

Preliminary Rebuttal Report on the Impact of Amending the Defined Benefit Retirement Plan to the Cash Balance Pension (CBP Select) on Older Employees

In re:

Wayne Tomlinson, Alice Ballesteros, and Gary Muckelroy, individually and on behalf of all others similarly situated, v. El Paso Corporation and El Paso Pension Plan
Civil Action No. 4-cv-02686-WDM-CBS
United States District Court
for the District of Colorado

Prepared for

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Context and Preliminary Findings

Context of the Report

This is a preliminary rebuttal report responding to defense experts' reports: *Statement of Qualifications and Report of Findings in Wayne Tomlinson et al v El Paso Corporation and El Paso Pension Plan, Pursuant to Federal Rule 26*, submitted by Michael P. Ward on April 15, 2008; and *In re El Paso Energy Corporation Pension Plan: Expert Report of Ian H. Altman, FSA*, submitted on the same day. I previously submitted a report in this litigation, *Preliminary Report on the Impact of Amending the Defined Benefit Retirement Plan to the Cash Balance Pension (CBP Select) on Older Employees*, also submitted on April 15, 2008.

The current report includes a brief overview of issues related to the two defense experts' reports, but is limited because defendants have not produced the spreadsheets or calculations that their experts used in preparing their reports. This report may be revised and supplemented when additional information is produced by defendants.

Data and Analytic Deficiencies in Dr. Ward's Report

Dr. Ward lists in his report a number of analyses that he performed. However, since he has not provided the data, computer programs, or computer output for his analyses, they cannot be replicated or tested:

1. In paragraph 8, Dr. Ward describes the method he used to select the subset of 2,904 employees on which he based his analyses. Dr. Ward has not provided the analytic methods or results to verify this selection process.
2. In paragraph 9, Dr. Ward describes a multi-stage process that he used to exclude 648 of the 2,904 employees because "they had special circumstances that made the computation of their retirement benefits impossible." It is not practical to verify or replicate the exclusions Dr. Ward advocates without access to his data, computer code, and results.
3. In paragraph 10, Dr. Ward states that he and his associates "calculated the minimum and transition benefit values at the start of the transition period" but that "benefits for some employees could not be readily determined." Without the data and methodology that Dr. Ward used, it is not possible to test or replicate the difficulties that he encountered in calculating benefits.
4. In paragraphs 10 and 11, Dr. Ward discusses one particular complication in estimating benefits that results from the impact of social security benefits on Sonat and Coastal benefits. As a result, Dr. Ward is forced to rely on an ad hoc method of determining whether his estimates are acceptable, excluding from his analysis employees for whom his estimates "differed more than 10% from the actual value shown in the data." He does not specify where he found the actual value in the data or why he did not simply use those actual values. In paragraph 11, Dr. Ward states that he excluded an additional group of El Paso employees for whom "our calculations differed more than 5%" from the actual values." Again, he does not specify where he found the actual values or why he did not use them. It is not possible to test or replicate his results without detailed backup data and computer files documenting these procedures.
5. In paragraphs 27 and 28 Dr. Ward applies early retirement benefits, but fails to state clearly that these benefits apply only to employees still active when they reach age 55. Complete data and documentation of methodology is required to test whether Dr. Ward erroneously applied early retirement benefits to all older workers. This concern is raised again in paragraphs 38 through 41 where Dr. Ward calculates the average benefit for older and younger employees, since these

calculations may be tainted by the same improper interpretation of early retirement benefits.

6. An additional problem is raised in paragraphs 38 through 41 where Dr. Ward clearly states that he applies a different method of calculating growth in benefits, depending on the age of the employee. He states that he calculates “the *average annual dollar increase of the cash balance benefit* for younger workers” and compares it to the “*increase in early retirement benefit* for the same period for workers age 40 or over” (emphasis added). Again, Dr. Ward fails to provide the data and details of computations necessary to replicate his results.
7. In paragraphs 34 through 41, Dr. Ward attempts to rebut the age claim in this litigation by comparing benefits accrued by older and younger employees. Dr. Ward puts a statistical gloss on his comparison in paragraphs 38 and 39. However, he provides no backup data or calculations for the values that he computes: \$6,861 average increase per year of service for younger employees versus \$16,081 for older employees. Without this documentation, the validity of the statistical comparison in paragraph 41 cannot be checked. These concerns are in addition to egregious flaws likely in Dr. Ward’s methodology, the evidence for which is detailed in plaintiffs’ expert Claude Poulin’s declaration submitted May 15, 2008.

Data and Analytic Deficiencies in Mr. Altman’s Report

Defendants produced an additional expert report in this litigation, entitled *In re El Paso Energy Corporation Pension Plan: Expert Report of Ian H. Altman, FSA*. Mr. Altman’s report suffers from the same lack of backup data and documentation found with Dr. Ward’s report.

In addition, Mr. Altman’s results have little relevance to this litigation. All of his presentations compare populations of older and younger employees as groups, and then apply stereotypical factors to each group to compute benefits. As a result, his presentations have no probative value regarding costs incurred by the defendant for individual employees. Mr. Altman’s observation that a preponderance of benefit costs can be attributed to older employees is an artifact of the age of the work force and the stereotypical factors he employs to compute benefits, and is not demonstrative regarding the cost of benefits for individual older employees.

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