

**Rebuttal Report on the Impact on Older Employees of Amending the Defined
Benefit Retirement Plan to the Cash Balance Pension**

In re:

Wade. E. Jensen and Donald D. Goff, individually and on behalf of all others similarly situated,
v. Solvay Chemicals, Inc., Solvay America, Inc., Solvay America Companies Pension Plan.

Civil Action No. 06-CV-273 (ABJ/WCB)

United States District Court
for the District of Wyoming

Prepared for
Stephen R. Bruce
805 15th St., NW, Suite 210
Washington, D.C. 20005

Richard Honaker
Honaker Law Offices, LC
214 Winston Drive
Rock Springs, WY 82902

Bardwell Consulting Ltd.
Robert A. Bardwell, Ph. D.
4801 W. Yale Ave.
Denver, Colorado 80219
(303) 934-3851

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This is a rebuttal report responding to the Defendants' statistical expert's report, *Statement of Qualifications and Report of Findings in Wade E. Jensen et al. v Solvay America, Inc. et al.*, Pursuant to Federal Rule 26, submitted by Michael P. Ward on March 31, 2009. I have also reviewed plaintiffs' actuarial expert Claude Poulin's rebuttal declaration submitted April 30, 2009. I previously submitted a report in this litigation, *Preliminary Report on the Impact on Older Employees of Amending the Defined Benefit Retirement Plan to the Cash Balance Pension*, also on March 31, 2009.

The current report includes a brief overview of issues related to the defense expert's reports, but is limited because defendants have not produced the complete spreadsheets or calculations that their expert used in preparing his report. In addition, the spreadsheet containing partial results produced by defendants' expert was produced only two days ago, on April 28, 2009. This allowed only two days to analyze defendants' partial production before the deadline for this rebuttal report. For these reasons, this report may be revised and supplemented after additional review of defendants' production, or if more complete documentation is produced by defendants.

Data and Analytic Deficiencies in Dr. Ward's Report

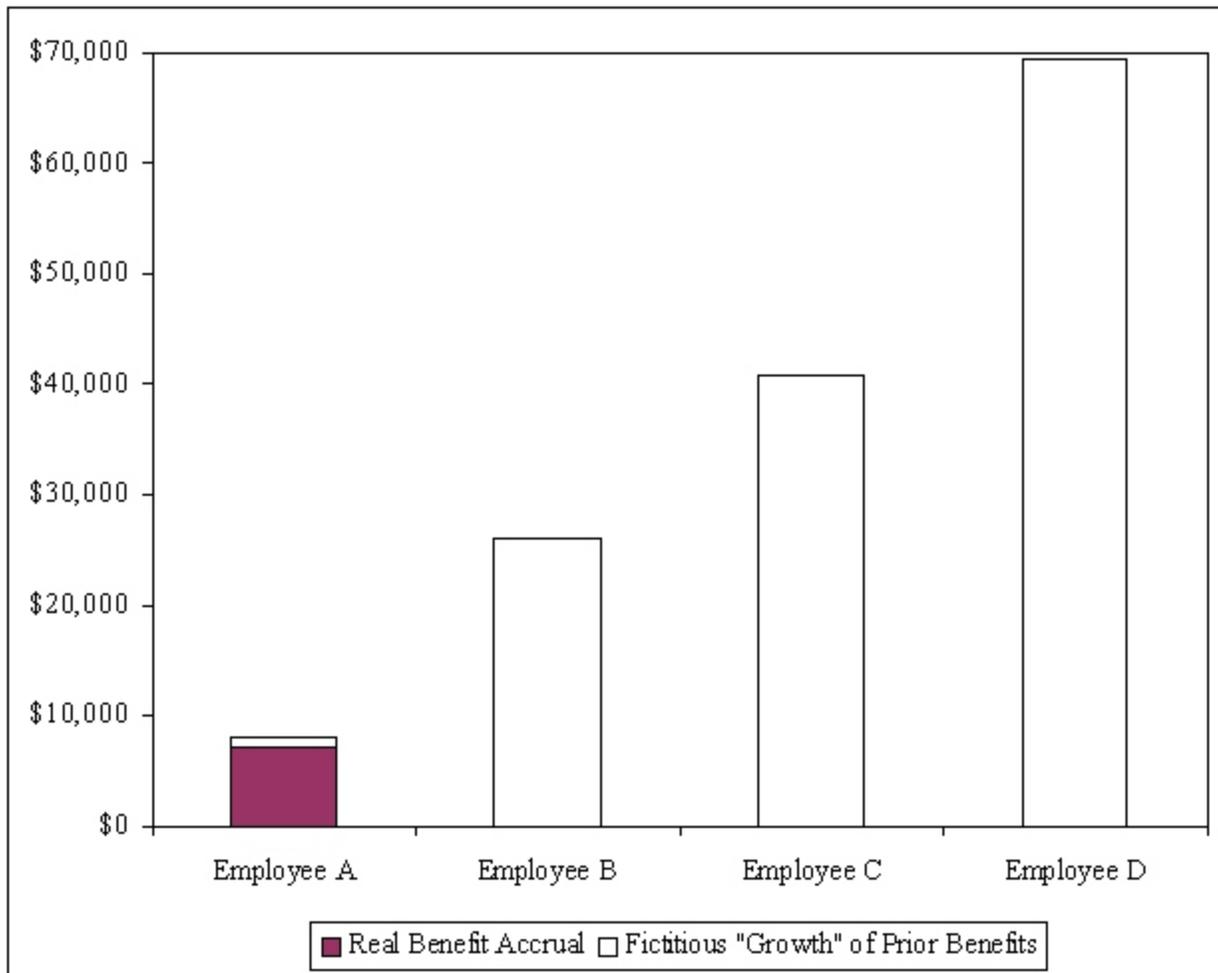
1. Dr. Ward attempts to describe in his report the analyses that he performed. However, since he has not provided complete data, computer programs, or computer output for his analyses, they cannot be replicated or tested.
2. Dr. Ward's report does not make any effort to disprove the central points of Mr. Poulin's actuary report and my preliminary report: that the large benefit reductions and long periods of wear away resulting from Solvay's cash balance conversion fall disproportionately on older employees.
3. Dr. Ward's report does not provide any evidence of costs associated with the "growth of benefits" that he claims. My understanding from Mr. Poulin's declaration is that Solvay could not incur an actuarially recognized cost during the periods of wear away.¹
4. In his rebuttal declaration Mr. Poulin provides a detailed actuarial critique of the "growth of benefits" that Dr. Ward has invented. I agree with Mr. Poulin that "growth of benefits" is not an area of statistical expertise. A statistician generally draws on measures recognized by experts in other fields and applies statistical methods to analyze them. Dr. Ward does not support his fabricated "growth of benefits" by reference to any expert opinion or authoritative source.
5. Dr. Ward does not reveal that the "growth of benefits" that he claims is a function of interest credits on the individual employees' opening account balances and the hypothetical pay credit assigned to the individuals' cash balance accounts. As Mr. Poulin demonstrates in his rebuttal declaration, this does not qualify as "growth of benefits" when wear away prevents those credits from actually adding to the employee's previously-earned retirement income.

¹Poulin Rebuttal Declaration, ¶25.

6. In paragraphs 19 through 22, Dr. Ward presents his analysis of “growth of benefits” for four employees: A, B, C and D. His demonstration is strong evidence for the *plaintiffs’* case. Only one of these employees, Employee A, is under 40. And only one has not spent the entire period since the plan transition in wear away: Employee A. This means that only Employee A has accrued any benefits in addition to the prior plan benefits frozen at the time of the plan transition. Mr. Poulin demonstrates that the “growth of benefits” that Dr. Ward claims for Employees B, C and D are an illusion that Dr. Ward props up by non-standard comparisons of “immediately available” benefits, and, more importantly, by *counting interest on previously earned benefits as growth in benefits*. This fiction is belied by the reality faced by Employees B, C, and D: all were under wear away for the entire period analyzed by Dr. Ward. By definition of wear away, that means that none of them accrued any additional benefits for their retirement during this period.

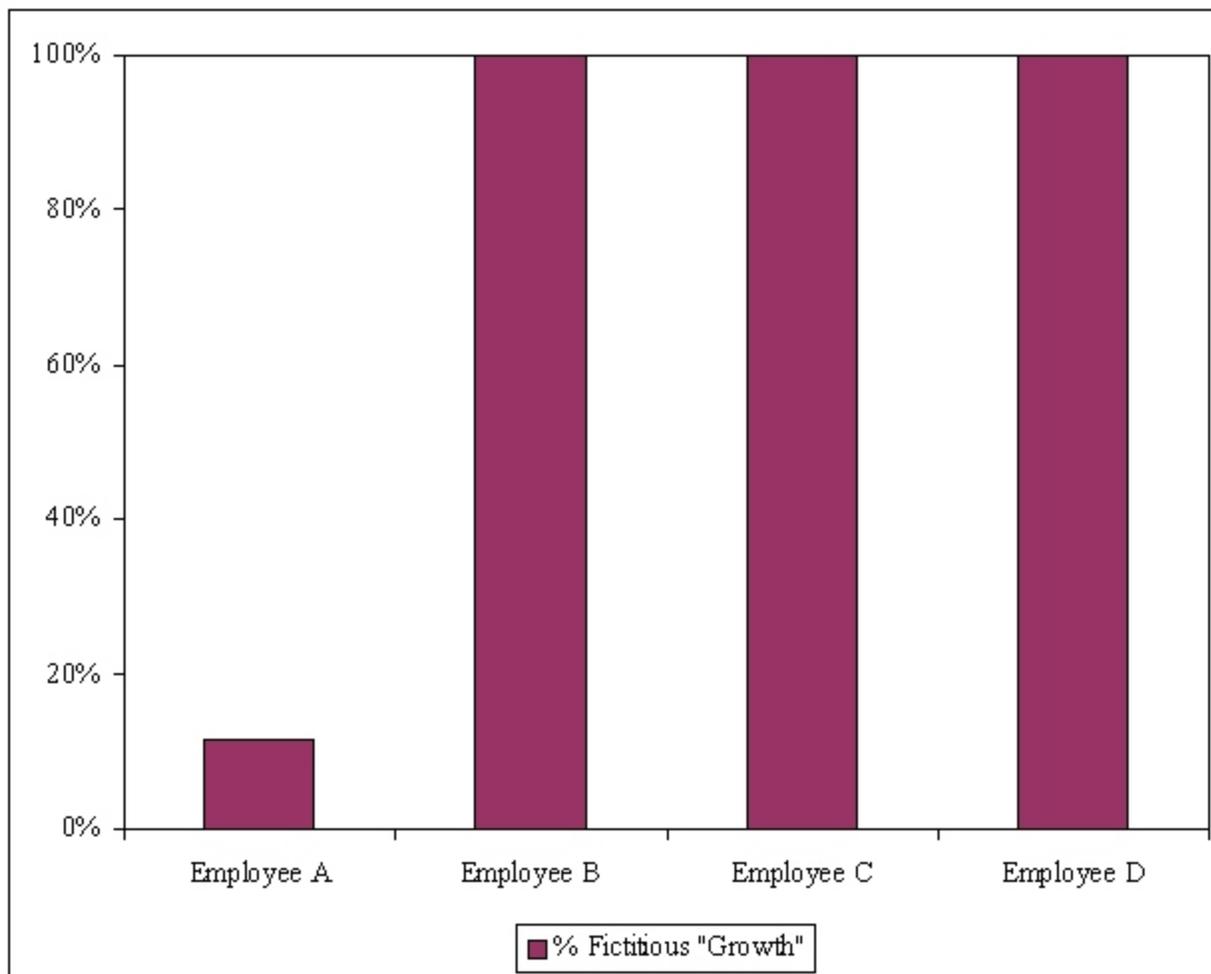
7. Chart 1 and 2 below demonstrate how misleading is Dr. Ward’s calculation of the “growth of benefits” for the four employees. Chart 1 shows that the “growth of benefits” that Dr. Ward ascribes to the three older employees is entirely a fiction because all three were under wear away for the entire period. By comparison, most of the “growth of benefits” for the one employee under 40 actually resulted in new accrued benefits.

Chart 1: Dr. Ward’s “Growth of Benefits” Fictitious for Older Employees



8. Chart 2 shows the same pattern, but displaying the percent of Dr. Ward’s “growth of benefits” that result from increases in the value of previously earned benefits. This chart shows that 100 percent of the older employees’ “growth of benefits” was fictitious, whereas only 12 percent of the younger employee’s growth of benefits was not real benefit accrual. For the younger employee, the remaining 88 percent was an actual increase in benefits.

Chart 2: 100% of Dr. Ward’s “Growth of Benefits” a Fiction for Older Employees



9. Table 1 reports the age, wear away and Dr. Ward’s “growth of benefits” for Employees A through D. The table shows that all employees but the youngest suffer prolonged wear away with no new benefit accruals. The table also shows that Dr. Ward’s fictional “growth” calculations include two distortions. First, they even inflate the actual increase in pay and interest credits, and they do this more for older employees. For example, Dr. Ward’s “growth of benefits” for the oldest employee, Employee D, is \$69,532, when the increase in the cash balance pay and interest credits was only \$41,609. Thus Dr. Ward’s growth number *overstates the actual* increase in cash balance credits by \$27,922, which exaggerates the increase in credits by *over 67 percent*. Secondly, the entire “growth of benefits” is a fiction

for older employees because the three older employees were all in wear away during the entire period.

Table 1: Dr. Ward's Fictitious Growth and Exaggerated Credits for Older Employees						
Employee	Age 2/8/2008	Years of Wear Away	Dr. Ward's "Growth of Benefits"	Total Increase in Cash Credits	Difference in Credits vs. Ward's "Growth"	New Retirement Benefits
A	32	0.4	\$8,039	\$7,980	(\$59)	\$7,117
B	47	4.9	\$25,974	\$23,814	(\$2,160)	\$0
C	52	11.4	\$40,911	\$36,776	(\$4,136)	\$0
D	56	6.7	\$69,532	\$41,609	(\$27,922)	\$0

10. Dr. Ward attempts to put a statistical gloss on his comparison of "growth of benefits" in paragraph 27. However, as demonstrated above, he is practicing the most maligned of pseudo-statistics, derisively described as "garbage in, garbage out." Dr. Ward does the court the disservice of applying reliable statistical methods to "growth" numbers that he fabricated in a most misleading way. In addition, Dr. Ward provides no documentation of the calculations or output for the statistical significance he claims.
11. Dr. Ward's calculation file was only provided on April 28, 2009. The spreadsheet file that was produced at that time was apparently a partial version of the original manipulated so that the formulas used in the calculations were removed. In addition, Dr. Ward's statistical log files have not been produced. I reserve the right to supplement this rebuttal report as further information becomes available and further analysis can be performed.

Robert A. Bardwell, Ph. D.

