No. 06-3639

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CROWN CORK & SEAL COMPANY, INC.,
Plaintiff / Counter Defendant – Appellant,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, The AFL-CIO,
Defendant / Counter Claimant – Appellee,

ALVIN L. MCCOLLEY; LEROY KIRCHNER; STEVEN ANDERSON,
Individually and as representatives of a defendant class of retirees,
Defendants – Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIEF OF APPELLANT

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SUMMARY OF THE CASE

Appellant, Crown Cork & Seal Company, Inc. ("Crown" or the "Company"), instituted this action against the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"), and three retirees as class representatives of former employees who receive benefits from Crown. Asserting claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3); and the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), Crown sought a declaration of its right to modify the welfare benefits applicable to retirees who retired before April 1, 2002. IAM counterclaimed for an order compelling arbitration of the dispute.

The District Court granted summary judgment to IAM on its counterclaim, compelling arbitration of a dispute related to benefits under *expired* collective bargaining agreements without ever making the necessary finding that the right to benefits vested under those agreements and that the duty to arbitrate therefore survived the termination of the agreements, and without recognizing that the agreements, on their face, provided only for arbitration of disputes related to *current* employees. The District Court also dismissed Crown's cause of action under ERISA and declined to exercise jurisdiction over Crown's LMRA claim.

Because of the complexity, multiplicity, and importance of these issues, Crown respectfully requests 20 minutes per side for oral argument.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Eighth Circuit Local Rule 26.1A, Appellant Crown Cork & Seal Company, Inc. makes the following disclosure:

Crown Cork & Seal Company, Inc. is a wholly-owned subsidiary of Crown Holdings, Inc. No other publicly traded corporation owns 10% or more of Crown Cork & Seal Company, Inc.'s stock.

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STATEMENT OF JURISDICTION

The District Court had jurisdiction pursuant to 28 U.S.C. § 1331. (JA4.) This appeal arises from a final judgment of the United States District Court for the District of Nebraska, entered on September 25, 2006. (JA1188.) Crown timely filed a Second Amended Notice of Appeal on October 25, 2006. (JA1190.) This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the District Court erred in compelling the arbitration of grievances relating to the modification of retiree medical benefits, where (a) the parties never agreed to arbitrate disputes relating to retirees and, (b) in any event, the collective bargaining agreements governing the arbitrability of the parties' dispute had expired and the benefits at issue did not vest under the expired agreements.

- *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190 (1991).
- *Chauffeurs, Teamsters & Helpers, Local Union 238 v. C.R.S.T., Inc.*, 795 F.2d 1400 (8th Cir. 1986) (en banc).
- *Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512 (8th Cir. 1988).
- *Anderson v. Alpha Portland Indus., Inc.*, 752 F.2d 1293 (8th Cir. 1985) (en banc).

2. Whether Crown stated a claim for declaratory relief under ERISA where it is a fiduciary seeking equitable relief to enforce the terms of an ERISA plan.

- *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002).
- *Winstead v. J.C. Penney Co.*, 933 F.2d 576 (7th Cir. 1991).
- Declaratory Judgment Act, 28 U.S.C. § 2201.
- ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

3. Whether the District Court abused its discretion in declining jurisdiction over Crown's claim for declaratory relief under LMRA.

- *Alsager v. Dist. Ct. of Polk County*, 518 F.2d 1160 (8th Cir. 1975).
- Declaratory Judgment Act, 28 U.S.C. § 2201.
- LMRA § 301(a), 29 U.S.C. § 185(a).

STATEMENT OF THE CASE

On June 6, 2003, Crown instituted this action concerning modifications to retiree welfare benefits in the United States District Court for the District of Nebraska against IAM and three retirees who receive welfare benefits from Crown. (JA1-17.) Crown asserted claims under the Declaratory Judgment Act, 28 U.S.C. § 2201; section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3); and section 301(a) of the Labor Management

Relations Act ("LMRA"), 29 U.S.C. § 185(a). IAM filed its answer and a counterclaim against Crown on July 28, 2003, seeking an order compelling arbitration of the dispute. (JA439-50.) IAM and the individual defendants also moved to dismiss. (JA849.)

On January 20, 2004, the District Court (Shanahan, J.) dismissed Crown's ERISA claim and declined to exercise jurisdiction over Crown's claim for declaratory relief under LMRA. (JA851-62.)

Subsequently, in an order dated August 25, 2005, Chief Judge Bataillon, to whom the case had been reassigned, denied the parties' first cross-motions for summary judgment on IAM's counterclaim on the ground that IAM lacked standing to represent the retirees, but allowed IAM 90 days to amend its counterclaim after obtaining consent from the retirees to be represented. (JA874-86.) Having obtained consent from 653 of the 927 retirees covered by Crown's plans, IAM filed an amended counterclaim on December 20, 2005. (JA887-92, 910.)

On September 25, 2006, the District Court granted IAM's motion for summary judgment on the arbitration counterclaim, denied Crown's motion, and ordered arbitration between the parties. (JA1169-87.)

This appeal timely followed. (JA1190.)

STATEMENT OF FACTS

Facing serious economic difficulties arising from the competitive global economy and the draining effects of asbestos litigation, Crown made a difficult decision to unilaterally modify (but not terminate) welfare benefits for its former employees who retired before April 1, 2002. Crown instituted this action seeking a declaration of its right, as the administrator and fiduciary of a welfare benefits plan covered by ERISA, to institute these changes. This litigation does not involve the rights of Crown employees who retire after April 1, 2002, and concerns only collective bargaining agreements that expired on or before that date.

A. The Parties To This Suit

Crown is a manufacturer of packaging materials. (JA2, 903.) When Crown acquired a division of Continental Can Company ("Continental") in 1990, it also acquired 33 of Continental's manufacturing facilities. (JA2.) At that time, collective bargaining agreements ("CBA's" or "Master Agreements") negotiated by Continental and IAM were in effect at ten of these facilities, of which only six remain in operation today (including facilities in Nebraska and Minnesota). (JA2-3.) Since the acquisition, Crown has bargained with IAM at these facilities and has provided benefits to retirees from all ten facilities governed by the CBA's originally negotiated between Continental and IAM. (JA3.)

Crown named as defendants in this action both IAM and three individual retirees, as putative class members, who receive benefits under ERISA-governed welfare benefits plans that Crown administers. The welfare plans at issue applied to employees who retired (1) before March 31, 1993;[1] (2) between April 1, 1993 and March 31, 1999;[2] and (3) between April 1, 1999 and March 31, 2002.[3] (JA3-4.) None of the retirees affected by this litigation were covered by the CBA in effect on June 6, 2003, when Crown filed suit; that CBA first became effective on April 1, 2002. (JA1135.)

[1] IAM Master Retirees who retired before March 31, 1993 received benefits under an insurance plan, effective August 1, 1988, entitled: "Your Life Insurance and Health Care Benefits During Retirement [as] Established pursuant to the [C]ollective Bargaining Agreement between Continental Can Company, U.S.A. . . . and International Association of Machinists and Aerospace Workers, AFL-CIO" ("the 1981 Group Insurance Agreement (as amended in 1988)" or "1988 plan"). (JA1045-59.)

[2] All IAM Master Retirees who retired between April 1, 1993 and March 31, 1999 received benefits in accordance with an insurance plan, effective April 30, 1993, entitled: "Benefits For Employees and Their Eligible Dependents Established Pursuant to an Agreement between Crown Cork & Seal Company, Inc. and International Association of Machinists and Aerospace Workers" ("the 1993 plan"). (JA1076-1101.)

[3] IAM Master Retirees who retired between April 1, 1999, and March 31, 2002 received benefits in accordance with an insurance plan, effective April 1, 1999, entitled: "Benefits For Employees and Their Eligible Dependents Established Pursuant to an Agreement between Crown Cork & Seal Company, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO" ("the 1999 plan"). (JA1118-34.)

B. The Governing Documents And Agreements

Before 1981, each Master Agreement included a health insurance plan that provided post-retirement benefits for employees. (JA906.) After 1981, the Master Agreements incorporated the insurance plan, including these benefits, by reference. (JA907.)

Each Master Agreement also provides a grievance process, ultimately resulting in binding arbitration, for disputes "between the Local Management and the Union or employees" concerning "wages, hours, or conditions of employment" under the Master Agreement. (JA948, 1014, 1037, 1061, 1070, 1103, 1111, 1192, 1199.) The four-step grievance process is initiated by an "aggrieved employee," who may take the matter to his or her "Supervisor." (JA950, 984-85, 1015-16, 1038-39, 1062-63, 1071, 1104, 1112, 1210; *cf.* JA1194 (referring to "Foreman" instead of "Supervisor").) An appeal of the supervisor's decision may then be lodged with the "Plant Manager" (JA950-51, 985, 1016, 1039, 1063, 1071, 1105, 1112, 1194, 1202), and thereafter in a grievance adjustment meeting between a company representative and various union representatives. (JA951-52, 985, 1016-17, 1039-40, 1063-64, 1071, 1105, 1112-13, 1195, 1202-03.) Finally, "[i]f the answer given by the Company Representative in Step 3 is not satisfactory," the union may request mandatory arbitration. (JA952-54, 986, 1018-20, 1040-42, 1064-66, 1072-73, 1106, 1113-14, 1196-97, 1203-04.)

Each set of documents (*i.e.*, each Master Agreement and insurance plan) also contains language explicitly *reserving* Crown's right to alter or terminate welfare benefits provided therein; *limiting* the duration of such benefits; and *mandating* the coordination of benefits when a retiree receives welfare benefits from a source other than Crown, such as Medicare.

Reservation-of-rights clauses. Each of the relevant insurance plans expressly reserves Crown's unilateral right to alter or terminate the plan. For example, the insurance plan in effect from April 1974 through April 1977 provides:

> Naturally, it is hoped the Plan will continue through the years. However, Continental must reserve the right to change or terminate it in the future subject, of course, to any outstanding contractual agreements.

(JA977.) Similarly, the plan documents in effect from April 1977 through March 31, 1993, which governed retirees who retired before that date, state:

> Continental hopes and expects to continue the Plans indefinitely, but reserves the right to change or terminate them in the future subject, naturally, to any outstanding contractual agreements.

(JA1012, 1034, 1059.) Plan documents applicable to retirees who retired between April 1, 1993 and March 31, 1999 explain:

> Crown expects to continue these plans indefinitely, but reserves the right to amend, modify, or discontinue the plans at any time subject to, and within the framework of, applicable federal legislation and subject to any outstanding contractual agreements.

(JA1099.) And the plan documents applicable to retirees who retired between April 1, 1999 and March 31, 2002 state that "Crown expects to continue the Plans"

but expressly "reserves the right to amend, modify, or discontinue any of the Plans at any future time." (JA1119.) The plan documents also expressly provide that the plans could be "changed, modified, or terminated at any time," regardless of outstanding contractual agreements. (JA1134.)

Durational language. Every Master Agreement effective between 1968 and 2002 expressly ties the duration of the insurance plan to the term of that Master Agreement. For example, the Continental Master Agreement effective from April 1, 1971 to March 31, 1974 states: "The Group Insurance under this Agreement will be provided during the life of this Agreement for employees in the bargaining unit defined in the Master Agreement and their dependents as defined herein . . . ." (JA936.) The remaining Continental Master Agreements, in effect from 1968 to 1993, similarly provide that "[t]he Company agrees to . . . continue said Group Insurance Agreement without modification for the life of this Agreement." (JA921, 955, 988-89, 1021, 1043, 1067.) The 1993 Crown Master Agreement likewise provides that "[t]he Company agrees . . . to continue said Group Insurance Agreement without modification for the life of this Agreement." (JA1074.) And the 1996 and 1999 Crown Master Agreements provide that "[t]he Group Insurance . . . shall be continued without modification for the life of this Agreement." (JA1108, 1116.)

Coordination-of-benefits provisions. Finally, each of the relevant plans includes a coordination-of-benefits clause that reduces a retiree's employer-provided benefits in coordination with Medicare benefits. (JA975-76, 980-81, 1002-04, 1024-25, 1046, 1056, 1090-91, 1122, 1130-31.) For example, the 1981 Group Insurance Agreement (as amended in 1988) provides that, "[i]f you are retired, benefits payable under hospital or medical benefits provisions of this Plan will be reduced by the benefits payable for the same procedures or expenses provided under Medicare . . . ." (JA1046, 1056.) Similarly, the 1993 Plan explains that "the Plans take into account benefits which you and your covered dependents may be eligible for under other group medical, vision, and dental plans" and reduces "account benefits that may be payable under . . . governmental programs" like Medicare. (JA1090.) The remaining plan documents contain similar coordination-of-benefits provisions. (JA976, 980-81, 1002-04, 1122, 1130-31.)

* * * * *

In accordance with its rights pursuant to these provisions, Crown announced its intention to replace the various plans applicable to retirees who retired before April 1, 2002 with a single plan that provides a modified level of benefits in line with those received by active employees. (JA11, 909.) The changes under the new plan include increases to the lifetime maximum benefits available to retirees, premium sharing, increased deductibles and out-of-pocket limits, decreased

coverage of hospitalization, and the elimination of coverage for some dependents. (JA909-10.) Crown implemented these changes on August 1, 2003. (JA909.)

C. The Course of This Litigation

Crown filed this lawsuit on June 6, 2003, seeking a declaration that it had the right to modify the welfare benefits provided to Crown and Continental retirees and their dependents. (JA1-17.) In Count One, Crown sought declaratory relief against IAM under section 301(a) of LMRA, 29 U.S.C. § 185(a); in Count Two, Crown sought declaratory relief under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), against a class of retirees represented by the three named individual defendants. IAM counterclaimed for an order compelling arbitration of the dispute. (JA439-51, 849.)

On July 1, 2003, IAM filed a grievance with Crown to contest Crown's adoption of the new benefits plan. (JA910.) Crown declined to submit the dispute to arbitration because the dispute is not arbitrable under any of the expired Master Agreements. (*Id.*)

On January 20, 2004, the District Court (Shanahan, J.) granted the defendants' motions to dismiss Crown's LMRA and ERISA claims. (JA862.) As to the ERISA claim against the retirees, the District Court stated that Crown is a fiduciary and that the declaration that Crown seeks "is arguably equitable" because it is "in some sense . . . for the purpose of prescribing whether Crown has the right

to modify or reform a contract, thereby[] reforming [Crown's] method of calculating retiree benefits for the present and the future." (JA851-53 (emphasis added).) Nevertheless, the District Court held that Crown failed to state a claim under section 502(a)(3) of ERISA because Crown did not seek to "enforce the terms of the plan." (JA856.)

Next, the District Court declined to exercise jurisdiction over Crown's LMRA claim, despite finding that Crown demonstrated "a 'sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" (JA859, 861 (quoting *Caldwell v. Gurley Ref. Co.*, 755 F.2d 645, 649 (8th Cir. 1985)).) The court reasoned that a declaratory action between IAM and Crown "would not necessarily serve any useful purpose in clarifying or settling the legal relations at issue" because the individual retirees, against whom Crown had asserted an ERISA claim, had been dismissed from the suit. (JA860.) Moreover, the court stated that Crown had filed this suit to "procedural[ly] fence" the IAM and retirees in the Eighth Circuit. (JA861 (internal quotation marks omitted).)

In dismissing Crown's claim, however, the District Court noted that the District of Nebraska was "as good a place as any" forum for resolving this dispute because the retirees were spread across the country. (*Id.*) In the course of discussing Crown's LMRA claim, the District Court also expressly "agree[d] with at least three of the reasons that Crown named . . . for rejecting" IAM's arguments

in favor of arbitration. (JA857.) The court stated that IAM lacked "standing to proceed to arbitration on behalf of retirees," that "the contractual grievance procedure does not cover disputes concerning retiree rights," and that "IAM ha[d] not shown that the action fits into the recognized categories of disputes that remain arbitrable following the expiration of a collective bargaining agreement." (JA857.) Indeed, the District Court explained that the "critical question" in determining the arbitrability of disputes arising after the expiration of a CBA "is whether Crown's action to modify health benefits infringes an accrued or vested right" under the lapsed agreements. (JA858.)

Shortly thereafter, this case was reassigned to Chief Judge Bataillon. (Dist. Ct. Dkt. Entry #63.) Based on a joint stipulation of facts, the parties cross-moved for summary judgment on IAM's counterclaim seeking arbitration. (JA863-70.) Initially, on August 26, 2005, the District Court denied both motions. (JA886.) The court reiterated that the "critical question for purposes of determining arbitrability was whether the retirees' benefits had vested." (JA878.) It declined to reach that question, however, because IAM "only represent[ed] the current bargaining unit" and "d[id] not have standing to pursue arbitration on behalf of the Continental/Crown retirees." (JA886.) Thus, the District Court gave IAM 90 days "to amend the [counterclaim] and/or substitute parties to demonstrate consent of the retirees in order to demonstrate standing and subject matter jurisdiction." (*Id.*)

IAM subsequently received written consents from 653 (out of 927) retirees to represent them in arbitration over the changes made to their benefits. (JA910.) Crown, IAM, and the consenting retirees agreed that, if IAM prevailed on its counterclaim for arbitration, the authorizing retirees and surviving spouses would be bound by the arbitrator's decision (except to the extent such a decision was modified or vacated on review by a federal court). Alternatively, if the federal courts ruled in favor of Crown on IAM's counterclaim, the retirees and surviving spouses, and IAM, would be precluded from pursuing their claims in arbitration under the CBA's. (JA910-11.)

On renewed cross-motions for summary judgment, the District Court granted IAM's motion and denied Crown's motion on September 25, 2006. (JA1187.) In deciding whether to compel arbitration, the District Court asked whether the dispute fell within the scope of the grievance provisions of the *current* Master Agreement that was in force on July 1, 2003, when IAM filed a grievance regarding the benefit changes, rather than under the grievance provisions of the expired Master Agreements that were in effect when the retirees in question retired from Crown or Continental. (JA1184-85.)

Focusing on what it found to be "numerous ambiguities in language that relate to 'vesting' in the submitted documents," the court concluded that "it would be *possible* for an arbitrator, consistent with the plain meaning of the agreement, to

rule in favor of [IAM]." (JA1185 (emphasis added).) Because of that "possibil[ity]," the court compelled arbitration, entering final judgment in IAM's favor on the counterclaim. That decision did not mention Judge Shanahan's earlier finding that "the contractual grievance procedure does not cover disputes concerning retiree rights." (JA857.) Crown timely appealed to this Court on October 25, 2006. (JA1190.)

SUMMARY OF THE ARGUMENT

The District Court erred in compelling arbitration of a dispute that the parties never agreed to arbitrate, in dismissing Crown's ERISA claim, and in declining to exercise jurisdiction over Crown's LMRA claim.

1. The District Court's grant of summary judgment on IAM's counterclaim for arbitration should be reversed, and summary judgment entered in favor of Crown. The duty to arbitrate is an obligation assumed in contract. Thus, before ordering arbitration, a court must determine (1) that a valid agreement to arbitrate exists; and (2) that the dispute at issue falls within the scope of that arbitration agreement. Neither requirement is satisfied here.

First, a duty to arbitrate generally expires along with the contract containing the arbitration clause. Where, as here, the relevant arbitration clauses are contained in *expired* collective bargaining agreements, a present duty to arbitrate exists (as relevant here) only if the dispute relates to a right that vested or accrued

under the expired agreements. To determine whether the duty to arbitrate survived the expiration of the pertinent CBA's, therefore, this Court must determine whether the welfare benefits at issue vested or accrued under those expired agreements. Judge Shanahan properly framed the issue: "[T]he critical question . . . is whether Crown's action to modify health benefits infringes an accrued or vested right under the agreement." (JA858.) Here, the plain language of the governing documents—specifically, the reservation-of-rights provisions, durational language, and coordination-of-benefits clauses contained in the documents applicable to each group of retirees—establishes unequivocally that Crown retained the right to unilaterally modify benefits after the expiration of each CBA, and that the benefits were therefore not vested. Thus, the duty to arbitrate grievances related to those benefits, like the retirees' right to the benefits themselves, expired along with each CBA.

Second, and independently, the plain language of the relevant arbitration provisions makes clear that, even if the arbitration clauses had survived the expiration of the CBA's, this dispute plainly falls outside the scope of the clauses, which are limited to claims on behalf of *current* employees, not retirees.

In compelling arbitration, the District Court erroneously looked to the arbitration clause of the *current* CBA, even though IAM's grievance relates only to *expired* agreements. Accordingly, the District Court concluded that a valid

arbitration clause existed without ever analyzing whether IAM's post-expiration grievance related to rights that survived the termination of the relevant agreements—specifically, whether the welfare benefits in fact vested under the expired CBA's. Additionally, Chief Judge Bataillon never addressed Judge Shanahan's dispositive finding that retiree rights were not within the scope of the relevant grievance and arbitration provisions.

2. The District Court also erred in dismissing Crown's ERISA claim. Crown satisfied each requirement for stating a claim under section 502(a)(3) of ERISA. First, Crown is indisputably a fiduciary. Second, the declaratory relief that Crown seeks is inherently equitable because, like an injunction, it would prescribe a method of determining the benefits to which retirees are presently and prospectively entitled. Third, Crown seeks to enforce the terms of an ERISA plan because it seeks to effectuate the reservation-of-rights clauses, the duration provisions, and the coordination-of-benefits clauses that enable Crown to modify retiree benefits. The District Court's interpretation of section 502(a)(3) to apply only to suits for past "injuries" or "violations" engrafts a requirement onto the statute that is not contained in its text, finds no grounding in precedent, and would contravene the purposes of the Declaratory Judgment Act.

3. Finally, the District Court abused its discretion in declining to exercise jurisdiction over Crown's LMRA claim. After correctly finding that

Crown stated a claim for relief, the District Court nevertheless declined to exercise jurisdiction under the Declaratory Judgment Act based on a series of factual findings wholly unsupported by the record. At a minimum, because a critical concern of the District Court—that adjudicating the LMRA claim between IAM and Crown would leave potential claims between Crown and its retirees unresolved—has now been obviated by the consent of most retirees to be represented by IAM, a remand is warranted so that the District Court can reconsider its decision.

ARGUMENT

Standards of Review:

This Court reviews *de novo* a grant of summary judgment, *see Lipton-U.City, LLC v. Shurgard Storage Ctrs. Inc.*, 454 F.3d 934, 936-37 (8th Cir. 2006), and a dismissal for failure to state a claim, *see Prescott v. Little Six, Inc.*, 387 F.3d 753, 756 (8th Cir. 2004), *cert. denied*, 544 U.S. 1032 (2005). When reviewing a district court's decision to decline jurisdiction over a claim for declaratory relief, an "appellate court may substitute its judgment for that of the lower court" if the district court has abused its discretion. *Alsager v. Dist. Ct. of Polk County*, 518 F.2d 1160, 1163 (8th Cir. 1975).

I. IAM'S POST-EXPIRATION GRIEVANCE IS NOT ARBITRABLE.

IAM's post-expiration grievance is not arbitrable for two reasons, each of which independently requires reversal of the District Court's judgment. First, the CBA's between Crown and IAM make clear on their face that the parties agreed to arbitrate only disputes related to *active* employees, not *retirees*. Second, and in any event, any duty to arbitrate did not survive the expiration of the CBA's because the instant dispute does not involve a right to benefits that vested under the agreements. Because the right to benefits expired with the CBA's, so, too, did any duty to arbitrate disputes over those benefits.

A. Arbitration May Not Be Imposed On Parties Beyond The Scope Of Their Agreement.

It is well settled that arbitration is a matter of contract, and a party will therefore not be compelled to arbitrate a dispute that it has not agreed to arbitrate. *See, e.g., A T & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986). In addition, a dispute over arbitrability—like any contractual dispute—is a question for *judicial* determination. *Id.* at 649. Thus, in considering arbitrability, a court asks "whether a valid agreement to arbitrate exists," and, if so, whether the dispute falls within "the scope of the agreement." *United Steelworkers of Am. v. Duluth Clinic, Ltd.*, 413 F.3d 786, 788 (8th Cir. 2005) (internal quotation marks omitted).

1. A dispute occurring after the expiration of a CBA is arbitrable only if it involves a right or obligation that survives expiration of the lapsed agreement.

Where, as here, a grievance relates to an *expired* contract, a court must first assure itself of the continued viability of the parties' agreement to arbitrate. *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 206-07 (1991). A dispute that arises after a contract's expiration is generally not arbitrable because "an expired contract has by its own terms released all its parties from their respective contractual obligations, except obligations already fixed under the contract but as yet unsatisfied." *Id.* at 206.

Specifically, a post-expiration grievance is arbitrable only if it relates to a right or obligation that *survives* the expired agreement, and thus continues to "arise under [that] contract." *Id*. In turn, a "postexpiration grievance can be said to arise under the contract," as relevant here, only "where an action taken after expiration infringes a right that accrued or vested under the agreement . . . ." *Id*. at 205-06 (also describing other circumstances not applicable here in which a post-expiration grievance arises under a lapsed contract, *i.e.*, "where it involves facts and occurrences that arose before expiration" and "where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement").

Thus, in determining whether a post-expiration dispute is arbitrable, a court must determine whether the expired agreement "*in fact* creates [a vested] right or obligation at issue." *Luden's Inc. v. Bakery, Confectioner & Tobacco Workers' Int'l Union of Am. Local No. 6*, 28 F.3d 347, 354 (3d Cir. 1994) (emphasis added) (citing *Litton*, 501 U.S. at 209-10); *cf. Chauffeurs, Teamsters & Helpers, Local Union 238 v. C.R.S.T.*, 795 F.2d 1400, 1405-05 (8th Cir. 1986) (en banc) (analyzing whether the right at issue actually survived the contract's expiration). The continued viability of the expired arbitration clause—the threshold *judicial* inquiry—turns on whether the right or obligation that is the subject of the grievance survived the expiration of the agreement. *See Litton*, 501 U.S. at 209-10. If the right at issue expired with the CBA, so, too, did any duty to arbitrate a dispute over that right.

2. No presumption in favor of arbitrability applies in determining whether a valid agreement to arbitrate exists.

No presumption of arbitrability informs this judicial determination of whether a valid agreement to arbitrate exists. *See Litton*, 501 U.S. at 209. Such a presumption attaches, if at all, only at the *second* stage of the court's traditional arbitrability inquiry, concerning whether a grievance falls within the scope of an arbitration clause that the court has already determined to remain in effect after expiration. *See A T & T Techs.*, 475 U.S. at 650. In this way, the presumption operates as a rule of construction that guides a court's interpretation of the breadth

of a valid arbitration clause, but cannot serve as a substitute for a valid agreement to arbitrate.

Specifically, a presumption in favor of arbitrability attaches to a dispute related to an *expired* agreement to arbitrate only after a judicial determination that the post-expiration dispute concerns rights that were vested under the lapsed CBA. *See Litton*, 501 U.S. at 204, 209. The Supreme Court's decision in *Nolde Brothers, Inc. v. Bakery & Confectionary Workers Union, Local No. 358*, 430 U.S. 243 (1977), is not to the contrary. As the Court later explained in *Litton*, the dispute in *Nolde Brothers* "'clearly [arose] under [the expired] contract'" at issue. *Litton*, 501 U.S. at 204 (quoting *Nolde Bros.*, 403 U.S. at 249). The *Litton* Court thus explained that, in *Nolde Brothers*, the Court "found a presumption in favor of postexpiration arbitration of matters unless 'negated expressly or by clear implication,' [*Nolde Bros.*, 430 U.S. at 255], *but that conclusion was limited by the vital qualification that arbitration was of matters and disputes arising out of the relation governed by contract*." *Litton*, 501 U.S. at 204 (emphasis added).

As a result, before a court applies any presumption of arbitrability, it must first determine whether a post-expiration grievance relates to "matters and disputes arising out of the relation governed by contract." *Id.*; *cf. Chauffeurs*, 795 F.2d at 1403 ("[B]efore we limit our examination to the *Nolde* presumption, we must first determine whether the disputed right arose under the collective bargaining

agreement."). Where a post-expiration grievance does "*not* arise under the [expired] contract . . . the *Nolde* presumption" of arbitrability is simply "inapplicable." *Chauffeurs*, 795 F.2d at 1404 ("We conclude that the right involved here did not arise under the contract, thereby making the *Nolde* presumption inapplicable.") (emphasis added); *see also Litton*, 501 U.S. at 204, 209. Any other rule would put the cart before the horse: A court cannot presume that a dispute is arbitrable without first ascertaining whether a valid agreement to arbitrate is in force.

3. A court—not an arbitrator—must determine the question of arbitrability, even if doing so requires the court to reach the merits of the underlying dispute.

Finally, because the duty to arbitrate is an obligation born in contract, the Supreme Court has stressed that "[w]hether or not a company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the *court*, and a party cannot be forced to 'arbitrate the arbitrability question.'" *Litton*, 501 U.S. at 208 (emphasis added). This Court has likewise explained that "[w]hether a collective bargaining agreement requires the parties to arbitrate a particular grievance is 'undeniably an issue for judicial determination.'" *Int'l Bhd. of Elec. Workers v. GKN Aerospace N. Am., Inc.*, 431 F.3d 624, 627 (8th Cir. 2005) (quoting *A T & T Techs.*, 475 U.S. at 649).

If, in performing its threshold function, a court must inquire into the merits of the parties' dispute, then "so be it." *Id.* at 628 (citation and internal quotation marks omitted); *accord Stevens Constr. Corp. v. Chicago Reg'l Council of Carpenters*, 464 F.3d 682, 687 (7th Cir. 2006); *United Parcel Serv., Inc. v. Unión de Tronquistas de Puerto Rico ("UPS")*, 426 F.3d 470, 472 (1st Cir. 2005). The court "must determine whether the parties agreed to arbitrate [their] dispute, and [the court] cannot avoid that duty because it requires [the court] to interpret a provision of a bargaining agreement." *Litton*, 501 U.S. at 209. Thus, "the judicial responsibility to determine arbitrability takes precedence over the general rule to avoid consideration of the merits of a grievance." *GKN Aerospace*, 431 F.3d at 628.

Indeed, numerous courts of appeals have held that a court has a "*duty* to reach the merits" of a post-expiration claim if it must do so to resolve the question of arbitrability. *Luden's*, 28 F.3d at 354 (interpreting *Litton*) (emphasis in original). For example, in *Independent Lift Truck Builders Union v. Hyster Co.*, 2 F.3d 233, 236 (7th Cir. 1993), the Seventh Circuit held "that the district court erred in ordering the dispute to arbitration without first determining that it was arbitrable." Where the arbitrability question and the merits of the dispute "collapse into the same inquiry," *id.* at 235, "the court cannot avoid the duty to decide arbitrability because the decision necessarily implicates a decision on the substantive merits of

the dispute," *BCS Ins. Co. v. Wellmark, Inc.*, 410 F.3d 349, 352 (7th Cir. 2005); *see also UPS*, 426 F.3d at 471-472, 473-74 (finding "legal error in the [district] court's approach" of "deferring to the arbitrator on the threshold question of arbitrability" rather than interpreting an expired agreement to determine whether a post-expiration dispute involved vested rights).

B. The District Court Erred In Compelling Arbitration Because Crown Never Agreed To Arbitrate Post-Expiration Disputes Related To Retiree Benefits.

These principles establish that IAM's post-expiration grievance is not arbitrable for two independent reasons. First, the plain language of the CBA's at issue makes clear that Crown and IAM never agreed to arbitrate disputes regarding *retired* employees, and any such dispute therefore falls outside the scope of the parties' agreement to arbitrate. Second, the arbitration provisions of the lapsed CBA's did not survive the expiration of the CBA's. Because the relevant documents establish that retiree welfare benefits did not vest under the expired CBA's, any duty to arbitrate disputes related to such benefits expired along with the expiration of the CBA's.

1. The expired CBA's make clear that the parties did not agree to arbitrate disputes regarding retired employees.

Even if IAM's post-expiration grievance related to matters that survived the expiration of the relevant CBA's—which they do not, *see infra* 28-42—the

language in the agreements makes plain that disputes regarding retirees fall outside the scope of the parties' agreement to arbitrate.

It is well settled that grievance and arbitration provisions in a CBA are available only for claims by individuals or entities contemplated by the parties to the agreement. *See, e.g.*, *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 370 (1984) (holding, in the context of a suit by trustees of a multiemployer fund seeking contribution from employers, that "[n]o other parties" besides those specified in the collective bargaining agreements "were given access to the arbitration process"). Thus, a grievance and arbitration procedure available for claims by current employees cannot be invoked on behalf of retirees. *Cf. Allied Chem. & Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172 (1971) (holding that retirees "are not 'employees' within the meaning of the collective-bargaining obligations of the [National Labor Relations] Act").

For example, in *Anderson v. Alpha Portland Industries, Inc. ("Anderson I")*, 752 F.2d 1293 (8th Cir. 1985) (en banc), this Court considered whether grievance procedures in a CBA covered claims brought by *retirees*, or only by *current* employees (specifically, in the context of determining whether retirees, before making claims for insurance benefits, were required to exhaust grievance procedures in the CBA's in effect when they retired). *See id.* at 1294, 1298-99.

The Court held that the language of the grievance procedures could not be read to include grievances brought by retirees because "the relevant provisions address only grievances of 'employees' and speak only of 'employees' initiating the contractual dispute resolution procedures." *Id.* at 1298. The Court also explained that "the context in which the grievance procedure is presented in the . . . contract makes any construction applying it to retirees even more strained," since "[t]he initial steps in the grievance procedure . . . all involve taking complaints to a foreman or plant manager, individuals not convenient to retirees, who do not even have a 'workplace.'" *Id.* at 1298-99; *cf. Friedrich v. Local No. 780, Int'l Union of Elec., Radio & Mach. Workers*, 515 F.2d 225, 228 (5th Cir. 1975) (finding that a grievance procedure was "clearly oriented exclusively toward employee[-]initiated disputes," not toward complaints raised by the employer); *Affiliated Food Distribs. v. Local Union No. 229, Int'l Bhd. of Teamsters*, 483 F.2d 418, 421 (3d Cir. 1973) (explaining that a CBA could not be "fair[ly] constru[ed]" to cover employer-initiated grievances where the grievance procedure required the grievant to refer a complaint to a union steward, who would then present it to a company official).

As in *Anderson I*, the arbitration provisions of the CBA's at issue here are designed only to cover claims by *current employees*. In all of the relevant CBA's, Article 13.5, entitled "Steps in Grievance Procedure," makes it plain that a current employee—not a retiree—must initiate the entire grievance process:

- Under Step 1 of the grievance procedure, an "aggrieved employee, accompanied by a Grievance Representative, must take the matter up with his Supervisor. The Supervisor shall give his answer orally before the end of the second work day." Then, "[i]f the Supervisor's answer is not satisfactory to the employee . . . a Grievance Representative shall put the grievance in writing . . . and present it to the Supervisor," who then must provide a written answer. (JA950, 984-85, 1015-16, 1038-39, 1062-63, 1071, 1104, 1112, 1201; *cf.* JA1194 (referring to "Foreman" instead of "Supervisor").)

- Under Step 2, the Grievance Representative must write an appeal to the Plant Manager, who provides a written answer. A meeting between the Grievance Representative, the Plant Manager, and the Local Union is also held as part of this step. (JA950-51, 985, 1016, 1039, 1063, 1071, 1105, 1112, 1194, 1202.)

- Under Step 3, "if the Plant Manager's answer is unsatisfactory," then the Representative of the Union "shall notify the Company's" designated Company Representative "in writing of the Union's desire to appeal." The Company Representative and various Union Representatives then hold a grievance adjustment meeting. (JA951-52, 985, 1016-17, 1039-40, 1063-64, 1071, 1105, 1112-13, 1195, 1202-03.)

- Finally, arbitration is compelled only "[i]f the answer given by the Company Representative in Step 3 is not satisfactory." (JA952-54, 986, 1018-20, 1040-42, 1064-66, 1072-73, 1106, 1113-14, 1196-97, 1203-04.)

Thus, the grievance procedure culminates in arbitration, but begins *only* after an "aggrieved employee" has initiated the grievance process. As in *Anderson I*, "the relevant provisions [here] address only grievances of 'employees' and speak only of 'employees' initiating the contractual dispute resolution procedures." 752 F.2d at 1298. Moreover, "[t]he initial steps in the grievance procedure . . . all

involve taking complaints to a [Supervisor] or [P]lant [M]anager, individuals not convenient to retirees, who do not even have a '[work day].'" *Id.* at 1299. Accordingly, as precedent establishes, as Judge Shanahan correctly concluded—and as Chief Judge Bataillon ignored—"the contractual grievance procedure [at issue here] does not cover disputes concerning retiree rights." (JA857.) That dispositive finding warrants the entry of judgment in favor of Crown.

2. Because the retiree welfare benefits at issue did not vest under the expired CBA's, IAM's post-expiration grievance is not arbitrable.

In any event, IAM's grievance is not arbitrable for a second, independent reason: Any duty to arbitrate terminated along with the expiration of the CBA's, and did not survive such expiration because the retiree welfare benefits at issue did not vest under the expired agreements. Once again, the key issue is vesting, without which there is no arbitrability.

In determining whether the retiree welfare benefits at issue vested under the expired CBA's, it is important to note that such benefits do not vest as a matter of law under ERISA, but rather survive the expiration of a CBA only if the employer assumed a contractual obligation to provide vested benefits. "Congress did not mandate vesting for employee benefits welfare plans, such as health care plans." *Stearns v. NRC Corp.*, 297 F.3d 706, 711 (8th Cir. 2002) (citing 29 U.S.C. § 1051; *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995)). As a result,

"[a]n employer offering welfare benefits may unilaterally modify or terminate [those] benefits at the employer's discretion, so long as the employer has not contracted an agreement to the contrary." *Hughes v. 3M Retiree Med. Plan*, 281 F.3d 786, 790 (8th Cir. 2002).

To be sure, a "welfare benefit may vest if a promise to provide vested benefits is incorporated, in some fashion, into the formal written ERISA plan." *Id.* (citation and quotation marks omitted). This Court has emphasized, however, "that to accomplish that result, there must be a *specific, if not written, expression* of the employer's intent to be bound." *Anderson v. Alpha Portland Indus., Inc. ("Anderson II")*, 836 F.2d 1512, 1517 (8th Cir. 1988) (emphasis added).

Accordingly, a court must "begin[] with the written plan documents," *Hughes*, 281 F.3d at 790, construing those documents in accordance with basic principles of contract interpretation, *Anderson II*, 836 F.2d at 1517, and the law of trusts, *Hughes*, 281 F.3d at 790. The party claiming a vested right bears the burden of proving that the documents confer a vested right to welfare benefits. *Hutchins v. Champion Int'l Corp.*, 110 F.3d 1341, 1345 (8th Cir. 1997); *see also DeGeare v. Alpha Portland Indus., Inc.*, 837 F.2d 812, 815 (8th Cir. 1988), *vacated and remanded, on other grounds*, 489 U.S. 1049 (1989).

Moreover, in determining the duration of welfare benefits, a court must apply two settled principles of contract interpretation—first, that "[e]ach provision

should be read consistently with the others and as part of an integrated whole"; and second, that "the terms must be construed so as to render none of them nugatory and to avoid illusionary promises." *DeGeare*, 837 F.2d at 816; *see also Anderson II*, 836 F.2d at 1519 ("When interpreting a contract we must not interpret one provision inconsistently with another.").

These principles demonstrate that the retiree welfare benefits at issue here did not vest under the expired CBA's. Indeed, the core documents—the collective bargaining agreements and the benefit plans associated with those agreements—contain provisions that unambiguously negate any intent to provide vested or accrued retiree welfare benefits. IAM's grievance is therefore not arbitrable.

a. The plans' reservation-of-rights clauses are inconsistent with vesting.

Every benefit plan at issue in this dispute contains a reservation-of-rights clause that unmistakably reserves Crown's right to "change or terminate"—or "amend, modify, or discontinue"—the plans. (JA977, 1012, 1059, 1099, 1119.) This Court has repeatedly held that such clauses are wholly inconsistent with vesting. *See, e.g.*, *Stearns*, 297 F.3d at 712 ("We have repeatedly held that an unambiguous reservation-of-rights provision is sufficient without more to defeat a claim that retirement welfare plan benefits are vested."); *Anderson II*, 836 F.2d at 1514 (explaining that a reservation of rights provision "allowing amendment,

modification, or supplementation[,] is inconsistent with plaintiffs' argument that benefits were vested for life").

In *United Paperworkers International Union v. Jefferson Smurfit Corp.*, 961 F.2d 1384 (8th Cir. 1992), for example, this Court considered a suit brought by a labor union, challenging modifications that were made to a benefits plan. The Court noted that the plan reserved to the plan administrators the right to "'terminate, suspend, withdraw, amend or modify the Plan in whole or part at any time, subject to any applicable provisions of the group insurance policy(ies).'" *Id.* at 1385. The Court found the meaning of this clause "obvious," and held that it foreclosed the plaintiffs' claim to vested welfare benefits. *Id.* at 1385-86.

The reservation-of-rights provisions at issue in this dispute are materially indistinguishable from those that have defeated claims of vesting in these other cases. For example, the reservation-of-rights clauses in the documents governing IAM's grievance provide:

- *1974-1977 Benefits Plan* (applicable until 1977 to retirees who retired before that date): "Naturally, it is hoped the Plan will continue through the years. However, Continental must reserve the right to change or terminate it in the future subject, of course, to any outstanding contractual agreements." (JA977.)
- *1977-1993 Benefits Plans* (applicable to retirees who retired before March 31, 1993): "Continental hopes and expects to continue the Plans indefinitely, but reserves the right to change or terminate them in the future subject, naturally, to any outstanding contractual agreements." (JA1012, 1059.)

- *1993 Benefits Plan* (applicable to retirees who retired between April 1, 1993 and March 31, 1999): "Crown expects to continue these plans indefinitely, but reserves the right to amend, modify, or discontinue the plans at any time subject to, and within the framework of, applicable federal legislation and subject to any outstanding contractual agreements." (JA1099.)

- *1999 Benefits Plan* (applicable to retirees who retired between April 1, 1999 and March 31, 2002): "Crown expects to continue the Plans described in this booklet indefinitely. Crown, as the Plans' Sponsor, also reserves the right to amend, modify, or discontinue any of the Plans at any future time by the Board of Directors' resolution or by the Board's designated representative(s)." (JA1119.)

Each provision reserves for the company the right to "change or terminate"—or "amend, modify, or discontinue"—the benefits set forth within each plan. Moreover, each plan uses predictive words like "hopes" and "expects," which "do[] not indicate finality." *Hughes*, 281 F.3d at 792-93 ("It is plain and unambiguous that the word 'intends' does not indicate finality" when it is used in a reservation-of-rights clause that provides: "'[t]he Company fully *intends* to continue this Plan indefinitely, but reserves the right to change or discontinue it if necessary.'") (alteration in original; emphasis added). These reservation-of-rights provisions establish definitively that the parties never intended to create vested benefits that would survive the expiration of the CBA's. Accordingly, IAM's post-expiration grievance is not arbitrable under those expired agreements.

b. The agreements' duration clauses are inconsistent with vesting.

Duration clauses in the relevant CBA's, which tie Crown's obligation to provide welfare benefits to the life of each agreement, confirm the conclusion made clear by the reservation-of-rights provisions—that the parties to the agreements did not intend to create vested benefits.

This Court has held that duration clauses are "inconsistent with an intent to vest health benefits for life." *John Morrell & Co. v. United Food & Commercial Workers Int'l Union*, 37 F.3d 1302, 1307 (8th Cir. 1994). For example, *John Morrell & Co.* was an action brought by an employer against a labor union, seeking a declaratory judgment that the employer could unilaterally modify or terminate retiree welfare benefits that were provided under an expired CBA. *Id.* at 1303. The expired agreement included a clause that provided that the "'Plan described . . . will remain in effect for the duration of this agreement." *Id.* at 1304. This Court explained that "'[i]t would render the durational clause[] nugatory to hold that benefits continue for life even though the agreement which provides the benefits expires on a certain date.'" *Id.* at 1307 (quoting *Anderson II*, 836 F.3d at 1519); *see also Am. Fed'n of Grain Millers v. Int'l Multifoods Corp.*, 116 F.3d 976, 981 (2d Cir. 1997) ("Promising to provide benefits for a certain period of time necessarily establishes that once that time period expires, the promise does as

well."); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609 (7th Cir. 1993) (en banc).

The durational clauses at issue here contain similar language that belies any intent to create a vested right to welfare benefits beyond the term of each CBA:

- *Continental Master Agreements (1968-1993)*: "[Continental] agrees . . . to continue said Group Insurance Agreement without modification for the life of this Agreement." (JA921, 955, 988-89, 1021, 1043, 1067; *cf.* JA936.)
- *1993 Crown Master Agreement*: "The Company agrees . . . to continue said Group Insurance Agreement without modification for the life of this Agreement." (JA1074.)
- *1996 Crown Master Agreement*: "The Group Insurance Agreement dated April 1, 1993 . . . shall be continued without modification for the life of this Agreement." (JA1108.)
- *1999 Crown Master Agreement*: "The Group Insurance Agreement dated April 1, 1999 . . . shall be continued without modification for the life of this Agreement." (JA1116.)

It follows that any obligation to arbitrate any dispute related to those benefits ended with the expiration of each CBA.

c. The plans' coordination-of-benefits clauses are inconsistent with vesting.

Finally, all of the relevant benefits plans contain coordination-of-benefits clauses that eliminate the employer's responsibility for benefits assumed by Medicare. This Court has repeatedly "held that such provisions are also inconsistent with vesting." *John Morrell & Co.*, 37 F.3d at 1307; *DeGeare*, 837 F.2d at 816; *Anderson II*, 836 F.2d at 1519. As the *Anderson II* court explained:

> [C]oordination of benefits is inconsistent with vesting. When interpreting a contract we must not interpret one provision inconsistently with another. The coordination of benefits provision in the [Insurance and Health] Agreements reduces benefits to be paid to all retirees. We agree with the district court that "the Plan cannot be interpreted to provide vested rights for prior retirees in one provision and to take such rights away in another."

836 F.2d at 1519 (citations omitted); *accord John Morrell & Co.*, 37 F.3d at 1307.

The coordination-of-benefits clauses at issue here likewise provide for diminished benefits in lockstep with Medicare's assumption of those liabilities. For example, the 1981 Group Insurance Agreement (as amended in 1988) provides that:

> If you are retired, benefits payable under hospital or medical benefits provisions of this Plan will be reduced by the benefits payable for the same procedures or expenses provided under Medicare (Parts A and B), for which you or your Dependents are eligible or would have been eligible had timely and proper application been made. (JA1046, 1056.)

Similarly, the 1993 Plan explains:

> The purpose of the Crown Medical, Vision, and Dental Plans [is] to reimburse you at specified levels for the cost of covered expenses. Therefore, the Plans take into account benefits which you and your covered dependents may be eligible for under other group medical, vision, and dental plans . . . . Coordination of benefits takes into account benefits that may be payable under the following types of plans: . . . [c]overage under governmental programs required or provided by law—for example, Medicare—except as restricted by federal law. (JA1090.)

Coordination-of-benefits provisions of this type appear consistently in all of the relevant benefits plans. (JA976, 980-81, 1002-04, 1122, 1130-31.)

Accordingly, these provisions further confirm that Crown never intended to provide vested retiree welfare benefits, and, as a result, that IAM's grievances over those benefits are not arbitrable.

d. IAM cannot satisfy its burden of demonstrating that the retiree welfare benefits vested.

Faced with these unambiguous indicia that Crown never intended to provide vested welfare benefits under the expired CBA's, IAM argued below that isolated snippets within the governing documents could nonetheless be read to support vesting. IAM's arguments are meritless.

First, IAM argued that a provision in the insurance plans that provides that individual employees will receive insurance under the plan "until death" supports vesting. This Court, however, has expressly rejected reliance on such language. *See Anderson II*, 836 F.2d at 1517; *see also DeGeare*, 837 F.2d at 814, 816-17. As this Court explained:

> In *Anderson [II]* we held that [the claimants'] burden was not met by the employer's promise to provide welfare benefits "until death of retiree" where the employer expressly reserved the right to terminate or amend the plan. Similarly, in *DeGeare* . . . we held that an employer's promise to future retirees that benefits "will continue" could not be read as a promise of vested lifetime benefits in the face of a termination clause.

Howe v. Varity Corp., 896 F.2d 1107, 1109 (8th Cir. 1990), *aff'd*, 516 U.S. 489 (1996) (citations omitted). Simply put, the "until death" provision cannot support a claim of vesting without reading the reservation-of-rights and durational clauses

out of the contract. Indeed, a court "must resolve [any] tension between the [until death] clause, and the plan termination and reservation of rights clauses, *by giving meaning to all of them*." *UAW v. Rockford Powertrain, Inc.*, 350 F.3d 698, 703 (7th Cir. 2003) (emphasis added); *accord DeGeare*, 837 F.2d at 816; *Anderson II*, 836 F.2d at 1519. "Reading the document in its entirety, the clauses explain that although the plan in its current iteration entitles retirees to health coverage for the duration of their lives and the lives of their eligible surviving spouses, the terms of the plan—including the plan's continued existence—are subject to change at the will of the employer." *Rockford Powertrain*, 350 F.3d at 704.

Second, IAM argued that a provision in some of the insurance plans that limits the maximum amount of benefits that may be provided over an individual's lifetime indicates vesting. However, a "lifetime" maximum provision is not a promise of lifetime coverage, but rather serves only to limit the benefits provided under each plan by setting forth the maximum amount of coverage that the insurer will provide while the employer is still offering the insurance plan. Indeed, as the Ninth Circuit has explained, "the use of the word 'lifetime' in a policy 'does not create maximum lifetime coverage . . . but rather defines the maximum benefit allowed *if one is insured throughout his or her lifetime*.'" *Babikian v. Paul Revere Life Ins. Co.*, 63 F.3d 837, 840 (9th Cir. 1995) (emphasis added; ellipsis in original; citation omitted). Particularly when read in conjunction with a reservation-of-

rights clause, such language does not promise lifetime vested benefits. *See Vasseur v. Halliburton Co.*, 950 F.2d 1002, 1008-09 (5th Cir. 1992).

Third, IAM argued that, because employees are not eligible for retirement benefits unless they have ten or more years of continuous service with Crown or Continental, the right to welfare benefits was vested once the eligibility requirements were met. But a continuous-service requirement serves merely as a minimum qualification for eligibility, not as a formula by which welfare benefits could become vested over time. Thus, numerous courts have rejected claims of vesting where the relevant documents contained continuous-service requirements. *See Hughes v. 3M Retiree Med. Plan*, 134 F. Supp. 2d 1062, 1065 (D. Minn. 2001), *aff'd*, 281 F.3d 786, 793 (8th Cir. 2002); *Stearns*, 297 F.3d at 708, 712; *Vallone v. CNA Fin. Corp.*, 375 F.3d 623, 635 n.5 (7th Cir. 2004); *Rombach v. Nestle USA, Inc.*, 211 F.3d 190, 194 (2d Cir. 2000).

C. The District Court's Analysis In Compelling Arbitration Misapprehends The Law And The Record.

The District Court granted IAM's motion for summary judgment on its counterclaim for arbitration because, in the court's view, if "it would be *possible* for an arbitrator . . . to rule in favor of [IAM]," this dispute must be submitted to arbitration. (JA1187.) This holding misapprehends both the law and the record.

The District Court's principal error was in applying the arbitration clause of the *current* collective bargaining agreement to IAM's grievance, which related

instead to *past* collective bargaining agreements. (JA1184-85.) Accordingly, the District Court concluded that a valid arbitration clause existed without ever analyzing whether IAM's post-expiration grievance related to rights that survived the agreements' termination—specifically, whether the welfare benefits vested under the expired CBA's.

Indeed, the District Court itself initially recognized—both in an early opinion by Judge Shanahan and later in Chief Judge Bataillon's opinion disposing of the parties' renewed motions for summary judgment—that the "critical question [before the District Court] for purposes of determining arbitrability was whether the retirees' benefits had vested." (JA858, 878.) But rather than engaging in this analysis, as required to determine whether IAM's grievance involves rights that survived expiration of past collective bargaining agreements, Chief Judge Bataillon looked to the *current* collective bargaining agreement to analyze the question of arbitrability. The District Court explained:

> The grievance at issue was filed on July 1, 2003. At that time, a collective bargaining agreement between IAM and Crown was in effect, and the retirees were covered by a plan incorporated into the agreement. The grievance thus involves a dispute over benefits provided under a labor contract that was in force at the time of the filing of the grievance. (JA1184-85 (citation omitted).)

This framework contravenes the parties' stipulation that the retirees at issue in this case were governed by different plans, based on the plan then in force at the time that each employee retired. (JA908.) It is also contrary to the settled rule that

a CBA is only binding on the employer and those employees who were in regular and active service during the term of that agreement. *See, e.g.*, *Pittsburgh Plate Glass Co.*, 404 U.S. at 172 (holding that retirees are "not and could not be 'employees' included in the bargaining unit").

As a result of looking to the wrong CBA, the District Court applied the wrong standard for determining whether IAM's post-expiration grievance is arbitrable. Relying on cases like *GKN Aerospace*, which address the standard for determining whether a grievance falls within the scope of a valid arbitration clause in a *currently effective* agreement, the District Court asked whether "it would be *possible* for an arbitrator . . . to rule in favor of the Union" on the question of vesting. (JA1187 (emphasis added).) *Litton*, however, provides that, on the question whether there is a valid agreement to arbitrate a *post-expiration* grievance, the court must determine for itself whether the rights or obligations at issue did *in fact* vest, without applying any presumption of arbitrability. *See Litton*, 501 U.S. at 208-10 (determining whether the rights at issue did in fact vest, not whether they arguably vested); *cf. Chauffeurs*, 795 F.2d at 1403-05 (same).

Thus, the District Court's charge was not to pick out snippets of language that, in isolation, could *possibly* support a claim of vesting, but rather to determine whether the benefits in fact vested, and in the process to "resolve [any] tension between the [until death and lifetime benefits clauses], and the plan termination

and reservation of rights clauses, by giving meaning to all of them." *Rockford Powertrain*, 350 F.3d at 703; *accord DeGeare*, 837 F.2d at 816; *Anderson II*, 836 F.2d at 1519. As described above, *see supra* at 36-37, a proper construction of the governing documents as a whole demonstrates unambiguously that the parties to the collective bargaining agreements did not intend to create vested benefits.

Moreover, even if the documents *were* ambiguous, the District Court was under an obligation to resolve those ambiguities before compelling arbitration. *Cf. Kansas City S. Trans. Co. v. Teamsters Local No. 41*, 126 F.3d 1059, 1067 (8th Cir. 1997) (concluding that the district court appropriately held an order compelling arbitration in abeyance pending an evidentiary hearing on arbitrability). The question whether the welfare benefits vested relates directly to the judicial determination of whether the parties agreed to extend the duty to arbitrate beyond the life of the agreement.

Finally, the District Court erred in applying even its own inapposite framework to the arbitrability question in this case. Even if it had been appropriate to consider whether the *current* CBA requires arbitration of IAM's grievance—an argument that was never pressed by IAM, and that Crown vigorously disputes—the District Court would have been required to consider whether the dispute was arbitrable in light of the scope of the current arbitration clause, which limits arbitration to any dispute between Crown and IAM concerning "the interpretation

or application of, or compliance with, *this Agreement* respecting wages, hours, or conditions of employment." (JA1206 (emphasis added).) IAM's grievance over benefits provided under past CBA's plainly does not involve the interpretation or application of, or compliance with, the *present* collective bargaining agreement, and therefore falls outside the scope of that agreement's arbitration clause.

Moreover, like the grievance procedure in the expired agreements, *see supra* at 24-28, the grievance procedure in the present CBA contemplates that a grievance will concern the rights of a *current employee*. The grievance process speaks of an "aggrieved employee" taking a matter up with his or her "Supervisor"; an appeal being lodged with the "Plant Manager"; and only then, the submission of a formal appeal by a union representative to the company. (JA1207-08.) Plainly, the current collective bargaining agreement provides no support for IAM's grievance over benefits provided under expired collective bargaining agreements. Indeed, Judge Shanahan ruled precisely that—a conclusion that Chief Judge Bataillon wholly ignored.

II. THE DISTRICT COURT ERRED IN DISMISSING CROWN'S CLAIM FOR A DECLARATORY JUDGMENT UNDER ERISA.

A. Crown's Complaint States a Claim for Relief Under Section 502(a)(3) of ERISA.

Crown properly stated a claim for relief under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3). A plaintiff bringing a claim under section 502(a)(3) must

allege that (1) he is a "participant, beneficiary, or fiduciary"; (2) seeking "other appropriate equitable relief"; (3) "to enforce any provisions of this subchapter or the terms of the plan." *Id.* Crown readily satisfied each of these requirements.

1. Crown is indisputably a plan fiduciary.

An entity is a "fiduciary with respect to a plan to the extent [it] exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets." 29 U.S.C. § 1002(21)(A). Crown filed this suit in its capacity as the plan administrator, which maintains discretionary control over the distribution of benefits under the relevant plans. (JA908.) *See also* 29 C.F.R. § 2509.75-8 (noting that "a plan administrator . . . must, b[y] the very nature of his position, have 'discretionary authority or discretionary responsibility in the administration' of the plan" and "will therefore be [a] fiduciar[y].") Thus, the District Court properly held—and Appellees conceded—that Crown's role as a plan administrator renders it a plan fiduciary. (JA851.)

2. The declaratory relief that Crown seeks is inherently equitable.

Section 502(a)(3) permits a fiduciary to sue for "appropriate equitable relief," which the Supreme Court has interpreted to mean "those categories of relief that were typically available in equity." *Mertens v. Hewitt Assocs.,* 508 U.S. 248, 256 (1993) (emphasis omitted). Crown sought such relief.

Numerous federal courts "ha[ve] characterized suits by fiduciaries under ERISA for declaratory judgments . . . as actions in pursuit of 'appropriate equitable remedies' under [section 502(a)(3)]." *Spitz v. Tepfer*, 171 F.3d 443, 450 (7th Cir. 1999) (citing *Harris Trust & Sav. Bank v. Provident Life & Accident Ins. Co.*, 57 F.3d 608, 615 (7th Cir. 1995); *Winstead v. J.C. Penney Co.*, 933 F.2d 576, 580 (7th Cir. 1991); *Heller v. Fortis Benefits Ins. Co.*, 142 F.3d 487, 494-95 (D.C. Cir. 1998)). Indeed, as the District Court properly recognized, "'the declaratory judgment procedure largely originated in equity.'" (JA852 (quoting *Northgate Homes, Inc. v. City of Dayton*, 126 F.3d 1095, 1099 (8th Cir. 1997)).)

Specifically, in determining whether a declaratory judgment action is equitable within the meaning of section 502(a)(3), a court must determine whether "the nature of the underlying remedies sought" is equitable. *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002); *see also* DAN B. DOBBS, LAW OF REMEDIES § 2.6(3) (2d ed. 1993) ("[T]he declaratory action is regarded as equitable when the underlying dispute is equitable."). Put differently, "courts have examined the basic nature of the issues involved to determine how they would have arisen had Congress not enacted the Declaratory Judgment Act." *Wallace v. Norman Indus., Inc*., 467 F.2d 824, 827 (5th Cir. 1972) (citing 28 U.S.C. §§ 2201, 2202; *Am. Safety Equip. Corp. v. J. P. Maguire & Co.*, 391 F.2d 821, 824 (2d Cir.

1968); *Simler v. Conner*, 372 U.S. 221 (1963); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959)).

In *Great-West*, the Supreme Court, considering the nature of the underlying relief sought in the section 502(a)(3) action at issue, gave numerous examples illustrating the difference between legal and equitable relief. As pertinent here, the Court explained that a claim for "an injunction to correct the method of calculating payments going forward" under a contract would constitute "typically available" equitable relief; in contrast, an action for "specific performance of a contractual obligation to pay past due sums" would constitute legal relief. 534 U.S. at 212.

The underlying nature of the relief sought by Crown is akin to the forward-looking injunction described as equitable in *Great-West*. The declaratory judgment that Crown seeks, like the "injunction to correct the method of calculating payments going forward" described in *Great-West*, *id.*, would prescribe a method of determining the benefits to which retirees are entitled now and in the future, based on the terms of the plans at issue. Indeed, at common law, a trustee—who occupies essentially the same role as a plan administrator, *see, e.g.*, *Varity Corp. v. Howe*, 516 U.S. 489, 502 (1996)—has always been "entitled to apply to [a] court for instructions as to the administration of the trust . . . ." RESTATEMENT (SECOND) OF TRUSTS § 259 (1959). This remedy has been described as inherently equitable. *See, e.g.*, GEORGE G. BOGERT & GEORGE T. BOGERT, THE LAW OF TRUSTS AND

TRUSTEES § 559, at 162 (2d rev. ed. 1980)*; see also* DOBBS, *supra,* § 2.6(3) ("trust and fiduciary cases are historically and substantively equitable"). Thus, "[a]s part of its general jurisdiction over trusts, the court of equity has power to instruct and advise the trustee as to his powers and duties, on his request . . . ." BOGERT, *supra*, § 559, at 162.

Since the relief underlying Crown's request for a declaratory judgment is materially indistinguishable from an injunction regarding the calculation of benefits in the future, Crown is seeking a form of relief that was "typically available" in equity, and that therefore satisfies the requirements of section 502(a)(3).

3. Crown seeks to enforce the terms of an ERISA plan.

Finally, as required by section 502(a)(3), Crown's declaratory judgment claim seeks to "to enforce . . . the terms of [an ERISA] plan" because it seeks to effectuate the reservation-of-rights clauses, the duration provisions, and the coordination-of-benefits provisions in the plan documents.

As the Seventh Circuit has explained, an action "[t]o enforce is [an action] to effectuate" the plan's provisions. *Winstead*, 933 F.2d at 579. In *Winstead*, the court considered which of two ERISA plans was obligated to pay certain benefits to a beneficiary. The trustees of one plan filed suit under section 502(a)(3) for a declaration that the other plan was responsible for the benefits in question. *Id.* at

577. The court held that the trustees' suit was to "enforce" the coordination-of-benefits provision in their plan. "To enforce," the court explained, "is to effectuate," and a "suit to enforce a coordination-of-benefits provision is a suit to enforce the plan in which the provision appears." *Id.* at 579. The court further explained that the plaintiffs' claim for declaratory relief fell "within the literal terms of the statute" and "promote[d] the goals of ERISA." *Id.* at 579, 580.

Just as in *Winstead*, Crown's declaratory judgment claim seeks to "enforce" the terms of the plan that it administers because it seeks to "effectuate" the terms of the plans—specifically, the reservation-of-rights clauses, duration provisions, and coordination-of-benefits clauses, all of which, in combination, give Crown the right to unilaterally modify retiree welfare benefits.

B. Recent Caselaw Confirms The Propriety Of Declaratory Judgment Actions Under ERISA By Plan Fiduciaries.

Indeed, recent caselaw confirms that declaratory judgment actions by ERISA fiduciaries are a proper means to determine a plan administrator's rights and duties.

For example, in *Rexam v. United Steelworkers of America*, No. 03-2998, 2003 WL 22477858 (D. Minn. Oct. 30, 2003), a district court within this Circuit held that a declaratory judgment action by an employer—in fact, Crown's principal competitor, and an administrator of ERISA plans with terms similar to Crown's—for declaratory relief was an appropriate vehicle for determining the permissibility

of proposed benefit modifications under the terms of the plans. *Id.* at *1. Denying the defendants' motion to dismiss, the court noted that "federal courts have 'regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question.'" *Id.* at *2 (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 19 (1983)). In the context of ERISA suits, the court stated that "federal courts have held that the [Declaratory Judgment] Act provides federal question jurisdiction in cases where insurers seek declaratory relief regarding ERISA-governed policies, since insurance recipients could bring coercive actions under ERISA." *Id.* (citing *Prudential Ins. Co. of Am. v. Doe*, 76 F.3d 206, 210 (8th Cir. 1996); *Transamerica Occidental Life Ins. Co. v. DiGregorio*, 811 F.2d 1249, 1253 (9th Cir. 1987)).

Applying this framework, the District Court concluded that Rexam adequately stated a claim for declaratory relief because there was a viable Article III controversy between it and the retirees, and because the defendant retirees could have brought a coercive action against Rexam to enjoin the modifications to their benefits. *Id.*; *see also John Morrell & Co. v. United Food & Commercial Workers Int'l Union*, 825 F. Supp. 1440, 1442-43 (D.S.D. 1993), *aff'd*, 37 F.3d 1302 (8th Cir. 1994) (allowing an employer's declaratory judgment claim under ERISA against a class of defendant retirees to proceed to judgment where the employer

sought a declaration "that it is entitled to unilaterally modify or terminate programs of health benefits provided to its retired hourly employees").

Likewise, in *Rodriguez v. Tennessee Laborers Health & Welfare Fund*, 463 F.3d 473 (6th Cir. 2006), the Sixth Circuit affirmed the propriety of declaratory judgment actions under ERISA, albeit in the context of a claim for declaratory relief by a participant against a fund. On appeal, the fund argued that the district court lacked subject matter jurisdiction "because neither part (A) nor part (B) [of section 502(a)(3)] confers jurisdiction over a claim for declaratory relief." *Id.* at 475. In rejecting this claim, the Sixth Circuit recognized that "'in many actions for declaratory judgment, the realistic position of the parties is reversed'" in that "'[t]he plaintiff is seeking to establish a defense against a cause of action which the declaratory [judgment] defendant may assert . . . .'" *Id.* at 476 (quoting *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 248 (1952)). Thus, "[t]he key issue" in determining federal jurisdiction in an action for a declaratory judgment "is whether the federal courts would have subject matter jurisdiction over the threatened claim"—that is, the potential claim by the defendant in the declaratory action. *Id.* at 476-77. Because "the relevant threatened claim" was "an action over which the federal courts" would have jurisdiction, the plaintiff's declaratory judgment action was proper. *Id.* at 477.

C. The District Court Erred In Limiting The Reach Of Section 502(a)(3) To Remedies For Past ERISA Violations Or Injuries.

While properly holding that Crown was a fiduciary, and recognizing that Crown was at least "arguably" seeking equitable relief, the District Court erred in narrowly interpreting section 502(a)(3) to apply only to suits for past "injuries" or "violations," thereby excluding prospective declaratory relief from the available "equitable relief" under the statute. (JA851, 853, 856.) The District Court further erred in holding that Crown's action did not seek to "enforce" plan terms.

In dismissing Crown's claim because Crown purportedly did not show a past "injury" or "violation," (JA856), the District Court engrafted a requirement onto section 502(a)(3)(B)(ii) that its text does not provide, contrary to the settled canon that a court may not "read an absent word into the statute." *Lamie v. United States Tr.*, 540 U.S. 526, 538 (2004). Indeed, ERISA expressly distinguishes suits "to redress . . . violations" of the statute or plan, which are expressly authorized by section 502(a)(3)(B)(i), from suits "to enforce any provisions of this subchapter or the terms of the plan" pursuant to section 502(a)(3)(B)(ii). 29 U.S.C. § 1132(a)(3)(B)(i-ii). The clear import of this juxtaposition is that an action to enforce is something other than an action to redress a violation of ERISA or a plan. Were it otherwise, Congress would have had no need to divide section 502(a)(3)(B) into separate subparts, one of which addresses "violations," 29 U.S.C.

§ 1132(a)(3)(B)(i), and the other of which concerns actions to "enforce," *id.* § 1132(a)(3)(B)(ii).

This statutory analysis also demonstrates that the District Court erred in relying on *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000), and *Varity Corp. v. Howe*, 516 U.S. 489 (1996), to support its conclusion that an action under section 502(a)(3)(B)(ii) "to enforce" plan terms is limited to claims involving past violations or injuries. Both *Harris Trust* and *Varity Corp.* dealt not with actions to enforce plan terms, but with actions "to redress . . . *violations*" under section 502(a)(3)(A). *See Harris Trust*, 530 U.S. at 241; *Varity Corp.*, 516 U.S. at 508. In this context, the Supreme Court's references to violations and injuries—as required by the text of the statutory provision at issue in those cases—is hardly surprising. Neither case addressed the very different text of section 502(a)(3)(B)(ii).

Moreover, not only is the District Court's restrictive interpretation of section 502(a)(3)(B)(ii) unsupported by the text of ERISA or by precedent, but it also undermines the Declaratory Judgment Act, 28 U.S.C. § 2201, and the long-standing federal policies that it embodies. The procedural device provided in the Declaratory Judgment "Act enables parties uncertain of their legal rights to seek a declaration of rights *prior to* injury." *Kunkel v. Cont'l Cas. Co.*, 866 F.2d 1269, 1274 (10th Cir. 1989) (citing S. REP. NO. 83-1916, at 1, *reprinted in* 1954

U.S.C.C.A.N. 3389) (emphasis added); *see also* 12 JAMES WM. MOORE, *ET AL.*, MOORE'S FED. PRACTICE § 57.03[2] (3d ed. 1999) ("The purpose of the Declaratory Judgment Act is to enable parties to adjudicate their disputes *before* either suffers great damages.") (emphasis added). The District Court's holding that Crown could not assert an action under ERISA until an actionable injury arose conflicts with the plain language and express purpose of the Declaratory Judgment Act to allow prompt resolution of disputes before injuries accrue.

Finally, the District Court erroneously dismissed Crown's ERISA claim on the mistaken understanding that Crown "is not seeking to compel anyone to do anything," and therefore is not seeking to "enforce" plan terms. (JA856.) The declaratory judgment that Crown seeks would, like an injunction, cause the retirees to accept the benefits calculations and plan interpretation as declared by the court. Just as in *Winstead*, the declaratory judgment that Crown seeks would "enforce" the terms of the plan by, in effect, compelling the defendants to abide by an interpretation of the plan that "effectuates" certain of its terms. Such an action, as the Seventh Circuit explained, both falls "within the literal terms of the statute" and "promote[s] the goals of ERISA." *Winstead*, 933 F.2d at 579, 580.

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN DECLINING TO EXERCISE JURISDICTION OVER CROWN'S DECLARATORY JUDGMENT CLAIM UNDER LMRA.

After correctly finding that Crown stated a cause of action under LMRA, the District Court abused its discretion in declining to exercise jurisdiction over Crown's claim for declaratory relief.

The Declaratory Judgment Act provides that, "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration . . . ." 28 U.S.C. § 2201(a). Thus, the Act requires that a claim for declaratory relief must state an "actual controversy," meaning that the "controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). The District Court correctly concluded that Crown's claim presented "a 'sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" (JA859 (quoting *Caldwell v. Gurley Ref. Co.*, 755 F.2d 645, 649 (8th Cir. 1985).) Indeed, at the time of filing, Crown had already announced its plan to change the welfare plans, and IAM's grievance and counterclaim followed shortly thereafter.

Even when an actual controversy exists, "the Declaratory Judgment Act affords the district court *some* discretion in determining whether or not to exercise [its] jurisdiction." *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 n.17

(1993) (emphasis added); *see also* 28 U.S.C. § 2201(a). However, "the presumption is in favor of declaratory jurisdiction." *BASF Corp. v. Symington*, 50 F.3d 555, 558 (8th Cir. 1995). Indeed, "[t]he discretionary nature of the district court's exercise of jurisdiction in declaratory judgment actions does not mean that the decision to abstain can be made 'as a matter of whim or personal disinclination.'" *U.S. Fid. & Guar. Co. v. Murphy Oil USA, Inc.*, 21 F.3d 259, 261 (8th Cir. 1994) (quoting *Pub. Affairs Assocs., Inc. v. Rickover*, 369 U.S. 111, 112 (1962) (per curiam)). On the contrary, this Court has explained that district courts should exercise jurisdiction over a declaratory judgment action when doing so (1) "'will serve a useful purpose in clarifying and settling the legal relations in issue'"; and (2) "'will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceedings.'" *Alsager v. Dist. Ct. of Polk County*, 518 F.2d 1160, 1163-64 (8th Cir. 1975) (quoting EDWIN BORCHARD, DECLARATORY JUDGMENTS 299 (2d ed. 1941)).

Here, Crown readily established both of these elements. *First*, a declaration of whether Crown has violated the collective bargaining agreements at issue would serve the "useful purpose" of settling the rights and obligations of Crown and IAM under these important documents. Moreover, Crown and IAM are engaged in an ongoing relationship that requires periodic negotiation of these same agreements. Without a settled meaning of the language of the past collective bargaining

agreements, the parties will be unable to properly negotiate future contracts. *Second*, a declaration would terminate the dispute, as it would end the controversy with regard to Crown's right to modify benefits under the former CBA's, and obviate the need for an arbitration regarding this issue. Therefore, the District Court should have exercised jurisdiction over Crown's properly asserted claim for declaratory relief under LMRA.

In declining to exercise jurisdiction over Crown's LMRA claim, the District Court abused its discretion in several respects. *First*, the District Court committed reversible error in concluding, absent any findings or evidence in the record, that Crown filed this suit in the Eighth Circuit for the purpose of "procedural fencing." (JA861 (internal quotation marks omitted).) Indeed, the court never explained why filing suit in a District where over 200 of the 927 retirees reside—and in a Circuit that is home to almost 837 retirees, spouses, surviving spouses, and dependents of retirees, and to four of the current or former facilities involved—constituted forum shopping that weighed against the exercise of jurisdiction. (JA5-6.) On the contrary, the District Court itself recognized that, because the retirees were scattered nationwide, the District of Nebraska is "as good [a forum] as any." (JA861.) The lack of any support in the record for the District Court's conclusion regarding forum shopping warrants reversal. *See Alsager*, 518 F.2d at 1165

(reversing the district court's decision not to exercise jurisdiction where "a careful reading of the transcript" did not support the court's reasoning).

Second, the District Court further erred in rejecting Crown's claim for declaratory relief on the ground that IAM sought arbitration of the dispute. A district court has "no discretion . . . to refuse to proceed in a declaratory judgment action" on the speculative ground that, "in some other action in the future[,] the other party might be entitled to relief which would dispose of the issues involved in the declaratory judgment action," *Aetna Life Ins. Co. v. Martin*, 108 F.2d 824, 828 (8th Cir. 1940), especially if the potential alternative forum is not "equally effective" to the declaratory judgment action, *Tierney v. Schweiker*, 718 F.2d 449, 457 (D.C. Cir. 1983); *see also N.Y. Life Ins. Co. v. Roe*, 102 F.2d 28 (8th Cir. 1939); FED. R. CIV. P. 57, 1937 adoption advisory committee's note (explaining that "declaratory relief is alternative or cumulative and not exclusive or extraordinary," and the "fact that another remedy would be equally effective affords no ground for declining declaratory relief").

Here, the District Court found that the alternative remedy of arbitration would provide "a more effective resolution" of the matter than declaratory relief, (JA861), but it also found—just several paragraphs earlier—that there was insufficient evidence of an agreement between Crown and IAM to warrant arbitration of a post-expiration dispute. (JA859.) Thus, the District Court

expressly acknowledged that "there is not necessarily an alternative remedy [to declaratory relief] in this case." (JA861.) It was an abuse of discretion for the District Court to refuse Crown's claim for declaratory relief in favor of an alternative remedy that was simply nonexistent, let alone more effective. *See Aetna*, 108 F.2d at 828; *Tierney*, 718 F.2d at 457. Indeed, the fact that the parties *could* agree in the future to arbitrate a matter will always provide an excuse for courts to decline to exercise jurisdiction. Allowing a court to decline jurisdiction on this basis flouts the Declaratory Judgment Act's presumption *in favor* of exercising jurisdiction, *BASF Corp.*, 50 F.3d at 558, and effectively forces Crown to submit to arbitration to resolve its dispute, contrary to the settled rule that arbitration is a matter of consent, *A T & T Tech.*, 475 U.S. at 648.

Third, the District Court abused its discretion in declining jurisdiction on the ground that resolving the dispute between IAM and Crown under LMRA would not *also* simultaneously adjudicate the retirees' potential ERISA claims. A district court abuses its discretion in declining jurisdiction "where the parties are involved in an ongoing relationship that may present the opportunity for future disagreement." *Halkin v. Helms*, 690 F.2d 977, 1007 (D.C. Cir. 1982). This is because an important role of the Declaratory Judgment Act is to "'enable[] litigants to narrow the issue, speed the decision, and settle the controversy before an accumulation of differences and hostility[] engender[] a wide and general conflict,

involving numerous collateral issues.'" *Nat'l R.R. Passenger Corp. v. Consol. Rail Corp.*, 670 F. Supp. 424, 427 (D.D.C. 1987) (quoting S. REP. NO. 73-1005, at 3 (1934)) (first and second alterations in original); *see also Columbian Nat'l Life Ins. Co. v. Foulke*, 89 F.2d 261, 264 n.1 (8th Cir. 1937) (Stone, J., dissenting) (same). Crown and IAM have a wide-ranging, ongoing relationship that ensures both Crown's access to its workforce and the employees' receipt of compensation and benefits. In the context of that relationship, the District Court failed to appreciate the importance and utility of the Declaratory Judgment Act in resolving the parties' dispute over retiree benefits.

In any event, at a minimum, subsequent events since the District Court declined jurisdiction have undermined the basis for its decision and warrant a remand. *See Gopher Oil Co. v. Bunker*, 84 F.3d 1047, 1051 (8th Cir. 1996) (remanding when the reason district court dismissed claim for declaratory relief was "no longer valid" "[g]iven the latest developments in th[e] case"). IAM now represents over two-thirds of the class of retirees involved in this dispute over welfare benefits. This development alleviates the District Court's concern (whether proper or not) that adjudicating the LMRA claim between IAM and Crown would leave potential ERISA claims between Crown and its retirees unresolved. The District Court should thus be allowed to reconsider its decision not to exercise jurisdiction over Crown's LMRA claim.

CONCLUSION

For the foregoing reasons, Crown respectfully requests that this Court reverse the grant of summary judgment for IAM on the counterclaim and enter summary judgment in Crown's favor. Crown also requests that the Court reverse the District Court's dismissal of Crown's claims for declaratory relief under section 502(a)(3) of ERISA and section 301 of LMRA.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that, in accordance with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) and the general requirements set forth in Federal Rule of Appellate Procedure 32(a)(7)(C) and Eighth Circuit Rule 28A(c), this brief is proportionately spaced, has a typeface of 14-point, contains **13,950** words, and was prepared using Microsoft Office Word 2003. I further certify that, in accordance with Eighth Circuit Rule 28A(d), the enclosed CD-ROM contains a digital version of the brief in Portable Document Format (PDF), has been scanned for computer viruses, and is virus-free.

Dated: December 4, 2006

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CERTIFICATE OF SERVICE

I certify that, on this date, two copies of the foregoing BRIEF FOR APPELLANT CROWN CORK & SEAL COMPANY, INC. were served, via Federal Express, on:

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