

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

Civil Action No. 04-cv-02686-WDM-CBS

WAYNE TOMLINSON,  
ALICE BALLESTEROS, and  
GARY MUCKELROY, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

EL PASO CORPORATION and  
EL PASO PENSION PLAN,

Defendants.

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**PLAINTIFFS' MOTION TO ALTER OR AMEND  
JUDGMENT ENTERED ON JANUARY 23, 2009**

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**COME NOW** the Plaintiffs, by and through their attorneys, Stephen R. Bruce and McNamara, Roseman, Martinez & Kazmierski, LLP, to respectfully request that this Court alter or amend the January 23, 2009 Judgment to find that Mr. Tomlinson's age discrimination charge was timely filed under the Age Discrimination in Employment Act, as amended by the Lilly Ledbetter Fair Pay Act of 2009, P.L. 111-2. Plaintiffs further request that the Court approve the ADEA collective action notice and consent form previously submitted in accordance with the Court's March 19, 2009 decision. The grounds for this motion

are:

1. This Court's January 21, 2009 decision held that Mr. Tomlinson's charge of age discrimination was untimely on the basis of the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007). On January 29, 2009, the President signed the Lilly Ledbetter Fair Pay Act of 2009 into law, which finds that *Ledbetter* is "contrary to Congress' intent" and amends the time period during which an individual must file a charge of discrimination under the Title VII of the Civil Rights Act, the ADEA, the Americans with Disabilities Act and the Rehabilitation Act.

2. The undersigned counsel for Plaintiffs certifies pursuant to L.Civ.R. 7.1 that he conferred in good faith with counsel for Defendants, Mr. Nadel, by telephone on February 4<sup>th</sup>, and Mr. Nadel stated that Defendants oppose Plaintiffs' motion.

3. A Memorandum in Support and a Proposed Order with the ADEA collective action notice and consent form previously submitted accompany this Motion.

WHEREFORE, Plaintiffs move that this Court alter or amend the January 23, 2009 Judgment to find that Mr. Tomlinson's age discrimination charge was timely filed under the Age Discrimination in Employment Act and to order that

notice be provided to the plan participants covered by the collective action definition previously approved by this Court.

Dated: February 6, 2009

Respectfully submitted,

s/ Stephen R. Bruce

Stephen R. Bruce  
805 15<sup>th</sup> St., NW, Suite 210  
Washington, D.C. 20005  
Telephone: (202) 371-8013  
E-mail: [stephen.bruce@prodigy.net](mailto:stephen.bruce@prodigy.net)

s/ Barry D. Roseman

McNamara, Roseman, Martinez &  
Kazmierski, LLP  
1640 East 18<sup>th</sup> Avenue  
Denver, CO 80218-1202  
303/333-8700  
[bdr@18thavelaw.com](mailto:bdr@18thavelaw.com)

Attorneys for Plaintiffs

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 6th day of February 2009, a true and correct copy of (1) Plaintiffs' Motion to Alter or Amend Judgment Entered on January 23, 2009, (2) the Memorandum in Support, (3) the Proposed Order with the Proposed ADEA Notice and "Consent to Join" forms, and (4) this Certificate of Service was sent via CM/ECF electronic filing, addressed to the following parties:

Darren E. Nadel  
LITTLER MENDELSON, P.C.  
One Tabor Center  
1200 17th Street, Suite 1000  
Denver, CO 80202

Christopher J. Rillo, Esq.  
GROOM LAW GROUP  
1700 Pennsylvania Ave., N.W.  
Washington, D.C. 20006-5893

Attorneys for Defendants

s/ Stephen R. Bruce