For Dockets See 09-3637

United States Court of Appeals, Seventh Circuit.
Grant **WALKER**, individually and on behalf of all others similarly situated, et al., Glynn Davis, individually and on behalf of all others similarly situated, et al., Fred Donaldson, individually and on behalf of all others similarly situated, et al., Plaintiffs-Appellants,
v.
MONSANTO COMPANY PENSION PLAN, et al., Solutia Incorporated Employees Pension Plan, et al., Pharmacia Cash Balance Pension Plan, et al., Defendants-Appellees.
No. 09-3637.
March 12, 2010.

Appeal from the United States District Court for the Southern District of Illinois, in Case No. 04-cv-436, consolidated with Case Nos. 05-cv-736, 06-cv-3, and 06-cv-139, The Honorable J. Phil Gilbert

Brief and Supplemental Appendix of Defendants-Appellees

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Not applicable

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INTRODUCTION

In 1997, Monsanto Company ("Old Monsanto") restructured its pension programs, converting them to a new plan design known as a "cash balance plan." A cash balance plan uses hypothetical accounts to represent the pension benefit of each participant, expressed so that its value is readily understood, similar to a defined contribution plan. A cash balance plan, however, does not create actual individual participant accounts. Rather, all of the plan's assets are held in trust for all employees, and the employer is responsible for ensuring that the assets are sufficient to pay all promised benefits. Accordingly, a cash balance plan is a "defined benefit plan" under ERISA.

In the new plan, Old Monsanto established two hypothetical accounts for its employees: one reflecting only new benefits to be earned going forward, and a second preserving the age-65 benefits that employees had already earned as of the time of the conversion. Only this second account, called the "Prior Plan Account," is at issue in this case.

After the conversion, employees had the right to receive their Prior Plan Account benefits upon termination of their employment, regardless of age. All employees could receive the full age-65 benefit ten years early, at age 55, while employees under 55 could receive a discounted benefit. Therefore, the Prior Plan Accounts of employees age 55 or older at the

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time of the conversion had balances reflecting the full amount of the benefits they had earned as of that date, and employees not yet 55 were shown a discounted amount they could receive if they wanted to take their benefits early. Each year, if an employee under 55 did not elect to receive the benefit, the amount of the discount for that year was credited back to the account. Employees who waited until age 55 or later to receive their benefit would see the discount on their Prior Plan Account restored to the full, undiscounted age-55 amount.

As explained below, the way the Prior Plan Account operates is not controversial. Providing benefits with an early retirement distribution option is lawful. Discounting the amount the employee receives if he or she takes the benefit early is lawful. Showing employees under age 55 the current (discounted) value of exercising their early retirement option is also lawful.

Nonetheless, because the plan uses the phrase “interest credits” to describe how the early retirement discount on the Prior Plan Account phases out as employees age toward 55, Plaintiffs brought this class action suit. Seizing upon the label “interest,” Plaintiffs mischaracterize the amounts credited back to the Prior Plan Account each year until age 55 as “new” benefits being added by the employer. Based on that mischaracterization, Plaintiffs assert that it is age discrimination to cease reversing the discount at age 55, even though, at that point, the early retirement discount is eliminated.

The district court correctly saw the interest credits for what they are: the lawful restoration of an early retirement discount. They add no new benefits to the Prior Plan Account, as the plan documents make clear. Because these amounts are not new benefits, they are not “benefit accruals,” and ERISAs prohibition against ceasing benefit accruals because of age does not apply. Likewise, as seen from the plan documents, the credits do not cease “because of age,” but rather because of pension status. The credits stop at age 55 because, once the employee reaches age 55, the discount has been fully restored. For these reasons, the district court properly entered summary judgment for Defendants.

Plaintiffs' claims fail for two additional reasons preserved by Defendants, although not reached by the court below. First, ERISA instructs that the amount of an early retirement subsidy should be disregarded when examining a plan to determine whether there has been age discrimination. Here, if one disregards the early retirement subsidy, there is no age discrimination claim. Second, Plaintiffs' claims are time-barred.

JURISDICTIONAL STATEMENT

The jurisdictional statement of Plaintiffs-Appellants is complete and correct.

ISSUES PRESENTED FOR REVIEW

1. Are credits to an ERISA plan's hypothetical account “benefit accruals” within the meaning of ERISA § 204(b)(1)(H)(i), where they add no new value to a participant's “accrued benefit” but merely restore an early retirement discount?

2. When credits that restore an early retirement discount to a hypothetical account cease when the discount is fully restored at age 55, is the cessation of those credits discrimination “because of ... age” within the meaning of ERISA § 204(b)(1)(H)(i)?

3. Are Plaintiffs' claims foreclosed by ERISA § 204(b)(1)(H)(v), which requires that early retirement subsidies be disregarded in determining whether a plan provision discriminates because of age?

4. Are Plaintiffs' ERISA age discrimination claims, the earliest of which were brought more than seven years after their claims accrued, barred by the applicable statute of limitations?

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STATEMENT OF THE CASE

Plaintiffs filed the first of these consolidated cases, *Walker v. Monsanto Company Pension Plan*, No. 04-436-DRH, on June 23, 2004. Subsequent actions were filed in *Davis v. Solutia Inc. Employees' Pension Plan*, No. 05-736-DRH (October 12, 2005); *Donaldson v. Pharmacia Cash Balance Pension Plan*, No. 06-03-GPM (January 3, 2006); and *Hammond v. Solutia Inc. Employees' Pension Plan*, No. 06-139-DRH (February 15, 2006). All of these cases were related because they asserted substantially identical claims based on the defendant pension plans, all of which, as a result of corporate restructuring, were successors to a single plan first adopted by Old Monsanto on January 1, 1997. The cases were consolidated on September 1, 2006, and Plaintiffs filed a consolidated complaint (the "Complaint") on September 4, 2006.

The Complaint asserted several claims under the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. § 1001, *et seq.* ("ERISA"). (R.139.)[FN1] Counts I-III alleged that the plans violated ERISA § 204(b)(1)(H)(i) because interest credits cease on the Prior Plan Account at age 55. Counts IV-VI alleged that the plans violated ERISAs anti-backloading provisions. Counts VII-IX alleged the same theory later rejected by this Court in *Cooper v. IBM Pers. Pension Plan*, 457 F.3d 636 (7th Cir. 2006). Count X, brought against only one plan, alleged an improper calculation of post-termination interest on lump sum distributions delayed by administrative processing time.

FN1. Materials not reproduced in any appendix in this Court will be cited by district court docket number, R. ___. Material reproduced in an appendix will be cited by appendix page: App. ___ (Appellants' required short appendix), JA ___ (separately bound Joint Appendix), and SA ___ (Supplemental Appendix attached to this brief).

The district court granted the Defendants' motion for judgment on the pleadings as to Counts VII-IX on September 13, 2007. Plaintiffs stipulated to the dismissal of Counts IV-VI on September 27, 2007. As to the remaining counts, the district court certified the consolidated cases as a class action on May 22, 2008.

With respect to Counts I-III and Count X, the parties agreed that no material facts were in dispute and filed cross motions for summary judgment. On May 6, 2009, the district court held a three-hour hearing at which the parties orally presented their arguments and answered questions. (R.322.)

On June 11, 2009, the district court granted summary judgment for the Defendants (and denied Plaintiffs' corresponding motion) as to Counts I-III, which are the only claims at issue on appeal. The district court held that the Plan's cessation of the interest credits at age 55 does not violate ERISA § 204(b)(1)(H)(i) for two reasons: (1) the credits are not "benefit accruals" because they do not increase the value of participants' accrued benefits but merely restore an early retirement discount applied to already-earned benefits; and (2) the credits do not cease because of age, but rather because the discount is fully restored at age 55.

Also on June 11, 2009, the district court granted summary judgment in favor of Plaintiffs with respect to liability on Count X. Subsequently, the Plaintiffs and the Defendants against whom Count X had been asserted stipulated to the amount of damages, and the district court entered its final judgment on September 29, 2009. This appeal followed.

STATEMENT OF FACTS

I. The Development and Implementation of the New Plan.

A. Conversion to a Cash Balance Plan.

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Effective January 1, 1997, Old Monsanto restructured its existing pension programs, converting them to a single plan with a "cash balance plan" design.[FN2] (JA9, 12.) Like other defined benefit plans, cash balance plans specify a promised benefit. But they express the promised benefit in the form of an "account," similar to a defined contribution plan, such as a 401(k) plan. However, cash balance plans create no actual separate account for individual employees. Rather, they use hypothetical bookkeeping accounts (sometimes referred to as "notional" accounts) that reflect the benefit promised to each employee in the easily understood format of an account balance. *See Berger v. Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755, 757-58 (7th Cir. 2003) (describing cash balance plans).

FN2. As a result of corporate restructuring, Old Monsanto's plan became three distinct plans--the Monsanto Company Pension Plan, the Pharmacia Cash Balance Pension Plan and the Solutia Inc. Employees' Pension Plan--all of which are at issue in this case. The plan provisions at issue here are identical. (Br. 5.) For convenience, all three plans are collectively referred to as the "Plan."

In the new cash balance plan, Old Monsanto created two hypothetical accounts for each employee: a "Cash Balance Account" for employees' new benefits, and a "Prior Plan Account" for employees' already-earned benefits. (JA31-37, Plan §§ 6.2, 6.3.) This lawsuit concerns only the operation of the Prior Plan Account. (Br. 5.)

1. Determining the Prior Plan Account's Initial Balance.

ERISA protected the already-earned benefits (accrued benefits) of employees who had participated in prior pension plans.[FN3] ERISA § 204(g). Certain features of the old pension plans provide helpful background for understanding how the new Prior Plan Account preserved those accrued benefits.

FN3. The "accrued benefit" is the benefit under a plan expressed in terms of a single life annuity payable at age 65. ERISA § 3(23).

First, Old Monsanto's prior pension plans expressed an employee's accrued benefit as a monthly annuity beginning at age 65, not as a lump sum payable at one time. (R.284 Ex. A ¶¶ 4-5.) For example, an employee who retired at age 55 might be entitled to receive $1,000 per month starting at age 65 until she died. If she continued to work beyond age 55 and earned additional benefits, then the monthly annuity available to her starting at age 65 would be greater than $1,000.

Second, some of the prior plans provided a discounted early retirement option to employees. (R.284 Ex. A ¶¶ 6-7.) If employees retired early and wanted to begin receiving their benefits before age 65, they could do so as early as age 55. (*Id.* ¶ 6.) In that event, the payments would be discounted by 3% for each year that the employee's age was less than 65 to reflect the longer payment stream. (*Id.*) For example, if our 55 year-old employee was entitled to a monthly annuity payment of $1,000 at age 65, but retired and elected to begin receiving payments at age 55, her $1,000 per month payment would be discounted by 30% (3% x 10 years) to $700 per month. The prior plans did not permit retirees to begin receiving payments before age 55. (*Id.*)

Finally, some of the prior plans also provided for an *undiscounted* early retirement option. (R.284 Ex. A ¶¶ 8-9.) The undiscoimted early retirement option provided the employee the full age-65 benefit even before the employee reaches age 65. (*Id.*) Such an option subsidizes early retirement. (*Id.*) The undiscounted, fully-subsidized early retirement option, known as "Combo 80," was available only to employees whose combined age and years of service with Old Monsanto equaled or exceeded 80. (*Id.* ¶ 8.) If the same 55-year-old employee described above had 25 years of service, and hence was Combo 80 eligible, then she could begin receiving the full $1,000 monthly payments at age 55, rather than either waiting until she turned 65 or taking the discounted $700 per month available to employees who were not Combo 80 eligible.

The new cash balance plan's Prior Plan Account was designed to preserve employees' accrued benefits, taking each of

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these features into account. (R.284 Ex. A 11, 24-29.) In importing these prior plan benefits into the Prior Plan Account, Old Monsanto improved the early retirement options and made the preserved benefits easier to understand in the context of the new Plan format.

To begin, the benefits earned under the old plans were expressed to employees in the new Plan as a lump sum, instead of an annuity. (R.284 Ex. A ¶¶ 22-23, Ex. H at MSP 673; SA6, 14, 19.) Showing the lump sum value of the prior benefits paralleled the lump sum value of the new cash balance plan benefits, making it easier for employees to calculate and understand their total benefit. (*Id.*)

In addition, the undiscounted, subsidized early retirement option in the prior plans was expanded to include all participants, not just those who were Combo 80 eligible. (R.284 Ex. A ¶ 25; SA6, 15, 33.) As a result, all employees were credited with the full age-65 benefit at age 55, without any discounting. (*Id.*)

Last, a discounted early retirement option was made available to participants even before age 55. (R.284 Ex. A ¶ 26; SA6, 14.) Under the prior plans, no benefits could be received before age 55. (R.284 Ex. A ¶ 6.) Following conversion, an employee could collect benefits prior to age 55, but the benefit would be discounted by 8.5% for each year the participant was younger than age 55. (R.284 Ex. A ¶¶ 27-28, Ex. E at MSP 3575-77; SA15, 40-41.)

Accordingly, Old Monsanto calculated the initial balance of the old plan benefits preserved in the Prior Plan Account in three steps. First, the age-65 annuity benefit earned as of January 1, 1997 was converted to a lump sum by multiplying it by an annuity conversion factor of 125. (R.284 Ex. A ¶ 28, Ex. E at MSP 3575-77.) Second, the lump sum was treated as payable in full at age 55 as an undiscounted, *i.e.*, subsidized, early retirement benefit. (*Id.*) Thus, for employees who were already age 55 or older on the date of conversion, the opening balance of their Prior Plan Accounts was the full, undiscounted value of their age-65 benefits already earned under the prior plans. (*Id.*) Third, to reflect the discounted early retirement option available for employees younger than age 55, § 6.2(b) of the new Plan discounted the lump sum at a rate of 8.5% per year for each year the employee was younger than 55:

The Prior Plan Account ... shall, as of January 1, 1997, be credited with an amount equal to the Actuarial Equivalent lump sum value of the Participant's Predecessor Plan Accrued Benefit ... *discounted using an interest rate of eight and one-half percent per annum* for each month, if any, by which the Participant's age as of January 1, 1997 precedes age 55.

(JA32, Plan § 6.2(b) (emphasis added).) The initial Prior Plan Account balance for employees younger than 55 was thus a discounted portion of their accrued benefit.

Plaintiffs do not complain about the calculation of the initial Prior Plan Account balance, or the discounting that was applied to balances of employees under age 55. They do not deny that the initial Prior Plan Account balances accurately preserved employees' accrued benefits.

2. Restoring the Discount to Prior Plan Accounts.

Going forward from the January 1, 1997 date of conversion, the Plan restored the 8.5% discount that had been applied to the Prior Plan Account balances of employees younger than 55. Just as § 6.2(b) of the Plan explicitly provided for the initial discounting at an 8.5% "interest rate," § 6.2(d) of the Plan explicitly provided for a mirror image 8.5% "interest credit" to restore the annual discount as employees aged and elected not to take early retirement:

For each month prior to ... age 55 or [the Participant's] Annuity Starting Date, a Participant's Prior Plan Account shall be credited with Interest Credits equal to the sum of (i) the Prior Plan Account on the first day of such month, and (ii) the

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Participant's Pay Credits credited for that month, if any, multiplied by 1.006822 [8.5%].

(JA34, Plan § 6.2(d).)

Section 6.2(d) thus adds “interest credits” at precisely the same “interest rate” (8.5%) that § 6.2(b) had discounted from the initial account balance. As a result, the 8.5% interest credit applies only to balances that had been discounted by 8.5% per year in the first place: balances credited to employees who were younger than age 55 when the Prior Plan Account was established. And, for the same reason, it applies only until the discount is fully restored: when the employee reaches age 55. Indeed, even Plaintiffs' experts acknowledged that the interest credits simply correspond to the early retirement discount that was calculated when the Prior Plan Account balances were first established for each employee. (R.284 Ex. N at 80, Ex. O at 35-38, 49-50, Ex. P at 82-84, Ex. Q at 39-40, 109-11; *see* SA42 (visual representation of discount and corresponding credit).)[FN4]

FN4. In addition to the 8.5% interest credits at issue here, the benefits preserved in the Prior Plan Account were also subject to annual pay credits at the rate of 4% of the then-current balance in any given year. (JA34, Plan § 6.2(c), discussed infra at 41-45.)

B. Detailed Communications to Employees.

In mid-1996, before the effective date of the plan conversion, Old Monsanto began informing its employees about the new Plan. (R.284 Ex. A ¶ 34.) Using a variety of media, it explained how the Prior Plan Account worked, that the Prior Plan Account ensured that the full value of the benefits employees had already earned under the prior programs would be preserved, and that employees were getting the benefit of expanded early retirement options. (*Id*. ¶¶ 34-35; SA6, 15, 19, 33-41.) The communications specifically explained that the 8.5% discount applied to the initial Prior Plan Account balances of employees younger than 55, and that the corresponding 8.5% credit would be applied only until employees reached age 55 because, by age 55, the discount would be fully restored. (SA6, 15, 27, 33-41.)

For example, the company gave employees personalized account statements explaining how their opening Prior Plan Account balances were calculated. (R.284 Ex. A ¶ 37; SA27.) Those account statements explained:

Your Prior Plan Account opening balance is the lump sum value of your monthly retirement benefit as of January 1, 1997 ... discounted by 8.5% for each year you are younger than age 55.... Each year that your account stays in the plan, it will grow with 8.5% interest credits, until you reach age 55, building your lump sum to its full age 55 value.

(R.284 Ex. A ¶ 38; SA27.)

Similarly, a company newsletter entitled the “Benefits Bulletin” was distributed to all employees, and several editions explained that the 8.5% interest credits would stop at age 55. (R.284 Ex. A ¶ 38.) For example, the September 1996 edition explained that the initial Prior Plan Account balances differed for employees who were at least age 55 and those who were under 55. (SA15.) For those who were at least 55, the initial balance was determined simply by multiplying the monthly annuity as of January 1, 1997 by the conversion factor. (*Id.*) For those who were under 55, the bulletin explained, “[the converted lump sum] amount is then discounted by 8.5% for each year that you are younger than age 55...” (*Id.*) It then explained that interest credits would be added at an 8.5% annual rate to the account going forward, and why:

This way, when you reach age 55, your Prior Plan Account will have increased to the value of your full benefit before it was discounted. If you are 55 or older, no interest is credited since your Prior Plan Account will not be discounted.

(*Id.*)

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In addition, a written presentation to employees directly explained "Why Prior Plan Account Interest Credits Stop at Age 55:"

A lot of people have asked about why interest credits are not added to the prior plan account after age 55. The reason relates to how the old plan works now, and the Company's intent to preserve old plan values in the new plan. . . . By crediting interest to age 55, your benefit builds back to its full value at age 55, preserving your old plan benefit.

(SA41.)

Moreover, the Summary Plan Description ("SPD") explained that the final step in determining the initial balance of the Prior Plan Account was to discount the lump sum value by "an annual interest rate of 8.5% ... for each month that you are younger than age 55" at the time of conversion to the new Plan. (JA198.) The SPD also explained that 8.5% interest credits would be applied to the Prior Plan Account balance "until you reach age 55...." (JA186.) Similar language was contained in pension benefit election guides, pension estimates, and other disclosures that Plaintiffs never disputed receiving around the time the new Plan became effective and thereafter. (R.284 Ex. A ¶ 39.)

II. Plaintiffs' Claims.

More than seven years after Old Monsanto introduced its new cash balance plan, putative class actions were filed against the successors to the Old Monsanto Plan. The cases were ultimately consolidated, and Plaintiffs filed a consolidated amended complaint ("Complaint") against all Defendants on September 4, 2006. (R.139.)

Plaintiffs asserted a variety of counts, but only three--Counts I, II, and III--remain at issue in this appeal. These three counts present an identical claim against each of the three defendant groups: Monsanto, Solutia and Pharmacia. Plaintiffs allege that "the Plan's discontinuation of [Prior Plan Account] interest credits at age 55 violates ERISA § 204(b)(1)(H), which prohibits the rate of benefit accrual and/or accrued benefits from ceasing or decreasing 'because of the attainment of any age' or 'on account of any increase in age.' " (R.139 ¶ 65.)

III. The District Court Ruling.

The district court entered summary judgment for the Defendants. (App. 16.) The district court recognized that Plaintiffs' claims depended on reading the phrase "interest credits" in § 6.2(d) "in a vacuum." (App. 7.) The court, however, was unwilling to read the phrase in isolation. (App. 8.) Considering the "context and history" surrounding § 6.2(d), which included "other portions of the Plan and ... pre-conversion materials distributed to participants and the SPD," the court concluded "the 8.5% 'interest credit' ... is not interest as the common person understands interest. Instead, the 'interest credit' represents the reversal of the discount taken from the total lump sum value of a participant's accrued benefit at the time of plan conversion." (*Id.*) In light of the clear function of the interest credits, the court ruled that the credits are not "benefit accruals" and do not cease "because of age," as Plaintiffs' claims required. (App. 8-16.)

First, relying on this Court's decision in *Cooper v. IBM Pers. Pension Plan*, 457 F.3d 636, 639 (7th Cir. 2006), the district court concluded that the credits are not a benefit accrual because a "benefit accrual" increases the value of a participant's retirement benefit. (App. 9-10.) A credit that merely "reverses the pre-55 ... discount year by year as the participant approaches 55" does not increase the value of the benefit. (App. 10.) The interest credits have no effect on the value of the benefit that any participant was entitled to claim *at age 55*, which, under the new Plan, was the age at which the full value of the previously earned benefits could be taken. (*Id.*) The interest credits merely reduce the total amount of discount taken from a particular base because the participant is (of course) aging and, hence, getting closer to 55 than when the Plan became effective in 1997. (*Id.*) The district court concluded that this case was "indistinguishable" from

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Atkins v. Northwest Airlines, Inc., 967 F.2d 1197 (8th Cir. 1992), where the Eighth Circuit held that simply reversing an early retirement discount until the point at which the early retirement discount is exhausted does not increase a participant's accrued benefit, and therefore is not a "benefit accrual" for purposes of ERISA § 204(b)(1)(H). (App. 11-12.)

Second, the district court determined that the 8.5% interest credits do not cease "because of" age. As the court recognized, numerous courts hold that a plaintiff must show that an action was taken because of age, not merely on account of a characteristic that correlates with age. (App. 14 (citing cases).) Here, "it is clear that the Plan's decision to stop awarding 'interest credits' was 'actually motivated' by the fact that the early retirement discount became fully reversed[.]" (App. 15.) Under this Plan, that point occurred "without fail when a participant turns 55" because that is the point at which the new Plan determined all participants would be entitled to receive their fully undiscounted (subsidized) accrued benefit. (*Id.*) It does not matter that the Plan referred to age 55 as the point at which the credits cease, rather than saying that they cease because the participant's Prior Plan Account had reached the point where it contained the "full early retirement subsidy [.]" (*Id.*) The undisputed record establishes that the credits cease because the early retirement discount had been fully reversed, not because of age. (*Id.*)

Having ruled in favor of Defendants on these two grounds, the district court chose not to address the two other independently dispositive arguments presented by Defendants: that Plaintiffs' claims are predicated on an early retirement subsidy, as ERISA § 204(b)(1)(H)(v) prohibits, and that their claims are time-barred. (App. 16.)

SUMMARY OF ARGUMENT

Four distinct arguments support affirming the judgment.

First, the 8.5% interest credits are not "benefit accruals," so ERISA § 204(b)(1)(H)'s prohibition against ceasing "benefit accruals" because of age does not apply. A benefit accrual adds "to the pot," *Cooper*, 457 F.3d at 641, which means that a benefit accrual increases the amount of a participant's accrued benefit.

Here, the 8.5% interest credits do not add to an employee's accrued benefit. To the contrary, the interest credits in the Prior Plan Account were necessary to preserve the *already* accrued benefits of employees. The initial balance in the Prior Plan Account for employees was determined in part by discounting their accrued benefit by 8.5% for each year, if any, they were younger than age 55. Having discounted the initial balance in the account by that amount, the 8.5% credits merely restore (as the employee ages to 55) what had been removed. The discounting and corresponding restoration of the discount in the Prior Plan Account is clear from the text of the Plan itself and was fully explained to employees in numerous documents. (JA32 (§ 6.2(b)--the discount) and JA34 (§ 6.2(d)--the restoration).) Even if the Plan's terms were ambiguous--and they are not--the objective extrinsic evidence demonstrates that the interest credits in § 6.2(d) exist merely to preserve the accrued benefits of employees whose initial Prior Plan Account balances had been discounted. *See* *Mathews v. Sears Pension Plan*, 144 F.3d 461, 466 (7th Cir. 1998) (explaining importance of objective extrinsic evidence in plan interpretation). The accrued benefit--the lump sum value the employee is entitled to receive at age 55--is unaffected by the interest credits, so those credits are not "benefit accruals."

Second, the interest credits do not cease "because of age." The credits cease because of pension status. The law is clear that if a benefit accrual ceases because of a factor that merely correlates with age, but not because of age itself, there is no violation. *Kentucky Ret. Sys. v. EEOC*, 128 S. Ct. 2361, 2366 (2008). Here, the credits cease when the discount to the initial balance is fully restored. Simply because full restoration occurs at a specified age does not change the analysis. As this Court recognized in *Cooper*, even when some other factor perfectly correlates with age, the two factors must be kept distinct. Because pension status--here, the full restoration of the age-55 accrued benefit--must be kept analytically distinct from the age--here, 55--the credits do not cease "because of age."

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Third, ERISA provides that a court should disregard early retirement subsidies when determining whether a benefit accrual ceases because of age. ERISA § 204(b)(1)(H)(v). The Plan fully subsidizes early retirement for employees by providing that all employees are entitled to the full age-65 benefit when they reach age 55 (the *undiscounted*early retirement option). The Plan also provides a *discounted* early retirement option by offering those who are under age 55 the opportunity to collect benefits, though the amount is discounted by 8.5% for each year the employee is under 55. Plaintiffs complain that the increase in the amount of benefits that an employee can collect (an increase that reflects the diminishing discount as the employee approaches age 55) stops at age 55. They believe that the increase should continue, and at the same rate, until employees reach age 65. But far from *disregarding* the early retirement subsidy, the increase in the amount of benefits an employee can collect stops at age 55 only because the Plan fully subsidizes early retirement at that point. This is precisely the age discrimination claim that ERISA § 204(b)(1)(H)(v) was designed to preclude.

Fourth, Plaintiffs' claims are time-barred because they waited more than seven years to bring them. That was too long under either of the two potentially applicable Missouri limitations periods. Plaintiffs complain of age discrimination, so the Missouri law most analogous to their claim would be Missouri's age discrimination law, which provides a two-year limitations period. Mo. Rev. Stat. § 213.055. Even if Plaintiffs' claims are treated as analogous to breach of contract, it is clear that their contract claim is for breach of a contract term *implied by law*. No contract provision requires continuation of the 8.5% interest credits beyond age 55. Plaintiffs are asking this Court to hold that ERISA implies the term. Missouri provides a five-year limitations period for such claims, Mo. Rev. Stat. § 516.120(1), leaving Plaintiffs' claims two years late.

ARGUMENT

I. The Plan Does Not Violate ERISA § 204(b)(1)(H).

ERISA § 204(b)(1)(H)(i) provides that a defined benefit plan is unlawfully age discriminatory "if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age." Thus, to prevail on their age discrimination claims, Plaintiffs must establish both that the credits at issue are "benefit accruals" and that they cease "because of" age. Moreover, they must show that the exception stated in § 204(b)(1)(H)(v)--whereby early retirement subsidies are disregarded in determining whether there is age discrimination--does not apply. Plaintiffs' claims fail each of these three steps, and each one standing alone is dispositive.

A. The 8.5% Interest Credits Are Not Benefit Accruals.

The district court correctly determined that the credits are not benefit accruals, because they do not increase the benefit that an employee had earned as of the January 1, 1997 plan conversion date. Instead, the 8.5% credits simply restore the 8.5% discounting that was built into the Prior Plan Account.

1. The Credits Do Not Increase the Accrued Benefit.

ERISA does not define the term "benefit accrual," but this Court held in *Cooper that* it means "the rate at which value is added" to an employee's benefit. ***20** 457 F.3d at 639. An amount is a "benefit accrual" only if it is an "addition to the pot," that is, a contribution that increases the amount of the benefit the employee has already earned. *Id*. at 641; *see also Hirt v. Equitable Ret. Plan for Employees, Managers & Agents*, 533 F.3d 102, 108 (2d Cir. 2008) (same); *Drutis v. Rand McNally & Co.*, 499 F.3d 608, 614-15 (6th Cir. 2007) (same); *Register v. PNC Fin. Servs. Group, Inc.*, 477 F.3d 56, 68 (3d Cir. 2007) (same).[FN5]

FN5. Indeed, this point was not disputed by the plaintiffs in *Cooper*. Rather, in that case, it was clear that the in-

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terest credits at issue *did* increase the accrued benefit, and the question then became whether the *rate* at which they were adding to the accrued benefit discriminatorily benefited younger workers over older workers.

Here, the 8.5% credits do not add to the Prior Plan Account "pot" in the sense that *Cooper* discusses. The Prior Plan Account, by its very nature, represents the accrued benefit already earned under the old plans. The annual 8.5% credits, when viewed in conjunction with the identical 8.5% discount taken for each year an employee was younger than 55 at the time of conversion, ensure that the accrued benefit always remains the same--they do nothing more than *preserve* that benefit. The credits surely add to the yearly account *balance*, but never add to the *accrued benefitir* in the account. Indeed, because the 8.5% discount was taken from the age-55 benefit amount, the 8.5% credits applied until age 55 were part of the accrued benefit participants had already earned as of the plan conversion date. And a credit that is already part of the accrued benefit cannot be a new benefit accrual. As *Cooper* instructs, an "accrued benefit" (the age-65 benefit to which an employee is entitled--the "end result") should be distinguished from "benefit accruals" (the amounts added along the way). *Cooper*, 457 F.3d at 639; *see also* ***21***Finley v. Dun & Bradstreet Corp.*, 471 F. Supp. 2d 485, 491 (D.N.J. 2007) ("Accrual is the process of accumulating, not the end result of accumulation."). The 8.5% credits are not, therefore, benefit accruals.

How the 8.5% credits add to the account balance without adding to the accrued benefit can be demonstrated using a hypothetical participant. This hypothetical was presented in Defendants' expert's report and to the district court below. (R.286 at 23-24; R.284 Ex. C at 26.) Plaintiffs have never disputed its accuracy.

Mary Doe's Prior Plan Account Progression

(a)	(b)	(c)	(d)	(e)	(f)
Year	**Age**	**Accrued Benefit (Age-65 annuity payable at 55)**	**Age-55 Lump Sum of Accrued Benefit**	**Prior Plan Account Balance at Beginning of Year/ Immediately Payable Lump Sum**	**8.5% Credit (Added to Prior Plan Account each year before age 55)**
1997	50	$1,000	$125,000	$83,131	$7,066
1998	51	$1,000	$125,000	$90,197	$7,667
1999	52	$1,000	$125,000	$97,864	$8,318
2000	53	$1,000	$125,000	$106,182	$9,025
2001	54	$1,000	$125,000	$115,207	$9,793
2002	55	$1,000	$125,000	$125,000	$0

In this example, Mary Doe is age 50 with 15 years of service at the time of conversion. Mary had earned an accrued benefit under her prior plan of $1,000 per month payable at age 65. Her opening Prior Plan Account balance would have been calculated by starting with the lump sum value of her age-65 accrued benefit: $125,000 ($1,000 x 125, the annuity conversion factor). This amount was preserved; she would always be entitled to a lump sum of $125,000 at age 65. But

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under the new Plan, she would have been credited with that full amount ten years early due to the subsidy Old Monsanto applied--so after conversion she became entitled to a ***22** lump sum of $125,000 at age 55. But Mary Doe is only 50 at conversion, and in order to express her accrued benefit as a *current* account (available to her at age 50), her balance would have been discounted by 8.5% per year for 5 years. As a result, her Prior Plan Account initial balance in 1997 would have been set at $83,131, as shown in column (e) of the chart. If she had chosen to retire at conversion and take her discounted early retirement benefit at that time, that is the amount she could have taken.

After the conversion, the Plan (specifically, § 6.2(d), JA34) would have restored the 8.5% discount to the account each year that Mary chose not to take an early retirement benefit, by adding 8.5% interest credits until she reached age 55. What those credits accomplish is clear from the chart. As column (e) illustrates, each year the credits add to Mary Doe's account *balance*, reflecting one less year of discounting. But as columns (c) and (d) illustrate, those credits have no effect on her *accrued benefit*. Even though Mary Doe continues to receive 8.5% interest credits up to age 55, her accrued benefit remains a constant $125,000 (as a lump sum) during that period. When Mary reaches age 55, her account balance and her accrued benefit become equal (as shown in columns (d) and (e)). The credits are aiming for, not adding to, the $125,000 accrued benefit. Therefore, once the credits equalize the account balance and the accrued benefit, they cease.

Indeed, Plaintiffs' expert correctly acknowledged that as the 8.5% credits are added, "the account balance would change as the participant aged up to age 55, but the accrued benefit ... always remain[s] the same." (R.284 Ex. O at 49.) More ***23** broadly, Plaintiffs' experts recognized that when an employee's benefit amount nominally increases by reason of the elimination of an early retirement discount, the increase is not a benefit accrual. (R.284 Ex. Q at 111 (Q: "So if [an individual] had waited one year and he decided to take his benefit at normal retirement age, the amount of his monthly benefit check would increase, is that right?" A: "Yes." Q: "Would you characterize that increase as a benefit accrual?" A: "No."); R.284 Ex. P at 84 (Q: "If [an individual] waits one year, the amount of his benefit check is going to be 3 percent higher than if he had taken it the year before normal retirement age.... Would you characterize that increase ... as a benefit accrual?" A: "Nope." Q: "Has his accrued benefit changed at all?" A: "Nope.").)

Plaintiffs suggest that it does not matter whether the participant's accrued benefit remained unchanged by the interest credits applied in this case. They argue that any addition to an account, regardless of whether it adds to a participant's accrued benefit, is a benefit accrual. (Br. 13-14 (quoting *Cooper*, 457 F.3d at 638-39; *Register*, 477 F.3d at 68-69; *Drutis*, 499 F.3d at 612-15; *Hurlic v. So. Cal Gas Co.*, 539 F.3d 1024, 1037 (9th Cir. 2008)).) But none of the authorities they cite supports that view.

Significantly, none of Plaintiffs' cases addressed additions to an account balance that merely offset a previously-applied discount. None of the courts, in discussing benefit accruals, were referring to an addition to an account balance that had no effect on a participant's accrued benefit. None of the courts reviewed additions to an account balance necessary to *preserve* a previously-earned benefit. ***24** Plaintiffs' cases are simply inapposite--any credit that merely preserves a participant's accrued benefit cannot be a "benefit accrual." Contrary to Plaintiffs' arguments, there is nothing "put in" or "deposited" to the Prior Plan Account by the interest credits that was not already there. These credits merely provide the method to show the pre-55 benefit a participant could take if he or she chose to do so. If the participant does not take the benefit before age 55, the depiction of the account in prior years has no significance.

The proposed Treasury Department regulations on which Plaintiffs rely also do not advance their position.[FN6] The 2002 proposed regulations provide only that "benefit accruals" in eligible cash balance plans would be "*permitted*" to be determined by reference to the "additions to the participant's hypothetical account." 67 Fed. Reg. 76,123, 76,126 (Dec. 11, 2002) (emphasis added). The regulations specifically recognize that this would be a special rule for certain cash balance plans, designed to get around the problem of interest credits that cause the *accrued benefit* to increase at different

rates for older and younger workers. *Id*. The "general rule" is still that "the rate of benefit accrual ... is the increase in the participant's *accrued normal retirement benefit.*" *Id*. at 76,125 (emphasis added).[FN7] The 1988 proposed Treasury regulations that Plaintiffs cite, to bolster their view that *any* ***25** "rights or features" that cease upon a specified age are discriminatory, say nothing about plan features that do not add to the accrued benefit or affect normal retirement benefit entitlements. Instead, in the very same paragraph, these proposed regulations remind us, by referring to § 204(b)(1)(H)(v) (discussed below), that an early retirement subsidy (which, by definition, does not affect the accrued benefit) is to be disregarded in this analysis. 53 Fed. Reg. 11,877 (Apr. 11, 1988). Put simply, Treasury, like this Court and the district court below, recognizes that unless an addition to an account adds to a participant's "accrued benefit," that addition is not a "benefit accrual."

FN6. The proposed regulations were never adopted. *Cooper*, 457 F.3d at 639.

FN7. Measuring benefit accrual by additions to an account may be the standard way for determining age discrimination when dealing with a typical cash balance plan account, but the Prior Plan Account does not function as a typical cash balance plan account. Rather, it is merely a mechanism for preserving the accrued benefit earned under the prior (traditional defined benefit) plans. In the Plan, ongoing benefit accruals are reflected in the Cash Balance Account, which *is* a typical cash balance plan account.

2. The Function of the 8.5% Credits Is Clear.

That the interest credits simply restore the early retirement discount initially applied to the Prior Plan Account opening balances of younger employees is truly not debatable. Indeed, even Plaintiffs' experts acknowledged that "it is mathematically true" that "all that happens is the 8.5 percent interest credit restore[s] the discounting[] that had been taken," and that "adding eight-and-a-half percent back ... is simply restoring that discount." (R.284 Ex. N at 80; Ex. O at 35-36.)

Plaintiffs treat the mathematically undeniable function of the credits as legally irrelevant. They dismiss as "mathematically convenient" the relationship between the initial 8.5% discount for those under age 55 at conversion (JA32, § 6.2(b)) and the subsequent 8.5% interest credits applied until employees reach age 55 (JA34, § 6.2(d)), simply because the two Plan provisions do not expressly reference each other. (Br. 17-18.) As the district court observed, Plaintiffs are ***26** asking this Court to apply what Plaintiffs claim is the plain meaning of the term "interest credit" in a "vacuum." (App. 7.) Their approach, which analyzes the meaning of § 6.2(d)'s 8.5% interest credits as if the 8.5% discount in § 6.2(b) had never happened, is an object lesson in how divorcing a contractual provision from its context and reading it in isolation distorts rather than captures the true meaning of a contract term.

It is a "basic contract principle that the meaning of separate contract provisions should be considered in light of one another and the context of the entire agreement." *Taracorp, Inc. v. NL Indus., Inc.*, 73 F.3d 738, 745 (7th Cir. 1996). One does not interpret a contract "by reference to particular words or isolated phrases." *Medcom Holding Co. v. Baxter Travenol Lab, Inc.*, 984 F.2d 223, 226 (7th Cir. 1993). The "purpose" of a contractual provision, as derived from its context within the contract as a whole, can illuminate the "plain meaning" of the provision. *Commonwealth Ins. Co. v. Titan Tire Corp.*, 398 F.3d 879, 885 n.3 (7th Cir. 2004).

Under these settled and sensible principles of contract interpretation, it does not matter that Plan § 6.2(d) does not expressly refer back (a mere two subparagraphs within the *same Plan section)* to § 6.2(b) when providing for the 8.5% interest credits. To ignore the interplay between such closely related, complementary subsections within the same section of a contract would be a caricature of, not a search for, the "plain meaning" of the phrase "interest credits." The "plain meaning" of the phrase "interest credits" in § 6.2(d), read in light of the ***27** contract as a whole, is that those credits merely preserve an accrued benefit, and do not add any new benefit accruals to a participant's Prior Plan Account.

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Plaintiffs also assert that the interest credits in § 6.2(d) do not reverse any early retirement discount because, they say, "there is no early retirement discount feature in the Plan." (Br. 17.) This is nonsense. The Plan provides employees with the right to take their benefits before age 55, but if they do so, their benefit is discounted for each year the employee is younger than age 55. (JA32-34, 44, Plan §§ 6.2(b)-(d), 7.3(d) "Option 4: Lump Sum".) That is, the Plan provides employees with the option of retiring early, which, if exercised before age 55, will result in the retiree receiving a discounted benefit. Plaintiffs have not even tried to explain how this is anything but an "early retirement discount feature in the Plan."[FN8]

FN8. Plaintiffs cite an excerpt from a 2002 submission to the IRS in which Solutia indicated that there is no early retirement benefit formula in the Solutia Plan. (Br. 17). The 8.5% early retirement discount was built into opening Prior Plan Account balances, and thus remains a part of the basic benefit formula going forward. Therefore, Solutia was entirely correct in informing the IRS that there was no "early retirement benefit formula" separate from the basic formula, which *was* disclosed in the IRS submission. (JA217, 221).

Even if the plain meaning of the 8.5% interest credits, read in context, were not enough, or were deemed ostensibly to support the Plaintiffs' view, the objective evidence extrinsic to the Plan confirms unquestionably that § 6.2(d)' s "interest credits" refer to the restoration of the initial discount applied under § 6.2(b). "[P]arties are allowed to present extrinsic evidence to demonstrate that although the contract looks clear, anyone who understood the context of its creation would understand that it doesn't mean what it seems to mean." *Mathews*, 144 F.3d at 466; ***28** *see also Green v. UPS Health & Welfare Package for Retired Employees*, No. 09-2445, 2010 WL 446097 at *4 (7th Cir. Feb. 10, 2010).

In *Mathews*, this Court concluded that the meaning of the plan language on its face supported the plaintiffs' interpretation, but it did not end its evaluation there because the defendant had presented objective evidence that the plan language had been understood by all involved to mean something other than the supposed "plain meaning." 144 F.3d at 466-69. Ultimately, this Court concluded that the objective evidence in support of the defendant's interpretation controlled.

Here, the literature disseminated to participants contemporaneously with the plan conversion expressly states that the 8.5% interest credits added to the Prior Plan Account until age 55 simply restore the discount initially taken from participants younger than age 55 at conversion. For example, a September 1996 Benefits Bulletin distributed to employees explained that the initial Prior Plan Account balances for those who were under 55 would be "discounted by 8.5% for each year that you are younger than age 55." (SA15.) It further explained why the 8.5% interest credits were added to the account going forward.

This way, when you reach age 55, your Prior Plan Account will have increased to the value of your full benefit before it was discounted. If you are 55 or older, no interest is credited since your Prior Plan Account will not be discounted.

(*Id.*) In addition, a written presentation to employees directly explained "Why Prior Plan Account Interest Credits Stop at Age 55."

A lot of people have asked about why interest credits are not added to the prior plan account after age 55. The reason relates to how the old plan works now, and the Company's intent to preserve old plan values ***29** in the new plan. . . . By crediting interest to age 55, your benefit builds back to its full value at age 55, preserving your old plan benefit.

(SA41.)

The message to participants at the time of conversion was consistent and clear. As the district court recognized, "anyone who understood the context and history of the 8.5% 'interest credit' would understand that it is not interest as the common person understands interest. Instead, [it] represents the reversal of the discount taken from the total lump sum value of a participant's accrued benefit at the time of the plan conversion." (App. 8.)

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Plaintiffs' final effort to distort the function of the 8.5% interest credits fails at the mathematical level. Plaintiffs assert (without explanation) that because the 8.5% interest credits also apply to the monthly 4% pay credits added to participants' Prior Plan Accounts, the interest credits must do more than reverse the early retirement discount. (Br. 18.) Plaintiffs suggest that because the 4% pay credits are new benefit accruals, the 8.5% interest credits on the 4% pay credits must also be new benefit accruals. But that is wrong because the 4% pay credit is equal to 4% of the account balance (not salary), and for anyone younger than 55, the account balance already reflects the 8.5% per year discount. As a consequence, the 4% pay credit on the discounted balance is smaller than it otherwise would have been by 8.5% per year. The 8.5% interest credits on any 4% pay credits simply cancels out the effect of the initial discounting. To the extent there is any new value added to a participant's Prior Plan Account, it is thus *entirely* attributable to the ***30** unobjectionable 4% pay credit, and not at all attributable to the 8.5% interest credits at issue here.

The Mary Doe example from above can easily be adapted to illustrate the math. If she works for one year past age 50, her opening account balance of $83,131 will increase by the 4% pay credit, or $3,325. In addition, the 8.5% interest credit will apply to the sum of the prior account balance and the 4% pay credit, yielding an 8.5% interest credit of $7,349. That produces an account balance of $93,805 ($83,131 (initial balance) + $3,325 (pay credit) + $7,349 (interest credit)) at age 51. If, instead, her age-55 accrued benefit of $125,000 were increased by 4% for one year, her new accrued benefit would be $130,000. And if $130,000 were discounted by 8.5% per year from age 55 to 51, the resulting amount is the same $93,805 balance. Thus, the difference in the amount of the accrued benefit from age 50 to age 51, when the 4% pay credit is considered, is attributable *solely to* the 4% credit. The 8.5% interest credit adds no new value.

3. The Prior Plan Account Could Function in an Economically Equivalent Way Without Any 8.5% Interest Credits.

Considering how the Prior Plan Account can function without any interest credits at all provides another way to understand why the 8.5% interest credits merely preserve already accrued benefits and do not reflect any new benefit accruals. In *Cooper*, this Court reasoned that two different, but functionally "economically equivalent" plans (a cash balance plan and a defined contribution plan) should not be treated differently for age discrimination purposes. 457 F.3d at 637-39; *see also Register*, 477 F.3d at 68-69 (treating cash balance plans and ***31** functionally equivalent defined contribution plans differently for age discrimination purposes "would lead to a result that is not sensible"). The same principle applies with even greater force here, where the issue is not two different plans that function alike, but rather two different methods for calculating and displaying the *very same benefit*.

Because, as *Cooper explains*, a "benefit accrual" adds to the "pot," 457 F.3d at 641, one could not eliminate a "benefit accrual" (new value added by the employer) without producing an effect on the "accrued benefit" (the amount an employee is entitled to take out). Here, one could change the method for calculating the Prior Plan Account balance for employees in a way that completely eliminates the 8.5% interest credit without any effect on participants' accrued benefits at any point in time. The 8.5% interest credit must therefore not be a "benefit accrual."

As relevant here, the Plan as written reflects a three-step process to determine the Prior Plan Account balance at any given moment: (1) convert the already-earned age-65 benefit as of January 1, 1997 from an annuity into a lump sum; (2) discount that lump sum by 8.5% per year for each year the participant was younger than 55 at conversion; and (3) add an 8.5% "interest credit" to the balance each year until the participant reaches age 55. The chart on page 21 above reflects this process for the hypothetical participant Mary Doe.

Plaintiffs do not complain about either step 1 or step 2; they complain only that step 3--the addition of 8.5% interest credits, which they assert to be "benefit accruals"--stops at age 55. But the Plan could have produced exactly the same

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***32** economic effect--precisely the same amount in benefit distributions for all participants--without any step 3 at all. The Plan could define the account balance *at any moment in time* through the following two steps: (1) convert the already-earned age-65 benefit as of January 1, 1997 from an annuity into a lump sum; and (2) discount that amount by 8.5% for each year that the participant is *presently* younger than 55. Using this methodology, the amount of Mary Doe's account balance (column (e) in the chart) at any point in time would be precisely the same as it is under the Plan as written. Yet this 2-step plan has no credits whatsoever, but merely calculates a *smaller discount* each year from the unchanging accrued-benefit base, until Mary turns 55.

Viewed this way, Plaintiffs are not asking the court to *continue* to provide a "benefit accrual." Rather, by asking that the 8.5% interest credits continue beyond age 55, Plaintiffs are really asking the court to use the anti-age discrimination provision of ERISA to *begin* providing new benefits at age 55. Such a claim must fail.

4. The Eighth Circuit Has Determined That Increases That Reverse an Early Retirement Discount Are Not Benefit Accruals.

As the district court recognized, the credits at issue in this case are "indistinguishable from the pension payment increases at issue in *Atkins v. Northwest Airlines, Inc.*, 967 F.2d 1197 (8th Cir. 1992)." (App. 11.) In that case, Northwest's plan offered a normal retirement benefit to its pilots at age 60 and an early retirement benefit that was discounted for pilots younger than age 60. Because of the discounting, the monthly benefit of pilots who did not take early ***33** retirement increased each year that they postponed receipt of their benefits until they reached age 60, as each passing year meant one less year of discounting for early payment. *Id*. at 1200.

The *Atkins* plaintiffs' claims are essentially the same as those asserted here: that "the rate of increase in pension payments for pilots over sixty must increase at the same rate that it increases for pilots under sixty," and because it did not, they claimed that the plan ceased "benefit accruals" because of age. *Id*. The Eighth Circuit rejected this claim, explaining that the nominal "increase" in pilots' pensions between ages 55 and 60 did not reflect any new benefit accruals. *Id*. at 1201. The "total accrued pension benefit" would be identical for a pilot who retired at age 55 and another pilot who retired at age 60 with the same years of service and final salary. *Id*. at 1200. The increase in the monthly payment for each year that a pilot postponed retirement did not reflect any additional accrued benefit, but "merely reflects that the early retirement discount is exhausted" for that year. *Id*. at 1201.

As in *Atkins*, the Plan here applies an early retirement discount to benefits received before a specified age (in *Atkins*, age 60; here, age 55). Each year, if an employee postpones taking his benefit, the Prior Plan Account balance increases, just as the nominal pension benefit increased in *Atkins* if a pilot postponed receipt of his benefit. In both situations, the annual increase in the amount immediately payable does not represent new value on top of what employees had previously earned. In both cases, the normal retirement benefit (the accrued benefit) is constant, but the amount payable is merely discounted for one less year for each ***34** year the employee ages. Just as the Eighth Circuit concluded that such a plan feature is not a benefit accrual triggering age discrimination concerns, so too should this Court.

5. Construing the Interest Credits as Benefit Accruals Leads to Absurd Results.

Courts should not construe an ERISA plan to produce absurd results, which includes construing a plan to provide a windfall that was neither intended nor expected. Plaintiffs were provided extra value in the conversion to the new plan design--all employees were given a ten-year increase in their benefits when the age 65 accrued benefit was subsidized and credited to every employee at age 55 in full. If the 8.5% credit were continued to age 65, as Plaintiffs demand, employees would get the windfall of yet another ten-year increase. ERISA was not "intended to confer such a windfall," particularly in respect to an account that was designed to preserve already-earned benefits. *Mathews*, 144 F.3d at 469 ("We cannot

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see how ERISA beneficiaries or anyone else within the protective sweep of the statute would be benefited by the adoption of principles of contractual interpretation so rigid and archaic as to permit the class to reap the pure windfall here sought to the potential prejudice of other beneficiaries."); *Jones v. UOP*, 16 F.3d 141, 144 (7th Cir. 1994) (rejecting argument that plaintiff was entitled to "double credits" for years of service because ERISA prohibits windfalls); *Jones v. UNUM Life Ins. Co. of America*, 223 F.3d 130, 139 (2d Cir. 2000) (ERISA is intended "to make the plaintiffs whole, but not to give them a windfall").

***35** To the contrary, ERISA plans are construed to give effect to the common-sense substance of the transaction. *Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan v. Wells*, 213 F.3d 398, 402 (7th Cir. 2000) (ERISA plans are "enacted against a background of common sense understanding"). The label "interest credit," ripped from context, has no legal significance separate from the actual function of the credits. Form should not be elevated over substance. *See, e.g., United States v. B.F. Ball Constr. Co.*, 355 U.S. 587, 593 (1958) ("Substance, not form or labels, controls the nature and effect of legal instruments."); *United Airlines, Inc. v. HSBC Bank USA, N.A.*, 416 F.3d 609, 612 (7th Cir. 2005) ("[it is] unlikely that the [Bankruptcy] Code makes big economic effects turn on the parties' choice of language rather than the substance of their transaction").

B. The 8.5% Interest Credits Do Not Cease "Because Of" Age.

That the 8.5% interest credits are not "benefit accruals" forecloses Plaintiffs' claims. In addition, their claims fail for the independent reason that the 8.5% interest credits do not cease "because of age." ERISA § 204(b)(1)(H). It is well settled that a cessation of a benefit accrual based on factors that merely *correlate* with age is not *because* of age. *Kentucky Ret. Sys.*, 128 S. Ct. at 2366; *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 611 (1993); *Cooper*, 457 F.3d at 642 ("it is essential to separate age *discrimination* from other characteristics that may be correlated with age") (emphasis in original). Here, the credits cease when the early retirement discount is fully restored. That this always occurs at age 55, because that is the date from which the discount was taken, does not transform the lawful decision to cease the credits when the discount is restored into unlawful age discrimination.

***36** In *Cooper*, plaintiffs alleged that a cash balance plan violated § 204(b)(1)(H) because the rate of benefit accrual declined each year as the employee grew older. *Id*. at 638. The decline occurred because the accrued benefit was determined by projecting a participant's account balance forward to age 65 at the plan's interest crediting rate. Thus, for each year a participant aged, there was one less year of interest to project forward. *Id*. Despite a perfect correlation with age, this Court rejected plaintiffs' age-discrimination theory because any decrease in the rate of accrual was a function of the time value of money, not age, and "[t]reating the time value of money as a form of discrimination is not sensible." *Id*. at 639. The sensible result--no age discrimination--followed the Supreme Court's instruction to keep "variables correlated with age ... 'analytically distinct' from age when searching for discrimination." *Id*. (quoting *Hazen Paper Co.*, 507 U.S. at 611).

Here, keeping the point at which the early retirement discount is fully restored "analytically distinct" from age makes clear that it is not sensible to treat a decision based on the full restoration of a discount as a form of discrimination. The complementary provisions of the Plan-- §§ 6.2(b) and (d)-- leave no doubt that the credits cease because the initial discount is fully restored. Section 6.2(b) takes an 8.5% discount from the initial balance of the Prior Plan Account for each year a participant is under 55, enabling employees, for the first time, to take an early retirement benefit before reaching age 55. Section 6.2(d) preserves the full age-55 benefit by providing a corresponding 8.5% interest credit each year employees choose not to take their benefits before age 55. The goal--preservation of the age-55 ***37** benefit--is accomplished when participants turn 55. It is thus not age but pension status-- specifically, a participant's eligibility to receive his or her full accrued benefit that had already been earned when the account was established--that causes the credits to

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cease.

That pension status (not age) triggers cessation of the credits for certain participants does not depend on examining Defendants' motives or reasons for designing the Plan, as Plaintiffs suggest. Instead, the express Plan provisions that (1) preserve the age-65 accrued benefit and make it available at 55, (2) provide the discount if less than 55, (3) allow a participant to receive a discounted benefit before age 55, and (4) restore the discount to age 55 if not taken early, clearly demonstrate that pension status, not age, is the key.

The Supreme Court has made clear that it is not age discrimination to allow for differential treatment based on pension status, even when pension status is expressly correlated with age. In *Kentucky Retirement Systems*, a pension plan provided for full retirement benefits at age 55 for employees who had worked five years. 128 S. Ct. at 2365. The plan also provided that if an employee became disabled before 55, he would be given extra service credit so that he would qualify for the full benefit. *Id*. However, the plan did not give this extra credit to similarly situated employees who were older than 55, because those employees would already have qualified for the full retirement benefit. *Id*. at 2368. By not giving the extra credit to similarly situated older employees, younger workers could get twice as ***38** much in benefits as older workers. *Id*. at 2373 (Kennedy, J., dissenting).[FN9] Nevertheless, the Supreme Court held that the disparity was due to pension status. Workers who had reached age 55 were already eligible for the full retirement benefit, and even though this pension status perfectly correlated with age--it always occurred at age 55--it was not age discrimination. *Id*. at 2367-69.

FN9. Plaintiffs erroneously assert that the plan at issue in *Kentucky Retirement Systems* did not provide for disparate treatment based “explicitly” on the attainment of a specified age. (Br. 26.) To the contrary, the plan at issue there expressly distinguished between employees who became disabled before age 55 and those who became disabled after age 55. 128 S. Ct. at 2368.

The same is true here. As noted above, the 8.5% credits cease not because of age, but because of pension status, *i.e.*, employees' eligibility to receive their full retirement benefit, unreduced for early payment. The fact that this eligibility always occurs at age 55 does not mean that the cessation of the 8.5% credits is “because of” age.

Plaintiffs contend that *Kentucky Retirement Systems* is distinguishable because it was brought under the Age Discrimination in Employment Act (“ADEA”). This makes no difference, as this Court recognized when it applied ADEA cases in *Cooper* to reject an ERISA claim. 457 F.3d at 642 (citing *Hazen Paper Co.*, 507 U.S. 604; *Achor v. Riverside Golf Club*, 117 F.3d 339, 341 (7th Cir. 1997); *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997)). The slight difference in language between the ADEA, which prohibits cessation of benefit accruals “because of age,” 29 U.S.C. § 623(i)(1)(A), and ERISA, which prohibits cessation of benefit accruals “because of *the attainment of any* age,” does not matter. Plaintiffs assert ***39** that the word “attainment” is “important,” (Br. 25 n.5) but fail to explain how or why. In fact, Congress intended the two provisions to be interpreted consistently. H.R. Conf. Rep. No. 1012, 99th Cong., 2d Sess. 378-79 (1986), *reprinted in* 1986 U.S.C.C.A.N 3868, 4023-24.[FN10]

FN10. The 2002 proposed Treasury regulations upon which Plaintiffs rely elsewhere recognize that this distinction is immaterial. 67 Fed. Reg. 76,123, 76,124 n.1 (Dec. 11, 2002) (“The legislative history states that no differences among the provisions is intended ... and the agencies have concluded that this particular difference in language has no effect.”).

Plaintiffs' contention that Defendants are ignoring the so-called “traditional rule” of looking only at the face of the plan or policy as discussed by the Supreme Court in *Kentucky Retirement Systems* is simply wrong. As demonstrated above, the express terms of the Plan, independent of any properly considered extrinsic evidence, supports the conclusion that

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pension status and not age triggers the discontinuation of the interest credits.

Plaintiffs' reliance on *Hurlic*, 539 F.3d 1024, is misplaced. There, the Ninth Circuit, like this Court in *Cooper*, held that cash balance plans do not violate ERISA § 204(b)(1)(H) merely because they guarantee interest credits through a plan's normal retirement age. In rejecting the plaintiffs' age discrimination theory, the Ninth Circuit provided an example of a plan under which participants began earning benefits at a reduced rate upon reaching age 50, and opined, in *dicta*, that such a plan would run afoul of ERISA § 204(b)(11)(H)(i). *Id*. at 1032. Plaintiffs erroneously assert that the example in *Hurlic* is "nearly identical" to the Plan here. The Ninth Circuit plainly was referring to a plan in which new benefits were earned ***40** at a reduced rate beginning at age 50; it gave no indication it was considering a plan in which credits restoring a discount to an accrued benefit cease at a certain age because of pension status (namely, the discount is fully restored).

In contrast, the Eighth Circuit has actually considered a case in which the plaintiffs' contentions were identical to those asserted here. *Atkins*, 967 F.2d at 1200. The Eighth Circuit not only rejected plaintiffs' claims that the increases to restore an early retirement discount were "benefit accruals," but it also rejected the argument that the increases ceased because of age. It held that the cessation did not "result from age discrimination. It merely reflects that the early retirement discount is exhausted." *Id*. at 1201.

Plaintiffs attempt to distinguish *Atkins* on three grounds, each of which fails. First, Plaintiffs note that *Atkins* involved a service cap and an early retirement benefit, and argue that the Plan here involves neither. (Br. 28.) But Plaintiffs cannot and do not explain how the absence of a service cap here makes any difference. And the Plan here *does* involve an early retirement benefit--participants may take their benefits early, before the age 65 normal retirement date. If they do so before age 55, the early retirement benefit is discounted, just as the early retirement benefit in *Atkins* was discounted before age 60.

Second, Plaintiffs argue that *Atkins* involved a "traditional defined benefit plan," which is "structured differently" than a cash balance plan. (Br. 28.) That is true, but the Prior Plan Account preserves the accrued benefit from the old plan, which was a traditional defined benefit plan. *See Berger*, 338 F.3d at 757-58 ***41** (describing how "standard" defined benefit plans determine benefits in contrast with how cash balance plans determine benefits).[FN11] The Prior Plan Account is, therefore, like a traditional defined benefit plan, just like the plan at issue in *Atkins*. In any event, a cash balance plan is a defined benefit plan, *Cooper*, 457 F.3d at 637-38, and Plaintiffs do not and cannot explain how the only "structural" difference here--the fact that benefits are expressed in an account-based format--affects whether an alleged cessation in benefit accrual is "because of" age.

FN11. Even the pay credits in the Prior Plan Account are not "structured" like a cash balance plan, because they are a function of the account *balance*, not an employee's *salary*. *Berger*, 338 F.3d at 757-58 (distinguishing cash balance plans from "ordinary" defined benefit plans).

Third, Plaintiffs argue that *Atkins* did not involve a plan that "on its face includes language terminating a benefit accrual because a participant attains a specified age." (Br. 28.) Plaintiffs are wrong. The plaintiffs in *Atkins* alleged that their benefit accrual ceased upon the attainment of age 60, the point at which the early retirement discount was exhausted.

In light of the Supreme Court authority, this Court's decision in *Cooper*, and the Eighth Circuit's decision in *Atkins*, a ruling in Plaintiffs' favor would be a striking departure from the widely accepted analysis of age discrimination claims under ERISA. The district court correctly chose not to break new, legally unfounded ground. The 8.5% credits do not cease "because of age."

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C. ERISA § 204(b)(1)(H)(v) Forecloses Plaintiffs' Claims.

While Plaintiffs' claims fail doubly under § 204(b)(1)(H) because the 8.5% credits are not benefit accruals and because they do not cease because of age, the ***42** statute makes clear that this type of design feature is excepted from the age discrimination rules in any event. ERISA § 204(b)(1)(H)(v) provides: "A plan shall not be treated as failing to meet the requirements of [204(b)(1)(H)(i)] solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals." This means that a plan may provide an early retirement subsidy that decreases over time as an employee ages, or even ceases because of age, without engaging in age discrimination.

The subsidized portion of any early retirement benefit is "the excess in value of a benefit over the actuarial equivalent of the normal retirement benefit." *Ashenbaugh v. Crucible, Inc., 1975 Salaried Ret. Plan*, 854 F.2d 1516, 1521 n.6 (3d Cir. 1988). By definition, therefore, the subsidized portion of an early retirement benefit ends once an employee reaches normal retirement age and becomes eligible for the full normal retirement benefit. Because that is when an early retirement subsidy *has* to disappear, in the case of a fully-subsidized early retirement benefit, like the one in the Plan between ages 55 and 65, the subsidy diminishes each year as the employee ages closer to his normal retirement date. This decline in the amount of the subsidy over time might superficially appear to be based upon age were it not for 204(b)(1)(H)(v), which ensures that employers can provide early retirement subsidies that diminish over time without fear of liability for age discrimination.[FN12]

FN12. Proposed regulations cited by Plaintiffs state that the rate of benefit accrual under a defined benefit plan will not be considered to cease merely because the subsidized portion of an early retirement benefit "ceases to be provided to an employee or is provided on a reduced basis to an employee by a plan on account of the employee's attainment of a specified age." 53 Fed. Reg. 11,876, 11,877 (April 11, 1988).

***43** The subsidy built into the Prior Plan Account at any given point is the excess of (a) the benefit actually available under the Plan to an employee at a given age over (b) the actuarial equivalent of the employee's accrued benefit (*i.e.*, the age-65 benefit discounted from age 65 to the employee's current age). This is visually represented in the following graph, derived from the Mary Doe hypothetical discussed above at page 21-22:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLETABLE

The bottom line on the graph represents the actuarial equivalent of Mary Doe's normal retirement benefit at any given age, *i.e.*, the amount she would be entitled to if no subsidy were provided. This line shows her benefits discounted from age 65 ***44** to 40 at a statutory rate.[FN13] The top line represents the benefit actually available under the Plan over the same age range. The top line slopes downward from age 55 to 40 to reflect the annual 8.5% early retirement discount applied to those years. That line is flat from age 65 to 55 because the early retirement benefit under the Plan is fully subsidized from age 65 to age 55, *i.e.*, there is no discounting. The shaded area is the early retirement subsidy.

FN13. For illustration purposes, actuarial equivalence was calculated at the Internal Revenue Code § 417(e) rate for February 2009.

Plaintiffs' claim focuses on the rate of growth of the top line--the year-to-year progression of the Prior Plan Account balance. According to Plaintiffs, because the Prior Plan Account balance (the top line) increases gradually and then flattens, there is age discrimination--what was growing until a certain age stopped growing. Plaintiffs want the Plan to continue to credit 8.5% interest credits through age 65; the top line should continue to go up at a constant rate rather than go flat.

Rather than *disregarding* the subsidized portion of an early retirement benefit, Plaintiffs' claims are *predicated* on the existence of a fully-subsidized early retirement benefit. Focusing on the point at which the asserted discrimination occurs-

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-age 55--the top line goes flat because the early retirement benefit provided by the Plan becomes fully subsidized at that point. By complaining that the top line does not continue to move upward, Plaintiffs are merely complaining that the subsidized early retirement benefit now equals the normal retirement benefit, and that the subsidy (the shaded area) therefore started to diminish. But that is precisely what ERISA § 204(b)(1)(H)(v) says must be disregarded.

***45** Indeed, if Plaintiffs were correct, any plan that provided an early retirement subsidy would be locked into providing additional benefits indefinitely. As noted above, when an early retirement subsidy is offered, the top lines and bottom lines have to meet somewhere. But Plaintiffs read the law to prevent the lines from meeting. In the graph above, the top line would continue to increase through age 65, and the shaded portion would actually *increase* with age. At age 55, what was an early retirement subsidy would be supplemented with new benefit accruals, producing a total benefit that would continue to increase. As a result, what was supposed to encourage employees to retire early would actually have the opposite effect, even though early retirement subsidies exist to encourage early retirement.

D. There Is No Forfeiture.

In a last gasp, Plaintiffs assert, without any explanation, that the cessation of 8.5% credits at age 55 also results in an "impermissive forfeiture under ERISA." (Br. 29-30.) Citing IRS Notice 96-8 and Revenue Ruling 2008-7, Plaintiffs contend that all cash balance plans must add any "interest" through a plan's normal retirement age. That is wrong. Rather, the notice and revenue ruling provide that *if* a plan promises interest credits prior to normal retirement age that are not conditioned on future employment, then the plan must consider the value of those future interest credits when converting an employee's accrued benefit to an immediate lump sum. *See Cooper*, 457 F.3d at 640 (Notice 96-8 simply requires that "a plan must ... add all interest that *would accrue* through age 65, then ... discount the resulting sum to its present value.") (emphasis added); *see also Fry v. Exelon Corp. Cash Balance Pension Plan*, 571 F.3d 644, 645 (7th Cir. 2009) (in calculating ***46** lump sum distributions, pension plans were required "to start with the current balance and add any *contractually promised* interest (or any other form of guaranteed increase in benefits) through the employee's 'normal retirement age' ") (emphasis added). Here, the Plan does not "contractually promise" 8.5% credits to normal retirement age; therefore, there is no obligation to project future 8.5% credits to that age when calculating lump sum benefits. In any event, the 8.5% credits are not the type of "interest" addressed in the IRS guidance; they do not contribute to "an employee's entire accrued benefit." *See* IRS Notice 96-8 at II.A.

II. Plaintiffs' Claims Are Time Barred.

Even if there were merit to Plaintiffs' age discrimination claims (and there is not), the claims come too late. Whether the applicable statute of limitations is two years (borrowed from Missouri's statute of limitations for age discrimination claims), or five years (borrowed from Missouri's statute of limitations for breach of contracts implied by law), Plaintiffs' claims are time barred because they waited more than seven years to file suit.

A. Missouri Law Supplies the Applicable Limitations Period for Plaintiffs' Claims, Which Accrued in 1996.

ERISA does not supply a limitations period for age discrimination claims brought under § 204(b)(1)(H). Thus, the Court borrows "the most analogous" statute of limitations from "the state with the most significant relationship to the parties and to the transaction" at issue. ***47***Berger v. AXA Network LLC*, 459 F.3d 804, 808, 813 (7th Cir. 2006). Plaintiffs have rightly never disputed that Missouri has the most significant relationship to the parties and the issues in this case.[FN14]

FN14. Old Monsanto was a Missouri-based corporation, its pension programs were administered in St. Louis, and most members of the group that designed the Prior Plan Account were based in St. Louis. (R.284 Ex. A ¶¶ 42-44.)

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Although state law provides the applicable limitations period, federal law determines the date of accrual of an ERISA claim. *AXA*, 459 F.3d at 815. A claim under ERISA accrues when the "plaintiffs' discovery of their employer's allegedly unlawful decision put them on notice of a potential ERISA violation and provided the factual basis for their claim." *Id.* Here, Plaintiffs' claims accrued no later than January 1, 1997--the date when Old Monsanto converted to the new cash balance plan design. In fact, Plaintiffs have not disputed that their claims accrued in 1996, when Old Monsanto began expressly advising them that the 8.5% credits added each year to their Prior Plan Accounts would end when the discount to their initial Prior Plan Account balance was fully restored at age 55. Their claims are barred under either accrual date.

B. Plaintiffs' Claims Are Governed by a Two-Year or a Five-Year Limitations Period.

To determine what limitations period applies, the court must " 'characterize the essence' of the [ERISA] claim in question and find the most analogous cause of action" under Missouri law. *Teumer v. Gen. Motors Corp.*, 34 F.3d 542, 546-47 (7th Cir. 1994). This entails a review of the specific section of ERISA alleged to have been violated, as well as a determination of the "nature of the ...rights recognized" and the abuses that provision protects against. *Id.* at 547. The Court examines the ***48** "analytical correspondence" and the "substantive focus" of the federal and state law causes of action to determine which state law claim provides the closest analogue. *Id.* at 549-50.

Two limitations periods in Missouri law are potentially analogous: the two-year period for age discrimination claims and the five-year period for breach of contract terms implied by law. Under either provision, Plaintiffs' claims, filed more than seven years after the claims accrued, are untimely.

1. Plaintiffs' Claims Are Barred by Missouri's Two-Year Limitations Period Applicable to Age Discrimination Claims.

The Missouri statute prohibiting employer-based age discrimination is most analogous to this case. Missouri Revised Statutes § 213.055 provides that it is unlawful for an employer to discriminate against any individual with respect to privileges of employment, including the provision of employee benefits. *See Brady v. Curators of Univ. of Missouri*, 213 S.W.3d 101 (Mo. Ct. App. 2006). The essence of Plaintiffs' claims is age discrimination in violation of ERISA § 204(b)(1)(H), (R.139 at ¶¶ 71, 91, 94), which this Court has recognized "prohibits age discrimination." *Cooper*, 457 F.3d at 637. Because Mo. Rev. Stat. § 213.055 directly addresses the cause of action at issue, that statute provides "the most analogous cause of action." *Teumer*, 34 F.3d at 547.

A two-year limitations period applies to claims brought under Mo. Rev. Stat. § 213.055. *See* Mo. Rev. Stat. § 213.111(1). Plaintiffs' claims alleging unlawful age discrimination are therefore untimely. *Cf Strawn v. Missouri State Bd. of Educ*, 210 F.3d 954, 957 (8th Cir. 2000) (borrowing two-year limitations period set forth in ***49** § 213.111(1) for disability discrimination claims brought under federal Individuals with Disabilities Education Act).

2. Plaintiffs' Claims Are Barred by Missouri's Five-Year Limitations Period Applicable to Claims of Breach of Contract Implied by Law.

Plaintiffs argued in the district court that their claims are most analogous to a claim for breach of contract because they are based on a benefit plan, which is essentially a written contract between employer and employee. No statute or case law affirmatively provides that claims alleging that a plan violates ERISA are always most analogous to breach of contract claims. And nothing in ERISAs anti-age discrimination provision suggests that the "substantive focus" of that provision is to ensure that employers honor their contractual obligations.

However, even if Plaintiffs' claims were deemed akin to breach of contract, the claims are analogous to claims for breach

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of contract implied by law. *See May Dep't Stores Co. v. Fed. Ins. Co.*, 305 F.3d 597, 601 (7th Cir. 2002). *May* demonstrates that when a claim is based on ERISA-imposed requirements (or their implementing regulations), and not the language of a plan, the claim amounts to one of breach of contract implied by law. *See id.* ("[L]ike many other contracts, pension plans governed by ERISA contain provisions implied by law."). In this case, Plaintiffs do not contend that they are entitled to the 8.5% credits beyond age 55 under the terms of the Plan. Their claims rest upon § 204(b)(1)(H), which they contend requires the Plan to provide the credits beyond age 55. Because Plaintiffs' claims are based on ERISA-imposed requirements, not violations of the Plan's ***50** terms, they are more analogous to claims for breach of contract implied by law than to claims for breach of a contract's terms.

Under Missouri law, claims of breach of contract implied by law are subject to a five-year limitations period. *See* Mo. Rev. Stat. § 516.120(1); *Aaron v. Brown Group, Inc.*, 80 F.3d 1220, 1225 (8th Cir. 1996) (applying Missouri law and concluding that an action under the federal Worker Adjustment and Retraining Notification Act "inserts additional terms into covered employment contracts ... [and] is most closely analogous to an action to recover damages for a breach of an implied contract" subject to the five-year limitations period). Again, Plaintiffs' claims are untimely, as they accrued more than seven years before the first of the consolidated lawsuits was filed. Thus, whether the two-year limitations period or the five-year limitations period applies, Plaintiffs' claims are barred.

***51 CONCLUSION**

For the foregoing reasons, the judgment of the district court should be affirmed.

Appendix not available.

Grant WALKER, individually and on behalf of all others similarly situated, et al., Glynn Davis, individually and on behalf of all others similarly situated, et al., Fred Donaldson, individually and on behalf of all others similarly situated, et al., Plaintiffs-Appellants, v. MONSANTO COMPANY PENSION PLAN, et al., Solutia Incorporated Employees Pension Plan, et al., Pharmacia Cash Balance Pension Plan, et al., Defendants-Appellees.
2010 WL 1789182 (C.A.7) (Appellate Brief)

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