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*Benefits Limbo*


# When Pensions Change Hands, Retirees Can Be Lost in Shuffle

**Mergers Shift the Obligation  
To Pay, Leaving Oldsters  
Baffled if Problems Arise**

**'Please Repay All You Received'**

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Staff Reporter of THE WALL STREET JOURNAL  
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For 18 years, Charlie Craven, a retired mine supervisor in Tucson, Ariz., received a pension of \$348.48 a month.

But in late December, instead of a check, he got a letter saying an audit showed he was receiving the benefit in error.

"You must repay the overpayment of \$18,363.44 in one lump sum by January 31, 2005," said the letter from the pension administrator. "If you are unable to make a one time lump sum repayment and wish to set up a repayment plan, your payments are as follows: \$1,530.29 per month for (12) months." The letter added: "If you do not comply within the stated timeframe, the plan sponsor may take additional steps," such as reporting the "overpayment" to tax authorities or taking "more formal collection action against you."



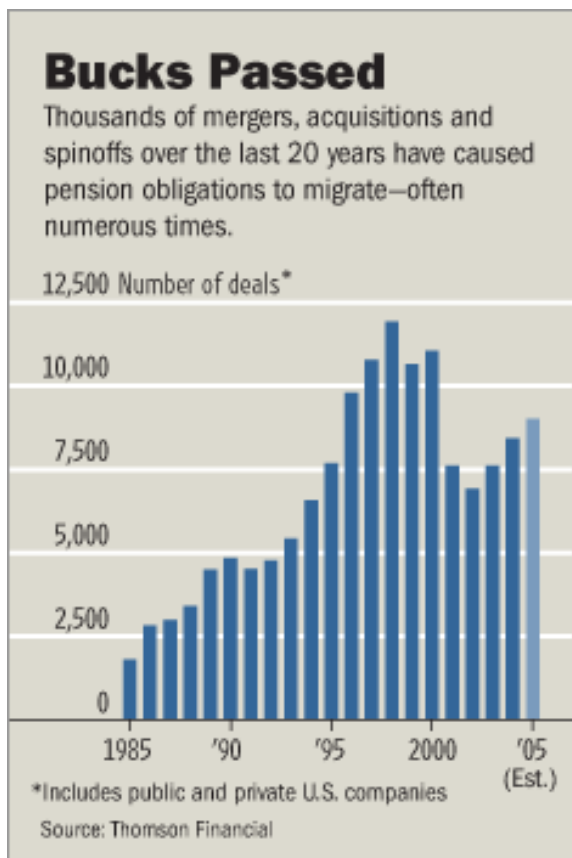
**Charlie Craven**

Mr. Craven, who is 79 years old and nearly blind from macular degeneration, had a friend read him the letter. "How can they come to me all these years later and tell me this?" he asks. The monthly repayments would exceed his \$1,080 monthly Social Security.

Mr. Craven is one of millions of pensioners whose benefits have been shuffled around in corporate deal-making over the past two decades. And when pensions get lost in the shuffling, retirees can find that the deck is stacked against them. If a company says the pension should be smaller or not paid at all, proving otherwise is up to the recipient -- no small burden for an aging retiree who typically has little grasp of either federal benefits law or corporate restructurings.

Retirees often are puzzled to learn their benefits are being paid by a company they never worked for. In fact, obligations to pay retiree benefits frequently are transferred to other companies in mergers and spinoffs, and also handed over to outside administrators. The administrators, in turn, often comb through the plans looking for ineligible beneficiaries or other ways to cut costs.

These audits can bring unpleasant news to people like retired pilot Chuck Ackerman. When a plan administrator determined that his pension checks had been too high for years, it began withholding his payments, sending him on a long odyssey to figure out what was wrong.



In the case of Mr. Craven, a pension administrator concluded that a different company should have been paying his pension throughout the years. But, owing to the vagueness of federal pension law, the administrator felt no obligation to pursue that other company, instead demanding that Mr. Craven repay.

His case reflects the copious rounds of corporate mergers that have redirected many retirees' benefit obligations. Mr. Craven first went to work at a company called Cyprus Mines in 1962 and left in 1979, a year when Amoco Corp. took it over. He returned to Cyprus two years later and retired in 1985.

The year he retired, Amoco spun off Cyprus as an independent company called Cyprus Minerals, transferring to it the pension liabilities of current employees. Cyprus Minerals began paying Mr. Craven a pension for his last five years of work, \$52 a month. More than a dozen years later, **Phelps Dodge Corp.** acquired a portion of Cyprus Minerals, and kept paying the small pension.

Mr. Craven also had begun receiving a second monthly pension for his earlier work stint, for \$348. Amoco paid this, and when Amoco became part of British Petroleum in the late 1990s, the combined company paid this second pension. The two small pensions arrived like clockwork. Mr. Craven remained ignorant of these rounds of corporate restructuring.

Then came another shuffle: **BP**, as it's now called, outsourced the administration of its pensions. It handed the job in 2000 to Fidelity Investments Institutional Operating Co., which handles benefits plans covering about 19 million employees and retirees. The BP plan alone encompasses about 49,000 U.S. retirees, plus 70,000 workers and former employees who'll get pensions someday.

Last year, Fidelity, a unit of the big mutual-funds company, audited the BP plan. It concluded that BP never should have been paying Mr. Craven a pension -- someone else should have. In December, instead of sending him his January pension check, Fidelity wrote to Mr. Craven demanding repayment of the pension money he had received over the years.

The letter said that based on Amoco's "sale" of Cyprus, Mr. Craven's pension was the responsibility of "a new plan sponsor," **Foundation Coal Corp.** The letter didn't further describe Foundation or mention that this had taken place nearly 20 years ago. But it said if Mr. Craven had questions about his benefit, he should direct inquiries to the coal company at an address in Maryland.

In a second letter about three weeks later, Fidelity advised Mr. Craven to write to its own office in Cincinnati or call a toll-free number. If he disagreed with the demand for repayment, the letter said, he could file a claim stating "the specific grounds upon which your request for review is based." That letter, it said, should go to BP's claims and appeals coordinator in La Canada Flintridge, Calif. The second letter outlined various appeal steps that would lead up to a final ruling by BP, after which Mr. Craven could go to court if he still thought he was due a BP pension.

Mr. Craven was stumped. Besides his vision problem, he didn't know how to research the history of corporate restructurings to try to determine the paternity of his pension. He had never heard of Foundation Coal. He wasn't a whiz at math, either, and didn't notice that his nearly 18 years of pension payments didn't add up to \$18,363, as Fidelity said, but to more than \$70,000.

His companion, Ruth Emley, also 79, started digging through old boxes of canceled checks, and his granddaughter offered to come over and go through tax returns. A volunteer at the Pima Council on Aging in Tucson helped him send a letter to the Fidelity address in Ohio, stating that he couldn't make the repayments and that it was Fidelity's problem to sort out. By then, he'd been without his pension for three months.

BP, asked by a reporter about Mr. Craven's case in early March, at first said it couldn't comment on an individual retiree. But after looking into the situation, Ronnie Chappell, a spokesman in the big oil company's Houston office, said the administrator, Fidelity, had mistakenly sent BP pension checks in 2003 and 2004 to 314 people who should have been paid by successors of Cyprus Minerals. He added, in a March interview, that these retirees were asked to repay amounts ranging from \$1,200 to \$18,000, and that so far 21 had paid or agreed to repayment plans.

If another company should have been the payer, such as Foundation Coal, it might seem that BP or the administrator would target that company. But Mr. Chappell said Foundation Coal had no duty to make restitution to BP: "That obligation belongs to people who sought and mistakenly were paid benefits from BP," he said.

Federal law says pension administrators have a duty to protect plan assets. Even when money truly is being paid out by mistake -- as sometimes happens -- the law doesn't explicitly say whom the plan must try to

recoup the money from. In fact, the Labor Department, in an opinion letter, has concluded that if the recovery leads to hardship, "it would be prudent [under the law] for the Fund not to seek recovery from the participant or beneficiary of an overpayment made to him."

The BP spokesman said retirees who got BP pensions that the company didn't owe should seek benefits from the rightful payer, and when they got them they could reimburse BP. It would be flexible in hardship cases. "We want retirees to contest decisions with which they disagree," said Mr. Chappell. "When we make mistakes, we acknowledge them and correct them. We regret and apologize for the confusion and the stress the mistakes have caused people in this instance."

A Fidelity spokeswoman, Jennifer Engle, confirms that her firm erroneously sent out hundreds of BP pension checks, and that in notifying Mr. Craven, Fidelity incorrectly added up the pension money he had received.

Still, there was one more mistake: Fidelity, in twice telling Mr. Craven that BP never owed him a pension and that he must repay it, was wrong.

After BP looked into the matter, following questions from a reporter, the oil company concluded that it was responsible for Mr. Craven's pension after all. On March 12, he got the happy news. "We are glad to tell you that your monthly pension has been reinstated, beginning with your April 2005 check," said a letter from the company.

BP was "unaware you wished to dispute our actions until this week," it said. "We immediately researched your particular situation and discovered you had two periods of employment...which caused the confusion." The letter said he would receive his back payments, with interest, which has now happened.

Fidelity's Ms. Engle, asked about the Craven case this week, said: "It's a complex industry, and sometimes mistakes get made. And when that happens, Fidelity works collaboratively with its clients to resolve any issues that might arise."

Says Mr. Craven: "I'm just glad I can get my finances back in order."

A bit of history helps explain today's retiree-benefits merry-go-round. After World War II, many industrial companies, in lieu of larger raises, offered deferred compensation, in the form of pensions and health care in retirement. The deal was mutually beneficial: Companies retained cash to put into operations, and workers got the prospect of a more comfortable old age. Moreover, compensation in this form isn't subject to Social Security tax.

It was an accounting shift years later that made companies start to see their debts to retirees as distinct portfolios to be managed or moved. In the late 1980s and early 1990s, the Financial Accounting Standards Board told companies to measure their liability for retiree benefits and carry it on their books. These liabilities and the assets to pay for them became more readily shuffled in mergers and spinoffs, and firms developed inventive strategies to profit from them.

For Mr. Ackerman, the retired pilot, a pension he earned at one company ended up in the hands of a second firm, and administered by a third. Then in January 2000, eight years after his retirement, his check didn't

arrive. Soon came a letter from the administrator. His pension, it said, had been miscalculated, and for years he'd been getting too much. Result: Instead of being due a check, Mr. Ackerman now owed one -- for \$31,904.

The letter said his pension would be withheld for the next year and a half until the "debt" was paid off.



Audrey Ackerman in her vineyard in Santa Maria, Calif.

Mr. Ackerman flew corporate jets for Hughes Aircraft Co. for 26 years, delivering executives to meetings, to ski vacations and to second homes in places like Baja California and Taos, N.M. Though he loved being a pilot, he faced mandatory retirement at age 60 in 1992. He then plowed his savings into an 18-acre farm outside of Santa Maria, Calif., called Wind Willow, where he and his wife, Audrey, grew grapes to sell to wineries.

In 1997, **Raytheon** Co. bought Hughes Aircraft. Raytheon also gained thousands of retirees from Hughes and other companies it acquired that year -- in effect a portfolio of \$5.6 billion in pension and health-care liabilities and \$6.4 billion in pension-plan assets. To administer these benefits, Raytheon hired **Hewitt Associates LLC**.

Hewitt audited the plan and concluded that Mr. Ackerman's pension had been incorrectly calculated: The monthly rate was too high, it said. Like Mr. Craven, Mr. Ackerman was told he must repay all the

money he was overpaid in a lump sum or within a year through installments.

Mr. Ackerman argued with the clerk at Hewitt's call center, who he said seemed unfamiliar with the type of pension Mr. Ackerman had with Hughes. Because pilots must retire early, Mr. Ackerman received a pension supplement until he reached 65. As the Ackermans understood it, Hewitt was saying that Mr. Ackerman had been getting the supplement for too long. Asked about this by a reporter, Hewitt declined to explain, saying it doesn't comment on specific clients.

The couple scrambled to find the details in old documents. They sent letters trying to make their case. "We couldn't prove that we hadn't been overpaid," Mrs. Ackerman says. "When your pension gets shifted from one company to another, there's no recourse. They've got you over a barrel."

Mr. Ackerman got the pension letter four days after learning that esophageal cancer that he'd been treated for had spread to his liver and lungs. He appealed to the pension plan to forgive the debt. While awaiting an answer, he began chemotherapy at a hospital near Santa Barbara.

There, he ran into a retired vice president of Hughes Aircraft and told him about his pension problem. A few weeks later, when he checked his mailbox, Mr. Ackerman found a note from the retired executive, with a personal check for \$5,000. He also found a letter denying his appeal of the decision to dock his pension.

The Ackermans told the plan administrator that repaying more than \$31,000 in 12 months would consume all of their pension plus most of their Social Security, leaving them almost nothing to live on. They said the

administrator relented, and later in 2000 agreed to let them repay at a rate of \$500 a month.

Mr. Ackerman poured himself into farm work, trying to provide more income to make up for the shrunken pension. He began grafting pinot noir grapes onto the root stock, hoping they would yield a higher price than the orange muscat vines he and his wife had planted. He also made improvements to the farm, fixing a roof and mending outbuildings, even as his 6-foot-4-inch frame dwindled to 140 pounds.

"He did all this work, even though he was really sick, because it was the only thing he could do to help me financially," Mrs. Ackerman says. "He was a very tough human being." Mrs. Ackerman, too, worked on the small farm, digging, pruning, "getting gophers." Together, the couple built a pump house.

Mr. Ackerman died in February 2002, aged 70. "He had a hard end," his widow says, not just because of the cancer but because of a feeling of betrayal. "After all those years of taking care of them, making sure they were safe, he felt like the company considered him a liar and a cheat."

After his death, she continued to work on the farm as Hewitt, which administered Raytheon's plan until 2003, deducted \$500 from each monthly pension check. In August 2004, the overpayment was finally paid off. But for three months, Mrs. Ackerman says, \$500 continued to be mistakenly withheld from each check, until she complained to Raytheon by phone and letter.

Asked about this, a Raytheon spokesman, in an email, said, "Raytheon regrets the Ackermans' unfortunate experience. When the \$31,000 overpayment situation was discovered by the administrator of the plan, we worked with the Ackermans to minimize the impact on a mutually agreeable basis." He added, "In any large population, administrative errors can occur. Our policy is to correct them as soon as they are discovered."

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