IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 04-cv-02686-WDM-CBS

WAYNE TOMLINSON,
ALICE BALLESTEROS,
GARY MUCKELROY,
individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

EL PASO CORPORATION, and EL PASO PENSION PLAN,

Defendants.

DECLARATION OF MICHAEL P. WARD

I, Michael P. Ward, declare:

1. I make this Declaration based on my personal knowledge. If called to testify under oath, I could do so truthfully and competently.

2. I am Senior Vice President and Senior Analyst at Welch Consulting, a consulting firm specializing in economic and statistical research. I am also Senior Economist at Unicon Research Corporation, a sister organization performing grant and contract research for the federal government. A copy of my Curriculum Vitae is attached as Exhibit 1.

3. I have calculated the value of individual pension benefits in hundreds of cases involving economic loss. A list of my testimony over the past seven years is attached as Exhibit 2.

EXHIBIT
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4. I was asked by counsel for El Paso Corporation to analyze statistics pertaining to employees who participate in its pension plan. A list of the documents and data we received is attached as Exhibit 3. All of the documents and data we received were also produced to Plaintiffs.[1]

Transition to Cash Balance

5. Prior to the conversion to a cash balance plan, employees who were participants in the pension plan earned a retirement benefit that was calculated based on the particular employee's years of service and income history using a formula known as a "Final Average Pay Formula." The value of the benefit could be calculated as either a monthly annuity or a single lump-sum.

6. El Paso converted its pension plan to a cash balance plan beginning on January 1, 1997.[2] Each participant's Opening Cash Balance was calculated based on the present value of his or her final average pay benefit as of January 1, 1997.

7. For the next five years of employment, each person's pension was calculated in two ways. First, benefits were calculated under the final average pay formula (referred to in the pension plan as the "Minimum Benefit") that existed prior to the start of the transition period. Second, benefits were calculated under the cash balance formula by adding pay and interest credits to the Opening Cash Balance.

8. These two formulas ran side by side for five years. At the end of the five years, each participant was entitled to receive the larger of the two formulas. The

[1] In performing my analysis, I excluded data that was not reliable. This is a standard practice and did not affect the validity of my results. My analysis ultimately included 2,011 employees.
[2] Different transition dates applied to employees of different companies owned by El Paso. All three named Plaintiffs were employed by a company known as EPNG. The dates referred to in this Declaration refer to the transition that pertained to EPNG employees. However, I used the correct transition dates for the Sonat and Coastal employees in my calculations.

"Minimum Benefit" was "frozen," at the end of the five year transition in the sense that value of the benefit that an employee could receive at age-65 could no longer change.[3] The benefits under the cash balance plan continued to accumulate according to the formulation of that plan. Upon retirement, employees received whichever benefit was higher: the final average pay benefit, or the cash balance benefit.

Summary Of Why Plaintiffs' Allegations Are Incorrect

9. Plaintiffs contend that the freezing of the Minimum benefit had disparate age effects. According to their complaint: "the transition is structured in a manner that causes older, longer service employees to earn no additional benefits for a number of years beyond the benefits to which they were already entitled under the old plan formula as of December 31, 2001." (Paragraph 25).

10. Plaintiffs' allegations are mathematically incorrect. Instead of measuring the actual benefit payable at any given point in time, Plaintiffs measure only the value of the benefit that is payable at age 65. However, Plaintiffs, like virtually all El Paso employees, retired at ages younger than 65. Under the terms of the pension plan described in Paragraph 12 below, the actual value of the benefit that an employee can immediately receive under the final average pay benefit continues to grow from the time the transition period closed until the individual reaches age 65 or age 60 plus 30 years of service.

11. The growth in the actual value of the benefit an employee can immediately receive under the final average pay benefit after the transition period is the result of

[3] However, employees who turned 55 after the close of the transition period could still earn an Early Retirement Supplement. *See* § 4.3 of the pension plan.

certain provisions of the pension plan. *See* § 4.3(b) (setting forth reduction criteria for individuals who retire before age 65 and take an "Early Retirement Benefit"); § 4.5(b) (setting forth reduction criteria for individuals who retire before age 65 and receive a "Vested Termination Benefit").

12. Specifically, in sections 4.3(b) and 4.5(b), the plan sets forth reduction factors that are applied to the retirement benefits of employees who retire before age 65 and/or before age 60 plus 30 years of service. Section 4.3(b) states that a Participant's Minimum Benefit will be reduced in the following situations:

> (i) if upon termination of employment, the Participant has completed at least 30 years of Credited Service, his or her Minimum Benefit shall be reduced by 2% for each year by which the benefit commencement date precedes his or her 60th birthday, with pro rata reductions for fractional years; or
>
> (ii) if upon termination of employment the Participant has completed less than 30 years of Credited Service, his or her Minimum Benefit shall be reduced by 2% per year for the lesser of (A) each year by which the benefits commencement date precedes his or her 65th birthday, or (B) the excess of 30 over the number of years of Credited Service, with pro rata reductions for fractional years; provided, however, that if the Participant's age at benefit commencement is less than 60, the reduction shall not be less than 2% for each year by which the benefit commencement date precedes his or her 60th birthday, with pro rata reductions for fractional years.

Section 4.5(b) states that a participant's Minimum Benefit will also be reduced if the Participant retires before the "Normal Retirement Date" or age 65 in the following ways:

> In the event the Participant will receive the Vested Termination Benefit described in Section 4.5(b), such Minimum Benefit shall be reduced by one one-hundred-eightieth (1/180) for each of the first sixty (60) months by which the Vested Termination Date precedes the Normal

> Retirement Date, and reduced by one three-hundred-sixtieth (1/360) for each of the next sixty (60) months by which the Vested Termination Date precedes the Normal Retirement Date, and reduced Actuarially thereafter.

13. Thus, reduction factors decrease each year that an employee gets closer to either (1) age 65 or (2) age 60 plus 30 years of service. Therefore, the reduction factors that applied on December 31, 2001 (the end of the transition period) are larger than the reduction factors that apply after the close of the transition period as the employee ages toward (1) age 65 or (2) age 60 plus 30 years of service. As the reduction factors decrease, the actual value of the benefit payable on any given day increases.

14. When I compared the growth of immediately available benefits under the Minimum Benefit formula to the growth of benefits under the cash balance formula, I found that older employees not only continued to receive benefits increases, but actually received higher benefit increases than younger workers.

<u>Nearly All Employees Retire Before Actually Reaching Age 65</u>

15. I analyzed 2,011 employees of El Paso, Sonat and Coastal who were employed at the beginning of each company's respective transition period and who were still employed at the end of the transition period. At the end of 2007 (the point at which the data ran out), 747 of these employees had left the company. Of these, only six were 65 or older when they left. Exhibit 4 shows these ages of termination.[4] Exhibit 4 also shows the ages of the 1,264 employees who were still active as of the end of 2007. Of these, only 11 are 65 or over.

[4] There is nothing in the data that indicates the reason for termination.

16. Therefore, while the final average pay benefit that is payable at age 65 may have been frozen, this is irrelevant to any employee who retires before age 65 or before reaching age 60 plus 30 years of service. Statistically, over 99% of the employees who exit the company have received, or will receive, a pre-age-65 retirement benefit.

Benefits Generally Grow Faster For Older Workers Than For Younger Workers

17. I also statistically tested the rates at which older employees' actually payable benefits rose in comparison to the rates at which younger employees' cash balance benefits rose.

18. Specifically, I calculated the average annual dollar increase of the cash balance benefit for younger workers - those less than 40 years of age at the end of the transition period. The time period involved in this calculation was from the end of the transition period until the end of the data or until the particular employee left employment. I expressed this on an annual basis. For each year of service, these younger workers' cash balance benefits grew, on average, by $6,861 year.

19. I next calculated the increase in the final average pay benefit over the same period for workers age 40 or over. On average, these older workers' benefits grew by $16,081 per year.[5]

20. Therefore, older workers' final average pay benefits grew more than twice as much per year as younger workers' cash balance benefits.

21. I next compared these differences statistically. The number of standard

[5] The calculations summarized in paragraphs 17 through 21 was performed with respect to the same 2,011 employees referred to in paragraph 15.

deviations separating the two growth numbers was 12.01 standard deviations to the advantage of older workers. I found that these differences are highly statistically significant, meaning that the difference between the average annual growth of older and younger workers' benefits was not due to chance.

22. I have reviewed the expert reports prepared by Robert A. Bardwell, Ph.D. Dr. Bardwell's analysis compares the hypothetical value of the final average pay benefit that is payable at age 65 to the cash balance benefit. Dr. Bardwell concludes that because the benefit payable at age 65 does not grow, there is a so-called wear-away. My analysis differs in that it evaluates the actually payable pension benefit at any point in time, rather than focusing on a benefit that is only payable if the employee happens to retire at age 65.

23. The "wear-away" that Dr. Bardwell refers to is the time period during which the value of the Minimum benefit that is payable at age 65 is greater than the cash balance benefit. However, Dr. Bardwell has not expressed any opinion about the rate at which the value of the immediately available Minimum benefit grows before an individual reaches (1) age 65 or (2) age 60 plus 30 years of service. As I have shown above, the actual value of the Minimum benefit grows faster than the cash balance benefit, even after the conclusion of the transition period.

24. Comparatively, the Minimum benefit was, by and large, a more generous benefit than the cash balance benefit was during the transition period. However, Dr. Bardwell's analysis excludes the growth in the final average pay benefit during the transition period itself.

25. By focusing only on the period after the five-year transition, Dr. Bardwell

ignores the increase in the Minimum benefit that El Paso provided by including a five year transition period in its conversion to a cash balance plan. By definition, any employee who experiences a "wear-away" has a higher benefit than he or she would have if El Paso had not included a transition period in its conversion to a cash balance plan. This is axiomatically true because in order to be in a wear-away, the employee's Minimum benefit must be higher than the value of the cash balance benefit. Had there been no transition period, there would have only been a cash balance benefit and no Minimum Benefit.

26. El Paso's decision to provide the five-year transition period was unquestionably advantageous to older workers. To assess the value of the transition period, I computed the value of retirement benefits assuming that the transition period never took place, and I instead assumed that the final average pay formula was frozen as of the start of the actual transition period. I compared those hypothetical benefits with the actual value of retirement benefits at the end of the transition period, and found that those extra years of accrual represented a gain of $8,720 per year in retirement benefits for older workers (age 40 and over) versus a $1,982 per year gain for younger workers. The number of standard deviations separating these two numbers is 27.92. By allowing its employees to accrue benefits under the old plan for five additional years, El Paso significantly improved older workers' retirement benefits relative to younger workers.

[Remainder of page intentionally left blank]

I have read this Declaration consisting of this and 8 other pages. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26 day of February, 2009.

Michael P. Ward

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