

SHORTCHANGED: PENSION MISCALCULATIONS

HEARING BEFORE THE SPECIAL COMMITTEE ON AGING UNITED STATES SENATE ONE HUNDRED FIFTH CONGRESS FIRST SESSION

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WASHINGTON, DC
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SHORTCHANGED PENSION MISCALCULATIONS

MONDAY, JUNE 16, 1997

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The committee met, pursuant to notice, at 2:01 p.m., in room SD-628, Dirksen Senate Office Building, Hon. Charles Grassley, (chairman of the committee) presiding.

Present: Senators Grassley, and Breaux.

OPENING STATEMENT OF SENATOR CHARLES GRASSLEY, CHAIRMAN

The CHAIRMAN. It is my privilege to call this meeting of the Special Committee on Aging to order, and I thank you all very much for your kind attendance. Particularly, we have a group of outstanding witnesses today, and they have all taken time out of their busy schedules to be with us. I welcome all of you, but most importantly, I would like to thank you for participating in today's hearing.

Also, my colleague is here, the ranking minority member of the committee, Senator Breaux. We work very closely together. This is a committee that does not have any partisanship, and I am thankful for that, as I am sure he is as well. So, we try to do what we feel is right. We are going to be discussing an issue today where we have some concern about whether things are right. The hearing today is to bring this matter to people's attention, to make judgments based on the facts we know and to plead for more information. From the information we get from our witnesses, we intend to look for more studies on the subject so that we can nail down exact areas of concern. We feel that there is a red flag that should go up.

Today, we are here to listen to people who have been hurt. We are here to bring up the issue that pensions have been miscalculated. We are here to see real people who have been hurt by miscalculated pensions. We are here to seek out the reasons for the miscalculations and what you should do if you think there is a miscalculation in your pension.

This hearing will highlight who is at risk, not who is at fault when it comes to pension miscalculations. This hearing will address whether this problem is rare or is it an awakening of a proverbial sleeping giant? If I could sum up the most important message of this hearing, it would be to become aware of what you and

I can do to be more accountable for ourselves, our family, and our future. The hearing's message, for current retirees, past retirees, the young and the old, is to become proactive in regards to your pension. You should take charge. You should trust the people who are involved with your pension calculations, but you should verify the information. Trust, but verify.

It is well established that pensions play a critical role in providing a secure future for one's retirement. When it comes to retirement, one should think of a three-legged stool. Think of one leg being Social Security; the second being personal savings; the third being the employee's pension.

Pensions operate in a very complex universe that spans across several agencies and involves countless statutes, regulations, instructions, advisory opinions and even case law. Over the past 20 years Congress has enacted 16 important but complicated pieces of legislation. As you can see from the first chart, the multicolored one with separate agencies, there is the IRS; the Pension Benefit Guaranty Corporation, and the Department of Labor.

That chart is just the timetable for filing certain reports with the Federal Government. One column is a description. Another column is who to file with. Another column is when to file. That is just with the reporting requirements. So, you can imagine the complicated aspects of all of the rules and regulations that have to be met to comply with all of these restrictions.

Since the beginning of the work on this pension oversight hearing, I was nagged by a question: how big is this miscalculation issue? Are we dealing with a few infrequent cases that have reached prominence, or are we nudging a sleeping giant? Well, I hate to say it, but it looks as if the sleeping giant is starting to awaken. Let me tell you why. Recently, we asked the PBGC to look into this matter. We asked the PBGC for an estimate of error rates in the audit samples they conducted for terminated pension plans. The PBGC reported that the preliminary results from their latest audit cycle showed approximately 13.7 percent of almost 2,800 people were underpaid. The majority of these people were receiving lump sum distribution payments. That is a shocking and alarming number, and I can only hope that it is not representative.

The PBGC audit results also revealed that there is a disturbing increase in the number of people underpaid. The chart shows that the number of pension plan participants underpaid is on the rise. Ten years ago the numbers were slightly over 2 percent, today they are at 8.2 percent. This is a very steady rise in the number of pensions miscalculated. Actually, the specific numbers are 2.8 percent during the 1986 to 1988 period and 8.2 percent in 1997.

How much are they being shortchanged? Our final chart shows the dollar amounts to be significant. In fact, one-third are underpaid \$1,000. That is a significant amount of money. It makes a significant difference in whether or not people feel their retirement income is adequate. That is the kind of money that buys a lot of food and pays a lot of bills for retirees and workers, of any age.

I would also like to make a special appeal to women throughout this Nation. Because they are in and out of the work force more than men are, they need to pay special attention to their pensions. In some cases, because of their deep commitment to families, they

do not stay on a career path with one company. It is a zig and a zag out of the working world, making pension calculations even more complicated and even more subject to error. It comes down to one thing, however, and that is everyone—I mean everyone—is at risk.

We have three panels today. On the first panel are two victims, two people who were the subjects of pension miscalculations. The second panel is made up of three witnesses: the people whose guidance one may seek if there is a problem with their pension calculation. The third panel has three witnesses as well. It includes two pension advocates who will discuss, among other things, the Administration on Aging's pension counseling demonstration project and the findings of a recent pension summit. From this third panel we will also hear from the president of a company engaged in the business of administering pension plans.

I would like to now ask my colleague to speak.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES GRASSLEY

This hearing will come to order. As Chairman of the Special Committee on Aging it is with great pleasure that I welcome each of our witnesses, members of the public and my distinguished colleagues to this very important hearing.

Today we are going to hear from people whose pensions were miscalculated, the reasons for those miscalculations, and what to do if you think that there is an error in your pension. This hearing is going to highlight who is at risk—not who is at fault when it comes to pension miscalculations. This hearing will also address whether this problem is rare or are we seeing the awakening of the proverbial sleeping giant. But, if I were to sum up what is the most important message of this hearing—well, it is about what you and I can do to be more accountable to ourselves, our families and to our futures. This hearing cries out to current and past employees, to young and old alike—and says—when it comes to your pension—be proactive, take charge of your future—in other words—TRUST BUT VERIFY.

It is well-established that pensions play a critical role in providing a secure future during one's retirement years. When thinking about pensions—it is helpful to think of a three legged stool. The first leg represents social security income, the second leg represents an individual's personal savings and the third leg represents an employee's pension.

Pensions operate in a complex universe that spans across several agencies and involves countless statutes, regulations, instructions, advisory opinions and case law. Over the past 20 years or so, Congress enacted 16 major laws regulating pension plans. Let me elaborate.

Here is a chart with sections—divided between the three agencies with primary jurisdiction over pensions—the Internal Revenue Service, the Pension Benefit Guaranty Corporation, and the Department of Labor. What is astounding here—is that this chart illustrates just the reporting and disclosure calendar for benefit plans—not the multitude of other laws that effect pensions in one way or another.

Since beginning work on this oversight hearing—I was nagged by the question—just how big is the pension miscalculation issue? Are we dealing with a few, infrequent cases that have reached prominence or are we nudging a sleeping giant? Well, I hate to say it—but, it looks like the sleeping giant is starting to awaken. Let me tell you why. Recently we asked the PBGC to look into this matter. We asked the PBGC for an estimate of the error rates in the audit samples they conducted for terminated pension plans. The PBGC said that the preliminary results from their latest audit cycle showed that approximately 13.7 percent of the almost 2,800 people they looked at, were underpaid. The majority of these people were receiving lump sum distribution payments. That is a shocking and alarming number and I can only hope that it is not representative.

The PBGC audit results also reveal that there is a disturbing increase in the number of people underpaid.

This next chart tracks the increase in the number of participants underpaid from 1986 to 1995. The number of people who didn't get what they earned has increased from 2.8 percent to 8.2 percent. How much are they being shortchanged? Our final chart shows that the dollar amounts can be significant. In fact, nearly 1 in 3 people

underpaid in the latest cycle were underpaid at least One Thousand Dollars. That kind of money buys a lot of food and pays a lot of bills for retirees and workers of any age—everyone is at risk.

Anyway, we have three panels today. On the first panel are two victims—two people who were the subject of pension miscalculations. The second panel is made up of three witnesses—the people whose guidance that one may seek if you think that there is a problem with your pension calculation. The third panel has three witnesses as well; two pension advocates who will discuss, among other things, the Administration on Aging's pension counseling demonstration project and the findings of a recent pension summit. In this third panel we will also hear from the president of a company engaged in the business of administering pension plans.

Before concluding this hearing, I would like to again thank our witnesses. Without your insightful and personal testimony we would not be as informed as we now are regarding pension miscalculation and what every consumer should do to avoid the risk of being 'SHORTCHANGED.' Now let me ask—Can we ever make this pension arena 'error-free'—absolutely not—can we improve the situation—absolutely.

First, this week, I intend to introduce legislation to update the Older Americans Act pension counseling demonstration projects. This will encourage more regional coverage and propose the creation of an 800 number.

Second, I hope to insure that employers provide to employees, if they ask—documents showing how their benefits were calculated.

Third, I am giving consideration to encouraging plans to resolve disputes through an alternative resolution process.

Fourth, I will review the safeguards that are in place to help participants track plans that have been closed or frozen because of a corporate merger or acquisition.

Finally, and I cannot emphasize this enough, I am talking to every man and woman—young and old—take charge of your future, be pro-active, keep pension documents, ask questions and make it hard for you to be 'SHORTCHANGED.'

STATEMENT OF SENATOR JOHN BREAUX

Senator BREAUX. Well, thank you very much, Chairman Grassley, for once again convening a hearing which I think has a great deal of importance to not only retirees and seniors. Everyone in our society is concerned about the wherewithal and the wellbeing of our senior citizens. I think that your opening statement, accurately covers the scope of the problem that we are experiencing. Hopefully, the panels and the witnesses that will testify this afternoon will shed some light on what we might do about this problem.

The problem of pensions is a very important subject. Most people in this country know that Social Security only covers about 40 percent of the amount of money that they are going to need after they retire to live a life anywhere comparable to what they were living while they were working. So, private pension plans will have to pick up the slack, and people need to know what their condition is and know more about how these programs work.

There are literally millions of dollars that are lost by inaccurate calculations in determining what a retiree's pension plan is. It is very, very important that we explore very carefully what we, as a Congress, might be able to do to help resolve this problem. I am not sure what the solution is, but I do know that there has to be a better way of providing more and accurate information to the people there through better education.

It is really the case of the disappearing pension or, rather, the nonappearing pension, because so many people, when they retire, find that what they were counting on is simply not there. Either it was not there from the beginning or that somewhere over the years, it has disappeared, and they know not where.

Today, you see so many companies that are merging, that are being sold, that are engaging in joint ventures with other compa-

nies. These pensions somehow tend to move from one place to the next, and the retiree knows not where. This is something that needs to be addressed.

Today, we are sounding a warning note to all of the pension recipients in this country to address the questions of what, where and when: what do they have in their pension plan? Where is it? When can they get it? I think that by better education, we will be able to answer those questions and have a better system which works for the people for whom it was intended to work, I congratulate the chairman for putting these hearings together with our staff, and hopefully, good benefits will result from it.

Thank you.

[The prepared statement of Senator Breaux follows:]

PREPARED STATEMENT OF SENATOR JOHN BREAUX

I want to thank Chairman Grassley for holding this hearing today on an issue which deviates somewhat from our previous Aging Committee hearings. All of our hearings this year have focused on health care and programs like Medicare, Medicaid, and Social Security. But the issue our committee is examining today is no less important than health security as an issue for the aging population in this country.

It is really frightening that someone can retire and then discover that the pension they had counted on for years is not what they thought it was going to be. It is even more frightening that such cases often result from calculation errors on the part of employers. Given the complexity of pension rules, it is essential that we do a better job of convincing workers to educate themselves about their pensions so they don't come up short when they retire.

The fact is, we don't even know how widespread this problem is because we are only just beginning to hear from victims like the witnesses who will appear before the committee this afternoon. While it may be hard to accurately assess the true scope of this largely hidden problem, only a small number of workers affected is too many.

For every person affected directly, there are spouses, children, and other loved ones who also feel the economic effects of pension miscalculations. Since these mistakes can go back years, even decades, the financial bit can be severe. Even if someone's monthly pension is off by only a few dollars, that can mean a great deal when we're talking about health care copayments, prescription drugs and other costs associated with retirement.

The chairman and I have been focusing on finding long-term solutions to reform Medicare, Medicaid, Social Security, and other retirement programs. I think we both agree that fundamental reform is vital if we are to preserve these programs for the baby boomers and beyond.

We have a ticking demographic time bomb that could explode unless we find ways to help more Americans save for their retirement. A recent survey released by the Employee Benefit Research Institute found that less than one-third of all Americans have even tried to calculate how much they need to have saved by the time they retire. Less than 20 percent said they are confident they will have enough money to live comfortably after they retire. The size of this demographic dilemma will only grow as the baby boomer generation retires and goes on Medicare and Social Security.

One component of our reform efforts is to make personal savings, pensions and Social Security the pillars of retirement planning. What we've found is that a significant obstacle to increasing our personal savings is the lack of knowledge, resources and incentives to take advantage of the extensive benefits offered by our current retirement savings system. But if we expect people to take a more active role in their pension planning and savings, we have to also seek ways to ensure that calculations are done accurately and that mistakes are corrected. Otherwise, they won't have faith that what they earned is what they will get back in retirement.

As a small first step to defuse this retirement time bomb, I recently joined Chairman Grassley in introducing legislation to better educate the public about the importance of saving for retirement and encouraging far more private savings.

Our legislation, the "Savings Are Vital to Everyone's Retirement Act of 1997" (SAVER), would create an educational project to raise public awareness about personal savings. It directs the U.S. Department of Labor to maintain an ongoing program of education and outreach to the public.

As we move forward with structural reforms of Social Security and Medicare, we must also provide more Americans with incentives to better prepare themselves for retirement. Another benefit which can come from the successful passage of our SAVER bill is increased awareness of mistakes in pension calculations. These mistakes must be found and corrected if the goals of our bill are to be achieved and the recommendations of today's witnesses implemented.

The CHAIRMAN. Thank you very much.

Without objection, the statement of Senator Wyden will be included in the record.

[The prepared statement of Senator Wyden follows along with a prepared statement of Senator Craig:]

PREPARED STATEMENT OF SENATOR RON WYDEN

Mr. Chairman, I'd like to thank you and our Ranking Minority Member, Mr. Breaux, for holding this hearing on a very important issue.

As a principled society, we make special arrangements to care for our most vulnerable members—such as ensuring an adequate income and access to medical care for the elderly. To ensure a decent income, an elderly American must rely on his or her own financial foresight and two compacts, one with employer and one with government. The compact with the employer is the private pension; with government, social security. These compacts say to each American that "your service during your working years entitles you to a decent income during retirement."

The income security of our elderly is a ticking time bomb, much like their medical security, and entitlement I have tried to address in my Medicare Modernization and Patient Protection Act, S-386. The length of the fuse in both cases is the number of years until baby boomers start retiring.

In some ways, income security is even more difficult to address than medical security, because of its several funding sources. All three funding sources are in jeopardy: demographics threaten to overwhelm the social security trust fund; more and more Americans work for the sort of companies least able to offer pension protection; and very few Americans have accumulated substantial private savings.

In short, the income security of American seniors is under siege. We have a lot of work to do.

Today the hearing focuses on one facet of seniors' income security: private pensions. Pensions are available to only 50 percent of American workers. We expect this percentage to decrease in the coming years, as more Americans will work for, and retire from, small businesses, where pensions are the exception rather than the rule. Today, for example only 13 percent of businesses with fewer than 20 employees offer any pension coverage whatsoever.

With the retirement security of our seniors in such dire straits, Americans fortunate enough to have a private pension ought to be able to trust the calculations used to determine their benefits are accurate. Americans ought to be able to trust that their employers are living up to their end of the compact between employer and employee. If problems with oversight endanger these private-pay benefits, Congress must address that. If, instead, miscalculations derive from the administrative complexity of the pension system, Congress must enact legislation that truly simplifies pension administration. In the interim, if there are pension assistance programs that help pensioners navigate the complexity of the system and obtain what they are entitled to, then Congress needs to give these programs a secure source of funding.

That said, Mr. Chairman, I look forward to the testimony of today's three panels.

PREPARED STATEMENT OF SENATOR LARRY CRAIG

I would like to thank the Chairman for holding this hearing today regarding pension miscalculations. I look forward to learning more about the issues surrounding this problem. Pensions play a vital role in increasing the financing security and peace of mind of America's older generation. Yet, today the complexity of pension rules often leave both the retiree and the employer bewildered. It is my hope that today's hearing will bring about the beginning of positive reforms in the pension process.

For millions of Americans, pensions are the difference between comfort and poverty in their retirement years. Many do not even have the opportunity to participate in a pension plan because the average cost of operating a pension plan has more than doubled in the last ten years. Approximately 87 percent of small businesses,

with fewer than 20 employees, offer no pension coverage. Additionally, small businesses with between 20 and 100 employees only have retirement coverage for about 38 percent of their workforce.

The chief cause of this problem is that the legislation governing pension rules and regulations is too complex. From 1974 through 1996, Congress has enacted 16 major laws regulating pension plans. Although each of these laws has sought to improve pensions, the resulting complexity has left businesses staggering. Each of these changes spurs dozens of different official interpretations. For example, the 1986 tax act resulted in more than 1,000 pages of pension rules—layer upon layer of complex rules and regulations that discouraged employers from setting up plans and encouraged mistakes in pension calculations. Neither business nor employee can afford the tremendous burden of keeping up with these laws.

Many Americans welcome the thought of retirement. It is the time in one's life meant for leisure and security. For many, the goal is to insure a satisfactory retirement income—Social Security, individual savings and a private pension are the backbone of this income. Unfortunately, these three sources have become more precarious. As the American population continues to age, a greater number of people will depend on their retirement benefits. For this reason, it is imperative that Congress makes it a priority to see that these problems are solved.

Pension rules are far too complicated. Tracking the process is difficult and many mistakes are made in the calculations, therefore, many seniors are getting short-changed. These types of mistakes typically stem from the confusion caused by complex and ever-changing rules. We need to cut down on the seemingly endless stream of regulations and focus on simplicity. I look forward to hearing the testimony of our witnesses today. It is my hope that the hearing today will help alert the public to a problem which threatens their retirement security, and offer solutions to encourage pension simplification.

The CHAIRMAN. I would ask Mr. Witort and Mr. Francione to come to the table. Before you start to speak and I will introduce you. I am going to say for each of the three panels, we have lights here to keep not only you on time but every member of the committee on time so that we can ask questions. First of all, when the orange light comes on, you have a minute left, and when the red light comes on, your 5 minutes are up.

Now, I want you to feel free to finish a thought if the 5 minutes are up. We are not here to strictly stick to 5 minutes. But the point is that we do want time for questions, and you cannot do your whole statement, I know, in 5 minutes, so, we ask you to put a statement in the record. We will print it if you have submitted us a statement, and that will be printed in total, and so, if you would summarize, I would appreciate it.

Then, also, because we never know how many members can come, particularly on a Monday afternoon, or any afternoon when we are in session, we may have some questions that may be submitted by Senator Breaux or me beyond what we ask orally. We would ask you to respond to those in writing within a 10-day period of time. Also for members who may not even be here today, they may have questions that they want to ask you, and we would ask if you would do the same thing for them as well.

Our first panelist is Edwin A. Witort. He was an employee in the purchasing division of Castle Metals, Franklin Park, IL. He retired in 1989, believing that he was being underpaid. Mr. Witort approached his former employer for relief. It was only when he contacted the National Center for Retirement Benefits that he got his full pension.

Paul Francione is our second panelist. He was a reservation supervisor for Pan Am Airlines. He held that position for 14 years, until he became disabled due to rheumatoid arthritis. He left his position, with the assistance of the Pima Council on Aging, which

enabled Mr. Francione to receive an additional \$309 in pension income each month.

So, I ask you folks to proceed, Mr. Witort first and Mr. Francione.

STATEMENT OF EDWIN WITORT, RETIRED FROM CASTLE METALS; HOT SPRINGS, AR

Mr. WITORT. Thank you, Mr. Chairman and honorable committee members. Good afternoon and thank you so much for inviting me to testify before you today on a matter that is near and dear to my wife and I, my pension.

My story is probably like the story lived through by a lot of people. You work a lot of years; you wait; you get a payment, and, lo and behold, you think it might not be right. You try to get the apparent error fixed, and you run up against a brick wall. Well, here is my story.

I worked for 40 years in the metal service center industry, the last 6 years of which were spent with an Illinois company called Castle Metals as a pricing manager. I retired from Castle Metals in 1989. My monthly pension calculated by Castle at that time was \$103. I thought it was wrong. I kept in my file pension information that was provided over the years and did a quick calculation myself and thought I was entitled to about \$300 monthly, minus my Social Security.

After retirement, I continued to work for Castle as a consultant for about a year. For several years following full retirement, I continued to feel that the Castle pension of \$103 was incorrect. Finally, I wrote to Castle regarding the calculations of my pension. I want to reference my letters, copies of which have been submitted to the committee. I wrote to Castle again in September 1994 and April and June 1995, asking them to review their calculations. All of Castle's replies stated that their original calculations were correct, and outside attorneys and actuaries had confirmed their results.

I was not too pleased with the response, so, in September 1994, I wrote to Castle again asking more questions. I did not hear from Castle for several months. My phone calls were not returned. I then wrote to Castle again and received a reply telling me again that I was wrong. At this point, I thought it would be futile to write Castle again. I really did not know where to turn, and honestly, I just gave up.

Then, in November 1995, I happened to see an article in the Arkansas Democrat-Gazette about the pension detectives, the National Center for Retirement Benefits. I called them. The pension detectives then wrote to Castle after they reviewed the information I provided. They told Castle that they were, indeed, wrong. In March 1996, Castle agreed that they were wrong, and I received in excess of a \$10,000 lump sum payment. My monthly pension was increased to more than \$220 per month from \$103 per month.

I would like to offer some advice to other people who may encounter a pension problem. Make certain you and your spouse fully understand your company's pension program. Also, keep your documents. Be persistent and stick to your guns when you think something is wrong. I do not think Castle was trying to rip me off inten-

tionally; they made the same mistake over and over again, even after I requested that they carefully review my case—three separate requests. The mistake was that an IRS notice stated benefits were to be recalculated after a new formula was adopted by Castle, and any additional amounts were to be paid retroactively if the new formula provided higher benefits. Had I not found outside help, nothing would have happened.

I would like to make a strong suggestion that IRS Notice 88-131, a key to solving my problem, be given wide publicity. Retirement and Social Security offset calculations should be furnished to retirees so errors might be readily corrected. There should also be provisions for reimbursement of expenses if a retiree must secure outside counsel to correct errors made by his former employer. I received an invoice totaling \$9,677 for services rendered by NCRB to correct the error made by my former employer.

Thank you for the opportunity to voice my views to this committee, and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Witort follows:]

HEARING TESTIMONY OF EDWIN WITORT

"SHORTCHANGED": PENSION MISCALCULATIONS

JUNE 16, 1997

Good afternoon and thank you so much for inviting me to testify before you today on a matter that is near and dear to my (and my wife's heart)-my pension. My pension makes a big difference in my life--it means the difference between a good quality of life in my elder years or one that leaves much to be desired.

My story is probably like the story lived through by a lot of people. You work a lot of years, wait, get a payment and low and behold it's not right. You try and get the error fixed and you run up against a brick wall. Well, here is my story.

I worked for an Illinois company called Castle Metals for about 6 years as a pricing manager. Then in 1989, I retired from Castle Metals and moved to Hot Springs, Arkansas. The cost of living was so much less in Arkansas then Illinois and it made it a bit easier to tighten our belts.

After retiring from Castle and having been one of the first employees to vest and qualify for a pension under the new 5 year vesting provision--my monthly benefit was calculated by Castle. After seeing my payment of \$103.00--I thought that it was wrong. I kept the material that was provided over the years and did a quick calculation myself. That calculation was based on a brochure that Castle sent me. That brochure stated specifically that the formula used to calculate my pension is one and two thirds percent times high-5 pay times years of service minus one-half Primary Social Security. I thought that I was entitled to about \$300 dollars monthly minus my Social Security.

Well I decided to write to Castle to get an explanation in March 1994--\$100.00 a month meant a lot to me and my wife. I asked if they would please recalculate the numbers. Four months after my first letter--it was now July 1994-- Castle said that it would look into the matter. Months went by and in August 1994 they said that their calculations were accurate. Castle told me that the Plan was carefully reviewed by their actuaries and outside attorneys. In September 1995 I wrote to Castle again asking more questions--I thought that their calculations were wrong. After I did not hear from Castle for several months and no one was returning my phone calls--I wrote to Castle again on April 7, 1995. Finally, on April 16, 1995 Castle wrote to me and said that all was well and gave me the assurance that a hand-written version of my pension calculation and a computer version matched resulting in a \$103.00 monthly payment

Well I still thought that Castle was wrong--so I wrote again in June 1995--setting out the best argument that I could. Castle wrote to me again, three months later in September 1995 and

told me that they had their actuaries and lawyers look into the matter and the \$103 dollars was right.

I thought it would be futile to write to Castle again. I really didn't know where to turn until I happened to see an ad in a paper for the pension detectives--the National Center for Retirement Benefits (NCRB) and so I called them. Paul and Allen were on the case right away. In fact they formally wrote to Castle in March 1996 and by May 31, 1997 I have a little more security now. I received about a \$10,000 lump payment and my monthly pension went up to more than \$220.00 a month from \$103.00 per month.

I am grateful to the pension detectives. And as for a little advice--let me tell young and old alike--keep your documents, be persistent, and stick to your guns when you think that something is wrong. I don't think that Castle was trying to rip me off intentionally--they made a mistake over and over again. And that mistake was that an IRS Notice said that benefits were to be recalculated after a new formula was adopted by Castle and additional benefits were to be paid retroactively if the new formula provided higher benefits. In closing I would like to say a few things. First I would like to make a strong suggestion that IRS Notice 88-131 (a key to solving the problem) be given wide publicity and that retirement Social Security Offset calculations be furnished to retirees so that errors might be readily corrected. There should also be provisions for the reimbursement of expenses if a retiree must secure outside counsel to correct errors made by his former employer. I received an invoice totaling \$9677.44 for services rendered by the NCRB to correct the error made by my former employer. Let me also say that had I not looked for outside specialized help--nothing would have happened.

Thank you for inviting me to testify and I would be happy to answer any questions that you might have.



National Center for Retirement Benefits, Inc.

March 19, 1996

Ms. Carla Hughes
Benefits & Compensation Manager
A.M. Castle & Co.
3400 North Wolf Road
Franklin Park, IL 60131

VIA FEDERAL EXPRESS

Re: Edwin A. Witort
SS# 333-12-9086

Dear Ms. Hughes:

This letter is a formal claim on behalf of Mr. Witort for additional benefits from the A. M. Castle & Co. Salaried Employees Pension Plan (As amended and Restated Effective as of January 1, 1989).

Mr. Witort retired July 1, 1989. His pension benefit was affected by a Social Security offset in the Plan formula in effect prior to 1989.

IRS Notice 88-131 provided plan sponsors alternatives in the form of Model Amendments while additional guidance was being developed for the required changes in plan design due to the Tax Reform Act of 1986. One of the conditions of the IRS Notice was that benefits were to be recalculated after the new formula was adopted and additional benefits paid retroactively if the new formula provided a higher benefit. The Plan sponsor adopted a revised benefit formula retroactively to January 1, 1989.

The offset in the new formula is significantly less than the Social Security offset used in Mr. Witort's initial benefit. The lower offset results in a higher monthly benefit.

We are well aware of your prior efforts in addressing Mr. Witort's concerns over the proper offset to be used. Your prior review did not consider the Provisions of the Plan that were retroactive to January 1, 1989.

Please recalculate our client's benefit and provide us with the calculations. After we approve your calculations we will provide you with payment instructions.

Sincerely,

Paul Holzman

Castle Metals •

JERRY M. AUFOX
Corporate Counsel & Secretary

April 13, 1995

CERTIFIED MAIL
No. 106 746 009
RETURN RECEIPT REQUESTED

Mr. Ed Witort
6 North Badalona Drive
Hot Springs Village, AR 71909

Dear Ed:

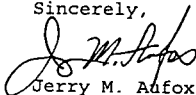
In response to your April 7th letter and your prior requests, which had been previously answered, I am again attaching a copy of your pension plan calculation benefit.

This benefit calculation, which is shown on the attached page, shows the high five year calculation resulting in an average compensation of \$3,333.33. The multiplication of the pension factor of 1.667% of the average compensation times your years of service, which turned out to be 6.1667 years, resulted in a pension of \$342.66 to which 50% of your social security benefit of \$429 was deducted (\$214.50). This left a monthly accrued benefit, without any deduction for co-pensioners, of \$128.16. Using the age factor between you and your wife Jeanne, the 50% co-pensioner resulted in \$103.82 a month to you and \$51.90 to your wife Jeanne after your death.

I have also included a handwritten version of how social security benefits are calculated. The actual social security benefit is calculated via computer program. You will note that the work-sheet portion resulted in a \$425.00 a month social security benefit; the computer program also calculated a \$429.00 a month benefit.

I hope this answers all of your questions. Again, I refer you to my August 11th letter which shows how all of this works. If you have any further questions, please contact us.

Sincerely,



Jerry M. Aufox

JMA:tmd
Enclosure

A. M. Castle & Co., 3400 North Wolf Road, Franklin Park, Illinois 60131 708-455-7111

ED and JEANNE WITORT
 6 N. Badalona Drive
 Hot Springs Village, Arkansas 71909
 501-922-2322

SEPT. 30, 1994

MR. JERRY M. AUFOX
 CASTLE METALS
 3400 N. WOLF ROAD
 FRANKLIN PARK, IL. 60131

DEAR JERRY:

THANK YOU FOR YOUR LETTER OF AUG. 11 - IT HELPED ME BETTER UNDERSTAND THE CASTLE PENSION PLAN.

THERE IS ONE OTHER AREA I'D LIKE TO DISCUSS WITH YOU.

WHILE I WAS WORKING AT CASTLE I RECEIVED A BOOKLET "YOUR HIDDEN PAYCHECK" WHICH WAS FOR CASTLE EMPLOYEES AND THEIR FAMILIES. ON PAGE 16 OF THE BOOKLET IT STATES THAT AT AGE 69 MY PENSION (COMPANY PAID INCOME) WOULD BE \$560 PER MONTH (ASSUMING I WORKED UNTIL AGE 69). ON A STRAIGHT LINE BASIS, HAVING RETIRED FOUR YEARS BEFORE REACHING 69 (AND SIX YEARS OF EMPLOYMENT) THE PENSION WOULD BE 60% OF THAT FIGURE OR \$336 PER MONTH. THIS IS INDICATED AS INCOME AFTER THE SOCIAL SECURITY DEDUCT.

I KNOW THERE IS A DEDUCTION FOR HAVING MY WIFE AS A SURVIVING BENEFICIARY WHICH WOULD REDUCE THE \$336 FIGURE.

I HOPE YOU CAN UNDERSTAND WHY I AM QUESTIONING THE DIFFERENCE BETWEEN YOUR FIGURES AND MINE.

JERRY, COULD YOU SEND ME A COPY OF YOUR CALCULATIONS? SOMETHING LIKE:

YOU EARNED A PENSION OF \$ _____

THE S.S. DEDUCT IS \$ _____

THE SPOUSE SURVIVOR
 OPTION DEDUCTION IS \$ _____

YOUR FINAL PENSION IS \$ _____

THANK YOU SO MUCH FOR YOUR HELP.

SINCERELY,

Ed Witort

The CHAIRMAN. Thank you very much.
Mr. Francione.

**STATEMENT OF PAUL FRANCIONE, RETIRED FROM PAN AM
AIRLINES, TUCSON, AZ**

Mr. FRANCIONE. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Paul Francione. I want to thank you for the opportunity to come before you today and talk about my quest to establish eligibility for retirement benefits from my former employer, Pan Am. I started at Pan Am in August 1960 in the Detroit sales office. My job was in telephone sales, and when I began working for Pan Am, I became a member of the union, the Brotherhood of Railway Clerks. After a few years, I, along with others, was instrumental in electing the Teamsters Union to represent us. I served for a time as shop steward in Local 299.

In May 1970, I was diagnosed with rheumatoid arthritis, and in May 1974, due to this condition, I was given total medical disability by Pan Am and had to leave my job. My health condition also resulted in my move from Detroit, MI to Tucson, AZ in 1976.

Around that time, I made an early inquiry to Pan Am to find out what I would have to do in the future regarding my pension. I contacted the employee benefits division for Pan Am in Chicago to ask whether I was entitled to any retirement benefits under the union pension plan. The Chicago office responded that I would, in fact, be eligible for a pension based on my years of employment. I did not realize at the time the significance of this letter's reference to a provision in the Teamsters' contract noting that I was allowed to accrue seniority for another 36 months beyond July 17, 1974, the date that I started collecting total medical disability. Pan Am's response also instructed me to write to their pension administrative manager in Chicago if I had further questions.

In 1983, Pan Am's director of affirmative action and employee services, Mr. H.W. Petrin, wrote to me informing me of the extra 3 years of service for those on medical disability. In January 1992, Pan Am filed for bankruptcy and then, in December of that year, was officially shut down. I attempted to contact Pan Am regarding my pension benefits a number of times but was unable to get a response from anyone in the company. As a former union member, I also tried to utilize my ties to the Teamsters. I contacted my former local office to ask for their assistance, but once again received no response.

I was 62 years old at the time, and my main source of income was Social Security Disability. I needed to be thinking about my future, but I did not know where to turn, who to call or where else to write. Then, I read in the Arizona Senior World of May 1994 on the pension counseling service offered by the Pima Council on Aging. With nowhere to turn, I contacted Mr. Marty Scheinkman of the Pima Council on Aging. Mr. Scheinkman told me about the Pension Benefit Guaranty Corporation. With Mr. Scheinkman's help, I wrote to the PBGC in June 1994. The PBGC wrote back to me and said that their preliminary review indicated that I was not eligible for any pension benefits.

We contacted the PBGC again and pointed out provisions concerning the 3 years that I had accrued after I had started my long-term disability leave of absence. The PBGC wrote back stating that according to their review, unless I was able to provide more information regarding my eligibility, I was not eligible for a benefit. For the third time, I wrote back to the PBGC and enclosed copies of letters I had received from Pan Am regarding my additional years of service and a copy of the Appendix F, the memorandum of understanding regarding pension programs.

Finally, in January 1995, 7 months after I first wrote to the PBGC, I received a response stating I was eligible for benefits and now receive an additional benefit of \$309 monthly. I am grateful that I persevered and that the grant to the Pima Council on Aging came just at the right time. Mr. Scheinkman was a great help to me in assisting and drafting letters to the PBGC and making telephone contacts. At no time was I contacted by Pan Am or the union or the PBGC until after my request in June 1994.

This program worked for me and was a great benefit. I would hope that it will be continued to help serve others as well. Once again, I thank you for this opportunity to share my story with you.

Thank you.

[The prepared statement of Mr. Francione follows:]

Testimony before the Senate Special Committee on Aging
June 16, 1997
Mr. Paul Francione

Mr. Chairman and members of the Committee, my name is Paul Francione. I want to thank you for the opportunity to come before you today to talk about my quest to establish eligibility for retirement benefits from my former employer, Pan Am.

I started at Pan Am in August of 1960 in the Detroit Sales Office. My job was in telephone sales, which consisted of answering telephones for fares, reservations, routings. When I began working for Pan Am, I became a member of a union -- the Brotherhood of Railway Clerks. After a few years, I, along with others, was instrumental in electing the Teamsters Union (Teamsters) to represent us. I also served for a time as the shop steward of Local #299.

In May of 1970, I was diagnosed with rheumatoid arthritis. In May of 1974, due to rheumatoid arthritis, I was given Total Medical Disability by Pan Am and had to leave my job. My health condition also resulted in my move from Detroit to Tucson in 1976.

Around that time I made an early inquiry to Pan Am to find out what I would have to do in the future with regard to my pension. I contacted the employee benefits division for Pan Am in Chicago, to ask whether I was entitled to any

retirement benefits under the union pension plan. The Chicago office responded that I would in fact be eligible for a pension based on my years of employment.

I didn't realize at that time the significance of the letter's reference to a provision in the Teamsters contract noting that I was allowed to accrue seniority for another 36 months beyond July 17, 1974, the day I started collecting Total Medical Disability. Pan Am's response also instructed me to write to their Pension Administration Manager in Chicago if I had further questions. In 1983, I wrote to Pan Am's Director of Affirmative Action and Employee Services, H.W. Petrin. He also informed me of the three extra years of service.

In January of 1992 Pan Am filed for bankruptcy and then in December of that year they officially shut down. I attempted to contact Pan Am regarding my pension benefits a number of times, but was unable to get a response from anyone in the company. As a former union member, I also tried to utilize my ties to the Teamsters. I contacted my former local office to ask for their assistance, but once again, received no response. I was 62 years old at the time, and my main source of income was Social Security Disability. I needed to be thinking about my future but I didn't know where to turn, who else to call or where else to write.

Then, I read in the Arizona Senior World in May of 1994 on the pension counseling service offered by the Pima Council on Aging. With no where else to turn, I contacted Marty Scheinkman at the Pima Council on Aging. Mr.

Scheinkman told me about the Pension Benefits Guarantee Corporation (PBGC). With Mr. Scheinkman's help, I wrote to the PBGC in June of 1994. The PBGC wrote back to me and said that their preliminary review indicated that I was not eligible for any pension benefits.

We contacted the PBGC again, and pointed out the provision concerning the three years I had accrued after I started my Long Term Disability Leave of Absence. The PBGC wrote back stating that according to their review unless I was able to provide more information regarding my eligibility, I was not eligible for a benefit.

For a third time I wrote back to the PBGC and enclosed copies of the letters I had received from Pan Am regarding my additional years of service and a copy of Appendix F, the Memorandum of Understanding regarding company pension programs. Finally, in January 1995-- seven months after I first wrote to the PBGC, I received a response saying that I was eligible for a benefit. I now receive an additional benefit of \$309 monthly.

I am grateful that I persevered and the grant to the Pima Council on Aging came just at the right time. Mr. Scheinkman was a great help to me by assisting in drafting the letters to the PBGC and making telephone contacts. At no time was I contacted by Pan Am or the PBGC until after my request in June, 1994. This program worked for me and should be continued to help others. Once again, thank you for this opportunity to share my story with you.

January 4, 1977

NOTE TO: Paul Francione

Dear Paul,

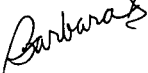
I promised months ago to look into your possible entitlement under the IBT non-contributory pension plan, which I did -- but never wrote you about it. My apologies! and I hasten to take care of this last piece of business before leaving the payroll tonight as a "retiree".

You were of course continuously employed from your 8-12-60 date of hire until 7-17-74 when your unpaid medical LOA began. The terms of the IBT contract allow you to continue to accrue seniority for another 36 months beyond that date or until mid-1977.

The effect of the ERISA legislation is to "vest" any employee with 10 or more years of service. In your case the total would be 16 full years (8-12-60 to 8-12-76). Since 23 years of service are required to qualify for the Full Benefit under the plan, your vested interest would be 16/23 (unless of course you are able to resume your employment and increase the total number of years of service).

Under separate cover I am mailing you a copy of the current agreement. On page 231 you will see that the Full Benefit effective January 1, 1977, is \$450.00 and it is 16/23 of that amount which you would be eligible to draw at age 65 if you are not able to return to work before then. The table beginning on the lower half of page 233 will show you the percentage of your benefit that could be drawn from 1 to 10 years prior to age 65.

I hope the foregoing is clear to you, Paul. If not, or if you have further questions, I suggest that you write direct to Ms. Heidi Boelcskev, Manager Pension Administration. She is the source of the information above and she can be addressed in the Pan Am Building, 49th Floor.


Barbara E. Stults
Pan Am Chicago

BES:slh

APPENDIX F
MEMORANDUM OF UNDERSTANDING
REGARDING
COMPANY PENSION PROGRAMS

Except as provided herein, all provisions of the Cooperative Retirement Income Plan, as it relates to IBT employees, who were participants in CRIP prior to August 12, 1969 and continue as participants, shall remain in full force and effect. Such IBT employees who elect to remain under the Cooperative Retirement Income Plan (CRIP) will continue to accrue benefits under this Plan and will continue to be required to contribute for the cost thereof at the rate of 1.375% on the first \$3,000. of compensation plus 2.750% of compensation in excess of \$3,000. per annum.

Employees who are participants in contributory CRIP may elect to terminate their participation effective at anytime within the sixty (60) day period commencing January 1, 1973. In such event their accrued benefits in contributory CRIP will be cancelled and they will be entitled to a refund of their contributions with interest, as provided in the Plan, accrued to the date of termination. Any covered employee who does not elect to terminate his participation in CRIP under the terms of this paragraph, shall not thereafter be entitled to withdraw his contributions to CRIP except in the event of death or termination as presently provided in the Plan and shall not be entitled to the non-contributory pension benefit described below. Any covered employee who terminates his participation in CRIP shall be ineligible to participate in CRIP thereafter.

Effective January 1, 1973, the Company will undertake to amend the IBT non-contributory pension benefit as follows:

1. Effective with retirements on or after January 1, 1973, the monthly non-contributory

Teamster pension benefit, payable at Normal Retirement Date (age 65), after 25 years of service, shall be \$350 per month.

2. Effective with retirements on or after January 1, 1973 a Teamster employee who has completed 25 years of service may elect to retire at age 62 or thereafter on his full pension of \$350 per month. A Teamster employee who has completed 25 years of service may elect to retire between the ages of 55 and 61 with the following monthly pension, applicable to both male and female employees.

Age at Retirement	Monthly Pension
61	\$245.35
60	226.45
59	209.65
58	194.95
57	181.30
56	169.40
55	158.20

3. Effective July 1, 1973 the service requirement for the pension referred to in 1. and 2. above is reduced to 23 years.
4. "Years of Service" as used herein shall mean years of compensated service (including periods of Medical Leaves of Absence up to a cumulative maximum of three (3) years), since last date of employment, in a position now covered by an IBT Agreement.

This Agreement shall be subject to and conditioned upon Internal Revenue Service approval. In the event of

The CHAIRMAN. Well, thank you very much, and thank you, also, for being concise in your statement as well.

I am going to ask your advice that you would give to people. The goal that Senator Breaux and I have, at least initially, is to educate, empower, and encourage people to be concerned about this as individuals. In your case, where you were being able to write to PBGC because the company had gone bankrupt—or the pension plan, at least, had—or I guess it was because they were in bankruptcy—you were able to do that, but Mr. Witort would not have been able to do that.

I think both of us are reluctant in a time of balancing the budget, to give the Government a whole lot of additional duties. So, at least initially, we are thinking of how can we empower people to do this themselves and encourage them to do it? Most importantly, it is an educational process.

You have told us about your problems. Drawing from your experience, what advice could you give to workers and retirees on steps to take that can result in more formal legal representation, which in your case, was fairly expensive?

Mr. WITORT. Yes.

The CHAIRMAN [continuing]. Is not necessary? Maybe you have to do that as a resort as well. I mean, that is obviously one resort. But beyond that—

Mr. WITORT. Well, Mr. Chairman, I do not know that I can add too much more to my testimony, but to be persistent and stick to your guns when you think something is wrong. I felt that my number was correct, and the employer's number was incorrect. I wrote a number of times, and I got responses that were negative. I just had to give up, because I figured that the company was treating me fairly; they should know what they were doing. I just felt that maybe I was wrong.

But then, I read the article about NCRB and wrote them, and they found out I was right and the company was wrong. But the advice I would like to give is to be consistent and stick to your guns. If you think you have a point, keep maintaining it.

The CHAIRMAN. Did you feel comfortable visiting with your employer about your pension while you were still employed there, or was that not much of a concern of yours? If it was not much of a concern of yours, would you look back and say that maybe that was a mistake; you should have been as concerned about your pension as you were about your weekly paycheck?

Mr. WITORT. Yes; well, I think perhaps the latter part of your statement is more accurate. You know, I should have been more concerned about it. At the time, I was not, because I had agreed to be a consultant for a year. I really did not want to rock the boat. I thought to myself, I am getting a pension, and if there is anything wrong with it—I would confront the issue at some later time. I felt there was something wrong with it at this time, but I did want to stay employed for that 1 year as a consultant.

The CHAIRMAN. Mr. Francione, do you have any advice?

Mr. FRANCIONE. Well, in the case of a company going out of business, I believe that is quite a different matter. There is no one to go to, no one to turn to, and it causes a lot of problems. In my case, thank God, I was fortunate to see this particular article in the Ari-

zona Senior World and it came at the time I started to look for my pension. I think that my advice to others would be to keep your records; do not throw things away. If the company goes out of business, I would recommend that the company notify all their employees that they have a pension plan, and be directed on where you go to find out about it. This is important, because without an address, you are at a loss. I went to the union. I went to Pan Am. There were no answers. It was not until I went to the Pima Council on Aging, that I was directed to PBGC for assistance.

The CHAIRMAN. You went to the Pima Council, and you went to NCRB. Did either of you contact an attorney before this? Was it ever in your mind to contact an attorney?

Mr. WITORT. Actually, Mr. Chairman, that is a good question. I had given that some very serious thought. But in the back of my mind, I said this is going to be quite an expense if I hire an attorney. I did not know which attorney would handle a case such as mine. There are corporate attorneys, divorce attorneys, accident attorneys, and I did not know where to turn for an attorney who dealt with pension reimbursement. It would cost a lot of money, and I just kind of gave up after the company wrote me four times and said that I was wrong. I just completely, completely gave up. But I did give it some thought; yes, I did.

The CHAIRMAN. Mr. Francione, did you?

Mr. FRANCIONE. No, I did not get any legal help. I was very fortunate that it did not cost me anything, so, for that, I am grateful.

The CHAIRMAN. As I understand it, there is no requirement that your employer provide you with an estimate of your future retirement benefits, except if you expressly request them from your employer.

Paul, you had an estimate from your description of your plan. Do either of you think that a routine notice from your employer while you were employed there outlining your expected benefits would have helped you get the right amount when you retired?

Mr. FRANCIONE. Who is that directed to?

The CHAIRMAN. Well, both of you.

Mr. WITORT. Well, I felt the communication between Castle Metals and their employees was very good. After reviewing the information that they gave me I came up with a different number. They did supply us with complete information on what our pension would be.

The CHAIRMAN. They did do that.

Mr. WITORT. Yes.

The CHAIRMAN. OK; now, you know they do not have to under law, and, of course, I would encourage every employer to do so voluntarily. If they did not provide it, one would have the right under law to request it, and they would have to give that to them.

What about you, Mr. Francione?

Mr. FRANCIONE. I never did receive anything from Pan Am for many, many years; there was no notification. I did have a letter in 1977 that indicated that I was eligible. Yet, in 1994, I was turned down twice by the PBGC until finally, after going back and forth with letters, I was approved 7 months later.

The CHAIRMAN. Mr. Francione, you said, I think, in your statement that you went to your union, in which you did not receive any

help. Did you expect your union to help you, since you had been a good member?

Mr. FRANCIONE. Even though it had been quite a few years from the time that I was a union member, I did think that they would respond. I was surprised to find that there was no response to my letter.

The CHAIRMAN. Mr. Witort, you talked about the cost that you had. Did you ask, since it was your company's mistake, and your discovery, and you had a lot of expense in getting it corrected, did you ask your company to pay?

Mr. WITORT. Yes, I did.

The CHAIRMAN. What did they tell you?

Mr. WITORT. The initial response from the company, if I might just take a moment and read it, were I asked for compensation for the total amount that I had to pay NCRB. They responded in saying: "I appreciate the way you must feel, since it took an unduly long time to get your pension amount straightened out. We apologize that, for whatever reason, the timing of the changes in the law as well as your retirement allowed you to slip through the cracks and not receive, for a time, the correct amount that you were entitled to. The fact that you engaged a company to help you out in this matter was purely your decision and not Castle's. Similarly, the amount of the compensation you agreed to pay was a decision you made without any benefit or discussion with Castle." This was their response when I asked them to compensate me for my expenses.

Eventually they did pay one-half of the costs.

The CHAIRMAN. They use the word fall through the cracks. I think that when the PBGC says 8.2 percent, and it is a growing percentage over the last 10 years of people who are being underpaid and a third of them \$1,000, that this is a little bit more than just slipping through the cracks.

Senator BREAUX.

Senator BREAUX. Let me thank both of the witnesses for being with us and also congratulate both of you for your perseverance. I guess when they started messing with your pensions, they did not realize that they had two gentlemen who were not going to give up until they found out exactly what they were entitled to.

I think that what people need to know is what I said in my opening comments. You need to know the what, the where and the when: what do you have? Where is it? When am I entitled to get it? You gentleman had to go through an awful lot of work to find that out for yourself. I often wonder how many people would not have taken it as far as you, who would have gotten that first letter and just accepted it on face value and not had the courage and the determination to pursue it.

Let me ask the question—I am reading from a manual about how to protect your pension, which is a quick reference guide from the Department of Labor. It tells how to find out if the rules are being followed with regard to pensions, and the manual says: "Under Federal law, your pension plan is required to give you information about plan investments. The plan must automatically provide you with a summary of its finances for each year or a written notice of your right to receive that summary. The summary is called the

Summary Annual Report or SAR. In addition, if you ask for it in writing, you must be given a copy of the full annual report and financial statements that the plan files with the Government."

Do you all remember whether you were getting that kind of information from your pension fund, either one?

Mr. FRANCIONE. Senator, I never received in all the years while I was there and even now, I never received any official notification of my pension benefits,

Senator BREAUX. What about you?

Mr. WITORT. No, sir, Senator; I did not receive any information. Now, I am not saying that it was not available to me, but I did not receive any. When was that put into effect?

Senator BREAUX. Oh, I am not sure when. I am just reading it. It is an annual publication from the Department of Labor. I would imagine it has been around for awhile. Of course, this may be focusing in on your pension plan's investments as opposed to what you actually are entitled to from your pension, the what, where and when of your personal pension.

Mr. WITORT. This was a noncontributory pension plan. Maybe that applies to contributory pension plans.

Senator BREAUX. I think it is supposed to apply to all pension plans covered under ERISA, the Employee Retirement Income Security Act, and that was passed back in 1974, so, that requirement has been around for quite awhile.

The Employment Retirement Income Security Act, is the only Federal statute that preempts state and local rules and creates a Federal right but does not have any agency in the Government that is charged with enforcing those rights or giving people who come under the pension plan help. There was no Federal agency that you went to for help or assistance, was there?

Mr. FRANCIONE. Well, the Pima Council on Aging; I do not think that is a Federal agency, but they had received a grant from, I would assume, the Government, but maybe it came from someone else, and that is where I went for my help.

Senator BREAUX. Yours was a different situation, because your company was in bankruptcy at the time, and, of course, there are different rules under bankruptcy proceedings.

When I hear both of you, I just think of, the thousands of people who may have gotten that same letter that you got and just put it away and accepted an inaccurate determination and today may be struggling unnecessarily because they are not getting what is legally theirs under the pension rules of this country.

I am not sure how many people keep all of their records like that over a long period of time. Had either one of you gentlemen not kept your records, you probably would have been in the dark as to what you were entitled for.

I congratulate you. You tell a very important story that we need to act upon in some way to help make sure that others do not have to go through what you have gone through. I dare say that there may be thousands of people who may not have pursued it as aggressively as you have and today are suffering as a result.

Thank you.

The CHAIRMAN. Mr. Witort, I did not have another question, but this one came to mind as Senator BreauX was talking. You went

through this process with your company to find out that you were entitled to more money. Did that encourage you to tell other retirees from the same company that maybe they had ought to check on theirs? Did they hear about yours, and go back to the company and try to get theirs checked on? Were there any other mistakes that you know of for other workers?

Mr. WITORT. To answer your questions, I would probably say no to each of these questions.

The CHAIRMAN. OK.

Mr. WITORT. Because at that time, I did not know of anyone who was retiring.

The CHAIRMAN. Well, do you think that your company would have been of the state of mind, since they made a mistake in yours, that they would have gone back and checked other peoples pensions? I know you are guessing, but would they be the kind of people you would expect to do that, since they made a mistake with yours?

Mr. WITORT. I would say that there is no question in my mind that they would do that, yes. If they found out that they made a mistake in my pension, they would review their records and say you know, let us review the records that—

The CHAIRMAN. Because I would hope that an employer would see an obligation not just to satisfy you. You were aggressive and sought a solution and was not satisfied until you got what you thought was a correction of error. One would think they would feel a moral obligation to go back for others, fix it and show everybody the money.

Mr. WITORT. Yes; I am sure that Castle Metals would do that, yes, sir.

The CHAIRMAN. I think that you have shown us that there is a lot out there that a worker has to do to protect himself. I think you particularly have shown that there is a lack of resources available to workers who need help. Your advice of empowering pensioners and beneficiaries to take charge is very important, and I thank you for doing that. You have opened our hearing very well. Thank you. I will call the next panel—

Senator BREAU. Let me ask one other question.

The CHAIRMAN. Oh, yes; please go ahead.

Senator BREAU. You know, you find out a lot if you read all of these pamphlets that the Federal Government puts out. Of course, if that is all we did was read the Government publications, we would never do anything else in life.

But I was reading this pamphlet, "protect your pensions" again, and, Mr. Chairman, it points out the problem in the chapter entitled "What to Do if You Think the Rules Have Been Broken." It says three Federal Government agencies have authority to investigate possible violations of the rules for private pension plans and to bring lawsuits or assess penalties against individuals engaged in illegal activities: the Department of Labor, the Internal Revenue Service and the Justice Department.

The problem here is their jurisdiction I will just summarize it quickly. First, the Department of Labor: "If you think the plan's trustees or others responsible for investing your pension money have been violating the rules, you should call or write the nearest

field office of the Department of Labor." Then the Internal Revenue Service: "If you suspect that individuals providing services to the plans have gotten loans or otherwise taken advantage of their relationship to that plan," well, then, the Internal Revenue Service may want to take a closer look. Finally, they say at the Department of Justice: "Cases of embezzlement or stealing of pension money, kickbacks or extortion should be referred to the FBI, and if illegal activities are found, the case can be referred to the Department of Justice for prosecution."

Well, the problem we have, is that there are three separate agencies, none of which are really there to address your problem.

Mr. WITORT. It does not fall into any one of those categories, does it?

Senator BREAU. If they are embezzling, or they are stealing, or they have got some kind of a sweetheart deal with the pension fund, you know where to go. But if they just have an inaccurate calculation, you do not have anybody who helps out with that. That is the problem, and hopefully, we can correct it.

The CHAIRMAN. Thank you very much.

I would ask our second panel, Edgar Pauk, Paul Holzman, and Allen Engerman to come forward. Edgar Pauk is a legal aid attorney who has 17 years of experience in providing counsel and advice in pension-related issues to persons eligible for legal assistance. Recently, Mr. Pauk won two cases involving backloading of benefits, which he will explain in his testimony. Mr. Pauk will speak to his experiences and observations in regard to pension plans.

The National Center for Retirement Benefits is a private, for-profit corporation that assists people with pension-related issues. The NCRB charges a fee if money is collected as a result of its efforts. The owners of the NCRB, Mr. Holzman and Mr. Engerman, will discuss the most common mistakes or problems they see in their work, as well as the legislative changes that they believe will act as an incentive to achieve the error-free pension calculations.

First of all, we will start with Mr. Pauk, and then, we will go to the NCRB.

STATEMENT OF EDGAR PAUK, DEPUTY DIRECTOR, LEGAL SERVICES FOR THE ELDERLY; NEW YORK, NY

Mr. PAUK. Mr. Chairman, Senator Breau, I am an attorney with Legal Services for the Elderly in New York City. Our program is funded by the Federal Legal Services Corporation to represent the elderly poor. I am one of the few attorneys in this country who specialize in ERISA in Legal Services. Legal Services is so underfunded that there is not enough attorneys who can spend the time to acquire expertise in ERISA.

We also received a grant from the U.S. Administration on Aging, and we have a statewide pension hotline so that people can call an 800 line from anywhere in New York State and get answers to their pension questions. In the past couple of years we received over 1,200 inquiries. I have personally reviewed documents and, in some cases, brought a lawsuit on behalf of maybe, I would say, 60, 70 or 100 of these callers.

Now, as Senator Breau pointed out, ERISA is the only Federal legislation that provides no agency; that it preempts all state laws

but provides no Federal remedies. There is no place to go. The standard letter when a person with a pension problem writes to the Department of Labor, the standard response they get is, well, you will have to get yourself an attorney or legal aid attorney. No one is there to interpret pension law or the terms of the pension plan.

Now, you already noted how complex ERISA is. The problem is many attorneys do not specialize in representing pensioners with pension claims, because it is a very specialized field. Unless you practice a lot of pension cases, you do not acquire the necessary expertise. The people who are experienced in ERISA matters are those representing employers and pension plans, namely, defendant types, I should say.

In terms of mistakes, I think the likelihood of finding a mistake in the calculation of a pension is directly proportional to the difficulty or complexity of the formula. If, for instance, a pension plan provides \$10 a month for each year of service, that is very simple. However, many pension plans deal with average earnings, with the final average earnings or lifetime average earnings. Some have Social Security offsets where, very often, the Social Security amount is estimated. It creates a degree of complexity that no individual can really figure out. When I represent individuals, I always find mistakes in calculations, indicating the complexity of the formulas.

Now, given the nature of my clientele, namely the poor or near-poor, most of the plans I deal with are union plans or multi-employer union plans. In union plans many employers have been involved over the years in contributing toward the pension of a particular worker, but union plans have no legal requirement to provide benefit statements. A single employer, for instance, if requested, will provide the benefit statement by law. Unions were exempted from that requirement until and unless the Labor Department issued regulations. Well, 23 years later, the Labor Department still has not issued any regulations. So, the people who need it most are not getting information about the pension, either the number of years of credit or the amount of pension they are going to get.

Now, in terms of backloading, that is an issue that has been around for 23 years. Backloading is prohibited by ERISA, and yet, until this year, there was not a single decision dealing with backloading. No attorney ever took a case against a pension plan complaining of backloading.

Let me give you an example of backloading. If you work 24 years under a plan, your pension will be, let us say, \$500. If you work 25 years, you get \$1,000. So, in other words, there is a very steep increase in latter years of service. That has been illegal since 1974. It is just that nobody has ever enforced it. I have the pleasure of telling you that I brought the first two cases, and I won them both, one in January and one in April of this year, and I am about to bring more. It seems to be very common in New York City that union plans are backloaded. I do not know why. Maybe they are getting the wrong legal advice, but they are backloaded.

Now, how can an individual know that the plan is backloaded? They cannot. A client came to me because her \$30 a month pension was late. In trying to help her, eventually, I stumbled into backloading. I have litigated the case now—I won the case; of

course, the client died meantime, but we are in the process of negotiating what amount the estate should be paid.

Now, quickly to recommendations. I think that the demonstration projects funded by the U.S. Administration on Aging are making wonderful efforts. I met most of the people who run these programs. They are wonderful. So, I think they should be continued and better-funded. I think that the Department of Labor should be required to issue regulations to provide benefit statements. I think that to create an incentive for plans not to make errors. The way to do it is to provide for attorneys' fees when an individual, like one of the victims we heard from before, has to retain someone to get what is theirs. I mean, it is wonderful that my colleagues the pension detectives are here, but why should a person have to spend one-third of their pension in getting what was theirs to begin with?

The plan administrator under the law is supposed to provide a summary plan description to participants. Very often, that is not the case. It just does not happen. I think the way to resolve that is to require plan administrators to state under oath, in filings with the IRS, that they have done so. If they have not, then, they get into trouble with the IRS. That is the only agency that everyone is afraid of. Finally, the plan administrator, when requested, is supposed to provide plan documents within 30 days. That very often just does not happen. I have had many people call me, particularly from the hot line, who have been trying to get plan documents. They do not know the name of their plan, the name of the administrator, how much pension they are going to get. They have no idea about any of this.

So, I think there should be some teeth put into it and perhaps some mandatory penalties. Right now, a court can impose a penalty of up to \$100 a day. But that is honored in the breach. Most courts do not like to impose any penalties, and when they do, they do not provide for attorney's fees, so that you spend more in getting penalties than the penalties you recover.

[The prepared statement of Mr. Pauk follows:]

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Edgar Pauk
Deputy Director

**WRITTEN TESTIMONY OF EDGAR PAUK
BEFORE THE SENATE SPECIAL COMMITTEE ON AGING
JUNE 16, 1997**

1. Background

I am Deputy Director of Legal Services for the Elderly, where for the past 17 years I have specialized in ERISA litigation on behalf of the elderly poor. A typical client is a former blue collar worker, who is a participant in a multiemployer union pension plan, and has been denied a pension, whether early, disability or normal. Also common clients are the widows of such workers who have been denied survivor's benefits.

2. The New York Pension Hotline

The New York Pension Hotline, of which I am the Director, receives calls over an "800" line from all over New York State. The Hotline is funded - or was, I should say - by the U.S. Administration on Aging as one of its pension demonstration projects across the country. Although not all callers are poor, the overwhelming majority are poor and need legal advice regarding their pension rights. The Hotline provides that advice and refers them to attorney referral services if they need an attorney. In a significant number of cases I agree to review plan documents in order to advise the callers whether it is worthwhile for them to retain an attorney, assuming they can find and afford one. Since its inception in 1994, the Hotline has had a total of more than 1,200 first-time calls.

3. Nature and complexity of pension law

ERISA is the only federal statute that preempts State law and creates federal rights, without providing any federal agency where a retiree can go to get help. While a person with a discrimination claim has a panoply of federal, state and local remedies, pension claimants have nowhere to turn. In fact, the U.S. Labor Department will only assist a participant in securing a copy of the summary plan description ("SPD"), which summarizes the provisions of the plan. It will not interpret the terms of an SPD or opine as to whether those terms violate ERISA.

The IRS is only concerned with tax implications. It is a well established principle of law that the fiduciary of a trust owes a fiduciary duty to the beneficiaries of the trust. Yet, the IRS insists it owes a duty only to the trustees of a plan, whom it considers "the taxpayer", not to its beneficiaries.

In short, the only option open to a participant who is denied a pension, or to a beneficiary denied survivor's benefits, is to retain an attorney. Very often the benefit at stake is so small, however, that no attorney will take the case on a contingency. Yet, even if small, the benefit is very significant to a poor participant. There are hardly any Legal Services or Legal Aid attorneys in the country accepting pension cases, let alone specializing in ERISA. As a result, pension claims will often remain unaddressed.

ERISA is a complex statute, with regulations enacted by the U.S. Department of Labor, the IRS, and the Pension Benefit Guaranty Corporation. It is quite difficult for an attorney who is a general practitioner in state court, to handle competently an occasional ERISA case in federal court, where most ERISA cases originate or are transferred. Since most persons with pension problems cannot afford to pay an attorney, few plaintiff's attorneys do enough ERISA litigation to match the expertise of defendants' attorneys.

ERISA representation is also expensive. It is not possible, in fact, for an attorney to provide advice regarding benefits from a particular plan without reviewing both the Plan and its SPD, and analyzing the plan's provisions for compliance with ERISA. For union plans, there is also a need to review a Trust Agreement and collective bargaining agreements, and to request a Detailed Statement of Earnings from the Social Security Administration.

Furthermore, the courts have required participants denied a benefit to exhaust the plan appeals procedure and to present all the relevant evidence to the plan administrator before initiating litigation, under penalty of having any new evidence rejected and the courthouse door closed to them. Since most participants do not know what the required evidence is, or how to obtain it, it is vital for a lawyer to be retained to help in exhausting plan remedies.

While exhausting the plan appeals procedure helps to resolve many claims without the need for litigation, there is no provision in ERISA for compensating an attorney for resolving a benefit dispute without litigation. Although ERISA provides for the discretionary award of attorney's fees by a court, such fees are awarded only for success in litigation. Where the attorney for a claimant succeeds in obtaining the pension without litigation, the attorney's fees must be paid by the pensioner, who can ill afford them. There is something wrong with requiring pensioners to retain attorneys at their own expense to obtain the deferred portion of their compensation, which they have earned.

Even when a claimant is successful in a court action and applies to the courts for attorney's fees, before awarding them many courts require that the claimant not only prove entitlement to benefits, but also that the plan's denial was in bad faith. In 17 years of ERISA practice, I have seen incompetent, negligent, and grossly negligent benefit denials, but I have never seen one in bad faith.

4. Mistakes and Backloading

There are three main reasons why pensioners who do get a pension, may not be getting the right amount of pension and may need the help of a lawyer or actuary.

First, calculation mistakes. While it is hard to quantify what percentage of pensions are miscalculated to the claimant's detriment, the rate is clearly directly proportional to the complexity of the pension benefit formula. Clearly, where the formula is \$ 10.00 a month for each year of service, it is highly unlikely that calculation mistakes will be made, but, if made, such mistakes will be easily noted by the participant and rectified by the plan. Where, however, the formula requires the calculation of average salary and of a social security offset, the chance that a mistake will be made is very high, as I have found in my practice.

For example, a common mistake I have encountered is to calculate final average monthly earnings by adding earnings over the last five years and dividing the resulting figure by sixty, even where the participant did not work twelve months in the last year of employment.

Mistakes are also likely to crop up whenever there is a lump sum calculation, because of the complexity of the actuarial factors involved. I have a pro bono actuary who will review lump sum calculations and actuarial assumptions for my clients. Mistakes are found often enough to make such review standard procedure.

Second, mistakes in crediting service. This type of mistake is found mostly in multiemployer union pension plans and is caused by incomplete records, due to mergers of unions and their pension plans over thirty to forty years. The problem is aggravated by the fact that such union plans are exempt from ERISA's requirement to provide individual benefit statements to participants, until the Department of Labor issues the required regulations. No such regulations have been enacted to date. Consequently, typically participants do not find out how many pension credits they have until they apply for a pension. Often they are told they suffered a pre-ERISA break in service thirty years earlier, and it is very difficult and time-consuming, if not impossible, to disprove the break. Moreover, few, if any, union retirees can afford an attorney.

Third, the "backloading" of pension benefits. As noted earlier, many poor clients are participants in multiemployer union pension plans, many of which (at least in the New York area) provide inordinately low rates of accrual during the participant's early years of service, and dramatically higher rates in the 25th or 30th year of service. That practice is called "backloading". Its effect is to greatly diminish the protection afforded by ERISA's vesting provisions, because the vested benefit will be quite small until the last few years of participation in the plan.

It is to forestall backloading that Congress required a defined benefit plan to comply with at least one of three minimum accrual schedules. Adherence to one of those schedules is meant to insure that participants will accrue their pensions more or less ratably over all their years of participation. Accrual need not be even over all years of participation, but the difference between the lowest and the highest rates of accrual cannot be more than one third.

ERISA was enacted in 1974, yet backloaded plans are still with us and, judging from New York, in great numbers. Yet not until this year was there a single court decision holding that a plan is unlawfully backloaded. There are two such decisions now, namely DeVito v Pension Plan of Local 819 IRT Pension Fund, 90 Civ 5299, 1997 WL 26292, 20 EBC 2864 (SDNY, Jan 22, 1997), and Carollo v Cement and Concrete Workers District Council Pension Plan, 96 Civ 3152, 20 EBC 2879 (EDNY, May 19, 1997). In both cases, the court found that the plan was unlawfully backloaded and had to be reformed.

The reformation of a backloaded plan will require a retroactive increase in benefits to anyone who retired with less than the maximum pension in the last twenty years. Between the two plans, easily 10,000 participants and pensioners are affected. The fact that the first backloading cases in 23 years were brought by a Legal Services attorney, and that they were brought in New York, with its oversupply of lawyers, speaks volumes about the state of ERISA representation and litigation.

The DeVito case involved a pensioner complaining that her monthly pension check was late. The amount of her monthly pension was \$ 30.22 for 13 years of union work. The small pension was the result of backloading, which resulted from prorating the pension benefit, but not the Social Security offset, so that but for the Plan's guaranteed minimum of \$ 2.00 per year, she would have accrued zero benefits for the first nine years of participation in the Plan. The Court held the plan's accrual schedule to be unlawful, because the rate of accrual in the later years was 800% of the accrual in the first nine years. The plan at issue in DeVito was designed by CIGNA and one can only wonder how many other plans it designed with the same unlawful accrual schedule.

Carollo involved another form of backloading. For the first 24 years, the accrued benefit for post-ERISA work was based on lifetime average earnings, with even smaller accruals for pre-ERISA work. Those participants lucky enough to earn a 25th year of pension credits would have their accrued benefit recalculated on the basis of final average earnings for all years of participation, whether pre- or post-ERISA. As a result of the change in the base of the computation, a participant's pension almost doubled between the 24th and the 25th year of participation.

ERISA and IRS regulations prohibit a change in the base of the computation "solely" because of an increase in the years of service. In the Carollo action, the Trustees argued, in fact, that they imposed an additional requirement for the change in the base, namely that the required 25 credits must be earned without a two-year break. The Court gave short shrift to that argument, noting that undoubtedly some participants would be denied the

change in the base solely because they did not have 25 years of credited service.

When the Plan is reformed to comply with ERISA, there will be a need to recalculate the pension of every participant who retired with less than the maximum pension since 1976. Mr. Carollo's pension should increase from \$ 850.35, to \$ 1,400.82.

5. Recommendations

- Reinstate authorization and appropriations for the Administration on Aging to resume the funding under the Older American Act of the pension demonstration projects, but increase the funding so as to permit the projects to provide not only pension advice, information, and referral, but also representation and litigation on behalf of persons denied pensions who cannot afford to retain an attorney.

- Direct the Department of Labor to issue regulations under Section 205 of ERISA, requiring individual benefit statements to be provided yearly to participants and beneficiaries in multiemployer union pension plans, and direct the Department to issue model language. Participants and beneficiaries in multiemployer union plans have been discriminated against since ERISA was enacted twenty-three years ago. All they seek is to be treated the same as participants in single-employer plans. At present, participants and beneficiaries in multi-employer plans do not know where they stand toward a pension or have mistaken notions, e.g., they believe (or were led to believe) that the payment of union dues means they are participating in the union plan and earning a pension. Moreover, requiring individual benefit statements would give participants a chance to correct errors while evidence is still available. Finally, the Labor Department regulations should give participants the right to rely on the information contained in the individual benefit statements. At present, the statements, when they are provided, often contain a disclaimer regarding their accuracy, thereby defeating their purpose.

- Create an incentive for plans not to make errors or violate ERISA by providing for mandatory attorney's fees for prevailing participants and beneficiaries. Such fees should apply not only to time spent in litigation, but also to time spent in exhausting administrative remedies and obtaining a benefit without litigation.

- Put some teeth in the plan administrator's statutory duty to provide the SPD automatically to every participant and beneficiary, by requiring a sworn statement by the administrator that the SPD was in fact distributed, and by prosecuting for perjury plan administrators who lied. Innumerable participants in 401(k) plans have called the Hotline to complain that they could not get their money out of the plan after their employment terminated. It was news to such callers that there was supposed to be an SPD, that they have the right to get a copy of it, and that their right to an immediate withdrawal of the funds depended on the terms of the SPD.

- Put some teeth in a plan administrator's duty to provide plan documents within 30 days of a written request. At present, ERISA provides for a penalty of up to \$ 100 a day for delay or refusal, but there is no way to collect the penalty short of bringing an action, in which the court is unlikely to award substantial, if any, penalties. Some courts award small penalties, but no attorney's fees, so that participants are penalized for seeking penalties, which are always smaller than the attorney's fees. Either the penalties (along with attorney's fees) should be made mandatory, thus leading to early settlements without litigation, or there should be a fine imposed by the IRS, which should keep a registry of offenders, for the purpose of acting out greater penalties if patterns of delay emerge.

The CHAIRMAN. Thank you very much.
Whichever one of you want to go first, please go ahead.

STATEMENT OF ALLEN ENGERMAN, NATIONAL CENTER FOR RETIREMENT BENEFITS, INC; NORTHBROOK, IL; ACCOMPANIED BY PAUL HOLZMAN, NATIONAL CENTER FOR RETIREMENT BENEFITS, INC; NORTHBROOK, IL

Mr. ENGERMAN. Chairman Grassley, Senator Breaux, Mr. Holzman and I would like to thank you for affording us the opportunity of addressing you this afternoon. We have submitted a written statement which we would like to be included in the record of these proceedings. The written statement is accompanied by exhibits, which include tapes of CBS News' 48 Hours segment entitled "The Pension Detectives" which aired on June 5, 1997, as well as a commentary by the noted financial analyst Terry Savage that aired on the Nightly Business Report.

Our company, the National Center for Retirement Benefits, Inc., is the only company in the United States dedicated exclusively to finding and correcting errors in pension plan distributions so that plan participants receive all of the benefits to which they are entitled. Is this a serious problem? Absolutely! In our experience, we have found that because approximately 50 percent of the plan distributions are incorrect, participants are being victimized by being underpaid, as I said by nearly 50 percent.

We perform our review without cost to our clients. If we discover an error and obtain a larger pension payout for them, our fee is 30 percent of the additional recovery. If our clients do not receive additional money, we are not paid a fee. Mr. Holzman will now address you gentlemen, and I will conclude the opening statement.

Mr. HOLZMAN. I would also like to thank the committee for the opportunity to speak about what we regard as a very serious problem for pension plan members. How do we know if their pension payment is correct? Most Americans have little knowledge of how pension plans operate nor the ability to understand complex formulas used in calculating their benefits. They do not know if their payment is accurate.

Over the past 4 years, our company has been responsible for thousands of plan members receiving millions of dollars of additional benefits. On an individual basis, the recoveries ranged from several hundred dollars to \$60,000. On a company-wide basis it ranged from \$18 million for 7,000 employees of GTE to \$20 million for over 3,000 employees of U.S. West. These additional payments have run from 5 percent to 300 percent per person—that is right; I said up to 300 percent per person. We have discovered errors in Fortune 500 plans as well as plans with as few as two employees. The nature of the errors run the gamut from the use of wrong interest rates to the failure to include all of an employee's compensation.

We have prepared a chart of the more common mistakes. A detailed list is found in our literature, which is distributed free to anyone who calls our 800 number. Through our investigations, we have discovered flawed pension software being sold by pension consulting firms to major corporations. Naturally, this results in serious pension mistakes affecting thousands of plan participants.

Plan members can help themselves. The first step is to establish a pension file when they start work and adding to it every pension-related document given to them by their employer. We have prepared another chart showing some of the documents available to employees that should be saved. Of prime importance are the documents that need to be requested before an employee leaves the company. Once they receive their distribution, they should have it reviewed for accuracy by a professional, be it our company, an attorney or an actuary.

In the pension field, mistakes are a way of life.

Mr. ENGERMAN. Thank you, Paul.

I would like to address the legislative changes that we feel are necessary in order to afford plan members the opportunity to be on a level playing field with their former employers. As you gentlemen are well aware, the body of law governing pension plans is enormous and seems to be never-ending, what with Federal legislation; Federal and State court decisions; regulations, rulings, and opinions of the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

As a result, companies must comply with the continuing changes in the law and periodically amend their plans. These changes create difficulties in the administration of the plans which results in mistakes being made in the calculation of individual benefits. We have created a chart that addresses some of the problems that need to be rectified in an effort to assure that plan participants are treated fairly. I would like to highlight the most significant proposals.

Strange as it may seem, some companies are asserting that when employees receive their pension payouts, they are no longer entitled to receive any documents that were used in calculating the payout. That leads to difficulties in making pension reviews.

We believe that individuals who have received their benefits should be able to obtain all of the documents that are needed to perform a review of their pension and to seek additional benefits from the company for up to 6 years after they were initially paid.

Another important piece of legislation would be to require the reimbursement of professional fees paid by participants to recover additional benefits. Presently, the law only provides fees when litigation is concluded successfully. We submit that if a company has erred in calculating benefits, and the plan member has had to hire a professional to secure those additional benefits, the company should reimburse the member so that no loss is sustained.

Last, when a company goes out of business or terminates its pension plan, a Federal depository should be established to receive and store all plan records so that 20 or 30 years later, when plan participants are seeking their pensions, those documents are available, and benefits can be obtained.

Paul and I wish to express our appreciation to you, Senator Grassley; Emilia DiSanto, your chief investigator and the Special Committee on Aging's staff for all of the assistance that we received in preparing for this hearing. We welcome your questions.

[The prepared statement of Messrs. Engerman and Holzman follows:]



National Center for Retirement Benefits, Inc.

**TESTIMONY
SPECIAL COMMITTEE ON AGING
JUNE 16, 1997**


**By Paul Holzman and Allen C. Engerman
The National Center for Retirement Benefits, Inc.**

The principals of the National Center for Retirement Benefits, Inc. ("NCRB"), Paul Holzman and Allen Engerman, through their experience in the fields of pension consulting and the practice of law respectively, were well aware of the existence of the complicated pension laws, rules and regulations that made it difficult to correctly administer plans.

In the late 1960's, Paul Holzman was an Internal Revenue Pension Agent who audited plans to determine if they were following the voluminous rules and regulations that determined if a plan was "qualified"; a term given to plans receiving special tax status from the Internal Revenue Service. Plans treated as "qualified" were allowed to establish a trust that was exempt from taxation, distributions to participants received favorable tax treatment and the participants were not presently taxed on the money being contributed on their behalf. Paul Holzman's job was to determine if the plan being audited had violated its favorable status and if any participants were being discriminated against. Mr. Holzman discovered many errors and the plans were notified as to the steps to be taken to correct participant records and payments. At the time these audits took place, Mr. Holzman noted that participants had little or no knowledge of the complex laws, rules and regulations governing pensions and were not represented by anyone who had such knowledge at the time they received their money.

In 1974, Mr. Holzman founded a pension consulting firm. The company was "born" at the time ERISA started (September 1, 1974) and helped pension clients handle extremely complex compliance problems.

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Often, errors occurred due to misunderstandings with the clients or due to the sloppy administration of a predecessor consulting firm. In the pension field, errors were and are a way of life.

Mr. Engerman was a prosecutor in Chicago, Illinois concentrating in major felony and financial crime cases during his early legal career and subsequently became the senior principal in law firms that were engaged in complex commercial litigation, including employment and pension rights matters. He was likewise well aware of errors made in the administration of plans affecting his corporate clients.

Mr. Holzman and Mr. Engerman teamed up in May of 1993 to form the National Center for Retirement Benefits, Inc., the nation's first business dedicated to reviewing pension payouts on behalf of individual participants to detect errors solely on a contingent fee basis. The backgrounds of Mr. Holzman and Mr. Engerman are contained in Exhibits A and B respectively, attached to and made a part of this statement.

NCRB reviews pension, 401(k) and profit sharing payouts from large and small companies. It is immaterial if the distribution is in the form of a lump sum payment or monthly income. NCRB does not review municipal, state or federal pension plans or those union plans that are not administered by the company.

The NCRB business cycle starts with a phone call to the firm as a result of a client having learned about the company from the news media or former clients.

The client is interviewed on the phone to determine if he or she qualifies for the company's services. If the client has received a lump sum payment or commenced receiving monthly income during the last six years from an ERISA plan and was not a member of a union or governmental plan we send them information on the company, the Service and Compensation Agreement (Exhibit C attached hereto) and an Authorization for the Release of Retirement Plan Records (Exhibit D attached hereto). After receiving the signed agreement and the authorization we send the client's former employer a copy of the authorization listing the documents we need to perform our



review. The request seeks, among other items:


1. A copy of the plan and amendments that affected the client's pension benefits.
2. A copy of the summary plan description (employee booklet).
3. A copy of the actuarial worksheets used to compute the client's pension benefits.

On receipt of these documents a review of the client's distribution commences. A team consisting of the principals of NCRB and an actuary will determine if errors exist and the impact on the client's pension. If an error is detected, a claim letter is prepared and submitted to the plan administrator seeking to have the client's pension distribution corrected. A reply to the claim letter is received within 90 days after being sent. If the client's claim has been denied, the reason for the denial will be analyzed and a determination made as to whether an appeal should be filed. During the claim and appeal period it's not unusual for a request to be made on behalf of the client for additional data. At times, further clarification of the claim may be submitted to illustrate why the client is entitled to more money. Often, employers will reject the claim only to later carefully review and approve the appeal.

After an employer agrees to correct the error, a request is made for a copy of the revised calculations to review before giving approval to issuance of a check to the client for the additional amount.

Approximately 70% of the plans reviewed are Fortune 1000 companies. The other 30% are a mixture of middle to small companies. Some of the clients were employees in plans that had only two participants, i.e., a doctor and receptionist.

There is no specific profile of a company that makes pension errors. A partial list of well known companies that have paid additional money after errors were discovered in their plans is found in Exhibit E attached hereto. When the company was formed, the expectation was that errors would average 5 to 10% of the original sum paid to the clients with



small plans being the major offender. To the contrary, errors have averaged from 20% - 40% and most of the errors are found in the Fortune "1000" companies.

Individual recoveries are usually in the \$5,000 to \$30,000 bracket. The highest individual recovery to date is \$60,000, although matters are presently pending that could exceed \$100,000 for several clients!!

The principals of National Center for Retirement Benefits, Inc. were recently featured on the CBS-News television program "48 Hours" which aired on June 5, 1997. The segment was entitled "The Pension Detectives" and focused on how NCRB helps clients receive additional pension benefits. A copy of the tape of the segment, as well as an earlier telecast of financial analyst Terry Savage's commentary on the Nightly Business Report on PBS which aired on March 15, 1994 are attached as Exhibit F hereto.

The list of errors discovered by NCRB would fill many pages. Amazingly, many errors have been found that did not affect existing clients but could affect future clients who were participants in the same plan. For example, while reviewing a pension plan a procedural problem is discovered that did not affect the existing client but affected other participants in the plan. The error is "inventoried" until a future client fits the profile. NCRB has dozens of "inventory" errors to rectify. Following is a sampling of the errors that have been encountered:

Error # 1. A pension participant works past age 65 and the plan fails to provide a U. S. Department of Labor notice (Department of Labor Regulation 2530.203-3) (Exhibit G attached hereto) at the time the participant turns 65, explaining changes in their pension benefits. NCRB restores these benefits by citing the appropriate regulation and correction procedures to the employer and asking it to make the appropriate adjustments.

Error # 2. Interest rate tables published by the Pension Benefit Guaranty Corporation were not properly used by the plan administrator in calculating a pension. The higher an interest rate used to cash out a participant the lower the amount paid out. The use of an incorrect

rate results in the participant sustaining a loss that can range anywhere from 10% to 40% of what was originally paid.

Error # 3. An Internal Revenue Service notice required to be given at a time when benefits stop accruing to a participant was not given and as a result, the client continued to accrue additional pension benefits before leaving the company.


Example: In 1995 a company amends its plan to stop all further accruals of benefits but does not notify the participants. The client leaves the company two years later and receives a pension payout that reflects benefits earned until 1995. NCRB presents a claim for benefits earned for 1996 and 1997 and secures additional benefits for the client.

Error #4. A company notifies employees of changes to the pension plan and pays terminating participants on the basis of the revised (amended) plan. Review by NCRB shows the amendments to be invalid and therefore the participants are entitled to additional money based on the plan provisions in existence before the ineffectual "amendment."

Error # 5. NCRB's favorite error: **Flawed pension software.** A well known actuarial consulting firm has sold pension software to numerous corporate clients to be used to administer pension plans and to cash-out participants. There are design flaws causing "systemic" errors affecting thousands of employees from each of the companies using the software. To complicate matters, the designers of the software on finding out about the flaws are reluctant to come forward and admit that the software is incorrect because they are concerned about costly litigation.

Example of a design flaw: Incorrect interest rates incorporated into the software are being used to cash-out younger pension participants who have cash-outs under \$3,500.

Error # 6. The administrators of a plan are incorrectly using the plan's actuarial/mortality tables. This will produce small errors that affect almost all plan participants.



Error # 7. Most employers have pension plans that tie into a participant's Social Security benefits. For example: A pension plan promises to pay participants a monthly benefit of 50% of their average monthly earnings over the last five years less the anticipated Social Security benefit they will receive at age 65. If the company has miscalculated the participant's Social Security benefit, smaller monthly pension checks will be sent to the participants.

Error # 8. The division of the company where the client worked has been bought and sold numerous times and the employment records fragmented. NCRB requisitions records from the different parties that administered the pension plan and learns the client is entitled to additional service or compensation for purposes of pension calculations. Locating pension and employment records has become a major problem for our country. NCRB receives many calls each week from people who left employers 10 to 20 years ago and cannot locate their records which could substantiate their right to receive a pension.

NCRB's ability to discover errors is directly related to the quality of the information furnished by employers. Employers who provide "barebone" information limit the ability to find errors. Pension laws that aid in securing all the documents needed to make a detailed review will enable participants to be assured that errors affecting their payout will be detected.

Since we have already found errors in the pension plans of many of the leading companies in the United States, we are of the opinion that no plan is immune from error.

Whether the percentage of plans that are flawed, either through improper plan documentation or administration is 10%, 20% or as high as 50%, the problem is significant and can only be rectified, if at all, by constant vigilance and the enactment of laws geared to simplifying what has become a very complex procedure.

The easiest way for employees to help themselves is to save every document given to them by their employer. They should start a file on the day they commence employment and place all documents they receive

into it so that a professional in the pension field can examine them years later when they are leaving the company to make certain they have received all of the pension benefits to which they are entitled.

What should be saved?


1. Payroll records, particularly notices of pay increases.
2. Plan literature, correspondence and reports, particularly any changes to the plan.

In addition, employees should request, in writing, copies of the following:

1. The plan and related amendments.
2. The latest summary plan description (employee booklet).
3. Summary annual report.
4. All actuarial calculations used to determine benefits.
5. Copies of all correspondence to and from the plan concerning the employees' participation.

The body of law governing pension plans is enormous and seems to be non-ending. The Employee Retirement Income Security Act ("ERISA") was adopted in 1974. Since its adoption, the following legislation has been enacted which impacts on its provisions:

Tax Reform Act of 1976
 Revenue Act of 1978
 Multiemployer Pension Plan Amendments of 1980
 Economic Recovery Tax Act of 1981
 Tax Equity and Fiscal Responsibility Act of 1982
 ("TEFRA")
 Deficit Reduction Act of 1984 ("DEFRA") which
 included the Tax Reform Act of 1984
 Retirement Equity Act of 1984 ("REA")
 Single Employer Pension Plan Amendments Act of
 1986 ("SEP-PAA")
 Tax Reform Act of 1986




1986 Omnibus Budget Reconciliation Act
1987 Omnibus Budget Reconciliation Act
Technical and Miscellaneous Revenue Act of 1988
("TAMRA '88")
1989 Omnibus Budget Reconciliation Act
1990 Omnibus Budget Reconciliation Act
1993 Omnibus Budget Reconciliation Act
Retirement Protection Act of 1994, which is found in
the Uruguay Round Agreements Act, which was
enacted under the General Agreement on Tariffs and
Trade ("GATT").

In addition to this legislation, regulations, rulings and opinions of the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation impact on the application of the statutes.

To complicate matters even more, federal court decisions and, to a lesser degree, state court decisions and legislation (primarily in the area of statutes of limitation), impact on the legislation and the regulations, rulings and opinions of the governmental agencies who are charged with enforcing pension law provisions.

As a result of the foregoing, plan administrators, in an effort to comply with the continuing changes in the law, must amend their plans with some regularity. In doing so, certain provisions must be added or amended and others deleted, all of which tends to create difficulties in administering the plans. These difficulties often result in errors being made in the calculation of individual benefits. While we, as professionals, know that errors are being made and have the ability to detect them, the plan participants are at a distinct disadvantage since they lack the requisite knowledge of the law and actuarial science to enable them to determine if the benefit they have received is correct.


No government agency has been willing to help the participant on an individual basis to determine if the benefit that has been received is accurate. We know of no attorneys or actuaries who are willing to assist pensioners on a contingent fee basis. We have been told by our clients that



when they contacted attorneys or actuaries, they were advised that they would have to pay a retainer and an hourly rate in addition to being responsible for all expenses. NCRB, on the other hand, only charges a client if we are successful in recovering additional pension benefits, and that contingent fee is never more than 30% of the amount recovered and in instances where we represent ten or more individuals, is reduced to 25%. All expenses incurred are paid by NCRB and no reimbursement is sought from the client for those items.

NCRB feels very strongly that legislation should be adopted to enable pensioners the opportunity to be placed on a level playing field with their former employers when disputes arise relating to the correctness of pension benefits that have been paid. To often, the process to correct distributions becomes adversarial in nature. Employers lose sight of the fact that they have a fiduciary obligation to participants to make certain that they receive all the benefits that they have earned. All too often employers are unwilling to treat participants with the respect to which they are entitled. The employers forget that benefits were part of the contract that employees bargained for or relied upon when they commenced employment. To deny them what is rightfully theirs is unconscionable.

The United States Supreme Court has defined the term "participant" as used in ERISA to include "former employees who 'have . . . a reasonable expectation of returning to covered employment' or who have 'a colorable claim' to vested benefits." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 117 (1989). As a result of the language in the *Firestone* case, certain employers have been unwilling to produce the relevant documents that are necessary to perform an analysis of the participant's distribution. While it is true that a number of cases, including *Raymond v. Mobil Oil Corp.*, 983 F.2d 1528 (10th Cir. 1993) have clarified the term "vested benefits," legislation should be enacted that once and for all clarifies that a participant should be entitled to receive those documents which will enable a professional to determine if the correct benefit has been paid by the plan. Those documents include, but are not limited to, the plan document and amendments, the summary plan description, payroll and service records, correspondence, notices to participants and calculation of benefit worksheets.




A participant should have the ability to commence his administrative remedies with the company by filing a claim seeking greater benefits for up to six years after the commencement of the benefit. Based on the *Firestone* case, some companies are refusing to consider a participant's claim by asserting that the claimant is no longer a "participant" since he has left employment and received a pension benefit. As ludicrous as this may sound, it is a position that has been taken.

While ERISA sections 104 (b) (4) and 502 (c) (1) provide respectively for the production of certain documents and statutory penalties of up to \$100 per day for failure to produce the documents, the federal courts have been loath to award a penalty in the amount of \$100 per day. In most cases, if fines are awarded at all, they tend to be de minimus and, in NCRB's opinion, such wrist slapping only gives comfort to other companies and discourages the production of required documents.

Legislation, with teeth in it, is therefore needed to preclude employers from failing to furnish relevant documents that are needed to review pension calculations. NCRB proposes that there be a mandatory fixed penalty for such failure.

In line with legislation providing for a mandatory fixed penalty for refusing to furnish documents in a complete and timely manner, Congress should enact legislation providing for punitive damages against corporate sponsors who violate the provisions of ERISA in an egregious manner. Too often NCRB encounters companies that are unwilling to pay additional benefits to participants, even though the benefits are clearly due. In those instances, corporate sponsors should be penalized severely for their conduct. Indeed, many more matters would be resolved at the administrative level if companies knew that they could be subjected to punitive damages.

In those instances where participants are only able to secure additional benefits by employing the services of a professional to represent them, legislation should be enacted which would provide that the costs of securing the additional benefits should be borne by the plan or its sponsor. Participants' benefits should not be diminished because the company failed to calculate them correctly and they had no option but to retain the services of a



professional to secure what they were rightfully entitled to. Indeed, ERISA provides for attorney fees if litigation is instituted to secure correct benefits.

All too often we receive requests from individuals who turn 65 and want to collect their pension from a company that they worked for 20 years ago and that is no longer in business. There is little, at this time, that can be done to assist them. If legislation were passed requiring pension plans to store all of the documents pertaining to the plan in a federal depository when the company sponsor goes out of business, participants' pensions would be protected. This would likewise apply, but to a lesser degree, when corporate mergers take place. While certain of the documents can be obtained from government agencies, those additional documents which are crucial to the calculation of benefits may be lost forever. What eventually happens to these funds is a mystery!

ERISA presently fails to provide a statute of limitations that applies uniformly to all pension plans. Instead, the courts require the use of the most analogous limitation period of the state where the plan is located. This results in a tremendous disparity of limitation periods between various states, depending on whether a contract, wage claim or other limitation period is applied and could be as short as two years or as long as fourteen. ERISA does, however, provide for a six year statute with respect to claims for violations of fiduciary duties. We propose that a ten year limitation period be enacted with respect to the time within which individuals could seek to have their benefits corrected.

Lastly, we have encountered instances where employers are unwilling to consider claims for correction of benefit distributions due to the participant having executed a release of all claims, even though the release was not based on circumstances affecting benefit claims. Legislation should be adopted that would preclude employers from asserting that such releases prevent participants from seeking to obtain benefits to which they are rightfully entitled.

In conclusion, NCRB wants all Americans to be aware of the fact that errors can and do occur and that after accepting their benefits, participants should challenge the correctness of the payment. **IT SHOULD NEVER BE ASSUMED THAT A PENSION PAYMENT IS CORRECT!!**

The CHAIRMAN. Well, thank you very much.

What kind of assistance does the Department of Labor provide to people who have problems like your clients'? Do you report problems to the Department of Labor that need to be enforcement cases, and do they take appropriate action?

Mr. ENGERMAN. Well, Senator, unfortunately, I do not think that the Department of Labor is geared to handle the type of situations that we encounter. They do not have the staff; they do not take the time nor the effort that is necessary to secure additional benefits for individuals. We have, on occasion, called upon the Department of Labor to handle certain matters and, unfortunately, I have to say, in my opinion, the matters were handled somewhat ineffectually.

In one instance, we referred a fraud matter to them over a year ago, and to this date, no action has been taken. As a matter of fact, the matter is in a civil lawsuit, and the attorney representing the defendant in that matter said that he was contacted by the Department of Labor and asked to produce documents. He gathered all of the documents but no one from the Department of Labor ever came to look at them.

The CHAIRMAN. Mr. Pauk, do you want to respond to that? I welcome you to.

Mr. PAUK. Well, my experience is more or less the same. I would refer to the Department of Labor only matters of fraud, breaches of fiduciary duty, where money is stolen or some trustee has lifted some money, because that is the only area that they are interested in. In terms of problems with accrual of benefits or vesting, it is not within their jurisdiction. Under the Reorganization Plan of 1978, Congress moved all of those issues to the IRS. You cannot talk to the IRS; at least, you can talk to them, but they will not talk back, because if you file a complaint, they just accept it, and you never hear from them again, because it is supposed to be confidential, and the taxpayer is supposed to be the trustee and not the participant on whose behalf you are filing a complaint.

So, I have not found tremendous help from the Department of Labor.

The CHAIRMAN. I would ask each of you the advice that you would give to people who are workers or retirees, either those retired or about to retire, so that they do not run into the problems that you work with or Mr. Francione, Mr. Witort told us about. They have tried to get answers, and, you know, they did not have any luck initially. They did not know where to turn.

What sort of advice would you have? We are emphasizing consumer empowerment, educating people to what the problem is, in addition to the legislation we propose. I still think educating should be a major effort of ours, of corporations' and of advocacy groups. Any response?

Mr. PAUK. Well, the first thing is that they should obtain plan documents, the summary plan description, and attempt to read it. It is supposed to be written in layman's terms, so it should be understandable to a consumer in general. These documents would also contain the benefit formula. They should look at that if they are capable of it. Now, many people are not. Many people are not

educated enough to be able to read a booklet of that nature, but for most people, perhaps, it is possible.

In the second place, I would advise them always to get a copy of a calculation sheet. In other words, when their pension is being calculated by the company or by the union, the consumer should ask for copies of those pieces of paper. Then if they bring the documents to someone knowledgeable, they can review those calculations; all of the information is there and can be reviewed. Do not wait until they retire to find out about their pensions, do it as early as possible and be comprehensive in their document collection. Very often, by the time they retire, it is a bit too late.

The CHAIRMAN. Mr. Holzman, Mr. Engerman.

Mr. HOLZMAN. I would agree, Senator, to save as many documents as possible, requesting items from your employer, including a copy of the plan, the calculations; it is extremely important to have these items before you leave and then to consult with a professional in the field to review the information. The professional can be an actuary, a consulting firm such as ours, or an attorney; it does not matter. Get competent professional advice to find out if you have been properly paid.

The CHAIRMAN. It is obvious to me that in order for you to do your job successfully, you need the cooperation of employers and plan administrators. You need access to certain documents, as you have stated here; even get them before you retire, have them in your hands, do not throw anything away. Overall, would you say that employers are cooperative in responding to your inquiries, and what barriers do you encounter from employers when helping a client?

Mr. ENGERMAN. If I may?

The CHAIRMAN. Yes.

Mr. ENGERMAN. Most corporations try to cooperate with us. There are, however, several, and some of them are quite large, that are very obstinate in producing the documents that we need in order to conduct a review on behalf of people who are participants in their pension plans. We try to write letters to the employees to obtain the documents; we try to contact the Department of Labor, to have them contact the employer to furnish us with the documents. There are two large companies in particular that we have had great difficulty with; I will mention the names if you have no objection, Senator.

The CHAIRMAN. I do not have any objection.

Mr. ENGERMAN. Bank of America is one; American Airlines is the other and they have just sent us a letter saying that they do not feel we are entitled to certain documents.

The CHAIRMAN. Are you inquiring for a specific client of yours; is that right?

Mr. ENGERMAN. That is correct, whose authorization we have. In other words, when we send the letter to the employer, we have an authorization signed by that client authorizing the employer to furnish us with the documents.

The CHAIRMAN. In a sense, American Airlines would be saying that that former employee did not have a right to ask.

Mr. ENGERMAN. That is correct. They are saying based on a U.S. Supreme Court case, they do not have "a colorable claim to vested

benefits." That is the language which is used. You are in a Catch-22 situation, because in order to determine if you have a colorable claim to vested benefits, you have to see the benefit calculations.

The CHAIRMAN. Did you finish?

Mr. ENGERMAN. Yes, I have.

The CHAIRMAN. OK.

Senator BREAUX.

Senator BREAUX. Thank you, Mr. Chairman. Thank the panel of witnesses.

You know, sometimes, I try to figure out whether we need more laws or whether we just need to enforce the laws that are already on the books better than we are currently enforcing them.

Under Federal law, your pension plan is required to give you information about plan investments. The plan must automatically provide you with a summary of its finances for each year or a written notice of your right to receive that summary. This book from the Department of Labor, "Guide to Summary Plan Description Requirements," says that under ERISA, Employment Retirement Income Security Act, the summary plan description is the basic document which gives the plan participant or beneficiary the details of his or her plan. It explains how the plan works, what benefits it provides and how benefits may be obtained.

Are people out there not getting this? Or do they throw it in the junk mail? Do they not realize what it is? Or they are not mailing it to them? What is the problem? The Labor Department is saying everybody gets this automatically so what is the problem?

Mr. HOLZMAN. Senator, your inventory is accurate. It is all of it. There are companies that simply do not give information to employees. We have had people call us and say that in 20 years, they have yet to receive one document, one page.

Senator BREAUX. Would they, then, be in violation of the ERISA law by not providing this?

Mr. HOLZMAN. There are many aspects in which they would be in violation.

Senator BREAUX. The question is do we need more laws, or do we just need to make the ones on the books more enforceable?

Mr. PAUK.

Mr. PAUK. Yes; because I think that there are no remedies right now if an employer does not provide a summary—

Senator BREAUX. Well, some of them are not sending it—I guess you have had clients that either have never seen this or have never received it.

Mr. PAUK. Right.

Senator BREAUX. OK; so, we have got, apparently, Mr. Chairman, on the books something that says that under ERISA, they are supposed to get this information automatically, without having to write for it, or make a phone call. They are supposed to tell you what you are entitled to and when you are entitled to it and where it happens to be, but people probably are not getting all of this; at least that seems to be the evidence so far.

Let me get into the ways that we provide remedies now, which give me some problems. I take it, Mr. Pauk, you are Legal Services. I mean, you operate not on contingency fees or—

Mr. PAUK. No; free legal services.

Senator BREAUX. I mean, whatever Legal Services pays you to do the work you are doing is what you get.

Mr. PAUK. Right.

Senator BREAUX. It is my understanding, and maybe I am wrong, but that the courts have held that lawyer fees, private attorneys representing clients who have a pension problem, cannot be awarded a fee for representing those clients unless there is willful misconduct that was shown by the plan; is that correct or not correct?

Mr. PAUK. Well, in some circuits. In some circuits, they must prove not only that the denial of benefits was wrong but that the benefits were denied in bad faith.

Senator BREAUX. You are not going to prove that.

Mr. PAUK. I have never really encountered a bad faith denial in my practice. But in the Second Circuit, no, it is sufficient to get the benefit.

Senator BREAUX. In the Second Circuit; is that New York?

Mr. PAUK. That is New York and Vermont and Connecticut.

Senator BREAUX. So, a private attorney in that circuit is able to receive—

Mr. PAUK. Well, a Legal Services attorney, too, until recently, until Congress, in its wisdom, told us we cannot ask for fees anymore. Previously we could get fees on this type of case.

Senator BREAUX. Private attorneys.

Mr. PAUK. No, Legal Services.

Senator BREAUX. Legal Services?

Mr. PAUK. But not anymore.

Senator BREAUX. Not anymore?

Mr. PAUK. Not anymore.

Senator BREAUX. Because of what Congress did?

Mr. PAUK. New restrictions placed by the Legal Services Corporation on legal services attorneys throughout the country.

Senator BREAUX. So, what is your understanding of what the circumstances would be with regard to private attorneys operating in your area who may represent a pension person?

Mr. PAUK. Well, if they bring a lawsuit, and they win the lawsuit, I think they will get fees. It is almost unheard of to prevail and not to get fees.

Senator BREAUX. In some circuits, I take it, it is different.

Mr. PAUK. In some circuits, yes there is more difficulty.

Senator BREAUX. Now, Mr. Holzman and Mister—is it Eagerman?

Mr. ENGERMAN. Engerman.

Senator BREAUX. Engerman; I am sorry, Engerman.

Mr. ENGERMAN. That is quite all right, sir.

Senator BREAUX. You should see how many times BreauX is mispronounced, at least it used to be.

Mr. Engerman, this is your folder, I take it, and what it says is what NCRB does, and it is a real good presentation. It points out that you are the only consulting firm in the United States that specializes in representing employees in these problems with retirement plans.

Mr. ENGERMAN. That is correct.

Senator BREAUX. It says on the bottom: "Our fee is 30 percent of the additional money generated by our services. Fees are solely

determined on a contingent basis. This means you pay us a fee only if we are successful in finding additional money for you." I take it that if you were lawyers acting as lawyers and doing work as lawyers, in many parts of the country, you would not be able to base your fee on contingency fees.

Mr. ENGERMAN. I do not know that that is necessarily correct, sir.

Senator BREAUX. Well, is it not true that in some circuits, they do not allow contingency fees for lawyers representing pension beneficiaries?

Mr. ENGERMAN. Not that I am familiar with.

Senator BREAUX. Mr. Pauk.

Mr. ENGERMAN. I do not know of any; do you?

Mr. PAUK. I do not know of any, no.

Senator BREAUX. That is even without showing willful misconduct on the part of the beneficiaries? My information is wrong? Because I have in my information that courts have generally said—

Mr. ENGERMAN. No, I understand what you are saying, Senator. I think if you are filing a class action-type lawsuit, you cannot do that on a contingent fee basis.

Senator BREAUX. What about just an individual?

Mr. ENGERMAN. No, I think an individual suit can be on a contingent fee basis. In class action suit, the fees must be awarded by the court. They are of a contingent nature, but the amount is not set between the participants and the attorney.

Senator BREAUX. So, in your opinion, there is no difference between the way NCRB is able to recover your fees as opposed to an individual attorney representing an individual beneficiary in the same type claim.

Mr. ENGERMAN. I do not think that there is any difference, except that I think we are more successful than individual attorneys.

Senator BREAUX. But I mean there are no restrictions from that standpoint.

Mr. ENGERMAN. No.

Senator BREAUX. OK.

The final point, I mean, I think, Mr. Chairman, we have got to find out. I mean, it seems like beneficiaries are supposed to be getting things about their plans right now, information and everything else that are particulars, about what they have and where it is and when they are entitled to it and how much it is going to be, and apparently, these witnesses are telling us that there is a large percentage of people out there who are not aware of this or not getting it or not realizing its importance when they get it or what have you.

The CHAIRMAN. That is correct.

Senator BREAUX. OK; thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I think you have summarized very well a major problem. This hearing is to get some of this information out to not only alert pension plans and employers to responsibilities that they have, but even telling the various bureaucracies that are involved that they may not be doing their job. So, that is the purpose of this hearing, and we will probably follow it up with some action. We can talk about that as well later on.

Senator BREAUX. Well, you know, Mr. Chairman, I think we could do a better job as a Government in putting out the information in English or in understandable language I mean, look at this: this is from the Department of Labor, and the only little red dot that you can see is SPD. It sounds like a gas additive or something. [Laughter.]

I mean, the first thing you do is throw that away;

The CHAIRMAN. Or something they drink in Louisiana. [Laughter.]

Senator BREAUX. We probably do. [Laughter.]

The CHAIRMAN. Mr. Pauk, if you would respond to a question, which I did not give you a chance to answer previously. Do you have problems with employers responding to your requests for information, your inquiries that you have for your clients?

Mr. PAUK. Most of my clients are in union plans. Therefore, I would be dealing with the plan administrator.

The CHAIRMAN. OK; then, do you have problems with unions, or union plans?

Mr. PAUK. Not as often. I mean, most of the time, when they try to give me trouble, I say: If I bring a lawsuit, you will have to show me those documents anyhow. You might as well show it to me, and we all save time and money, and those documents do arrive.

I have not had—I mean, every now and then, there is one stubborn plan, but by and large, because I write on my attorney's stationery, you see. It is very different if you are, perhaps, a participant, and you write a letter, and you ask for something. But once there is an attorney's stationery, an attorney involved, I think it is much easier.

The CHAIRMAN. Let me ask you a question in regard to multi-employer plans, because I have asked everybody about any advice you have for workers. Since you deal with so many people that are multi-employer, do you have any specific advice for those workers in multi-employer plans as opposed to single-worker plans?

Mr. PAUK. Oh, yes; the most important thing is to make sure that they know how many years of credit they have and that all their service is credited, because very often, it is not. Many unions and many union pension plans merge over the years. There is a tremendous number of mergers, and often the records just are not there. It is not that the pension plan does not want to pay the benefits, they just say we do not have those records. They state if you can prove to us that this particular individual worked, fine. We would be glad to pay. But we do not have the records.

So, at the earliest opportunity, they have to make sure that they know what records the plan has, the records of contributions. That is the key matter.

The CHAIRMAN. Mr. Engerman, you mentioned that there was some flawed software out there.

Mr. HOLZMAN. I did, sir.

Mr. ENGERMAN. Mr. Holzman did.

The CHAIRMAN. OK; there is some flawed software out there. Can you tell us what company is producing it?

Mr. HOLZMAN. Unfortunately, Senator, I could not at this point. These are matters that are presently being worked on by our company, but there is flawed software being vendored by major actuar-

ial firms to their customers, and to their clients. That creates a spreading effect of errors.

The CHAIRMAN. Well, do you know if there is any business who purchased this software who are trying to get reimbursed for the money that they had to pay out to their employees because of the flawed software?

Mr. HOLZMAN. National Center would not know about that, sir. We would not be informed about it.

Mr. ENGERMAN. Senator, if I might just—

The CHAIRMAN. Yes.

Mr. ENGERMAN [continuing]. State to the committee, we were talking earlier about fees, and I would like to call to your attention that we had a matter where we discovered an error in the pension plan of MCI for an individual.

The CHAIRMAN. They have 6,000 employees in Iowa.

Mr. ENGERMAN. They contacted us, Senator, and they said would you please send a statement for your services immediately to your client, because we made the mistake, and we intend to pay you for your fee that you are sending to the individual. We just thought that that is something that should be on the record.

The CHAIRMAN. We are glad to have that on the record. I think it emphasizes that if it is wrong for one person, it might be wrong for more people, and hopefully that same company would feel a moral obligation to check on other examples. If they make one mistake, they may have made several mistakes, particularly if they had some flawed software.

Mr. ENGERMAN. We got a call from Frito-Lay on Friday, in which they indicated that they were aware from seeing "48 Hours" of the mistake that they had made. They wanted our help to make certain that they did not make any mistakes in the future with respect to their plan participants. So, there are companies out there that are concerned.

Senator BREAUX. May I have one follow up question, Mr. Chairman.

The CHAIRMAN. Yes.

Senator BREAUX. Mr. Pauk, I would like to pursue, and I forgot to earlier, about the difference between the reporting requirements of a union-based pension plan versus unrelated-to-union pension plans.

Mr. PAUK. Right.

Senator BREAUX. You had mentioned that there was a difference, on the reporting requirements or on the information requirements. Can you describe that to us?

Mr. PAUK. Yes; ERISA requires a pension plan administrator to provide a benefit statement if a participant requests that. Now, for multi-employer union plans, however, ERISA says that that requirement will not apply until and unless the Labor Department passes regulations. Now, I know that the Labor Department maybe 10 or 15 years ago issued a draft of some regulations which then were withdrawn, and there are no regulations. So, the people who need it the most, the people with the greatest number of employers, those are the people who are not told.

Senator BREAUX. So, when did we create a different standard between union plans and non-union plans? When was that done? In the original?

Mr. PAUK. 1974.

Senator BREAUX. In 1974?

Mr. PAUK. When ERISA was enacted. It is part of the statute.

Senator BREAUX. We said by statute that union plans would be treated differently; that they did not have to provide the same information—

Mr. PAUK. That is right.

Senator BREAUX [continuing]. Until the Department of Labor issued regulations.

Mr. PAUK. Correct.

Senator BREAUX. They have never issued final regulations.

Mr. PAUK. Correct.

Senator BREAUX. In all that time?

Mr. PAUK. Correct.

The CHAIRMAN. Well, the Government moves slowly. [Laughter.]

Senator BREAUX. Well, yes, but, I mean, that is 23 years; good gosh. Do you all understand? Have you all ever had problems dealing with union plans in this regard?

Mr. ENGERMAN. We do not deal with union plans. We deal with individual plans that affect union members, but it has to be a private plan.

Senator BREAUX. Well, let me ask this, Mr. Pauk, about this SPD thing that I tried to describe. This seems to say that we are going to provide annually a summary description about how your plan works and what benefit it provides and how your benefits may be obtained. It sounds like this would be sufficient information for the average beneficiary to tell them what is in their pension plan.

Mr. PAUK. Probably.

Senator BREAUX. But everybody does not get this.

Mr. PAUK. No, that is right.

Senator BREAUX. Unions, I take it, under the exemption, do not have to provide this.

Mr. PAUK. No, they provide a summary plan description, they provide. What they do not provide is they are not required to provide an individual benefit statement. If I, for instance, am a participant in the plan, and I write, and I say please send me a statement; let me know, you know, how many years of service I have—

Senator BREAUX. For me.

Mr. PAUK. Yes, what pension I have earned up to now, they do not have to respond.

Senator BREAUX. OK; so, most of the private plans you deal with, if the recipient makes an official request, they are supposed to supply that to them.

Mr. HOLZMAN. That is right.

Senator, you were talking about what happens if they do not supply it. There is a \$100-a-day penalty, but that penalty can only be enforced by the courts.

Senator BREAUX. I have got a \$1,000-a-day fine; that the Department of Labor has the authority to assess civil penalties of up to \$1,000 per day per annual report against plan administrators who fail or refuse to comply with all the annual reporting requirements.

Mr. HOLZMAN. The participant can go into court after requesting documents, but it is something that seldom happens.

Senator BREAUX. It is not going to happen.

Mr. HOLZMAN. Right.

Senator BREAUX. Now, a final point, Mr. Pauk. I am not picking on union plans, because I think Congress did this, and it may be Congress' fault, not the unions'. They complied with the law.

Mr. PAUK. Well, some unions, I should say—

Senator BREAUX. Do it anyway.

Mr. PAUK. Some unions do it anyway.

Senator BREAUX. OK; but there are some who would say if an individual who paid into a pension plan says dear union, please send me, John Doe, my individual statistics, they could respond and say look, under ERISA, we do not have to keep that information or give it to you.

Mr. PAUK. Exactly.

Senator BREAUX. That does not make any sense.

The CHAIRMAN. Well, we are done with your participation, and we thank you very much, because obviously, you are telling us sources of help and encouraging other people to get involved, so, we thank you very much for your expert testimony.

Mr. PAUK. Thank you, sir.

The CHAIRMAN. I am going to call the third and last panel. Our witnesses are Karen Ferguson and Trip Reid of the Pension Rights Center. Ms. Ferguson is the director of a non-profit advocacy organization that has been assisting individuals with pension-related issues free of charge for 22 years now. Ms. Ferguson will speak to us about the pension-related problems she sees in her work.

Mr. Reid was coordinator of the technical assistance project, which provided backup assistance to the six pension counseling demonstrations which were funded by the Administration on Aging.

Thomas Walker is a constituent of mine. He is president of the Associated Benefits Corporation, Des Moines, IA. He will discuss his company's work as an administrator of pension benefits for both small and large corporations. ABC provides benefit administrations for about 18,000 people which involves \$500 million.

Ms. Ferguson.

Ms. FERGUSON. Actually, I think Mr. Reid will begin.

The CHAIRMAN. Yes, that is OK.

Ms. FERGUSON. With your permission.

The CHAIRMAN. Mr. Reid, then, proceed.

STATEMENT OF TRIP REID, COORDINATOR OF TECHNICAL ASSISTANCE PROJECT, PENSION RIGHTS CENTER; WASHINGTON, DC; ACCOMPANIED BY KAREN FERGUSON, DIRECTOR, PENSION RIGHTS CENTER; WASHINGTON, DC

Mr. REID. Thank you, Mr. Chairman, Senator BreauX. I am Trip Reid, coordinator of the Pension Rights Center's Technical Assistance Project, and with me is Karen Ferguson, the center's director. The Pension Rights Center is a nonprofit public interest group committed to protecting and promoting the pension rights of workers, retirees and their families. We have been doing this for

over 20 years. I would like to summarize our prepared statement that has been submitted for the record.

In your press release for the hearing and your statement opening the hearing today, you noted that people in pension plans deserve every penny that they have earned. Yet many of these people do not know how to determine whether they are getting what they are entitled to receive. This committee is looking for ways to deal with this problem, to educate workers about their pension rights and to empower them with the necessary tools to check on their pensions.

The committee need look no further than the Administration on Aging's Pension Information and Counseling Demonstration Program. This program has, using very limited funds, been the most successful program the Pension Rights Center has seen in our 20-year history in helping people with their pension problems and getting people the pensions they are rightfully owed. First authorized in 1992 under amendments to the Older Americans Act, the nine demonstration programs that have operated since the inception of the program in 1993 have collectively helped answer the questions and resolved the problems of thousands of people with pension questions. In a significant number of cases it has assisted in recovering benefits owed to retirees or beneficiaries.

We urge Congress to reauthorize and appropriate funds to continue and expand these important programs. I should note that because of the budget crunch that you mentioned earlier, the appropriations were cutoff and these programs are simply proceeding under momentum and waiting to see if there will be new authorization and appropriations to continue the program in the next fiscal year.

You have heard from Mr. Francione and Mr. Pauk specific examples of how these projects have helped people. Our written statement describes other, comparable examples of how demonstration projects work and how they have concretely helped individuals. For instance, the California project helped a dental assistant recover \$80,000 from her 401(k) plan that her employer had invested in a bad real estate scheme. The Missouri project helped an individual who had been fired get \$38,000 in a lump sum payment that she needed for her financial well-being. The Massachusetts project spent the time chasing down plans. You have heard how difficult it is to track down a plan once it has folded, and they spent the time, the months of writing and calling, to track down the plan and get the pensions that the individuals were entitled to.

Another important thing that these programs are doing is educating people about their pension rights and giving them the information they need to pursue, on their own, remedies to their pension problems. They are empowering people to deal with their own problems.

The estimated benefits received by the projects have far exceeded the programs costs. We hope very much that you will recommend refunding and expansion of this important program.

In the time remaining, Karen will address the other questions that you asked us to respond to.

The CHAIRMAN. Thank you.

Karen.

Ms. FERGUSON. Mr. Chairman, Senator Breaux, I just want to start by thanking you for holding this very important hearing on a long-overlooked issue. The Pension Rights Center has been trying for the last two decades to try to figure out how to solve the nation's pension assistance problem. Thousands of people have come to us over the years, all with variations of the same story. They thought they would get a pension at retirement, only to find out that they had been denied all or part of their benefit. When they try to get help, all too often, they are shuttled from agency to agency, organization to organization, unable to find the help that they need. Now, thanks to this committee's leadership, a solution may finally be in sight.

We particularly commend you, Senator Grassley, for recommending refunding and expanding the Administration on Aging's demonstration program. Significantly, that was the top legislative recommendation of a "Pension Assistance Summit" that we convened earlier this year. We are releasing a report of that event today, which you have. It was cosponsored by the four key Government agencies in the pension area, and attended by 85 representatives of 35 organizations and Government agencies.

Another important outcome of the Summit was a unique, informal public-private partnership which is already at work implementing a number of non-legislative solutions to improve the delivery of pension assistance to older Americans. These include a new pilot project to forge working relationships among Government agencies and private sector groups and create a network of pension assistance services here in the Washington, DC area. It is just a pilot; it is just the beginning.

In the few seconds remaining, I would like to first submit for the record a number of legislative recommendations aimed at providing information and assistance to individuals. I believe you have a copy. These are for people whose pensions have been wrongly denied or incorrectly calculated. As you will note, several of these have been suggested by the previous panel.

Second, I would like to address the issue of the complexity of pension regulations. Pension rules can be extraordinarily complex, so complex that even the experts admit that they cannot understand them all. But employers do not have to have complicated plans. If they are willing to include all of their employees in a plan, provide them the same percentage of pay or contributions and make payments in the form of annuities and not as lump sum cashouts, they can set up very easy plans. Pensions become complicated when employers want to skew them to reward some employees at the expense of others.

For example, any employer of any size can set up a very simple plan. It is called a SEP. It has been in the law for 19 years. It is very straightforward; as it requires no Government filing. It can be set up in a matter of minutes. These plans are fair; they are portable, and they give employers a tax-sheltered benefit of up to \$24,000 a year or 15 percent of pay, whichever is less. SEP's are an ideal plan for small employers who recognize that people need more than Social Security to pay their bills when they are too old to work.

Another initiative which I understand may be introduced this week is something that is also very simple, very straightforward, and very important. Senator James Jeffords and Senator Jeff Bingamon have announced that they will reintroduce their Pension Pro-Save legislation. I have run out of time, but perhaps in the question period, we can talk about their bill.

[The prepared statement of Mr. Reid and Ms. Ferguson follows:]

STATEMENT OF THE PENSION RIGHTS CENTER
BEFORE THE
SPECIAL COMMITTEE ON AGING
U.S. SENATE
JUNE 16, 1997

"SHORTCHANGED: PENSION MISCALCULATIONS"

STATEMENT OF THE PENSION RIGHTS CENTER
BEFORE THE SPECIAL COMMITTEE ON AGING
U.S. SENATE
JUNE 16, 1997

Mr. Chairman, members of the Committee, I am Trip Reid, Coordinator of the Pension Rights Center's Technical Assistance Project. Accompanying me is Karen Ferguson, the Center's Director. The Pension Rights Center is a nonprofit public interest group committed to protecting and promoting the pension rights of workers, retirees and their families.

The press release announcing this hearing noted that people covered by pension plans deserve every last penny they've earned, but that most such people don't know how to determine whether they're getting what they're entitled to. The release added that the Committee is looking for ways to deal with this problem, to educate workers about their pension rights, and to empower them with the necessary tools to check on their pensions.

The Committee need look no further than the Administration on Aging's Pension Information and Counseling Demonstration Program, which has, using very limited funds, demonstrated an effective approach to meeting each of the Committee's stated goals.

Recognizing that countless thousands of older Americans are frustrated each year by their inability to understand and assert their pension rights, Congress included in the 1992 amendments to the Older Americans Act a provision authorizing the Administration on Aging to establish a Pension Information and Counseling Demonstration Program.

In late 1993, AoA awarded 17-month grants to seven demonstration local pension counseling projects, and to the Pension Rights Center to provide training and technical support to the projects. In October, 1995, four of these projects, two new projects and the

Pension Rights Center were awarded grants for another two-year period.

AoA took great care to shape the demonstration program to encourage innovative methods of meeting the pension counseling needs of the elderly individuals in widely differing communities. The resulting program was extraordinarily successful. It documented that there is an urgent need for pension assistance, and that help can be efficiently delivered in a variety of ways at a very low cost.

AoA selected each local project sponsor for its experience in community-based outreach to the elderly in its region, and for the ability of its staff and volunteers to give claimants individual help. Significantly, each project used a distinctive approach to address the retirement needs of people in its area:

- o The Michigan Office of Services to the Aging, worked through the Area Agencies on Aging in Southfield and in Escanaba, MI, to recruit and train volunteer counselors who met people with pension questions at nearby senior centers and, when appropriate, in their homes. The volunteers were supported by project staff and the Michigan Legal Hotline for the Elderly.
- o The Gerontology Institute of the University of Massachusetts in Boston, MA, built on the experience of its successful age discrimination clinic and used stipend volunteers to assist project staff.
- o The Legal Services for the Elderly in New York, NY, used a telephone hotline administered by a full-time paralegal, with backup support from two pension lawyers, one experienced, and one recruited for and trained by the project.
- o California Advocates for Nursing Home Reform in San Francisco, CA, relied on staff attorneys and a referral panel of lawyers who agreed to take pension cases at a reduced fee or for no charge.
- o The Older Women's League chapter in St. Louis, MO, used volunteer OWL members who answer telephone inquiries at regularly scheduled times during the week. Additional help was provided by paid staff and OWL's national office.
- o The Pima Council on Aging in Tucson, AZ, an Area Agency on Aging, used volunteers and lawyers involved in other agency activities to assist project staff.

- o The Metro Region Minnesota Senior Federation in St. Paul, MN looked to project staff and volunteer retirees with business experience to provide assistance.
- o The Alabama School of Law established a clinic, where students provided pension counseling, assistance, and outreach to older Alabamans. A component of the program included one two-hour classroom session each week.
- o The Chicago Department on Aging project established a Pension Information Effort to work through its existing Benefits Eligibility Checklist program that screens seniors over age 60 for all benefits they are eligible to receive.

The projects found that pension assistance surprised them by being more difficult and demanding than other kinds of benefits counseling and traditional elder issues. At the same time, they pointed to the satisfaction of being able to give individual responses to people who previously were unable to find anyone to listen to their problems. Even more rewarding were the instances, such as the following, where they could help people resolve satisfactorily concrete problems:

- o The California project helped a dental assistant whose employer had used her \$80,000 contributions to her 401(k) plan to make a bad real estate deal, and had then stonewalled her efforts to find out about her money. The project took her case and recovered her money for her.
- o The Missouri project was able to help a low-income minority senior citizen who had been fired from her job obtain her badly needed lump sum retirement benefit of \$38,000.
- o The Massachusetts project went to bat for two retirees whose employer had gone into bankruptcy, and whose pension plan could not be located. After weeks of writing many letters, the project succeeded in tracking down the plan, and got application forms their clients needed to begin collecting the pensions they had earned.
- o The Minnesota project worked with retirees from a large company who had been trying to find out for years if their plan could lawfully reduce their benefits. The project learned from the IRS that the company's action may be improper. It now is working with an actuary and a prominent Minneapolis pension lawyer to assure that the retirees get the benefits they are entitled to.
- o A woman came to the Michigan project who needed a California lawyer to get a

proper court order to get her share of her husband's benefits. The project contacted the San Francisco project for an appropriate lawyer referral.

- o The Tucson project got a request for help from a 62-year-old retired warehouse employee. After he returned to work in the same industry his pension was suspended because of a plan amendment made after he retired. The project found the client a lawyer who took successful action to have the pension restored; subsequently the lawyer instituted a class action on behalf of a number of other similar retirees.
- o You have heard earlier today in testimony from Edgar Pauk about the remarkable work of the New York Pension Hotline in presenting successful claims against plans that had used improper "backloading" schemes to deny the clients proper pensions.

In these and other cases the projects showed that they have the responsiveness to their clients' individual needs, and the energy, ingenuity, and persistence, that is required to cope successfully with complex and frustrating pension questions.

Overall, the project cases resulted in more than \$1 million in benefits during the first grant period. About one thousand individuals received help. Of these 10 to 15% received increased benefits. We expect the results of the second grant period to be equally impressive. In addition, the projects gave people understandable answers to complex questions, easy-to-understand fact sheets and other publications, and referrals to lawyers, actuaries, government agencies, and private organizations. They also helped clients obtain documents, clarified the basis on which pension decisions had been made, and provided other invaluable assistance, particularly to low-income, elderly people who would otherwise have been unable to resolve their pension questions or pursue their pension claims.

A network of public and private agencies and organizations that have committed to support the pension assistance program was built and is in place. Coordination with and active involvement of the Department of Labor's Pension and Welfare Benefits Administration (PWBA), the Internal Revenue Service, and the Pension Benefit Guaranty

Corporation, was a crucial element in the success of the program. PWBA field offices were directly involved with supporting the various projects on various levels, giving advice, training, and referral help. The following comment from the PWBA Pasadena office is indicative of the field offices' reactions to the program: "This program is of great assistance to the people, and should grow and be of more benefit as time goes on and taxpayers learn about it."

Similarly, in the private sector, professional associations and private organizations have given generous support to, and are actively involved in, the program. Actuarial societies, bar and accounting associations, retiree organizations, and industry groups have participated in training sessions, provided publications, and helped develop local project support networks. Individual professionals joined the effort by serving as project advisers, and on project steering committees or boards.

In June 1996, AoA informed the projects that Congress had eliminated Older Americans Act discretionary funds that would have been allocated to support the program for the fiscal year beginning on October 1, 1996. As a result, even though grants had been awarded for the coming fiscal year, the \$600,000 that would be needed to support the program would not be available.

In an emergency effort to keep the program afloat, AoA and PWBA joined together to allocate an additional \$150,000 to the program for this fiscal year. That funding ends on September 30.

On a cost-benefit basis the AoA program has been extremely effective. The estimated benefits received by the projects have far exceeded the program costs. In addition, the

program promoted self-reliance by people with pension inquiries who were able to get information about their particular issues that encouraged and empowered them to deal with their problems on their own. We very much hope that you will recommend refunding and expansion of this important program.

Thank you. We would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.
Mr. Walker.

STATEMENT OF THOMAS WALKER, PRESIDENT, ASSOCIATED BENEFITS CORPORATION; WEST DES MOINES, IA

Mr. WALKER. Mr. Chairman, Senator Breaux, I also thank you for the effort you are making in dealing with the issue. As an introduction, I am the president of Associated Benefits Corporation, and we are the sponsoring employer for 300 agricultural cooperatives who provide over 18,000 of their employees with pension and welfare benefits.

The issue of erroneous benefit calculations is obviously a difficult issue. For those who may have been harmed by an incorrect calculation, the anger and hurt no doubt runs very deep. As a plan administrator, I do not pretend that errors do not happen. In our case, our error rate for defined benefit calculations is 1.7 percent. That means 17 out of 1,000 will have a benefit payment that contains one or more mistakes. Of those 17, however, 8 will be negatively impacted, while 9 will receive more money than they are entitled to. Mistakes work both ways. As an interesting aside, we very seldom hear from any of the nine, especially when we try to recover the overpayments.

The point is that honest errors will historically work equally to the detriment or benefit of both the participant and the plan sponsor. Looking at the visual, errors occur in three parts of the process: reporting from the employer to us as the administrator; the calculation of the benefit by our staff; and then, payment errors by the trustee bank. Examples of the kinds of errors that occur in each category are listed on the visual display. As you can see, the potential for honest error is significant and work out about evenly as to whose ox got gored.

I find it amazing that some people seem to think that employers spend very significant amounts of money to set up and maintain pension plans and then intentionally miscalculate the benefits to be paid out. The economics for an employer who sets out to short-change participants simply is not there. Such an employer would be far better served with no pension plan, thus avoiding all of the legal, actuarial, administrative and audit costs, to say nothing of the cost of the benefit itself, rightly or wrongly calculated.

That leaves us with honest error. They do happen. They are unfortunate. They are difficult for all of the people involved. They should not happen, but they do. They will continue to happen as long as people are involved in the process, not because people are evil or uncaring or irresponsible, but because people are not perfect. Fingers hit wrong keys; eyes and brains transpose numbers; interruptions occur. None of these kinds of errors can be legislated or regulated away.

Defined contribution account balances are now valued daily with fully automated valuation through a voice response unit. I believe that the problem with defined contribution plan calculations that may have existed in the past are now or very soon will be eliminated and are, therefore, probably not a concern for the committee.

It has been suggested that you propose legislation incorporating some sort of penalty for miscalculating pensions. I take the position

that the vast majority of calculation errors are honest mistakes, and honest mistakes cannot be legislated or regulated away. How can they then be penalized? If I am forced to tell my people that if they make an error, either the company, them or I, are going to be fined or spend time in jail, my offices will be vacated overnight. We hire good people, and they should be able to secure their jobs without that kind of threat hanging over them.

For the mistakes intentionally made which are fiduciary breaches, the law already penalizes as a fiduciary violation, and that is appropriate. Since the intentional mistake already has a penalty, and since honest error cannot be totally avoided and, therefore, should not be subjected to penalty, I respectfully request that you approach the idea of penalties very cautiously.

One thing I think this hearing should emphasize to all is that each and every one of us must take responsibility for attempting to understand the benefits being provided by our employers and for the accuracy of what we are told is our due. It is my experience that many people are totally oblivious to the single largest asset they own: their retirement benefits. I am amazed that they do not pay attention when we hold employee meetings to try to explain their benefits or that they will not read their summary plan descriptions, which they do get. They do not remember getting their annual benefit statement that we send out to their homes, or they will not call the 800 number if they have questions.

We all, each and every one, must take responsibility for our own actions. Mistakes are going to happen. It is up to each plan participant to take some responsibility for understanding their plan and to know at least a ballpark figure what they can expect from that plan upon termination or retirement.

In summary, errors happen, but they are not, by and large, the kinds of errors that can be legislated or regulated. The growth of coverage for individuals could best be obtained through less, not more, legislation and regulation. Each of us individually must make some effort to understand our benefits and to be able to say that is not correct when those errors do occur.

I appreciate the opportunity to share my views on the pension calculation process. While I am conveying a message quite opposite from the majority of your panel of witnesses today, I urge you to listen very carefully to both sides and to analyze what you hear thoroughly. I repeat that when an error occurs, real people feel pain, and we know that. But that error was made by another real person who did not intentionally set out to do so. Penalizing the error maker for the honest error will not prevent the error; it will only spread the pain to an ever-widening circle of honest error makers. The competent people now doing those jobs will vacate these jobs, and ever less competent people must be hired to make more honest errors.

You can help make better plan participants out of our employees by not giving them another crutch to lean on. Let them participate in the process, not just the plan.

Thank you.

[The prepared statement of Mr. Walker follows:]

**STATEMENT OF THOMAS C. WALKER
TO THE SENATE SPECIAL COMMITTEE ON AGING'S
HEARINGS ON PENSION CALCULATIONS**

ACRONYMS

ABC -	Associated Benefits Corporation
AME -	Average Monthly Earnings
APRSC -	Administrative Policy Regarding Self Correction
CAP -	Closing Agreement Program
CS -	Credited Service
DOB -	Date of Birth
DOH -	Date of Hire
DOL -	Department of Labor
DOT -	Date of Termination
EE -	Employee
ER -	Employer
ERISA -	Employee Retirement Income Security Act of 1974 - as Amended
IRC -	Internal Revenue Code
IRS -	Internal Revenue Service
PBGC -	Pension Benefit Guarantee Corporation
PWBA -	Pension and Welfare Benefits Administration
SPD -	Summary Plan Description
SVC -	Service Vesting Credits
VCR -	Voluntary Compliance Resolution Program
VRU -	Voice Response Unit

Summary of the principal points in the statement of Thomas C. Walker in connection with the hearings of the Senate Special Committee on Aging regarding pension calculations:

1. Pension simplification has proven to be an oxymoron.
2. ABC has an error rate of 1.7%.
3. Roughly half of our errors benefit participants and half are to the detriment of participants.
4. Over 60% of all errors occur with highly compensated participants.
5. Errors are "honest" errors as opposed to intentional.
6. Defined benefit plans have greater potential for error than defined contribution plans.
7. Honest errors must not be penalized and intentional errors are a fiduciary breach for which penalties already exist.
8. The employer community will resist most legislative efforts not so much because of the legislation, but because of the voluminous regulation that follows.
9. There are fourteen proposed Bills currently in the House and Senate.
10. Enforcement should focus on good faith compliance rather than sanctions and/or penalties.
11. Regulations sometimes conflict between various regulators causing administrative angst.
12. We must expect and promote greater understanding and responsibility for individual benefits.

The issue of erroneous benefit calculations is an issue with many sides. For those who may have been harmed by an incorrect calculation, the anger and hurt no doubt runs deep. As a Plan Administrator, I do not pretend that errors do not happen. In our case, our error rate for Defined Benefit Plan calculations is 1.7%. That means 17 out of 1,000 will have a benefit calculation that contains one or more mistakes. Of those 17, 8 will be negatively impacted, while 9 will receive more money than they are entitled to. As an interesting aside, we very seldom hear from any of the 9, especially when we try to recover the overpayments. The point is that honest errors will historically work equally to the detriment or benefit of both the Participant and the Plan Sponsor.

We also tracked our 1.7% error rate and determined that over 60% of the errors that occurred happened with individuals who are defined as highly compensated under the IRS regulations. This is because the highly compensated tend to make more moves during their careers as they progress into management, making their calculations more complex.

I find it amazing that some people seem to think that employers spend very significant amounts of money to set up and maintain pension plans, and then intentionally miscalculate the benefits to be paid out. The economics for any employer who set out to short-change Participants simply isn't there. Such an employer would be far better served with no pension plan thus avoiding all the legal, actuarial, administrative and audit costs, to say nothing of the cost of the benefit itself - rightly or wrongly calculated.

That leaves us with honest error. They do happen. They are unfortunate. They are difficult for all the people involved. They should not happen, but they do and they will continue to happen as long as people are involved in the process. Not because people are evil, or uncaring, or irresponsible, but because people are not perfect. Fingers hit wrong keys, eyes and brains transpose numbers, interruptions occur. None of these kinds of errors can be legislated or regulated away.

Recognizing that honest human error is a given, let me describe the process we use to try to take as many of these errors out of the process as possible.

When we get a termination or retirement from one of our defined benefit plans, we enter the person into our system and extract all the data we have on him or her. The data bank contains name, social security number, date of birth, date of hire, date of plan participation, salary history for all years of employment, marital status and any Qualified Domestic Relations Orders that have been filed with us. For most of our Participants who are older, the file also contains the after-tax contributions that were made in the earlier years of employment when Contributory Plans were the norm.

The calculation process then begins. For those employees who were employed by a single employer in our system, the calculation is computerized. A sample of this type of calculation is attached as Exhibit Number 1. You will note that all identifying information has been blacked out. On page 2 you will note that two separate people initialed off on the calculation and neither of them did the actual work. After three people do and verify the calculation, paperwork is prepared for the Participant to review and sign off on. The paperwork and the calculation is reviewed again by a fourth person who has not been involved to this point. Simple calculations like this one have a virtual 100% accuracy rate.

Exhibit Number 2, again with identifying information blacked out, is much more difficult, and is six pages long as opposed to two pages in Exhibit Number 1. This person has been employed at six separate employers with 10 years and 3 months of credited service and 14 years of vested service. This is the kind of calculation that is most likely to contain one or more errors. The four person calculation, verification and review described above occurs here also, but the potential for error grows exponentially as the number of employers involved increases.

The kinds of errors that we have found over the years can occur in the reporting of data to us by the employer, in the calculation itself and in the actual payment process. A description of the kinds of errors that have occurred in each category, and a comment on how we strive to avoid each is attached as Exhibit Number 3.

One of the biggest areas of error is the 1,000 hour rule for eligibility. Employers consider 20 hours a week as part-time and therefore, not benefit eligible. While we stress every year that these people must be reported, very few small employers keep a count on hours and don't have a clue who is at 990 and who is at 1010. In our industry, agriculture, many part-timers work 70 or 80 hours a week for 5 or 6 weeks in the spring, and again in the fall, getting time and a half for all over 40 hours, so it is not as simple as dividing the W-2 by the hourly rate to get the number of hours. Do not construe this as crying, but rather as a statement of fact. They don't know the hours and they don't have a way to reconstruct without going through every time card. Remember, there are a lot of hand done payrolls out there in small employers. Many don't even own a computer.

And the biggest thorn in our side is having to be the Grinch and try to recover payments made to dead people. We discovered a situation just last month where the retiree had passed away seven years ago, but the son had kept his father's checking account open and had been pulling the retirement payments out of his father's account every couple of months. When we tried to recover the

significant amount of money, we were chastised for pursuing this poor man who could not afford to repay the Plan. The checking account had been moved from the local bank in the father's home town several months before he died and the son was a signatory, because he had responsibility for his father's affairs.

While we make some honest errors, the errors like our seven year party above can hardly be considered honest.....or even innocent.

Defined contribution plan account balances are now valued daily with a fully automated daily valuation VRU. The technology that has evolved over the last few years makes daily valuation cost effective and very efficient because any errors are isolated immediately. These systems also allow Participants to get account information verbally, and order statements on a daily basis if they want to. Account balances are as up-to-date as yesterday's market closing prices, and the maximum error possible would be one day's transactions, because the trust is balanced each day. Benefit calculations simply should not be of concern in the daily valuation systems in use for most plans today, and virtually all plans soon. The administrative economies of scale simply demand that plans move to these systems as soon as possible. I believe any past problem with defined contribution plan calculations have now, or very soon will be, eliminated and should not be a concern for this Committee.

It is my understanding that this Committee has been requested to propose legislation incorporating some form of penalty for miscalculating pensions. I take the position that the vast majority of calculation errors are honest mistakes that cannot be legislated or regulated away. How can they then be penalized?

If I am forced to tell my people that if they make an error, we (either the company, them or me) are going to be fined \$1,000 or spend 30 days in jail, my offices will be vacated overnight. We hire good people..... and they can secure new jobs without that kind of threat hanging over them.....and they should. That is an absurd idea.

For the mistakes intentionally made, a fiduciary breach has occurred and the law already penalizes a fiduciary violation, and that is appropriate.

Since the intentional mistake already has a penalty, and since the honest error cannot be totally avoided and therefore should not be subject to penalty, the idea should be dropped.

It has also been suggested that you should require mandatory pension benefit statements at regular intervals. We send a statement annually that shows the accrued benefit and the projected age 65 benefit. A sample statement is

attached as Exhibit Number 4.

Quite frankly, we understand why requiring statements is resisted by many employers. You can see how we have caveated the statement and we live with several weeks of phone calls each year when the statements are received, only a few of which are of value to the process. We believe the statement is simple and precise. We know that a certain portion of our Participants are selective readers and their calls are not time well spent, because they will call again next year with the same non-issue to discuss. Having said that, we believe the statements are of value to the majority of our Participants and will continue sending them.

The concern I have about a mandated statement is that by the time the regulations are issued on the legislative mandate, our usable statement will have been turned into a lengthy and unreadable file 13 piece. This is because of the "evil plan myopia" assumption that the regulators exhibit consistently. Not all plans maintain the same information in the files that are used in the actuarial valuation. The actuarial valuation would have to be the basis for any statement generated. If you would legislate a statement, once every three years, that required name, accrued benefit, and vesting status, and if you would include language that directed no regulations would be allowed on this requirement, then I believe you would find very little resistance.

We, the employer benefits community, will very likely resist any and all new legislation as a matter of course. This should not surprise you. Congress has shaken our tree every year since 1974 with annual legislation.....much of it in response to perceived, rather than real, problems. As a result, we have a system that is much less effective than it could be, and that covers many fewer people than it should. Why? Because we are a nation where the majority of our work force is employed by small businesses, with less than 100 employees. The owners of many of these enterprises are unable and/or willing to submit themselves to the burden imposed by our federal and state governments on those who voluntarily sponsor benefit plans. I don't blame them. And don't be naive and say "that's what we passed SIMPLE for". You limit the owner to a \$6,000 annual contribution and why should he or she pay four percent of total payroll in order to save personal taxes on only \$6,000? As an example, if the employer has 20 employees, and they average \$20,000 per year, the payroll totals \$400,000.00. The SIMPLE Plan requires 3% for all and a 50% match on the first two percent of pay contributed for a cost of \$12,000.00 to \$16,000.00. This is offset for the owner by a tax savings, in a 50% bracket (Federal and State) on his \$6,000 contribution of \$3,000. He or she would take care of him or herself better by taking the total of \$12,000.00 employer contribution plus the \$6,000.00 personal contribution less \$9,000.00 tax, and investing the remaining

\$9,000.00 in tax free municipals. Do you really wonder why SIMPLE hasn't taken off as predicted? The prediction was not accurate.

It never ceases to amaze me that you restrict so heavily the contributions and benefits of the decision makers in every business, and then wonder why they don't adopt qualified plans. The decision makers have options.....and they won't choose one that gives their employees all the goodies while restricting what they can do for themselves.

At this point, "legislative simplification" is an oxymoron. I suggest elsewhere returning to 1974 and ERISA as written and starting over.

As an example of the potential impact that Congress has on pension plans alone, the following Bills are currently being considered:

- S. 14, The Retirement Security Act
- S.106, The 401(k) Pension Protection Act of 1997
- S.108, The Small 401(k) Pension Disclosure
- S.221, The Social Security Accountability Act
- S.320, The Comprehensive Women's Pension Protection Act of 1997
- S.321, The Strengthening Social Security Act of 1997
- S.620, The Women's Investment and Savings Equity (WISE) Act of 1997

- H.R. 83, The Comprehensive Pension and Retirement Security Act of 1997
- H.R. 509, The Retirement Protection Act of 1997
- H.R. 766, The Comprehensive Women's Pension Protection Act of 1997
- H.R. 818, The 401(k) Pension Protection Act of 1997
- H.R. 819, The Small 401(k) Pension Disclosure Act of 1997
- H.R. 1130, The Retirement Security Act of 1997
- H.R. 1377, The Savings are Vital to Everyone's Retirement (SAVER) Act

While several of the Senate and House Bills are intended to be reflections of each other, the magnitude of the impact that would occur if all were passed never seems to be considered. Everyone in Washington seems to have their own pension plan target du jour and pays no attention to the overall impact on real people and real dollars. While many of the ideas contained in these Bills are not necessarily bad, the question of whether they are truly needed, or of whether they can be cost justified seems never to be asked in these hallowed halls. Once a Bill is passed, it is seldom rescinded, even when everyone ends up acknowledging the result was not what was envisioned. Section 89 is the sole exception that I can think of, and that wasn't pension related.

The problem with all the tinkering is that the only statutory sanction for even a minor violation of any of the myriad pension rules is a complete disqualification of the plan. The consequences of disqualification are draconian and generally bear no relation to the nature of the error that occurred.

In recent years, the IRS has established programs that attempt to address some of the problems in the current statutory sanction structure, but they are still an agency driven by a "get as many dollars in the treasury as we can" mentality.

Enforcement efforts should focus on promoting good faith compliance and correcting any errors that occur. No sanctions or penalties should be imposed on plan sponsors (or their plans or participants) if they voluntarily correct violations that they discover prior to audit. In addition, penalties imposed as a result of audits should not exceed a reasonable amount in relation to the amount involved in the error.

Although the IRS is to be commended for recognizing the problems inherent in the current enforcement scheme, the current programs pose too much risk and are expensive for plan sponsors to utilize. Programs like APRSC, VCR and CAP are not viable substitutes for a workable statutory correction/sanction scheme. Existing programs do not adequately deal with the numerous good faith errors that inevitably arise under our complex pension laws and regulations.

Our regulators occasionally issue regulations that directly conflict one with the other. A fairly recent example is on 401(k) loans, and particularly on loan defaults. The IRS is very clear that money can only be distributed from a 401(k) account under certain circumstances, a properly collateralized loan being one of them. There is no allowable recovery of a 401(k) loan in default until a distributable event occurs, i.e. termination of employment. This means a defaulted loan cannot be recovered by a Plan until the Participant terminates employment, at which time the unpaid balance is deducted from the Participant's account balance prior to distribution.

The original DOL regulation on loans required that any 401(k) loan be adequately secured and went on to stipulate that security is only adequate when the Plan Administrator could execute against the security immediately upon default.

The conflict then was a disqualifying event under DOL regulations if the administrator could not execute the foreclosure immediately upon forfeiture. Such an action would be an invalid distribution under the IRS regulations and a disqualifying event.

This conflict was eventually resolved with a change in the DOL regulations stating security would be adequate if the account balance earmarked as security would be executed as soon as a distributable event occurred.

During the year it took to get resolution, we, as Administrators, had to choose between which regulation we would violate. Not fun and not fair!

For a business, and particularly a small business, that voluntarily sponsors a retirement plan, the draconian threat of disqualification can be catastrophic, potentially leading to bankruptcy. For innocent rank-and-file employees participating in a qualified plan, the prospect of taxable benefits is inappropriate. Even the arbitrary threat of disqualification, taxation or penalties has a negative impact on the voluntary retirement plan system, especially since the existing IRS programs mentioned above are discretionary.....the IRS need not grant relief except under terms arbitrarily decided by agents, some of whom have their own agenda.

One thing I think this hearing should prove to all who care is that each and every one of us must take responsibility for attempting to understand the benefits being provided by our employers, and for the accuracy of what we are told is our due.

I find it unbelievable that any person would allow themselves to be so totally ignorant of what for many is the single largest asset they own.....their retirement benefits. The people that claim no ability to understand their pension are probably the same people who will haggle over 50 cents for a pair of used jeans at a yard sale. Understand, I'm not critical of them arguing over 50 cents, but I'm amazed they don't pay attention when we do the employee meetings to explain their benefits, or that they won't read their SPDs, or they don't remember getting the annual benefit statement we send out to their homes, or they won't call the 800 number if they have questions.

We all, each and every one, must take responsibility for our own actions. If we choose to ignore every attempt to help us understand our benefit, then we should not be able to parade ourselves in front of a hearing like this, telling the world that we have been abused by our terrible ex-employer. That is ludicrous.

Mistakes are going to happen. It is up to each Plan Participant to take some responsibility for understanding their Plan, and for knowing, at least in a ball-park way, what they can expect from that Plan upon termination or retirement.

If the problem is that the average worker can't comprehend the language, then you have a great argument for reducing the complexity that you have legislated and the regulators have regulated. If the argument is that employers do not do

enough to try to educate their employees, then I take umbrage with your argument.....it is blatantly false in the vast majority of instances.

In summary, errors happen, but they are not by and large the kinds of error that can be legislated or regulated. The growth of coverage for individuals could best be obtained through less, not more legislation and regulation, and each of us, individually, must make some effort to understand our benefits, and to be able to say "that is not correct" when errors occur.

I appreciate the opportunity to share my views on the pension calculation process. While I am conveying a message quite opposite from the majority of your panels of witnesses today, I urge you to listen to both sides carefully and analyze what you hear thoroughly. I repeat that when an error occurs, real people feel real pain.....but that error was made by another real person who did not intentionally set out to do so. Penalizing the error maker for the honest error will not prevent the error.....it will only spread the pain.....to an ever widening circle of honest error makers as competent people vacate the job, and ever less competent people must be hired to make ever more honest errors.

You can help make better plan participants out of our employees by not giving them another crutch to lean on - let them participate in the process, not just the plan.

Thank you.

NONCONTRIBUTORY RETIREMENT PLAN

CALCULATION OF BENEFITS

DATE: 04/22/97

NAME: [REDACTED]

SSN: [REDACTED]

EMPLOYER: [REDACTED]

COOP NO.: [REDACTED]

Sex: M

Date of Birth: 11/20/72 ✓

Date Benefits Begin: 03/28/97

Age as of 03/28/97: 24 4 Mos
NEAR AGE: 24

Normal Retire Date: 12/01/37

Type of Termination: 2 Termination

	VESTING Service	CREDITED Service
Date of hire for:	03/06/95 ✓	03/06/95 ✓
Date of termination for:	03/28/97 ✓	03/28/97 ✓
1000 Hours in year of hire:	No ✓	No ✓
1000 Hours in year of termination:	Yes ✓	Yes ✓
Exclude Years for:	0	0/ 0
Months counted in excluded yrs:		0/ 0

BENEFICIARY DATA

NAME:

Date of Birth: / /
Age as of 03/28/97: 0 0 Mos
NEAR AGE: 0

<u>VESTING SERVICE</u>		<u>CREDITED SERVICE</u>	
To 5/1/75:		To 5/1/75:	
After 5/1/75:	2.0000	5/1/75 to 3/31/89:	0.0000
TOTAL Service:	2.0000 ✓	Subtotal:	
Vesting Sched:	TEFRA ✓	After 3/31/89:	2.0833
Percent Vested:	20 ✓	TOTAL Service:	2.0833 ✓
Eligible for Rule of 85?	NO		
EE CONTRIBUTION BENEFIT:	0.00		

Mr. [unclear] 3/12

Exhibit 1
Page 2NAME: [REDACTED]
SSN: [REDACTED]

CALCULATION OF BENEFITS

---- High 5 Years ---- Monthly Salaries		---- High 5 Years ---- Preceding 04/01/89		---- Earnings for ---- Minimum Ben. Calc.	
1997	2,391.19	1989	0.00		
1996	2,334.94	1988	0.00		
1995	0.00	1987	0.00		
1994	0.00	1986	0.00		
1993	0.00	1985	0.00		
AVG1:	2,363.07	AVG2:		AVG3:	

AVG1 * .0100 23.63
 * Total CS 2.0833

Benefit A 49.23

AVG2 * .008 0.00
 (AVG2-1250) * .004 0.00
 = Subtotal 0.00
 * CS to 4/1/89 0.0000
 = Subtotal (i) 0.00

AVG1 * .0100 23.63
 * CS from 4/1/89 2.0833
 = Subtotal (ii) 49.23

Benefit B (i+ii) 49.23

MINIMUM BENEFIT CALCULATION

AVG3 * .011 0.00
 (AVG3-400) * .0055 0.00
 = Subtotal 0.00
 * CS to 4/1/89 0.0000
 = Subtotal 0.00
 - EE CONTR. BENE. 0.00
 = Subtotal (i) 0.00

AVG1 * .0100 23.63
 * CS from 4/1/89 2.0833
 = Subtotal (ii) 49.23

Benefit C (i+ii) 49.23

Accrued Benefit per the formula 49.23
 Vesting Percentage 20%
 Benefit Payable at age 65 9.85

LUMP SUM VALUE (CATT Rate 6.69%/Near Age 24/D65 Factor 7.6390) =

75.24

LS

CONTRIBUTORY RETIREMENT PLAN

CALCULATION OF BENEFITS

DATE: 03/19/97

NAME: [REDACTED]

SSN: [REDACTED]

EMPLOYER: [REDACTED]

COOP NO.: [REDACTED]

Sex: M

Date of Birth: 10/13/59 ✓

Date Benefits Begin: 02/28/97

Age as of 02/28/97: 37 4 Mos
NEAR AGE: 37

Normal Retire Date: 11/01/24

Type of Termination: 2 Termination

	VESTING Service	CREDITED Service
Date of hire for:	04/25/83 ✓	05/29/92 ✓
Date of termination for:	02/28/97 ✓	12/30/94 ✓
1000 Hours in year of hire:	No	Yes
1000 Hours in year of termination:	Yes	No
Exclude Years for:	0	0/ 0
Months counted in excluded yrs:		0/ 0

*1 ✓
transfer to
FMC*

©193

BENEFICIARY DATA

NAME: [REDACTED]

Date of Birth: 11/07/60 ✓

Age as of 02/28/97: 36 3 Mos

NEAR AGE: 36

VESTING SERVICECREDITED SERVICE

To 5/1/75:		To 5/1/75:	
After 5/1/75:	14.0000	5/1/75 to 3/31/94:	2.0000
TOTAL Service:	14.0000	Subtotal:	2.0000
Vesting Sched:	CLIFF	After 3/31/94:	0.7500
Percent Vested:	100	TOTAL Service:	2.7500
Eligible for Rule of 85?	NO		

CONTRIBUTORY ACCOUNT BALANCES

EE Contributions (LVD):	3,711.23 ✓
Interest (LVD):	705.07 ✓
EE Contributions (CUR):	0.00
EE Cons (4/1/94 thru LVD):	1,227.23 ✓
Interest(4/1/94 thru LVD):	155.77 ✓

Age 65: 11/01/24
Calc Date: 04/01/97
To Retire: 27 Yrs / 7 Mos

GATT:	<u>Rates</u>	<u>Years</u>
	6.830	27

MISC. BENEFIT FORMULAS

me: [REDACTED] SSN: [REDACTED]

Average Monthly Earnings (high 5 consecutive)

Year	Monthly Earnings	TOTAL	AVERAGE
19 <u>96</u>	\$ <u>5000.00</u> /	\$ <u>23063.28</u>	\$ <u>4612.66</u> /
19 <u>95</u>	\$ <u>5000.00</u> /		
19 <u>94</u>	\$ <u>4947.21</u> /		
19 <u>93</u>	\$ <u>3883.07</u> /		
19 <u>92</u>	\$ <u>4333.00</u> /		

(1995)

Contributory Formula

193

(1) \$ 4612.66 / AVG1 * 1.65 / Percent * \$ 76.11 * Cr. Svc. = \$ See computer calc. / Accr. Bene.

Old Contributory Formula

(1) \$ _____ * .0110 = \$ _____
AVG

(2) \$ _____ - 400 * .0055 = \$ _____
AVG

(3) (1) + (2) = \$ _____ * Cr. Svc. = _____

Noncontributory Formula

201 + 190

(1) \$ 4612.66 / AVG1 * 1.1 / Percent * \$ 50.74 * Cr. Svc. = \$ _____ / Accr. Bene.

Old Noncontributory Formula

023

(1) \$ 4612.66 / AVG * .008 = \$ 369.01

(2) \$ 4612.66 / AVG - 1250 * .004 = \$ 13.45

(3) (1) + (2) = \$ 50.35 * Cr. Svc. = _____

Initial Date
 Prepared By _____
 Approved By _____
 WILSON JONES COMPANY 07251 GREEN 7205 GMP MADE IN U.S.A.

	PC	Int	Tot
4-195	371123	34638	405761
8.84%		35869	
4-1-96	371123	70507	441630
4-194	0	0	0
7.08%	122723	4314	
4-1-95	122723		127067
8.84%		11233	
4-1-96	122723	15577	138300

Paid
 u
 1-1-96
 1-1-96

Exhibit 2
Page 4NAME: [REDACTED]
SSN: [REDACTED]

CALCULATION OF BENEFITS

---- High 5 Years ----
Monthly Salaries---- High 5 Years ----
Preceding 04/01/94

Minumum Ben. Calc.

1996	5,000.00
1995	5,000.00
1994	4,847.21
1993	3,883.07
1992	4,333.00
AVG1:	4,612.66

1994	4,847.21
1993	3,883.07
1992	4,333.00
1991	0.00
1990	0.00
AVG2:	4,354.43

(AVG2*.0165)	71.85
CS to 4/1/94	* 2,000.00
Pre94 Accrual	= 143.70

(AVG1*.0165)	76.11
Total CS	* 2,750.00

(AVG2*.011)	47.90
(AVG2-400)*.0055	21.75
Subtotal	= 69.65
CS to 4/1/94	* 2,000.00
Subtotal (i)	= 139.30

BENEFIT A or B	209.30
Pre94 Accrual	- 143.70
Post94 Accrual	= 65.60

BENEFIT A 209.30

(AVG1*.0165)	76.11
CS @ 4/1/94	* 0,750.00
Subtotal (ii)	= 57.08

ECBP (Post94)	76.41
1/2 Post94	+ 32.80
Pre 94 Bene	+ 143.70

BENEFIT B (i+ii) 196.38BENEFIT C 252.91

Accrued Benefit per the formula

252.91

	EE Contrib	Interest	TOTAL		Interest	TOTAL
Valuation 04/01/96	3,711.23	705.07	4,416.30	04/01/96	705.07	4,416.30
353 Days @ 7.08%	0.00	302.39	302.39	365 Days	312.67	312.67
Calc/Term 03/19/97	3,711.23	1,007.46	4,718.69	04/01/97	1,017.74	4,728.97

4/01/94 - 04/01/96	1,227.23	155.77	1,383.00
335 Days @ 7.08%	0.00	89.87	89.87
Calc/Term 03/01/97	1,227.23	245.64	1,472.87

TOTAL	4,728.97
(OBRA1)	* 5,952,743
	= 28,150.37
(OBRA2)	* 1,039,842
	= 29,271.93
(GATT @ 65) /	119,9695
ECBP	= 243.99

TOTAL	1,472.87
(OBRA1)	* 5,952,743
	= 8,767.61
(OBRA2)	* 1,045,533
	= 9,166.83
(GATT @ 65) /	119,9695
ECBP (Post94)	= 76.41

Accrued Benefit	252.91
ECBP	- 243.99
	= 8.92

Nontax P.C.	3,711.23
PVAB /	5,760.03
Excl. Factor	= 0.644307
Total P.C.	= 4,718.69
Taxfree	= 3,040.29

ER Benefit	32.80
* Vesting 100%	= 32.80
CATT Lump Sum Factor	= 22,77500
ER Lump Sum	= 747.02
Contribution Account	+ 4,718.69
TOTAL LUMP SUM BENEFIT	= 5,465.71

TAXFREE:	3,040.29
Taxable:	1,678.40

Accrued Benefit	252.91
CATT Lump Sum Factor	* 22,77500
PVAB	= 5,760.03

NAME:
SSN:IMMEDIATE ANNUITY BASED ON EE CONTRIBUTIONS

Employee Age: 37 4 Mos

Spouse Age: 36 3 Mos

1. If Employee takes EE Benefit Early, after age 55 with the required service, the benefit is reduced 1/300 per month prior to age 62.

Early Retirement Reduction Factor:

2. If Employee takes EE Benefit Early, before age 55, or after 55 without the required service, then the benefit is reduced actuarially from age 65 to actual age.

Actuarial Reduction Factor:

Factor for EE Age at next birthdate:		.0700
Factor for EE Actual Age (Years):	-	.0643
Factor for 12 Months:	=	.0057
EE Actual Age (Months) / 12:	=	.3333
Factor for EE Actual Age (Months):	*	.0019
Factor for EE Actual age (Years):	+	.0643
Actuarial Reduction Factor:	=	.0662

BENEFIT REDUCTION

ECBP	243.99	Life Only Factor:	142.906
Reduction factor	0.066200	Cash Ref Factor:	/ 146.712
Reduced Benefit (Life Only)	16.15	Reduced Benefit:	* 16.15
		Full Cash Refund	
		Benefit:	= 15.73
		LS:	2,247.911

OPTIONAL FORMS OF PAYMENT	Employee	Spouse		
Joint & 1/2	15.32	7.66		
Joint & 2/3	15.18	10.12		
Joint & 3/4	15.12	11.34		
Joint & Full	14.92	14.92		
5 Years & Life	15.71			
10 Years & Life	15.65			
15 Years & Life	15.56			
5 Years Only	52.90	Factor: 51.237287		
10 Years Only	30.78	Factor: 88.060361	Factor: 167.843	
15 Years Only	23.67	Factor: 114.524268	LS: 2,710.664	

○ [Redacted]

Service:

		<u>CS</u>	<u>VS</u>
@ [Redacted]	4-25-83 to 9-27-84	1 1/2	2
*C [Redacted]	9-27-84 to 7-1-88	3 9/12	3
@ [Redacted]	7-5-88 to 5-28-92	0	4
@ [Redacted]	5-29-92 to 12-30-94	2 9/12	3
@ [Redacted]	12-30-94 to 9-1-96	1 8/12	1
comb. ^{max} *C [Redacted]	9-1-96 to 2-28-97	7/12 ^{Adj by 1/2 to make full yr CS}	1
		10 3/12	14

○ Benefit:

old form.	@ [Redacted]	50.35' * 1.5' = 75.53		If w/o's p.c. 75.53
new form.	@ [Redacted]	50.74' * 4.3333' = 219.87		219.87
on	@ [Redacted]	2.75 = 309.30	min. formula benefit accr. 25291	32.80
new form.	@ [Redacted]	50.74' * 1.6667' = 84.57		84.57
		<u>589.27</u>	<u>632.88</u>	<u>412.77</u>

Breakdown

Breakdown if w/o's p.c

@ [Redacted]	18.69
@ [Redacted]	219.87
@ [Redacted]	219.95
@ [Redacted]	84.57
@ [Redacted]	89.80
	<u>632.88</u>

	18.69
	219.87
	32.80
	84.57
	56.84
	<u>412.77</u>

003/19/97 003/12/97

[Handwritten signature]

ERRORS IN PENSION CALCULATIONS**REPORTING**

INCORRECT REPORTING OF DATA BY EMPLOYER/EMPLOYEE - DOB, DOH, DOT, SALARY
- HAVE ER VERIFY INFORMATION ON ASD, LOOK FOR INCONSISTENCIES ON ENROLLMENT CARDS, LOOK FOR ODD DATES, LOOK FOR INCONSISTENCIES OF SALARIES YEAR TO YEAR

IF EE IS PART TIME - HOURS NOT COUNTED PROPERLY FOR ELIGIBILITY
- AUDIT COOP'S RECORDS

IF EE IS ELIGIBLE - NOT REPORTED
- AUDIT COOP'S RECORDS

CALCULATION OF BENEFITS

ERRORS IN CALCULATING - SERVICE, AME, AGE, ACCRUED BENEFIT
- HAVE CALC VERIFIED, VERIFY AGAINST MERCER'S PARTICIPANT LISTING

IF PLAN IS CONTRIBUTORY - CONTRIBUTIONS NOT CREDITED PROPERLY
- AUDIT COOP'S RECORDS, VERIFY REPORTED CONTRIBUTIONS BEFORE PAYOUT

USE OF INCORRECT BENEFIT FORMULA
- VERIFY AGAINST OPTIONS REPORT

USE OF WRONG FACTORS IN CALCULATING LUMP SUMS, RETIREMENT OPTIONS, ETC.
- HAVE CALC VERIFIED

PLAN TERM BENEFIT NOT OFFSET
- HAVE ANY OFFSETS NOTED ON CARDS, VERIFY AGAINST OPTIONS REPORT IF COOP HAD A PLAN TERM

CALCULATING CS FOR SERVICE PRIOR TO EFFECTIVE DATE
- NOTE ON CARD WHEN CS BEGINS, VERIFY AGAINST OPTIONS REPORT, VERIFY AGAINST MERCER'S PARTICIPANT LISTING

RECORDS - INCOMPLETE OR MISFILED
- LABEL RECORDS CLEARLY

PRIOR HISTORY NOT NOTED ON CARD, FILE, OR COMPUTER RECORD
- LOOK AT COOP FILES FOR ANY CHANGE IN PLANS

CALCULATING AGE REDUCTION FACTOR INCORRECTLY
- HAVE CALC VERIFIED

PLAN TERM WITH ANNUITIES PURCHASED, STILL PAID A BENEFIT FROM TRUST
- VERIFY AGAINST OPTIONS REPORT IF PLAN IS ACTIVE, FROZEN, OR TERM

COMPUTER PROGRAM ERRORS

- *CALC BENEFIT BY HAND, VERIFY AGAINST COMPUTER CALC*

ERRORS DUE TO EXCEPTIONS IN PLAN RULES OR NORMS

- *NOTED ANY "ODDITIES" ON OPTIONS REPORT, CARDS, COMPUTER RECORDS*

LAWS THAT ARE RETROACTIVE

- *CONTINUE EDUCATION*

LACK OF UNDERSTANDING THE PLAN

- *CONTINUE EDUCATION*

INCORPORATING PLAN AMENDMENTS

- *CONTINUE EDUCATION*

TRANSFERS - CREDITING CORRECT SVC TO CORRECT FORMULA, PLAN TERM & ECB OFFSETS

- *KEEP TRANSFER INFORMATION UPDATED, NOTE CHANGES ON CARDS AND COMPUTER RECORDS*

PAYMENT OF BENEFITS

PAYMENTS CONTINUE AFTER DEATH

- *UPON NOTICE OF DEATH REQUEST RETURN OF OVERPAID BENEFITS,
IF DIRECT DEPOSIT HAVE BANK REVERSE DEPOSIT*

PAYMENTS FOR PERIOD CERTAIN - CONTINUE BEYOND GUARANTEE

- *VERIFY BANK RECORDS A FEW MONTHS BEFORE PAYMENTS END*

INCORRECT DOR ON PAYMENT DIRECTIVE

- *HAVE PAPERWORK VERIFIED BEFORE SENDING TO BANK*

INCORRECT AMOUNT ON PAYMENT DIRECTIVE

- *HAVE PAPERWORK VERIFIED BEFORE SENDING TO BANK*

TWO PEOPLE WITH SAME NAME - PAID OTHERS AMOUNT

- *VERIFY SSN ON PAPERWORK WITH SSN ON PACKET*

BANK PAYS INCORRECT AMOUNT

- *VERIFY AMOUNT PAID AGAINST AMOUNT DUE*

**THE RESTATED NONCONTRIBUTORY
RETIREMENT PLAN FOR COOPERATIVES**

**Farmers Cooperative Company
Group 210**

**Annual Statement of Pension Benefits
for the Year Ending March 31, 1996**

Participant:	Joe Smith
Social Security Number:	444-44-4444
Date of Birth:	May 5, 1955
Primary Beneficiary:	Mary Smith
Current Address:	2929 Westown Parkway West Des Moines, IA 50266

Estimated Accrued Retirement Benefit:

You have accrued a monthly benefit of \$835.61 as of April 1, 1996. This benefit is payable on your normal retirement date of June 1, 2020. You are fully vested in your benefit.

Estimated Normal Retirement Benefit:

If you continue as a member of the Plan until your normal retirement date, your estimated monthly benefit is \$4,528.19. It is assumed you will be a plan member until you retire and your current salary level is used in this calculation. This estimated benefit is intended to be as accurate as possible, but some assumptions were made. Therefore, we caution you not to rely on this estimate in making any final decisions such as deciding to retire.

You will receive an updated statement of benefits annually. Please report any errors on your statement. These plan benefits assume payment under the basic form. When your employment ends, your actual benefit may be different from the amount shown. Benefits are paid only in accordance with plan provisions regardless of any written or oral statement you may have received.

Please contact Associated Benefits Corporation if you have any questions regarding your benefits. When you retire or leave employment, an individual calculation will be made for you based on actual employment data and plan provisions at that time.

Associated Benefits Corporation
2929 Westown Parkway, Suite 220
West Des Moines, IA 50266
515-226-0303

The CHAIRMAN. Well, thank you very much.

First of all, in response to your request that we not pass additional penalties, at this point, I do not think that we have indicated that we want to. There may be some people who have advocated that. I assume, though, you are talking about additional, and what Mr. Breaux was referring to, that there are penalties in the existing law, you do not find any fault with those.

Mr. WALKER. That is correct. Those are fiduciary violations, and they should be penalized.

The CHAIRMAN. OK.

First of all, I will start with you, Mr. Walker. As we heard in our first panel from our retirees Paul and Edwin. They had been short-changed about \$100 and \$300 per month respectively. In your experience, about how much money is involved in an average overpayment or an average underpayment? Do the numbers that we have from the PBGC on my first chart that I had up there surprise you in any way?

Mr. WALKER. I was unable to see your chart.

The CHAIRMAN. OK.

Mr. WALKER. Because of where I was sitting. The size of the 1.7 percent error rate that we make, the average monthly error, whether it is plus or minus, and now, I am talking in terms of a monthly benefit, not a lump sum, the size of the average benefit calculation is in the \$60 to \$65 range.

Now, if you multiply that out for a lifetime, it would be a significant amount, obviously.

The CHAIRMAN. OK; yes, well, these are the numbers that I asked if it surprises you. A third of these would be \$1,000 or more.

Mr. WALKER. Now, I am sorry. I do not know whether that is \$1,000 in terms of present value of future benefit or whether that is \$1,000 a month. Is that a lump sum number?

The CHAIRMAN. I will have to ask my staff.

That is total, for the life.

Mr. WALKER. I would say that that is certainly not overstated.

The CHAIRMAN. OK; and then, the other figure that I had was—it was the other chart that is not up here; I do not think you have to put it up here, but we have 8.2 percent, the PBGC said, were underpaid.

Mr. WALKER. Those, I assume, were in terminated plans.

The CHAIRMAN. Yes.

Mr. WALKER. My guess is that a terminated plan—and this is a guess; please, I do not have access to that research, but my guess is that administrators of terminated plans are probably not as fastidious as they might be if it were an ongoing plan process and that the employers lose interest in the plan as they lose interest in their business.

The CHAIRMAN. I would also like to have you comment briefly about how all the statutes and all of the regulations that you have to deal with that are governing pensions have affected the sheer quantity of material that you need to maintain on each beneficiary.

Mr. WALKER. That could perhaps be best summarized in a two-sentence piece of legislation. The discrimination rules, when passed as legislation, were two sentences in the Tax Reform Act of 1986. The first version of the regulations that were published by the IRS

were 687 pages, typed, single-spaced. The legislation is not harmful. The regulation is an abomination. The best piece of legislation you could pass as a Congress would be to restrict all regulations to not exceed the legislation by more than 100 times. [Laughter.]

In other words, if you have a two-sentence piece of legislation, restrict the regulation to 200 sentences.

We have, obviously, records that go back on people who are still living who are 90 years old that go back to their date of hire. We think it is important that the records be maintained in perpetuity, so that we are prepared to deal with the statutes and everything else as those things come up. I am not sure that that is required. I think that that is prudent, however, and we try to operate under the prudent man rule. So, we have files on every participant that go back to their original date of hire.

The CHAIRMAN. Ms. Ferguson, I was not going to ask you this question, but based upon his comment of the two-line statute versus all of the pages of regulations and your position that in some instances, there might be rationale for more Government regulation or policymaking in this area, what is your feeling about the statement that he made?

Ms. FERGUSON. Well, I think the real explanation for the complexity is that the private pension system is sort of a delicate balance. It is a voluntary system, and we want to encourage employers to set up plans. Yet, because it is a tax-subsidized system to the tune of \$32 billion this year in lost revenue, it has to meet the social objective of providing benefits to people, who need more than Social Security in order to live when they are too old to work.

So, what Congress has done over the years is to forge a series of compromises. To just give you one example, before 1986, it was all right for an employer to leave out up to 56 percent of his work force from a pension plan for any reason at all. We and the women's and retiree groups pointed out that was unfair. So, Congress decided, "OK; we will split the difference. We will just allow you to leave out 30 percent. But you can leave out more if you follow some very complicated rules that assure that some benefits trickle down to the rank and file."

So, part of it is the legislative process where you have the tension between the employers, who obviously want to shape the plans to meet their management needs, and the employees, who need pensions. The compromises that have been struck, the line that has been drawn, is necessarily complicated to allow the maximum flexibility to employers while, at the same time, allowing benefits to go to workers.

But you can have a simple plan. A SEP, or simplified employee pension, is the simplest of all. You just provide the same percentage of pay for all. You include all of your employees. It is simple. But that does not serve the employer's objective of providing higher benefits to higher-paid, longer-service employees.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you very much.

I take it, Mr. Reid and Ms. Ferguson, that your organization has been one of the groups that are responsible for putting this out, and I think that it is very helpful in summarizing. It is certainly a brighter color than the Government publication.

Ms. FERGUSON. Actually, that is the Government's color. Ours was orange.

Senator BREAU. This is yours?

Ms. FERGUSON. No; orange was our original version. It is now published as green.

Senator BREAU. Well, anyway, you have to have something that gets people's attention, I think, and I thank you for doing that.

I think, Mr. Walker, you have made good points. Errors are created both ways, and you point out that you do not hear from a lot of people who get an overpayment. I would venture that we do, in the Congress. When the Government tries to collect an overpayment of a Social Security check, we get a lot of calls from people saying that it was not their fault. I am reminded of the notch babies, where we had constant communications from that error that generated that problem.

But I take it—you are an ERISA authorized; you come under the ERISA laws.

Mr. WALKER. Correct.

Senator BREAU. If anyone from your beneficiary group wrote you saying can you tell me what my benefits are today or effective this week or whenever the date certainly, you would respond and give them that information.

Mr. WALKER. I am going to answer that in at least two and maybe three parts. We do give an annual benefit statement. The annual benefit statement is sent to the participant's home. It gives them their accrued benefit to date, their projected benefit at age 65, assuming that they continued working at the same salary they received last year, that is, there is no inflation hedge and it tells them how they are on their vested status, whether they are vested or when they would be if they are not.

With that annual statement—

Senator BREAU. Now, that goes out annually? At the end of the year?

Mr. WALKER. That goes out annually, following the actuarial valuation that is done at the end of our plan year, which happens to be—we operate on a 4/1 to 3/31 year, so that goes out, actually, the first part of June, after the actuarial valuation is done at the end of the year.

Senator BREAU. That is every year.

Mr. WALKER. That is every year, to every participant, to every participant's home.

In a mid-year situation, if a defined benefit participant asks for another statement and has not terminated, we will suggest that they wait until the next year, because in order to adequately do a benefit statement and be accurate, you have to do the valuation process, and doing that for individuals mid-year, except on a termination basis, does not make any sense. So, they would be informed that they got one in June. If they did not receive it, or if they cannot remember receiving it, we will send them a copy of it, and they will get another one the next June.

Senator BREAU. Did you mention the 1-800 number? Was that yours?

Mr. WALKER. That is ours, yes.

Senator BREAU. If somebody called that, what do they find out when they call that number?

Mr. WALKER. We will say did you get the valuation, or did you get the statement that we sent out to you in early June, and if they say no, we will send them a copy; if they say yes, but I cannot find it; I forgot it, we will send them a copy; or, if they say yes, and I do not think it is right, then, we will do whatever research is necessary to either verify the benefit that was reported to them or correct it, and we will do that. But we do that basically once a year.

Because the defined benefit plan is operated based on W-2 earnings or the actual earnings of the prior year, to do it mid-year would require an estimate of earnings, and those tend not to be as accurate as they should be. So, we try not to give mid-year.

On the defined contribution side, we have a voice response unit that gives daily valuations. They can call the 800 number for that and get a valuation of their 401(k) or their defined contribution plan on a daily basis, and that is both a verbal and a written statement of account balances.

Senator BREAU. Suppose someone calls that 1-800 number in a defined benefit plan and says it looks like the numbers are inaccurate against the paper that I have received from the plan? What happens at that point?

Mr. WALKER. The benefit calculation is based on the high 5 years of their career. So, we will immediately send out to them these are what we show as your high 5 years of earnings. If you find an error, please notify your employer and have your employer notify us right away so that the correction can be made. We also let them know what their date of hire was, and if they have a problem with that, they should also have their employer clear that up with us and their age, which is irrelevant to the benefit calculation, but we get all of that done at the same time, and if there are errors, we ask them to correct them at that time. If there are not errors, then, supposedly, the problem has gone away.

Senator BREAU. Mr. Reid and Ms. Ferguson, after Mr. Walker has described how their particular operation operates, do you have any comments or suggestions about that? Is that the way it is supposed to be operating, or is theirs still deficient from your perspective and, if so, in what way?

Ms. FERGUSON. Well, as Trip mentioned, the nine demonstration counseling projects have had different experiences, but what they have told us is that many have had a great deal of difficulty getting information for their clients. Their clients have difficulty getting information, and they have difficulty getting information.

Now, part of the reason is that the plans are not run by Mr. Walker. [Laughter.]

No, the problem is that the law basically says that employers must give certain required statements to individuals within 30 days. Now, we are talking about the kinds of statements that must, under the law, be given. However, the only remedy is actually going to court. Then, one point that has not been made today, is that although the court may, in its discretion, award a penalty of \$100 a day for delayed payment, courts have not done that. They have only done it if they have also found "substantial harm" resulting from the delay.

Senator BREAUX. So, what I am trying to figure out—

Ms. FERGUSON. The reality is there are a great many of projects that have had difficulty getting basic information from plans for their clients.

Senator BREAUX. OK; but the two points I think you are making is, No. 1, the amount of information that is given is a problem, but the situation that Mr. Walker described as to how his plan works seems to be, in your opinion, adequate information.

Ms. FERGUSON. Yes.

Senator BREAUX. The real problem, then, becomes enforcement—

Ms. FERGUSON. Exactly.

Senator BREAUX [continuing]. When there is a disagreement as to the type of information you are getting.

Ms. FERGUSON. Exactly, we have suggested in our recommendations that consideration be given to giving the Labor Department enforcement authority. When an individual is having difficulty, they could go to the Labor Department. The Labor Department could take over and enforce it and impose penalties if it was willful.

Senator BREAUX. As opposed to having to go into the Federal court system and litigate and everything else?

Ms. FERGUSON. Right; the situation is absurd. People cannot find lawyers, because it is terribly costly.

Senator BREAUX. OK; I understand that.

Mr. Walker, what are all of the pension folks going to think if we decide to recommend that the Department of Labor be an enforcement authority short of having to go to court?

Mr. WALKER. The Department of Labor—

Senator BREAUX. Or some department; I am not sure which one.

Mr. WALKER. Well, preferably, do not create another one. [Laughter.]

Senator BREAUX. We have got plenty of them. I am just trying to move it around; maybe put it in the Agriculture Department or the Department of Energy or something.

Mr. WALKER. The Department of Labor, I think, would be the logical place to go. I think the Department of Labor already has the authority to do much of what everyone has suggested today. Whether they do it in the circumstances that have been described by the other panelists today or not. The Department of Labor, I believe, has the authority now to do much of what has been discussed.

I would point out one other thing, if you do not mind. Several panelists have complained that they cannot get information. When I get a letter from an attorney requesting information, I do not send it to the attorney. I will, however, immediately send the information that the attorney requests to the plan participant. Then, if the participant wishes to give it to the attorney, that is certainly the plan participant's right. I have no problem with that.

But sometimes, I think people are frustrated by administrators who refuse to turn over information because somebody asks for it. They say I have a signed form. Well, that is all well and good, but I did not witness the form being signed. I consider the participant information that we have on all of our participants to be privileged information, and I will not release that information to anyone ex-

cept the plan participant. I will, however, send any information requested to the plan participant in a very timely manner.

The CHAIRMAN. Ms. Ferguson, in regard to the Older Americans Act coming up for reauthorization, it gives us an opportunity to refund these demonstration projects. Do you have any recommendations that we should consider as we review this authorization for counseling projects?

Ms. FERGUSON. I think the law was quite well-crafted the first time around. We would like to see many more projects, and possibly fewer limitations on the types of organizations permitted to sponsor the projects. For example, the original law prescribed sponsorship by four state and area agencies on aging and two nonprofit organizations. Our view is that the Administration on Aging could choose among State or area agencies or nonprofit organizations. They did a wonderful job in shaping the requests for proposals to ensure the broadest geographic distribution and to have different types of programs that were appropriate for different parts of the country, rural, urban, so forth. They did a wonderful job. So, I think giving them full discretion would be appropriate.

The CHAIRMAN. Also, we heard testimony about how you have to go to court if you want to resolve anything. Assuming you do not get the cooperation, and that is costly and adversarial, and because personally, I have been an advocate for a long time in the Senate of alternative dispute resolution, because I want to keep things out of the costly and adversarial environment of the courtroom, would alternative dispute resolution processes be helpful here?

Ms. FERGUSON. Yes, they would.

The CHAIRMAN. Particularly if they could be done within the existing procedures that we have, through court-annexed arbitration, as an example?

Ms. FERGUSON. Yes; we have very strongly advocated the adoption of a voluntary, nonbinding alternative, so that participants would have the choice of an alternative dispute resolution process. If they are lucky enough to find a lawyer to take the case to court, they could go that route.

There are excellent programs. In fact, we did a study for the National Institute of Dispute Resolution. It took us a very long time to research all possible different forms of ADR. The one that we came up with is very similar to one used in the courts but with a significant difference: you do not have to file a complaint. You do not have to go to court in order to become part of this process. We propose that it be administered through the Labor Department in conjunction with the American Bar Association.

The CHAIRMAN. I have nothing further. Please respond.

Mr. WALKER. When it comes to defined benefit plans, I wonder whether the ABA is the most appropriate vehicle. Should it be an actuarial society or something else?

Ms. FERGUSON. Well, it could be either. Actually it should be both. I think perhaps the actuarial societies and the bar associations could work together on this. At the Pension Assistance Summit, one of the outcomes was a recommendation for an alternative dispute resolution program. A committee of the Joint Committee on Employee Benefits of the American Bar Association is actually un-

dertaking to explore that, and I think also working with the actuarial societies would be an excellent idea.

The CHAIRMAN. I need to thank again the third panel, and I want to thank every panelist for participating today. Without this insightful testimony, particularly some of the personal testimony, the public and this committee would not be as informed as we now are regarding pension miscalculation and what every consumer should do to avoid the risk of being shortchanged.

I would like to ask myself, because only I can answer this question, myself and other members should ask, too, as we go down this road of seeing what solutions that there are, can we ever make sure that we have a pension arena that is error-free? The answer to that is absolutely not, but can we improve the situation? I think with the statistics we have had today, we can have an absolute necessity of improving the situation.

One thing I would like to do for sure, and that is to follow with legislation to update the Older Americans Act, pension counseling demonstration projects and to encourage more regional coverage and propose the creation of an 800 number.

I also want reaction from people over the next several weeks on two or three other things that I am looking at: introducing legislation that will require employers to provide employees with a benefit statement at least once every 3 years, and this would differ from current law saying that if an employee asks for a statement, the employer is required to provide them one. Next, to ensure that employers provide to employees, if they ask, documents showing how their benefits were calculated and also to encourage plans to resolve disputes through alternative dispute resolution and last review the safeguards that are in place to help participants track plans that have been closed or frozen because of corporate mergers.

Finally, and I cannot emphasize this enough, but it is repeating things that have been said by both of us members throughout this meeting, the importance of everybody to take charge. We are talking to every man or woman, young or old, to take charge of their future; to be proactive; to keep pension documents, not to be afraid to ask questions. Make it hard for you to be shortchanged in the future.

I thank you all very much, and I adjourn the meeting.

[Whereupon, at 3:58 p.m., the committee was adjourned.]

APPENDIX

National Committee to
Preserve Social Security
and Medicare



Statement of

**Martha McSteen
President of the
National Committee to
Preserve Social Security
and Medicare**

Submitted for the Record to:

Senate Special Committee on Aging

Regarding

Shortchanged: Pension Miscalculations

June 16, 1997

The National Committee to Preserve Social Security and Medicare commends Chairman Grassley for holding this important hearing regarding the problem of pension miscalculations and the significant need to educate workers about their pension rights and ways to ensure accuracy in pension distributions. The National Committee strongly supports efforts to help seniors obtain the pension benefits due them to achieve financial security in retirement. To this end, the National Committee has provided support for the past several years to the Pima Council on Aging Pension Information and Counseling Project in Tucson, Arizona. This model demonstration program, partially funded in the past under title IV of the Older Americans Act (OAA), has helped many seniors navigate the labyrinth of rules and regulations in order to receive the pension benefits they earned and counted on for retirement.

Pensions, along with Social Security and private savings, are considered one of the three legs of the retirement stool. However, private pensions are also the least straightforward and most confusing of the three legs. The Employee Retirement Income Security Act (ERISA) passed by Congress in 1974 set standards for pension plans, protections for pension funds and requirements for keeping employees informed on the status of their retirement benefits. Before ERISA, private pensions were virtually unregulated, and many employees did not receive benefits that they had earned and counted on after many years of work. Even with ERISA, there is a maze of rules, agencies and resources involved in pension issues. Many older Americans are frustrated by their inability to get answers or help pursuing their pension claims. Pension assistance is far more demanding than any of the other types of benefits counseling or traditional elder law issues. Thus, many workers with modest incomes cannot afford the expert legal advice necessary to resolve their pension claims.

In September 1993, a grant from the Administration on Aging (AoA) provided partial funding for the pension information and counseling demonstration project administered by the Pima Council on Aging, with the National Committee supplying matching funds. The project's main objective was to respond to the need for pension information and counseling among low and moderate income seniors and to assist them in securing the full level of benefits

to which they are entitled, as well as help them make the best use of all of their retirement benefits.

The Pima Pension Information and Counseling project has proven to be a successful, innovative, and cost-effective program. This community-based project has assisted nearly 1,700 individuals recover more than \$1.5 million in lost pension benefits, at an average cost of less than \$100 a case -- a remarkable cost-benefit ratio. Unfortunately, in Fiscal Year 1997, pension counseling did not receive an earmark under title IV of the OAA. As a result, the Pima project is continuing temporarily on a no-cost extension.

Due to the success of the Pima project in helping so many seniors, we urge Congress to increase funding for title IV research and demonstration programs, and in particular, to renew funding for pension counseling projects such as the Pima project. The pension counseling demonstration projects funded under title IV have been an important response to concerns about the average worker's lack of information regarding pension rights, and lack of access to affordable expert advice. These projects have been able to train volunteers to master enough of the complexities of pension plans to provide effective, low cost advice. In a recent report, the AoA praised the successes of the various demonstrations and issued its recommendation of continued support of these efforts.

The National Committee recommends that the AoA demonstration projects be continued and expanded so that existing approaches can be further developed, and new approaches investigated. We would further suggest increasing the duration of the grants to allow grantees to do more evaluation of long term success and to build on those successes in providing pension counseling to older persons with low to moderate incomes.

To that end, the National Committee supports bipartisan legislation recently introduced by Chairman Grassley and Senator Breaux, the "Pension Assistance and Counseling Act of 1997," to improve the pension rights counseling programs under the OAA. This legislation establishes a toll-free telephone number for individuals seeking information and assistance regarding

their pension rights and benefits, and extends the duration of the pension counseling grants to three years.

The Pima pension counseling project has shown that there is an overwhelming need for pension information and counseling that is not currently being adequately addressed. Innovative local projects that rely on well-trained volunteers can help meet that need effectively and at a modest cost. A targeted and ongoing public information campaign is essential to alert people of the availability of assistance with pension problems. As Congress seeks to develop innovative, efficient, and cost-effective programs for seniors and all Americans, we hope it will consider pension counseling projects such as Pima as a worthwhile investment. Moreover, Congress should examine current pension law to determine ways to better protect pension beneficiaries from onerous miscalculations and other errors that may have a profound effect on their pension benefits.

The experiences of the pension information and counseling project of the Pima Council on Aging has demonstrated that local groups experienced in working with older Americans can, with technical support and access to experts in pension law, provide significant assistance to persons facing complex pension issues. Helping older persons optimize or protect their financial resources contributes to the individual's financial security, peace of mind, and ability to remain in independent living status.

On behalf of the National Committee to Preserve Social Security and Medicare's five and one-half million members and supporters, we thank you for raising public awareness of this problem and the need to more adequately address pension miscalculations. We look forward to working with you on this and other issues of concern to older Americans.

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