**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**

Civil Action 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.

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**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT ENTERED ON JANUARY 23, 2009**

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# Table of Contents

## TABLE OF AUTHORITIES

### FEDERAL CASES

**FEDERAL STATUTES AND LEGISLATIVE HISTORY**

**Introduction**

Plaintiffs hereby reply to El Paso's 16-page opposition, its 6-page response to the Plaintiffs' renewed request for approval of ADEA notice and consent form, and to the extent El Paso incorporates it by reference in the latter response, El Paso's 24-page "amended motion for partial summary judgment."

The Lilly Ledbetter Fair Pay Act (P.L. 111-2) expressly applies to the Age Discrimination in Employment Act. In his signing statement on January 29, 2009, President Obama stated that the Act:

> is to send a clear message that ... there are no second-class citizens in our workplaces; and it's not just unfair and illegal, it's bad for business to pay somebody less because of their gender <u>or their age</u> or their race or their ethnicity, religion or disability.

2009 WL 207323 (emph. added). The Ledbetter Act specifically amends the charge-filing period in Section 7(d) of the ADEA, 29 U.S.C. §626(d), to provide that an unlawful employment practice occurs:

(1) "when a discriminatory compensation decision or other practice is adopted,"

(2) "when a person becomes subject to a discriminatory compensation decision or other practice, or"

(3) "when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice."

P.L. 111-2, §4. Previously, Section 7(d) provided that a charge shall be filed within 180/300 days "after the alleged unlawful practice occurred" with no elaboration.

## I. The Lilly Ledbetter Fair Pay Act Covers Discriminatory Practices Involving Benefits, Including Pension Benefits.

If there was any doubt about whether the statutory reference to "compensation" covers "benefits," the inclusive phrase "or other practice" (as in a "compensation decision or other practice") and the specific reference to "benefits" removes any doubt that this Act is designed to cover discriminatory practices involving pension and other benefits. See 155 Cong. Rec. (Jan. 27, 2009) H554 (statement of Rep. Nadler, co-sponsor of the Act) ("our use of the phrase 'discriminatory compensation decision or other practice' should be read broadly, and to include any practice–including, for example, ... pension practices–that impact overall compensation"); accord *City of Los Angeles, Dept. of Water & Power v. Manhart*, 435 U.S. 702, 712 n.23 (1978) ("pension benefits ... are 'compensation' under Title VII").[1] Indeed, one of the principal objections from the

[1] The ADEA also specifically provides that "[t]he term 'compensation, terms, conditions or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan." 29 U.S.C. §630(l), as amended in 1990. The 1990 amendment was to make it "unmistakably clear" that the ADEA's purpose "includes the elimination of age discrimination in all forms of employee benefits." S.Rep. No.

Act's opponents was that it could subject employers to new liabilities for pensions. See 155 Cong. Rec. (Jan. 9, 2009) H115 (Rep. Kline), H121 (Rep. McKeon) and 155 Cong. Rec. (Jan. 21, 2009) S712 (Sen. Enzi).

In this instance, the connection between compensation and pension benefits is unmistakably clear because the challenged "wear-away" practice concerns the receipt of quarterly "pay credits," equal to a percentage of an employee's compensation, which are to be credited to a "cash balance" account for retirement, but which are not actually being paid to older employees because of the Plan's "wear-away" design.

## II. This Case Is Pending and Therefore Clearly Covered By the Ledbetter Act's Effective Date.

The House Education and Labor Committee Report on the Ledbetter Act makes clear that the intent of the effective date section (in Section 6 of the Act) is to "ensure[] that no pending or future claims, not yet fully adjudicated, are affected by the *Ledbetter* ruling." H.R. Rep. No. 110-237, at 19.[2] The Supreme Court has

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101-263, 1990 U.S.C.C.A.N. 1509, 1521-22.

[2] For the Court's convenience, H.R. Rep. 110-237 is attached. House Report No. 110-237 was prepared during the 110th Congress, but the bill on which it reports is identical to the bill introduced and enacted in the first days of the 111th Congress. This is the only House or Senate Report on the Ledbetter Act.

In the House floor debate on January 9, 2009, Representative Robert "regularly applied intervening statutes conferring or ousting jurisdiction, whether or not jurisdiction lay when the underlying conduct occurred or when the suit was filed." *Landgraf v. USI Film Products*, 511 U.S. 244, 274 (1994).[3] Other courts have already applied the Ledbetter Act to pending cases. In *Gilmore v. Macy's Retail Holdings*, 2009 WL 305045 *2 (D.N.J. Feb. 4, 2009), Judge Simandle found, on his own motion, that "Congress expressly indicated that the FPA was to apply retroactively" and therefore applied the FPA to the case before him.

## III. The Legislative Finding About "Pension Distributions" in Section 2(4) Supports Plaintiffs' Position Because Mr. Tomlinson Filed His Charge Long Before He Retired.

The "Finding" in Section 2(4) of the Ledbetter Act that "[n]othing in this Act is intended to change current law treatment of when pension distributions are considered paid" confirms that Congress intends for the Act to cover discriminatory pension practices–regardless of whether an employee seeks redress

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Andrews of New Jersey, a Subcommittee Chair of the Education and Labor Committee, also explained: "The courts have generally recognized that when the pension structure is put in place and the person gets their pension, the clock starts running, and if the time expires after that, your ability to make the claim expires after that." 155 Cong. Rec. H115.

[3] Accord *Plaut v. Spendthrift Farm*, 514 U.S. 211, 227 (1995) ("When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly").

under Title VII, the Americans with Disabilities Act, the Rehabilitation Act, or the ADEA. At the same time, the Finding indicates that Congress intends that the Ledbetter Act not allow employees to rely on the monthly issuance of pension checks to extend the charge filing period beyond the end of their employment and their entry into retirement. The House Education and Labor Committee Report explains that the language in Section 2(4) is to preserve the rule that "pension distributions would be considered paid upon entering retirement and not upon the issuance of each annuity check." H.R. Rep. No. 110-237, at 18 (2007) (emph. added), citing *Florida v. Long*, 487 U.S. 223, 239 (1988); *Maki v. Allete, Inc.*, 383 F.3d 740, 744 (8th Cir. 2004). In *Maki*, the Eighth Circuit explained "Pension checks ... are based on a pension structure that is applied only once, when the employee retires, and the pension checks merely flow from that single application." The Eighth Circuit rejected two other "options" that the defendant proposed of using the date: (1) when the "allegedly discriminatory bridging provisions were adopted by the defendant" or (2) "when the defendant stated through its Law Department that it planned to make no further amendments to the bridging provision." 383 F.3d at 744-45. Thus, *Maki* rejects the argument made by El Paso in this case that the time limit expires 300 days after the adoption of the allegedly discriminatory provisions.

In this instance, Mr. Tomlinson filed his classwide age discrimination charge with the EEOC on June 16, 2004 and did not retire until nearly 3 years later. Mr. Tomlinson charged that "[a]s a result of the conversion from the old pension plan to the new plan, older workers will be denied new pension benefit accruals for a long period." He alleged that the earliest act of discrimination occurred on "1/01/2002" and that the latest act of discrimination prior to his charge took place on "5/31/2004." Dkt. 229-6 (Ex. E).

As this indicates, Mr. Tomlinson was still an active El Paso employee when he filed his charge. As such, he should have been earning additional pension benefits in the form of "pay credits" for each quarter of his employment. Section 4.1(a) of the Plan document provides for these pay credits, calculated as a percentage of pay, to be credited quarterly to a "cash balance" account for retirement. Dkt. 221-2 (Ex. 1). As this Court recognized in its first decision in this case, "it is far from clear that the hypothetical payments made to older employees' cash balance accounts (or 'pay credits' attributed to these accounts) should qualify as a 'cost incurred' under §623(f), especially if the company knows that the vast majority of older workers will never cash in these 'payments' but will rather elect the (now-frozen) benefits they had earned under the old plan." 2007 WL 891378, *2.

Mr. Tomlinson's employment relationship with El Paso ended on April 30, 2007. Dkt. 229-7 (Ex. F). On May 1, 2007, he started receiving the retirement benefits that he charged were discriminatorily denied the quarterly "pay credits" which were hypothetically credited since January 1, 2002. *Id*. As a result, the Finding in Section 2(4) that the Act is not intended to extend the charge-filing period beyond the end of the employment relationship and the employee's entry into retirement presents no barrier to the timeliness of his charge. Indeed, Mr. Tomlinson's EEO charge was filed nearly 3 years before the last application of El Paso's discriminatory pension design to his compensation and the beginning of his pension benefits.

## IV. This Court's January 21, 2009 Decision Relied on *Ledbetter*, and Not *Morgan*, Because *Ledbetter* Addressed Compensation Practices and Substantially Narrowed *Bazemore*; the "Discrete Acts" in *Morgan* Involved Sexual Harassment.

El Paso seeks to place some distance between this Court's January 21, 2009 decision and *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 127 S.Ct. 2162 (2007), by arguing that the Supreme Court's decision in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) "was not overturned by the Ledbetter Act" and that "the Supreme Court's holding in *Morgan* that the continuing violation doctrine may not be applied to discrete acts still remains good law." Notice of Intent (Dkt. #317) at 2; accord Opp. at 3, 8-9.

El Paso's argument plays upon a false distinction between *Ledbetter* and *Morgan*, acting as though *Ledbetter* did not involve "discrete acts" and so the legislative reversal of *Ledbetter* leaves *Morgan* intact. In fact, the *Ledbetter* decision borrowed the concept of "discrete acts" from *Morgan,* which was a sexual harassment/hostile work environment case, and extended it to discriminatory individual decisions about Ms. Ledbetter's compensation. 127 S.Ct. at 2165 and 2169.

Most critically, however, this Court's January 21, 2009 decision did not rely on *Morgan.* It relied on *Ledbetter.* This Court found that *Ledbetter* had distinguished *Bazemore v. Friday*, 478 U.S. 385 (1986), on the basis that the perpetuation of the individual decisions about Ms. Ledbetter's compensation occurred pursuant to a "facially nondiscriminatory and neutrally applied" pay structure, and not a "facially discriminatory pay structure that put[] some employees on a lower scale because of race" as was at issue in *Bazemore*. 127 S.Ct. 2173-74. By contrast, *Morgan* describes *Bazemore* as "a pattern-or-practice case" and in footnote 9 states that "[w]e have no occasion here to consider the timely filing question with respect to 'pattern-or-practice' claims brought by private litigants as none are at issue here." 536 U.S. at 112 and 115 n.9. For these reasons, this Court believed that *Ledbetter*, and not *Morgan*, had implicitly overturned the Tenth Circuit's precedents on pattern-or-practice cases, including *Thiessen v. GE Capital Corp*, 267 F.3d 1095, 1105 (10th Cir. 2001), cert. denied, 536 U.S. 934 (2002), and *Furr v. AT&T Technologies*, 824 F.2d 1537, 1543-44 (10th Cir. 1987).

In enacting the Ledbetter Act, Congress made a clear legislative determination that the Supreme Court's *Ledbetter* ruling was "unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress." P.L. 111-2, Section 2(1). Accordingly, the Ledbetter Act effectively reversed the Supreme Court's narrowing of *Bazemore* to "facially discriminatory pay structures" and instead provided that an unlawful employment practice occurs "when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice." *Id*., Sections 3 and 4.

At bottom, the issue now is whether Wayne Tomlinson's charge of discrimination is timely under Section 7(d) of the ADEA, as amended by the Ledbetter Act. Plaintiffs respectfully submit that Mr. Tomlinson's charge of age discrimination is timely because "each time" El Paso applied its "wear-away" plan design to Mr. Tomlinson's quarterly"pay credits" constituted an act of age discrimination. Mr. Tomlinson's charge is also timely under the intent expressed in Section 2(4) that "pension distributions [are] considered paid upon entering retirement" because Mr. Tomlinson did not enter retirement until May 1, 2007.

El Paso's arguments are by contrast internally inconsistent. In the first part of its opposition, El Paso appears to agree, based on Section 2(4) of the LLFPA and the House Committee Report, that pension distributions are considered paid upon retirement for charge-filing purposes. Opp. at 4-7 and 10-12. However, in other places, El Paso seems to argue, based on *Morgan*, that Mr. Tomlinson's time for filing an EEOC charge continues to run exclusively from "El Paso's adoption of the cash balance plan." Opp. at 8; *id*. at 10 (charge was not filed "within 300 days of El Paso's discrete act of amending the plan"). Both of these positions cannot be true; the former is supported by the Ledbetter Act and its Findings; the latter is discredited by the terms of Section 7(d) of the ADEA, as amended.

Defendants complain further that Plaintiffs' motion to alter or amend does not contain "admissible evidence that they were 'affected by application of a discriminatory practice' within 300 days of filing" and does not adequately "explain how the language of the statute actually applies to a wear-away claim."

Opp. at 8 and 11. This Court already recognized, however, that "each quarter the employee earns 'pay credits' based upon a percentage of their salary" and that "for some workers overall benefits did not grow until the cash balance benefits caught up to and exceeded the 'frozen' benefits due under the old formula. This period is commonly referred to as a 'wear away.'" Slip Op. at 2-3. There was no reason for Plaintiffs to repeat that in their motion to alter or amend. Moreover, both before and after the Ledbetter Act, the untimeliness of a charge remains an affirmative defense. See *Zipes v. TWA*, 455 U.S. 385, 393 (1982); *DeWalt v. Meredith Corp.*, 288 Fed. Appx. 484, 490 (2008). In this instance, even though Section 7(d) has indisputably been amended, Defendants have made no effort to set forth evidence of how the application of the wear-away design to Mr. Tomlinson's quarterly "pay credits" can possibly fall outside the terms of the amended statute.

## V. An Opposition to a Rule 59(e) Motion Is Not the Place for an Opposing Party to Move to Alter or Amend the Judgment; In Any Event, Section 4(a) of the ADEA Is Not Preempted by Section 4(i); El Paso's Wear-Away Design Does Not Comply with Either Section 4(a) or Section 4(i).

In its Opposition, El Paso advances a new argument that Mr. Tomlinson's charge is not "cognizable" under the ADEA because ADEA Section 4(i) effectively forecloses any action under Section 4(a) related to benefit accruals. El Paso then argues that this Court already dismissed Claim III under statutory language identical to Section 4(i). Opp. at 12-16. El Paso did not make this argument in: (1) its March 2005 motion to dismiss, (2) its May 2007 motion for judgment on the pleadings, (3) its April 2008 motion for summary judgment on the timeliness of Mr. Tomlinson's charge, or (4) its May 14, 2008 motion for partial summary judgment. It is true that this Court's March 28, 2008 opinion specifies that El Paso's April 2008 motion was to be "limited to the ADEA statute of limitations issue." 2008 WL 762456, *9. But this Court did not prevent El Paso from making its ADEA Section 4(i) argument in its March 2005 motion to dismiss, its May 2007 motion for judgment on the pleadings, or its May 14, 2008 motion for partial summary judgment. El Paso's ADEA Section 4(i) argument (which is reiterated in the "amended motion for summary judgment" that El Paso filed on the same day) is therefore a dispositive motion made long after the July 14, 2008 deadline established by Magistrate Judge Shaffer for dispositive motions. Dkt. #199. If this Court were to rely on El Paso's new argument, it would alter or amend the judgment even though El Paso did not file a Rule 59(e) motion or any timely dispositive motion on this ground.

El Paso's argument is, moreover, without merit. As this Court recognized, the "wear-away" claim relates to the receipt of benefit accruals (older workers "will never cash in these 'payments'") rather than the benefit accrual formula.

Although Plaintiffs did not agree with these rulings, this Court has already ruled that the rates at which benefits are accruing under El Paso's cash balance formula satisfy the anti-backloading rules (Claim II) and the anti-rate-reduction standard in ERISA Section 204(b)(1)(H) (Claim III). This Court has not decided whether the failure of El Paso to actually pay older employees those "pay credits" satisfies the age discrimination standards in Section 4 of the ADEA. In *Engers v. AT&T*, 2007 WL 958472, *2-3 (D.N.J. 2007), Judge Chesler examined the statutory language and the legislative history in connection with another wear-away claim and concluded that "there may be circumstances in which claims of discriminatory pension accruals will be resolved outside of Section 4(i)."[4] As is true here, he also determined that AT&T had never shown its compliance with Section 4(i) with respect to that claim. In *George v. Duke Energy Retirement Plan*, 560 F.Supp.2d 444, 463 (D.S.C. 2008), Judge Harwell ruled that "the *Smith* [*v. City of Jackson*] case specifically holds that disparate impact claims were permitted under the ADEA" and therefore that they can be brought under Section 4(a)(2). As a result,

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[4] In so holding, Judge Chesler relied on a 1990 Senate Report which states, "In circumstances in which the provisions of section 4(i) are inapplicable, claims of discriminatory accruals or pension credits in defined benefit and defined contribution pension plans shall continue to be resolved under section 4(f)(2) as modified by these amendments." 2007 WL 958472 *3. The quoted language also appears in the House Education and Labor Committee Report. See H.R. Rep. 664, 101st Cong., 2d Sess., at 35-36, 1990 WL 200383 (Leg.Hist.).

he concluded that the "wear-away" effect experienced by employees over the age of 40 states a disparate impact claim. Finally, in *Kentucky Ret. Systems v. EEOC*, 128 S.Ct. 2361, 2365, 2368 (2008), the Supreme Court analyzed an age discrimination claim concerning a formula for "calculating" retirement benefits with "imputed years" of service for disability without once discussing any possible preclusion by the benefit accrual rules in ADEA Section 4(i).

Even if a cessation of benefits was somehow not "cognizable" under Section 4(a) of the ADEA, Plaintiffs' wear-away claim could be recognized under Section 4(i) because El Paso's wear-away design "requires or permits...the cessation of an employee's benefit accrual...because of age." El Paso's argument that Section 4(i) blocks any claim of age discrimination under Section 4(a), but still does not make a cessation in benefit accruals unlawful relies more on sophistry than logic.[5] In particular, Defendants seem to play on the fact that the Court previously dismissed Claim III which was brought under ERISA

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[5] Defendants rely on *Hurlic v. So. Cal. Gas Co.*, 539 F.3d 1024, 1035-37 (9th Cir. 2008). But *Hurlic* is distinguishable because the plaintiffs were pursuing an action under the California Fair Employment and Housing Act (FEHA) which has no counterpart to ADEA Section 4(i). Thus, the Ninth Circuit panel could not decide whether Section 4(i) covered Hurlic's wear-away claim because Section 4(i) was not before it. In *Northwest Airlines, Inc. v. Phillips*, 2009 U.S. Dist. LEXIS 8672 *24-28 (D. Minn. 2009), there was no "wear-away" claim; the district court simply decided that the defendant pilots had offered insufficient proof that a cessation in accruals was because of age.

§204(b)(1)(H), pursuant to nearly identical statutory language to ADEA §4(i). Opp. at 12 and 16. Defendants overlook, however, that Claim III was not about "wear-aways," as this Court's March 22, 2007 opinion shows. See 2007 WL 891378 *3. The wear-away claim is set forth in Claim I. This Court refused to dismiss Claim I in the March 22, 2007 opinion because the "pay credits attributed" to older employees' cash balance accounts could not "qualify as a 'cost incurred' under §623(f)" where "the vast majority of older workers will never cash in these 'payments.'" 2007 WL 891378 *2. On January 21, 2009, this Court dismissed Claim I but solely on the timeliness ground which is the subject of the present motion.

## VI. El Paso's Effort to Block Approval of Plaintiffs' Renewed ADEA Notice With the Newfound Theory that No One "Actually Experienced a Wear-Away" Also Falls Short.

This Court's March 28, 2008 decision directed El Paso to promptly file any motion on timeliness and stated that "[i]n the event I determine that the charge was timely filed or that there are genuine issues of fact about the timeliness, Plaintiffs may resubmit the ADEA collective action notices and consent forms for my approval." 2008 WL 762456 at *9. El Paso had already opposed the notice and consent forms that Plaintiffs submitted. Dkt. #126, 127. At the Court's direction and in response to that opposition, Plaintiffs amended the class definition to "limit the class to individuals whose benefits were subject to a wear away period." *Id*. at *8.

However, now, in addition to its 16-page opposition to the motion to alter or amend, El Paso has filed a separate 6-page response to the request for approval of the ADEA collective action notice and consent form which Plaintiffs renewed in their motion to alter or amend. Dkt. #326. That response furthermore incorporates part of a 24-page "amended motion for summary judgment" filed on the same day. El Paso's response, combined with that "amended motion," offers an argument against approval of the ADEA notice that is different than anything El Paso has offered previously. This time, astonishingly given the record in this case and all of its prior statements, El Paso asserts that "none of the Plaintiffs experienced a benefit freeze" and that no one (including both the named Plaintiffs and any other employees) "actually experienced a wear-away." Opp. at 5 and S.J. Memo (dkt. #325) at 2. Obviously, El Paso's new assertions are totally at odds with its prior positions. Indeed, El Paso's motion for partial summary judgment on the SPD claim was based on both parties' assertion, which this Court adopted, that "for some workers, overall benefits did not grow until the cash balance benefits caught up to and exceeded the 'frozen' benefits under the old formula. This period is commonly referred to as a 'wear away'." Slip Op. at 3. In ruling against Plaintiffs on the SPD claim, this Court further agreed with El Paso that "[t]he [1999] bar graph clearly shows the wear away effect, as it shows both the frozen old benefit and the growing cash balance plan benefit at several intervals." *Id*. at 15.

Now, El Paso says that wasn't really true and that "no wear-away exists" (dkt. #325 at 12) because if one looks at the named Plaintiffs' pension benefits from a different perspective, i.e., based on their "immediate value" or "actually payable value," the "frozen" benefits were really "growing" after all. This argument is based on a contortion of the fact that if an individual is entitled to a retirement benefit of $1,000 per month, the "present value" of that entitlement increases each year–even if the monthly amount is completely frozen (the increases in present value occur, moreover, whether or not an individual is employed).

Simply put, El Paso's new theory totally neglects to address the fact that the quarterly "pay credits" for older workers like Mr. Tomlinson are still not being paid, sometimes for periods of employment with El Paso in excess of 10 years, whereas they are being paid to relatively younger employees. If El Paso wishes to advance its newfound theory later, and the Court permits yet another motion to dismiss/motion for summary judgment, Plaintiffs will address it fully and show that even El Paso's own actuarial and statistical experts are unwilling to support it.

As a result, El Paso is now principally relying on a declaration from an actuary who was not designated as one of its experts. Indeed, the only actuary who El Paso can evidently find to support its new theory is the Mercer actuary who advised El Paso on the discriminatory wear-away design in the first place. See Dkt. 325-8 (Declaration of Kevin Minor).[6]

**Conclusion**

For the foregoing reasons, Plaintiffs respectfully request that their motion to alter or amend the judgment entered on January 23, 2009 be granted and that this Court approve the ADEA notice of collective action and consent form.

DATED: March 3, 2009

Respectfully submitted,

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[6] This is the second substantive Declaration from Mr. Minor that El Paso has submitted in this case even though El Paso did not designate him as an expert. In his previous Declaration Mr. Minor found wear-aways. Dkt. 130-2 at 4 and 6 (“Whether a particular employee in the proposed class experienced wear-away...depends heavily on the combination of that participant’s age and years of service”; “Some employees included in the proposed class did, in fact, experience the wear-away described in Plaintiffs’ Complaint”).

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Attachment: H.R. Rep. No. 110-237.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this 3rd day of March 2009, a true and correct copy of (1) Plaintiffs' Reply Memorandum in Support of Motion to Alter or Amend Judgment Entered on January 23, 2009, and (2) this Certificate of Service was sent via CM/ECF electronic filing, addressed to the following parties:

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