuant to this alliance; whether such actions constitute prohibited employer conduct within the meaning of § 510; and, most importantly, whether CoreStates took these actions for the purpose of interfering with plaintiffs' ability to attain benefits.¹³

Welfare and Pension Plans Disclosure Act [29 U.S.C. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act.
29 U.S.C. § 1140.

¹³ Defendants object to inclusion in the class of individuals who were notified that they would be terminated and transferred to Andersen, but who left CoreStates before they could actually be terminated and transferred pursuant to the alliance. Specifically, defendants argue that “[i]ndividuals who resigned from CoreStates before November 1, 1997 departed CoreStates voluntarily . . . Accordingly they have no claim against CoreStates and cannot be a member of any class.” Defs' Letter at 2; see also Defs' Mem. at 4; Defendants' Reply to Plaintiffs' Supplemental Memorandum (“Defs' Reply”) at 3-4. This argument, however, goes to the merits of plaintiffs' claim--which the court

b. Count II

In Count II, plaintiffs state a claim against CoreStates and all other fiduciaries and administrators for fiduciary misrepresentation in violation of § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3). See Amended Complaint ¶¶ 73-74a.¹⁴ To prove a fiduciary misrepresentation claim under ERISA, plaintiffs must establish that there was a material misrepresentation (or omission) about the terms of a plan, and that this misrepresentation (or omission) caused some loss to plaintiffs. See In re Unisys Corporation Retiree Medical Benefits ERISA Litigation, 57 F.3d 1255, 1265-67 (3d Cir. 1995), cert. denied, --- U.S. --- (1996); Bixler v. Central Pa. Teamsters Health-Welfare Fund, 12 F.3d 1292, 1300-03 (3d Cir. 1993).

Plaintiffs contend that CoreStates made a variety of misrepresentations to employees in the ADM portion of the Information and Technology Group. Specifically, plaintiffs allege that in March 1997, Larsen and Greco promised that: “[P]eople whose jobs are affected [by the CoreStates-Andersen alliance] will receive benefits according to the CoreStates severance policy.” Amended Complaint ¶ 30. Plaintiffs also allege that Ricci sent out e-mails via the company's internal e-mail system, in which she

may not consider when deciding a motion for class certification. See Eisen, 417 U.S. at 177-78.

¹⁴ Section 502(a)(3) provides:

(a) A civil action may be brought --

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

29 U.S.C. § 1132(a)(3).

represented that the online policy was the applicable policy. See id. ¶ 40. Plaintiffs contend that during this time, CoreStates amended the severance plan to limit eligibility for severance benefits, but did not give notice to CoreStates' employees that it was so doing. See id. ¶ 43-44.

Plaintiffs further allege that plaintiff Cloud and other members of the class relied on these misrepresentations in that they “continued to work for CoreStates,” and stopped looking for other jobs. See Amended Complaint ¶ 44a; see also id. ¶ 62a (“The misrepresentations regarding the severance plan made by CoreStates and the other Plan Fiduciaries and Administrators resulted in plaintiffs and other members of the class foregoing potential employment opportunities with other employers and remaining employed by CoreStates so that they could receive severance pay when their jobs would be eliminated pursuant to the Alliance.”).

Defendants argue that the proposed class of plaintiffs cannot satisfy the commonality requirement with respect to their fiduciary misrepresentation claim because this claim requires individual inquiries into the materiality of CoreStates' alleged misrepresentations and the harms that each plaintiff allegedly suffered. See Defs' Mem. at 19-24. According to defendants, “the materiality of the misstatements turns primarily on the nature and context of the assurance.” Defs' Mem. at 20 (quoting Ballone v. Eastman Kodak Co., 109 F.3d 117, 124 (2d Cir. 1997)). They point out that the named plaintiffs did not all read the exact same documents. Whereas Feret testified that he read the on-line severance policy, Cloud and Leyderman testified that they did not read it. See Defs' Mem. at 20 (citing Feret Dep. at 15, 23, 45-47; Cloud Dep. at 46, 79; Leyderman Dep. at 29). Defendants contend that the “fact patterns for

each named Plaintiff and claims for each potential class member are too individualized for class treatment.” Id. at 22.

The court disagrees. In order to satisfy the commonality requirement, plaintiffs need to show only that the putative class members share one issue of fact or law in common with the named plaintiffs. The proposed class of plaintiffs--consisting of all individuals in Subclasses A and B--meets this standard. A question common to individuals in both of these subclasses is whether CoreStates' documents and e-mail messages constitute material misrepresentations. The materiality of a misrepresentation is a “mixed question of law and fact, ultimately turning on whether 'there is a substantial likelihood that [the misrepresentation] would mislead a reasonable employee in making an adequately informed decision” Fischer v. Philadelphia Elec. Co., 994 F.2d 130, 135 (3d Cir. 1993) (emphasis added). Thus the question of whether CoreStates' documents and e-mails constitute material misrepresentations will not entail individual inquiries into the nature and context in which each these documents and e-mails were read. If some employees prove to have stronger cases than others (i.e. because they made specific inquiries and received additional misrepresentations specific to them), the court can always divide the class into additional subclasses. See In re Unisys Corp. Retiree Med. Benefits ERISA Litig., 1994 WL 284079, at *27 (E.D. Pa. June 23, 1994), aff'd, 57 F.3d 1255 (3d Cir. 1995) (“[B]ecause some plaintiffs have stronger [breach of fiduciary duty claims] 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.”); Bunnion, 1998 WL 372644, at *6 (holding that the proposed

class of plaintiffs satisfied the commonality requirement with respect to their fiduciary misrepresentation claim and noting that, if necessary, the court could divide the class into subclasses at a future time in order to compensate for individual issues).

Moreover, the Third Circuit has explained that the presence of individual issues such as reliance and damages does not necessarily prevent satisfaction of Rule 23(a)(2)'s commonality requirement--or even Rule 23(b)(3)'s more difficult predominance requirement.¹⁵ See Prudential, 1998 WL 409156, at *25 (agreeing with the district court that the presence of individual questions as to the reliance of each plaintiff in a class action alleging deceptive sales practices does not per se rule out a finding under Rule 23(b)(3) that common questions predominate over individual questions); Baby Neal, 43 F.3d at 57 (explaining that “[e]ven where individual facts and circumstances do become important to the resolution [of a claim], class treatment is not precluded,” and noting that “[c]lasses can be certified for certain particularized issues” and that “under well-established principles of modern case management, actions are frequently bifurcated”); Eisenberg v. Gagnon, 766 F.2d 770 (3d Cir. 1985) (holding that plaintiffs' securities fraud case met the commonality requirement and explaining that the class phase could resolve the central issue of liability for the alleged misrepresentations and omissions, and that individual damage determinations could be made at a separate phase of the trial). For these reasons, the court is satisfied that, on the current record, the class of individuals proposed by plaintiffs satisfies the commonality requirement with

¹⁵ In order to certify a class pursuant to Rule 23(b)(3), a court must find 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).

respect to plaintiffs' fiduciary misrepresentation claim in Count II.

c. Count III

In Count III, plaintiffs state a claim on behalf of the entire employee class against the plans for failure to provide benefits in violation of § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). See Amended Complaint ¶¶ 75-76. This section provides that a plaintiff may bring a civil action “to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B).

The court finds that the class proposed by plaintiffs--consisting of all individuals in Subclasses A and B--satisfies the commonality requirement with respect to this claim. Questions common to all of these plaintiffs include the appropriate interpretation of the amended severance plan--and more specifically, the appropriate interpretation of the term, “involuntary termination,” as it is used in the amended severance plan; and the appropriate interpretation of CoreStates' other employee benefit plans. See Stadler v. McCullough, 949 F. Supp. 311, 315 (E.D. Pa 1996) (finding that common issues under Rule 23(a)(2) “could involve the [appropriate interpretation of] the terms of [defendants'] medical plan”).

d. Counts IV and V

Count IV asserts a claim on behalf of all class members who were transferred to Andersen on November 1, 1997 against CoreStates for violation of the Pennsylvania Wage Payment and Collection Law (“WPCL”). See Amended Complaint ¶¶ 77-78.

Plaintiffs allege that “[b]y re-hiring employees to nominally non-employee positions (which were actually employee positions), defendants CoreStates wrongfully denied those employees the benefits available to other employees and thereby violated the WPCL” Id. ¶ 78.¹⁶

Count V asserts a claim on behalf of all class members who were transferred to Andersen on November 1, 1997 against all defendants for breach of contract. See Amended Complaint ¶¶ 79-80. Plaintiffs allege that “[b]y re-hiring employees to nominally non-employee positions (which were actually employee positions) and wrongfully denying those employees in nominally non-employee positions the benefits available to other employees of CoreStates, CoreStates and the other defendants breached the contract between CoreStates and its employees.” Id. ¶ 80.¹⁷

The court finds that the class proposed by plaintiffs--consisting of individuals in Subclasses A and B--satisfies the commonality requirement with respect to Counts IV and V. Questions common to individuals in both of these subclasses include whether they may be considered employees “in fact” of CoreStates even though they nominally became Andersen employees on November 1, 1997; and whether, in denying these individuals benefits available to CoreStates employees, CoreStates violated the WPCL or breached a contract with plaintiffs.

¹⁶ As discussed in the court's July 27, 1998 memorandum and order, this claim is limited to non-ERISA benefits because ERISA preempts all state laws that relates to an employee benefit plan. See Feret I, 1998 WL 426560, at *8.

¹⁷ As discussed in the court's July 27, 1998 memorandum and order, this claim is limited to non-ERISA benefits because ERISA preempts all state laws that relates to an employee benefit plan. See Feret I, 1998 WL 426560, at *9.

(3) Typicality

Rule 23(a)(3)'s typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented. See Baby Neal, 43 F.3d at 57 (citation omitted). The typicality inquiry focuses on “whether 'the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of the class members will perforce be based.’” Id. (quoting Eisenberg, 766 F.2d at 786). This requirement is met if the named plaintiffs and the proposed class members “challenge[] the same unlawful conduct.” Baby Neal, 43 F.3d at 58. Factual differences between named plaintiffs and class members do not defeat a motion for class certification if “the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.” Id. Even “relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories.” Id. The court must, in effect, discern whether potential conflicts exist within the class. See Georgine, 83 F.3d at 632.

Defendants contest plaintiffs' ability to satisfy the typicality requirement only with respect to plaintiffs' fiduciary misrepresentation claim in Count II. Specifically, defendants argue:

[T]he severance claims are clearly monetary and the differences among each individual's severance claim goes [sic] beyond mere mathematical calculations. Plaintiffs must first establish some harm cognizable under ERISA by establishing the individualized causation and reliance elements discussed above. Because there are facts peculiar to each potential plaintiff,

typicality is absent.

Defs' Mem. at 27.

The court disagrees, and finds that the named plaintiffs satisfy the typicality requirement with respect to all of their remaining claims in Counts I, II, III, IV, and V-- including their fiduciary misrepresentation claim in Count II. As explained above, the focus of the typicality inquiry is on defendants' conduct. The court finds that the claims of the named plaintiffs in all of these counts arise "from the same . . . [alleged] practice or course of conduct [of defendants] that gives rise to the claims of the . . . members [of the proposed class]." Baby Neal, 43 F.3d at 58. Specifically, in Count I, the claims of the named plaintiffs and all proposed class members arise from CoreStates' alleged plan to terminate and transfer plaintiffs to Andersen on November 1, 1997. In Count II, the claims of the named plaintiffs and all proposed class members arise from CoreStates' alleged misrepresentations concerning plaintiffs' eligibility to receive severance payments. In Count III, the claims of the named plaintiffs and all proposed class members arise from CoreStates' failure to provide plaintiffs with benefits under the terms of its amended severance plan and other benefit plans. In Counts IV and V, the claims of the named plaintiffs and all class members arise from CoreStates' failure to pay them wages as well as benefits under the terms of CoreStates' benefit plans. Because plaintiffs' claims all arise from the same course of conduct and are all based on the same legal theories, the court finds that the main class as well as both subclasses satisfy the typicality requirement.

(4) Adequacy of Representation

Rule 23(a)(4) requires a finding that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy of representation inquiry has two components designed to ensure that the interests of absentee plaintiffs interests are fully pursued. First, the interests of the named plaintiffs must be sufficiently aligned with those of absentee class members. See Georgine, 83 F.3d at 630. Second, class counsel must be qualified and must serve the interests of the entire class. See id. The burden is on the defendants to show inadequacy of representation. See Lewis v. Curtis, 671 F.2d 779, 788 (3d Cir.), cert. denied, 459 U.S. 880 (1982).

Defendants object to plaintiffs' ability to satisfy the first part of the adequacy requirement. They argue that the interests of the named plaintiffs are not sufficiently aligned with that of absentee class members. Specifically, they argue that Cloud, Feret, and Leyderman “suffer from a conflict among themselves” because Cloud did not receive an offer to return to CoreStates, whereas Feret and Leyderman did. See Defs' Mem. at 10. According to plaintiffs, “[t]his conflict suggests that the Plaintiffs cannot adequately represent the class.” Id. at 27 n.20. By this reasoning, Cloud and Feret would also not be able adequately to represent Subclass B.

The court finds that whether the named plaintiffs received or accepted offers of reemployment with CoreStates is irrelevant to the Rule 23(a)(4) inquiry. All three named plaintiffs are challenging the same allegedly unlawful conduct as all other class members--conduct that occurred before CoreStates decided to extended offers of reemployment to some of its former employees. The court finds that the interests of Feret, Cloud, and Leyderman are sufficiently aligned with those of all absentee class

members to satisfy the Rule 23(a)(4) inquiry.

The court is also satisfied that plaintiffs' attorneys are qualified and familiar with class actions and ERISA litigation. The court notes that the burden of disproving adequacy of representation is on defendants, see Lewis, 671 F.2d at 788, and that at oral argument on June 14, 1998, defendants' counsel informed the court that defendants had no objections to this part of the adequacy test. For these reasons, the court finds that the named plaintiffs and their attorneys have satisfied the requirements of Rule 23(a)(4).

B. Rule 23(b): Class Actions Maintainable

In addition to satisfying the four prerequisites of Rule 23(a), plaintiffs must also satisfy one of four parts of Rule 23(b). Specifically, plaintiffs must show that:

- (1) the prosecution of separate actions by or against individual members of the class would create a risk of
 - (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
 - (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair their ability to protect their interests or;
- (2) 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; or
- (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b).

Plaintiffs seek certification pursuant to subsections (b)(1) and (b)(2). See Pls'

Mem. at 18-22. Certification under either of these subsections constitutes a mandatory class. That is, class members may not opt out of the action to “pursue separate litigation that might prejudice other class members or the defendant.” 5 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE §§ 23.40[2] (3d ed. 1998) [hereinafter MOORE'S].

Rule 23(b)(1), divided into two clauses, defines two related types of class actions, both designed to prevent prejudice to the parties arising from multiple potential suits involving the same subject matter. See 1 NEWBERG § 4.03, at 4-10. Rule 23(b)(1)(A) is used to “obviate the actual or virtual dilemma which would . . . confront the party opposing the class” if separate lawsuits were decided differently so as to result in “incompatible standards” for that opposing party. See WB Music Corp. v. Rykodisc, Inc., 1995 WL 631690, at *3 (E.D. Pa. Oct. 26, 1995) (quoting Fed. R. Civ. P. 23(b)(1)(A) advisory committee notes). Conversely, Rule 23(b)(1)(B) is used when separate actions might lead to adjudications that could be dispositive of nonparty class members' interests or substantially impair their ability to protect their interests. See id. Certifications under both of these clauses are common in labor relations cases because defendants often provide “unitary treatment to all members of [a] putative class [in this] . . . area” and thus the rights of absent “class member[s] [are often] . . . implicated by litigation brought by other class members.” 5 MOORE'S §§ 23.41[4], 23.42[3][c].

The court finds that plaintiffs' remaining claims in Counts I, II, III, IV, and V are appropriate for certification under both clauses of Rule 23(b)(1). There is a realistic possibility that separate actions would be brought in this case in the absence of a class action. Moreover, plaintiffs seek broad declaratory and injunctive relief in all of these

counts. See Amended Complaint, Prayer for Relief, at 31-32.¹⁸ These declaratory judgments and injunctions could potentially create conflicts for defendants in the event that they were granted in some actions but denied in others. The differing outcomes “would make it near impossible for defendants to implement any one result because of the inherent conflict from disparate adjudications.” Schutte, 1993 WL 218898, at *9. For this reason, the court will certify the action pursuant to Rule 23(b)(1)(A).

In addition, the court finds that if plaintiffs independently brought suit against defendants and if plaintiffs' requests for declaratory and injunctive relief were granted in only some cases and not others, absent plaintiffs would be prejudiced. The conflicting decisions would affect the interests of all proposed class members, as the relief sought pertains directly to the plans and contracts under which all class members are allegedly covered. See Schutte, 1993 WL 2188989, at *10. For this reason, certification is also proper under Rule 23(b)(1)(B).¹⁹

¹⁸ The court notes that although plaintiffs seek statutory damages under the WPCL, see Amended Complaint, Prayer for Relief, ¶ G, as well as punitive damages “where applicable” (presumably for breach of contract, see id. ¶ I, plaintiffs also request broad declaratory and injunctive relief in Counts IV and V. See id. ¶¶ A, D. For example, plaintiffs seek a declaration that, although they became nominally Andersen employees on November 1, 1997, they remained employees “in fact” of CoreStates. See id. ¶ D.

¹⁹ Because the court has concluded that certification is proper under Rule 23(b)(1), it need not reach the question of whether certification is proper under Rule 23(b)(2). In order to be certified, a class must satisfy all four subsections of Rule 23(a), but only one subsection of Rule 23(b). See Prudential, 1998 WL 409156, at *19.

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

JOSEPH P. FERET, JAMES CLOUD,	:	
IRINA LEYDERMAN, on Behalf	:	
of Themselves and All Similarly	:	CIVIL ACTION
Situated Persons,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CORESTATES FINANCIAL CORP.,	:	
Its Employee Pension and Welfare	:	No. 97-6759
Benefit Plans, and the Fiduciaries	:	
and Administrators of Each,	:	
Defendants.	:	

ORDER

AND NOW, this day of August, 1998, upon consideration of plaintiffs' motion for class certification of Counts I through VI, defendants' response, plaintiffs' reply memorandum and request for immediate certification of Counts I and III as uncontested, plaintiffs' supplemental memorandum, defendants' reply to plaintiffs' supplemental memorandum, defendants' report on the status of waiver requests and supplemental memorandum opposing class certification, and both parties' subsequent letter submissions, and after oral argument by the parties on June 14, 1998, IT IS HEREBY ORDERED that:

1. Pursuant to subsections (b)(1)(A) and (b)(1) (B) of Rule 23 of the Federal Rules of Civil Procedure, this action will proceed as a class action with respect to all remaining claims in Counts I, II, III, IV, and V.
2. The class will include all employees in the Application Development and

An appropriate order follows.

Maintenance portion of the Information Technology Group of CoreStates who were notified that they would be terminated by CoreStates as a result of the alliance between CoreStates and Andersen, including individuals who left CoreStates before they could actually be terminated and transferred to Andersen as well as individuals who nominally became Andersen employees on November 1, 1997, but excluding individuals who were notified before October 31, 1997 that they would be retained by CoreStates.

3. The class will be divided into two subclasses, as follows:
 - (a) Subclass A will consist of all individuals who have signed waivers releasing their claims against CoreStates.
 - (b) Subclass B will consist of all individuals who have not signed waivers releasing their claims against CoreStates.
4. Joseph P. Feret, James Cloud, and Irina Leyderman are appointed as class representatives. In addition, Leyderman will represent Subclass A, and Feret and Cloud will represent Subclass B .
5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the above defined class and subclasses may be altered or amended by further order of the court at any time before a decision of the merits is entered.

William H. Yohn, Jr., Judge