IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

WADE E. JENSEN and DONALD D. GOFF, individually and on behalf of all others similarly situated,	§ § § §	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 06 CV 273
	§	
SOLVAY CHEMICALS, INC., SOLVAY AMERICA, INC., and SOLVAY AMERICA COMPANIES PENSION PLAN,	§ § § § §	
	§	
Defendants.	§	

<u>DECLARATION OF CLAUDE POULIN, F.S.A., M.A.A.A., E.A.</u>

I, Claude Poulin, am over 21 years of age and based on personal knowledge, state as follows:

1.   My March 17, 2009 Declaration in this matter describes my credentials and my 43 years of experience as a pension actuary starting in 1966 as an Associate in the Society of Actuaries and as a Fellow in the Society of Actuaries since 1972.

2.   I have carefully reviewed Dr. Michael Ward's report dated March 30, 2009. In conjunction with this review, I also examined the April 17, 2009 rebuttal actuarial report from Paul Zeisler to see whether it is consistent with Dr. Ward's analysis.

3.   Solvay's Designation identifies Dr. Ward as a statistician. But "growth in benefits" (para. 8) is not a field in which statisticians are trained. Dr. Ward's measures for "growth in benefits" are not accepted in my field of expertise and in fact they reject the analyses of the benefit consultants, actuaries, accountants and labor economists with whom I am familiar. Although Dr. Ward's resume shows that he trained as an economist, he does not draw on any

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recognized principles from that field. Instead, his measures of "growth in benefits" are of his own devise.

4. If a pension actuary measured growth in benefits in this way it would not pass the standards for a Fellow or an Associate in the Society of Actuaries. It is true that Dr. Ward might be able to confuse a lay person with his calculations of "growth in benefits" but this is the type of testimony that I understand that the "gatekeeper" role established in the *Daubert* decision is designed to keep out.

5. Under the ADEA, Plaintiffs' central complaint is that the retirement benefits of relatively older employees are being selectively frozen through a "wear-away" design and that the hypothetical cash balance "pay credits" that Solvay tells them about are not actually adding to their retirement benefits for a number of years. During the periods of wear-away, their cash balance accounts may be increasing but the increase is only going to catch up with the value of their previously earned benefits; it is not resulting in an additional retirement benefit at age 55 or over.

6. To illustrate, the calculations done for my initial report show how the pay credits that Solvay has assigned to Wade Jensen's cash balance account from 2005 through the end of 2008 have not created any net addition to his retirement benefits payable at age 55 or over. By my calculations, Mr. Jensen has a 4.9 year period of wear-away during which his retirement benefits at age 55 or over do not increase. See Ex. G-1 to my March 17, 2009 Declaration.

7. Without once mentioning the term "wear-away," Dr. Ward tries to reconceptualize the periods of wear-away as periods of "growth" and suggests that Mr. Jensen and other relatively older Solvay employees do not recognize how fortunate they are. But Dr. Ward's measures of growth are contrived and not accepted in the fields of actuarial science,

accounting, or labor economics.

8.   Dr. Ward first attempts to discredit the Plaintiffs' claim that their benefits are "frozen" during periods of wear-away. Dr. Ward says that "Plaintiffs characterize the benefit as 'frozen'" as if that was a figment of the Plaintiffs' imagination. But it is well-known that hundreds of major companies have "frozen" the retirement benefits of literally millions of employees over the past decade. Similarly, hundreds of pension plans covering millions of employees have been terminated, which means that the retirement benefits under those plans are likewise "frozen."

9.   If an employee has earned a retirement benefit of $1,000 per month starting at age 55 and this benefit is "frozen," it means that the benefit is not growing with future service. Acting as a contrarian, Dr. Ward suggests that those benefits are still growing and that "we can think of this [growth] as cash compensation." Dr. Ward would thus find retirement benefits to be growing or increasing when, in fact, there is no increase in benefits at all, and in millions of instances terminated pension plans whose company sponsors have ceased to exist.

10.   At bottom, Dr. Ward says that "we can think of" a "frozen" retirement benefit as growing because the "present value" of the frozen benefit is still increasing. However, this occurs whether or not an employee continues to work and participate in a pension plan and it will continue to occur even if the plan is terminated because the company has gone out of business. As a result, the growth the Dr. Ward suggests "we can think of … as cash compensation" cannot be thought of in that way in any meaningful sense.

11.   Dr. Ward's use of the term "compensation" to encompass increases in present value that occur regardless of whether the employment relationship has ended conflicts with standard usage. The Bureau of Labor Statistics defines "compensation" as the "entire range of

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wages and benefits, both current and deferred, that employees receive in return for their work."

Similarly, *Roberts' Dictionary of Industrial Relations* defines "earnings" as the "total amount of remuneration received by a worker for a given period as compensation for work performed or services rendered." Thus, compensation or earnings for a given time period should not include interest on amounts earned in the past, e.g., interest on the balance of a 401(k) account as of the end of 2004 cannot be thought of as part of the employee's compensation in 2005 if the employee is entitled to receive that interest even if he separates from service before 2005.

12.   Dr. Ward argues that even when an employee's retirement benefit is "frozen," as it is during a period of wear-away, the employee could or should reconceptualize the frozen or stagnant retirement benefit as "growing" in the sense of present value or the "immediately available" annuity. However, wear-away has an accepted meaning in the field of pensions that neither an expert nor a non-expert can ignore. For instance the Treasury Department's regulations on ERISA Section 204(h) notice require disclosure of "wear-away" periods, which are defined as "a period of time during which there are no accruals (or minimal accruals) with regard to normal retirement benefits or an early retirement subsidy." Treas. Reg. 54.4980F-1, Q&A-11(a)(4)(ii). Congress and the courts have used the term "wear-away" in the same manner.

13.   Even Solvay has recognized the existence of wear-aways, stating in its "204(H) Notice" that "Some participants may notice that … their monthly benefit may not increase at the same rate or at all in some years." When I review the April 17, 2009 rebuttal actuarial report of Solvay's actuarial expert, Paul Zeisler, I also see that Mr. Zeisler recognizes the accepted definitions of both frozen benefits and wear-away--while attempting to challenge whether they are illegal in this context. Mr. Zeisler's report does not even mention Dr. Ward's alternative views, much less endorse them.

14.   The central elements of Dr. Ward's calculations are not complex. First, he computes an "immediately available monthly benefit" at one age, e.g., age 29, by dividing the opening account balance by the conversion factor for an immediate annuity for that age (drawn from a look-up table supplied to him). Then he subtracts that result from the "immediately available monthly benefit" four years later, e.g., at age 33, and finally he looks up the present value of the difference in those two amounts. Although the calculations are not complex, his approach is deeply flawed for a number of different reasons:

15.   First, "immediately available monthly benefits" at age 29 and age 33 only exist on paper. It is highly unlikely that Solvay has paid even one 29 year old or 33 year old a monthly annuity. Solvay may make lump sum distributions to younger employees, but the immediately available monthly benefits that Dr. Ward computes are fictions. The immediate annuity amounts on which Dr. Ward relies would not even be calculated by Solvay's Plan administrator unless and until an employee leaves. If the employee leaves, the only number that might be calculated would be an amount for that year as an alternative to the lump sum distribution. The Plan administrator would never calculate the immediately available amount for a previous year. So Dr. Ward's approach relies on a comparison that does not exist.

16.   Second, subtracting a benefit immediately available at one age from a benefit immediately available at a different age and computing the present value of the difference is economic and actuarial nonsense. An immediately available benefit of $10 per month at age 29 cannot be compared with a $12 per month benefit that is immediately available at age 33 because the two are not actuarially or economically comparable without adjustments. Assuming the same interest and mortality assumptions are used, "immediately available" benefits should grow with age because for each year of deferral a benefit will be paid for fewer years and the benefit

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amounts that might have been paid during that time period can accumulate with interest. The "immediately available monthly benefits" should be higher each year because the conversion factors are smaller with age (based on the time value of money). Simply taking the difference in dollars between an immediately available benefit at age 29 and at age 33 does not represent growth in an actuarial or economic sense.

17. Dr. Ward's calculations are most critically flawed for a third reason. His calculations count interest on the account balances already existing at the beginning of each period as if this represents growth in the participant's monthly benefits. This effectively means that Dr. Ward is counting the interest on the existing account balance twice. The interest on the existing account balance is necessary to sustain the annuity value of the account balance existing at the beginning of the period. If interest were not credited, the annuity benefit payable immediately or at retirement age would decline from the previous year. If this interest is moved over to a "growth" side, as Dr. Ward does, it cannot also be used to preserve the value of the existing benefit without double-counting.

18. Fourth, Dr. Ward's approach always counts the hypothetical "pay credits" assigned to the cash accounts as growth even during the periods of wear-away, ignoring the fact that the "pay credits" are not adding to the participant's pension benefit during those periods. During those periods, the pay credits are simply allowing the cash balance account to "catch up" with the value of the previously-earned annuity. The central point of the Plaintiffs' ADEA claim is that the pay credits are not actually adding anything to their retirement benefits during a wear-away period. However, Dr. Ward's approach obliviously counts the pay credits as growth irrespective of the Plaintiffs' allegations and the detailed actuarial and statistical proof offered by myself and Dr. Bardwell that Solvay's conversion design means that those credits often add

nothing to older individuals' retirement income for a number of years, e.g., 4.9 years in the case of Wade Jensen.

19.   At bottom, the "growth" that Dr. Ward finds in his Examples A, B and C is founded on three components: (1) the pay credits which may not be adding anything to the employee's retirement income because of wear-away, (2) the double-counted interest credits on existing account balances, and (3) the actuarial and economic nonsense of comparing a benefit immediately available at one age with a benefit immediately available four years earlier. Put those three components together and you have Dr. Ward's "growth."

20.   To illustrate, in his Example B based on Wade Jensen's data, Dr. Ward calculates a "growth in benefit" of $131 per month for 2005 through 2008 ($330 less $199). But $56 per month of this "growth" is due to over $10,000 in interest on account balances that already existed at the beginning of each year. For instance, without interest on the opening balance, the benefit of $199 at the start of 2005 would drop by $36 to $163. This is a classic instance of robbing Peter to pay Paul. Dr. Ward conjures up growth by quietly depleting the retirement benefits that were already earned and labeling the depletion as growth.

21.   The fault with Dr. Ward's approach can also be seen by comparing the schedule of pay credits under the Solvay America Pension Plan with Dr. Ward's annual growths in present values. In the examples that Dr. Ward uses, the highest pay credit rate is 4% of pay. But the only one of Dr. Ward's examples where the growth in present value as a percent of pay is close to those pay credit rates is Example A, where the pay credit rate is 2.5% and Dr. Ward calculates an annual growth in present values that is equal to approximately 3.2% of pay. In the next two examples, the pay credit percentages are from 3 to 4%, whereas Dr. Ward computes an annual growth in present values as a percentage of pay of 8% for Example B and 11.2% for Example C.

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The difference is that in Example A, a relatively young participant had earned virtually no retirement benefit before the cash balance conversion and thus had practically no opening account balance on which interest would be credited. In the other two examples, the difference between the pay credit percentages and Dr. Ward's growth percentages is attributable to interest on the existing account balances, which in turn is due to the retirement benefits that the participants already earned before the cash balance conversion.

22.   In Example D, the last of his four examples, Dr. Ward makes still another critical error. He posits that retirement benefits also "grow" after age 55 when early retirement reductions are lifted because employees have deferred retirement and commencement of benefits. To illustrate, in Example D, the employee has a frozen benefit of $1,139 per month at age 65. If the employee retires at age 55, $803 per month will be payable. If he or she defers the commencement of benefits until age 57, $871 per month will be payable. By deferring the frozen benefit from age 55 to age 57, the individual passes up two years of benefit payments. Because the benefit will be paid for two fewer years the early retirement reduction at age 57 is 6% less. This is not growth associated with work rendered in this time period because it will happen regardless of whether the individual is still employed. Therefore, it cannot constitute compensation or growth in benefits in a sense that is accepted by experts in this field.

23.   Comparing the $871 available at age 57 with the $465 payable under the cash balance formula at age 53, as Dr. Ward does in Example D, introduces yet another critical error: $871 is the benefit that the participant had already earned under the traditional formula before the conversion, whereas $465 is the cash balance benefit that Solvay and its consultants deliberately set up below the full value of the retirement benefit that the individual had already earned under the traditional formula. Measuring growth from that point is like taking half of

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someone's paycheck and then talking about how much more the individual "earned" when it is returned. In fact, this individual has not earned anything more in retirement benefits during the entire period from 2005 through 2008. I am aware of no recognized field of expertise that would "think of" or characterize this "as cash compensation" or a "growth in benefits."

24.   Dr. Ward also asserts that "since benefits increase with age, the economic cost of those benefits must also increase with age." But this syllogism rests on the premise that benefits are increasing with age. If retirement benefits are frozen because of age, the economic cost of those benefits is also frozen. The present value of a frozen benefit may increase with age, but this is not an increase in the economic value but is just interest with no increment to principal. If Dr. Ward's assertion were correct, moreover, he should be able to prove that Solvay has incurred actual or actuarial or accounting costs during the periods of wear-away. In fact, there are no actuarial methods or system of accounting of which I am aware in which the costs of benefits increase during periods in which employees are not earning additional benefits.

25.   Finally, in paragraph 16, Dr. Ward says that the Plaintiffs' Complaint is "improperly predicated on the assumption that all Solvay employees terminate or retire at age 65." However, the Complaint was not predicated on that assumption at all. My expert report makes that clear by examining the benefits payable at "age 55 or over." See ¶25. Indeed, Mr. Zeisler criticizes my report for focusing on the age 55 or over benefit too much. It is impossible to figure out how Dr. Ward misread the Complaint and my report in this manner.
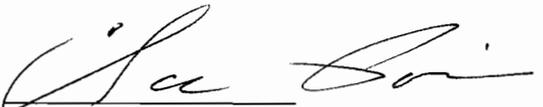
26.   In conclusion, Dr. Ward's report reveals fundamental misunderstandings about a field in which he lacks expertise. My understanding is that an expert can rely on other experts, as Dr. Bardwell relied on my report to frame his statistical analysis. But Dr. Ward does not rely on the rebuttal actuarial expert for Solvay, nor does his report indicate reliance on any other

qualified expert.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge.

Date: April 30, 2009

Signed: _____
Claude Poulin