

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Pamela McKinney  
400 E. Randolph Street  
Chicago, Illinois 60601-5024

Class Representative  
Plaintiff

v.

Civil Action No.: 1:11-cv-00631-RLW

United States Postal Service  
475 L'Enfant Plaza, S.W.  
Washington D.C. 20260-3100

Defendant

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff brings this action on behalf of herself and all other similarly situated former employees of the United States Postal Service, and beneficiaries of such employees who died during the period July 21, 1981 to July 20, 1984. Benefits originally paid to the plaintiff and others did not include the cost of living adjustment required by a Collective Bargaining Agreement and Memorandum of Agreement between the USPS and the two unions representing the employees. When those added funds were later paid, often 25 years late, no interest was paid to the beneficiaries. This suit seeks payment of interest for the decades that the proper benefits were withheld from the class members.

### **Parties**

1. Plaintiff Pamela D. McKinney is the adult daughter of Lepolion McKinney, and a beneficiary of his life insurance policy. She resides at 400 E. Randolph Street, Chicago, Illinois 60601-5024.

2. Defendant United States Postal Service is an independent establishment of the Executive Branch of the United States Government.

### **Jurisdiction and Venue**

3. Jurisdiction is proper in this court pursuant to 5 U.S.C. §8715, 39 U.S.C. §409, 28 U.S.C. §1332 (d), 29 U.S.C. §185 and 39 U.S.C. §1208(b). The amount in controversy, aggregated among all class members, exceeds \$5,000,000. There are more than 100 members of the putative class.

4. Venue is proper pursuant to 28 U.S.C. §1391 (e). Some of the members of the class are citizens of the District of Columbia, and a substantial part of the events or omissions giving rise to the claim occurred in this jurisdiction.

### **Facts**

5. Lepolion McKinney was employed by the USPS from April 17, 1969 until December 17, 1969 (when he left to join the United States Army), and again from November 3, 1980 until January 31, 1982.

6. On January 31, 1982, Mr. McKinney was killed. His death was ruled accidental.

7. After Mr. McKinney's death, Pamela McKinney and her siblings became eligible for certain death benefits, including life insurance administered by the Office of

Federal Employees Group Life Insurance (“OFEGLI”). The amount of the insurance benefits was based upon Mr. McKinney’s basic pay.

8. At the time of Mr. McKinney’s death, he and other employees of the USPS were covered by a Collective Bargaining Agreement (CBA) between the USPS and the National Association of Letter Carriers, AFL-CIO, and the American Postal Workers Union, AFL-CIO, covering the period July 21, 1981 to July 20, 1984.

9. The CBA, among other things, deferred until 1984 a cost of living adjustment (COLA) of \$3,619 that otherwise would have gone into effect in 1981. Thus, employees’ basic pay was lower than it otherwise would have been during the pendency of the July 1981 CBA.

10. A Memorandum of Agreement between the USPS and the two unions provided that “no employee, whose basic pay is not increased by the amount of \$3,619 (the annualized cost-of-living adjustment accumulated during the life of the 1978 National Agreement) before the first full pay period of October, 1984, due to the provisions set forth in Article 9, section 3, of the 1981 National Agreement, will suffer any diminution of annuity (e.g., optional, disability, or survivor’s benefits), by reason thereof.” This provision is referred to as the Annuity Protection Program or APP.

11. The USPS and the two unions also had an oral understanding that “no one will get hurt” by the delay in rolling the accumulated COLA into the basic pay.

12. There was a dispute between the USPS and the two unions concerning the meaning of the Memorandum of Agreement and oral understanding over which specific benefits were to be included within the scope of the Annuity Protection Program. The dispute was arbitrated.

13. A decision was issued by the arbitrator on August 5, 1986.

14. The arbitrator ruled that life insurance benefits are among the benefits that are protected within the meaning of the Memorandum of Agreement. He ruled that “survivors of deceased postal employees who have suffered a diminution of life insurance benefits” are entitled to a “full remedy.” He ruled that any hurt suffered by such survivors “should be made whole” from “whenever the ‘hurt’ began.”

15. Prior to the issuance of the arbitration decision, OFEGLI had fully paid Ms. McKinney her insurance benefits and survivor benefits as computed based on Mr. McKinney’s basic pay, but the calculation of those benefits did not include the 1981 COLA which was the subject of the APP and the oral understanding.

16. Notwithstanding the arbitration decision, USPS did not pay Ms. McKinney her COLA-adjusted benefits, either at the time of Mr. McKinney’s death or following the arbitration decision. The USPS has never explained why it refused to comply with the decision of the arbitrator.

17. Ms. McKinney was not a party to the arbitration and no notice of it.

18. On July 23, 2008, more than 27 years after Mr. McKinney died, the USPS sent Ms. McKinney a letter notifying her that she may be eligible for an additional death benefit payment pursuant to the Annuity Protection Program, representing the difference between the amount OFEGLI originally paid her and the amount she would have received had the applicable COLA amount been included in Mr. McKinney’s basic pay.

19. Prior to receiving the July 23, 2008 letter, Ms. McKinney had no notice of the APP, and had no knowledge or information suggesting that she had not been fully compensated with the death benefits to which she was entitled.

20. On August 22, 2008, Ms. McKinney was sent a check from the USPS in the amount of \$2,665.80, which was represented to her as being “the difference in the death benefit you had received from OFEGLI and the amount you would have received if applicable cost-of-living adjustments had been part of decedent’s basic pay.”

21. On May 22, 2009, she was sent a second check, in the amount of \$1,333.33. This was represented to her as reflecting the COLA on a double benefit under her father’s life insurance policy, resulting from the fact that her father’s death was accidental.

22. Ms. McKinney’s total added benefits from her father’s life insurance policy attributable to the APP and oral understanding were therefore \$3,999.13. Her two siblings also received comparable payments.

23. Although the required COLA-related insurance payments were made to Ms. McKinney more than 26 years after her father died, and more than 22 years after the arbitrator ruled that the payments were required by the APP in the Memorandum of Agreement and the oral understanding, USPS refused to pay interest on the delayed payments.

24. Ms. McKinney is entitled to interest covering the period that USPS withheld the COLA-adjusted benefits.

25. USPS has not provided a valid justification for refusing to pay interest to Ms. McKinney on the delayed payments.

26. Upon learning that the USPS would not pay her interest, Ms. McKinney sought the assistance of the American Postal Workers Union.

27. Ms. McKinney spoke with William Burrus, the President of the APWU. Mr. Burrus disavowed any duty to help her on the grounds that she was not a member of the union. He said he would take some action on her behalf only as a favor to her.

28. Ms. McKinney also spoke with Phillip Tabbita, APWU Manager Negotiation Support, who advised Ms. McKinney to pursue the matter on her own.

29. Mr. Burrus wrote a grievance which was filed on January 12, 2009.

30. The Postal Service made no meaningful response to the grievance. It failed to meet any of the time limitations in the CBA. It issued no "Step 4 decision," which is one of the steps required to be taken by the USPS by Article 15.2 of the collective bargaining agreement. The union, although noting that deficiency, did nothing about it.

31. The union took no action on the grievance after it was filed in January, 2009 through August 2011. Nor did the USPS take any action in response to the grievance.

32. The union advised Ms. McKinney that it owes no duty to her because she is not a union member.

33. The union withdrew the grievance on August 29, 2011. As of now, there is no grievance pending and there are no union efforts to enforce the arbitration award.

34. On information and belief, the union took no action on behalf of any other person adversely affected by the failure of the USPS to comply with the arbitral award, regardless of whether such persons are union members entitled to representation or not.

### **Class Action Allegations**

35. The class in this case includes all former employees of the USPS covered by the July 1981 CBA, the Memorandum of Agreement and the oral understanding, and their heirs and beneficiaries, who were paid or were entitled to be paid benefits in accordance with the arbitration decision dated August 5, 1986 alleged in paragraph 14 above, but were not paid interest.

36. The exact number of class members is unknown to Ms. McKinney. According to a letter written by John Dockins, Manager for Contract Administration of the USPS, as of December 31, 2008, there were 1645 beneficiaries remaining to be paid the principal amounts due to them pursuant to the APP and oral understanding as interpreted by the 1986 arbitration decision. Others, such as Ms. McKinney and her siblings, had already been paid principal but not interest on the principal amounts. It is thus likely that the class will include more than 1645 members. Class members are located throughout the United States. Joinder of that many class members is impracticable.

37. On information and belief, no class members were paid interest on their overdue benefits.

38. There are common questions of law and fact that relate to and affect the rights of each member of the class. The questions of law or fact common to the members of the proposed class predominate over any questions affecting only individual members in the class. The proposed members all were deprived of interest due on payments that were delayed by more than two decades notwithstanding an arbitration decision in 1986 requiring such payments. On information and belief, the

decision of USPS not to pay interest was not based on any factors relating to individual beneficiaries, but rather reflects a nationwide policy that is equally applicable to all class members.

39. The relief sought is common to the entire class, in that all class members are entitled to be paid interest on the long-delayed benefits paid pursuant to the 1986 arbitration decision.

40. The claims of the named representative are typical of the claims of the class. The named representative was denied interest for benefits that the CBA, Memorandum of Agreement, and oral understanding, as interpreted by the arbitrator, required to have been paid in 1982 but which were not paid to her until 2008 and 2009. The other members of the class were also denied interest for long-delayed benefits which were paid to them or should have been paid to them pursuant to the CBA, Memorandum of Agreement, and oral understanding, as interpreted by the arbitrator.

41. There is no conflict between the individually named plaintiff and other members of the class with respect to this action or with respect to the claims of relief hereinafter set forth. The named party will fairly and adequately protect the interests of the class because the class representative is part of the class and possesses the same interest and suffered the same injury as the class members.

42. The undersigned counsel for the named plaintiff are experienced and capable litigators, including class action litigation. Counsel are partners at Stein, Mitchell & Muse LLP, an experienced litigation firm. David Fierst has over 35 years of litigation experience, including class action experience. He was lead counsel for the plaintiff class in *Anselmo v. OPM*, CA No. 94-895 (D.D.C.) (JR), and was counsel in

other class actions, including: *In Re: Vitamins Antitrust Class Action*, MDL No. 1285, Misc. No. 99-197 (TFH); *New Motor Vehicles Canadian Export Antitrust Litigation*, MDL No. 03-1532 (DBH); *A.F. OF L. -A.G.C. Building Trades Welfare Plan v. Biovail Corp.*, MDL No. 03-223 (RJL); *Meijer, Inc. v. Warner Chilcott Holdings Company III, LTD*, 05-cv-2195 (CKK); *Louisiana Wholesale Drug Co., Inc. v. Astrazeneca Pharmaceuticals L.P.*, 06-cv-2157 (RWR); *Pigford v. Veneman*, 97-cv-1978 (PLF). Robert Bredhoff has more than 30 years litigation experience.

43. This action is properly maintained as a class action since common questions of law and fact predominate over any questions affecting only individual members, and a class action is superior to other available means for the fair and efficient adjudication of this controversy.

**Count I**  
**Breach of Contract – Third Party Beneficiary**

44. Plaintiff repeats and realleges the numbered paragraphs 1 through 43, inclusive, as though fully set forth herein.

45. Plaintiff and the class members are third party beneficiaries of the CBA, the Memorandum of Agreement and oral understanding as already interpreted by the arbitrator.

46. The USPS breached the CBA, Memorandum of Agreement and oral understanding, causing injury to the members of the class.

**Count II**  
**Unjust enrichment**

47. Plaintiff repeats and realleges the numbered paragraphs 1 through 46, inclusive, as though fully set forth herein.

48. USPS has been unjustly enriched by holding money rightfully belonging to the class members for extensive periods of time without paying interest.

**Count III  
Conversion**

49. Plaintiff repeats and realleges the numbered paragraphs 1 through 48, inclusive, as though fully set forth herein.

50. USPS converted funds rightfully belonging to the class members.

**Count IV  
Enforcement of Arbitration Decision**

51. Plaintiff repeats and realleges the numbered paragraphs 1 through 50, inclusive, as though fully set forth herein.

52. Plaintiff and the class members are third party beneficiaries of the August 5, 1986 arbitration decision, and are entitled to enforce it as it relates to them.

53. USPS neither timely complied with the arbitration decision nor paid pre- or post-judgment interest for its delay.

**Count V  
Claim for Accounting**

54. Plaintiff repeats and realleges the numbered paragraphs 1 through 53, inclusive, as though fully set forth herein.

55. Class members are entitled to an accounting for the funds due to them that were not paid or were withheld for extensive periods of time.

WHEREFORE, plaintiff demands for herself and all members of the class that this Court order:

1. That USPS pay all class members any added sums due as a result of the APP of the CBA, Memorandum of Agreement and the oral understanding;
2. That USPS pay compound interest to all class members on all benefits paid out pursuant to the APP of the CBA, Memorandum of Agreement and the oral understanding, such interest to be paid for the period beginning when the payments were due and continuing until such payments were made in full;
3. That USPS be ordered to provide an accounting for funds that were withheld from the class members;
4. That a fee be paid to class counsel, and expenses reimbursed;
5. And such other and further relief as may be appropriate.

Respectfully submitted,

/s/ David U. Fierst

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