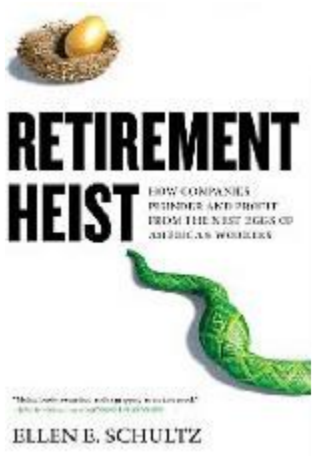
Retirement Heist



Throughout the IBM Pension heist, Ellen E. Schultz, a Pulizter Prize winning investigative reporter with the Wall Street Journal, exposed IBM's and other companies shenagicans that have cost retirees millions and millions of dollars, while enriching corporate executives.

Ms. Schultz has just published a book that every IBMer should read: *Retirement Heist: How Companies Plunder and Profit From the Nest Eggs of American Workers*. Many IBMers are aware of the "cash balance heist" of 1999. However, IBM has been stealing money from the pension plan dating back to 1991, well before the Gerstner era.

Please support Ms. Schultz's excellent work by buying the book. You may do so using one of these methods:

- Support your local bookstore...buy the book there.
- Tattered Cover (Denver)
- Powell's Books (Portland)
- Amazon (hardcover)
- Amazon (Kindle)
- Barnes & Noble (hardcover)

From the book's jacket cover:

"'As far as I can determine there is only one solution [to the CEO's demand to save more money]', the HR representative wrote to her superiors. 'That would be the death of all existing retirees.'"

It's no secret that hundreds of companies have been slashing pensions and health coverage earned by millions of retirees. Employers blame an aging workforce, stock market losses, and spiraling costs- what they call "a perfect storm" of external forces that has forced them to take drastic measures.

But this so-called retirement crisis is no accident. Ellen E. Schultz, award-winning investigative reporter for the Wall Street Journal, reveals how large companies and the retirement industry-benefits consultants, insurance companies, and banks-have all played a huge and hidden role in the death spiral of American pensions and benefits. A little over a decade ago, most companies had more than enough set aside to pay the benefits earned by two generations of workers, no matter how long they lived. But by exploiting loopholes, ambiguous regulations, and new accounting rules, companies essentially turned their pension plans into piggy banks, tax shelters, and profit centers.

Drawing on original analysis of company data, government filings, internal corporate documents, and confidential memos, Schultz uncovers decades of widespread deception during which employers have exaggerated their retiree burdens while lobbying for government handouts, secretly cutting pensions, tricking employees, and misleading shareholders.

She reveals how companies:

- Siphon billions of dollars from their pension plans to finance downsizings and sell the assets in merger deals
- Overstate the burden of rank-and-file retiree obligations to justify benefits cuts while simultaneously using the savings to inflate executive pay and pensions
- Hide their growing executive pension liabilities, which at some companies now exceed the liabilities for the regular pension plans
- Purchase billions of dollars of life insurance on workers and use the policies as informal executive pension funds. When the insured workers and retirees die, the company collects tax-free death benefits
- Preemptively sue retirees after cutting retiree health benefits and use other legal strategies to erode their legal protections.

Though the focus is on large companies-which drive the legislative agenda-the same games are being played at smaller companies, non-profits, public pensions plans and retirement systems overseas. Nor is this a partisan issue: employees of all political persuasions and income levels-from managers to miners, pro- football players to pilots-have been slammed.

Retirement Heist is a scathing and urgent expose of one of the most critical and least understood crises of our time.

An excerpt from the book pertininent to IBM...

Wise Guys

Not everyone was fooled when their employers changed to a cash-balance plan. Jim Bruggeman was forty-nine when his employer, Central and South West, a Dallas-based electric utility, took this step in 1997. “The changes being made are good for both you and the company,” the brochure noted. Bruggeman, an engineer in Tulsa, was eager to find out how, and was uniquely qualified to do so. He also had a background in finance, his hobby was actuarial science, he had taken graduate-level courses in statistics and probability, and he knew CSW’s old pension plan inside and out. After considerable tinkering with spreadsheets, he was able to finally figure out that the supposedly “better” pension would reduce the pensions of many employees by 30 percent.

He wasn’t about to keep this finding to himself. At a question-and-answer session on the new plan, Bruggeman spoke up and told co-workers how their pensions were being reduced. He had a sheaf of spreadsheets to prove it. The next day, his supervisor went to his office with a message from CSW management in Dallas. They were concerned that his rematks would cause an “uprising” and warned him that if he continued to talk to other employees about the pension change, they’d think he wasn’t a team player and his job could be in jeopardy. In his next performance evaluation, his supervisor’s only criticism was that he “spends too much time thinking about the pension plan.” CSW saved $20 million in the first year it made the change. Bruggeman was fired in 2000.

Another engineer one thousand miles away was equally perplexed. Steven Langue had spent three decades designing military engines, but he couldn't figure out how the cash-balance plan his employer changed to in 1989 worked. The skeptical engineer relentlessly pestered his employer, Onan Corp., a unit of Cummins Engine in Minneapolis, for answers. When they refused to spill the beans, the increasingly apoplectic Langlie wrote to local lawmakers, complained to the Minnesota Department of Human Rights and the IRS, and traveled to Washington, D.C., to deliver a petition signed by 460 fellow workers to the Department of Labor.

As Langlie's pension complaints escalated, he was transferred, denied training, and demoted, despite favorable job-performance reviews. The company also refused to upgrade his computer from a primitive IBM 286—the industry equivalent of an Etch A Sketch, which couldn't run engineering software or communicate with the company's servers. Finally, the human resources department told Langlie's supervisor that it would "help retire him" and eliminated his job. After Langlie's thirty-seven years with the company, his pension, which would have been $1,100 a month under the old pension plan, was just $424 a month.

Deloitte & Touche, the giant accounting firm, made a big miscalculation when it tried to switch to a cash-balance plan in 1998: The finance guys apparently forgot that a large number of the firm's employees were older, experienced actuaries and accountants, who took a professional interest, as well as a personal one, in the plan's novel design. They were horrified when they connected the dots and saw that their pensions would go over a cliff. They went ballistic, and the firm back tracked, allowing all who were already on the staff when the cash-balance plan was adopted to stick with the old benefit if they wished.

(A number of companies "grandfathered" older workers under the prior plan. But these transition periods typically lasted only five years, merely postponing, and ultimately increasing, the wear-away.)

IBM also underestimated the über-nerds on its staff, though it's not hard to understand why the company was so complacent: It had cut pensions several times in the 1990s, and no one had noticed. Traditionally, it provided 1.5 percent of pay for each year of service, which resulted in a pension that replaced roughly one-third to almost one-half of a person's salary in retirement. The calculation was simple: years of service times average pay in the final few years times .015. For example: If someone worked thirty years, and his average pay in the final years was $50,000, the pension would be worth $22,500 a year in retirement ($50,000 x 30 x .015).

Reducing any of these factors would produce a smaller pension. In the early 1990s, IBM reduced all three. In 1991, it capped the number of years of service that got taken into account when calculating pensions, limiting it to thirty years. This meant that if people worked longer than that, their pensions wouldn't grow. Next, it lowered the multiplier from 1.5 percent to 1.35 percent, again reducing the pensions. Finally, it reduced the salary component; instead of basing the pension on the average salary an employee earned in the final five years of service, it began to use an average based on the entire time of service, including the early years when pay was low.

These early cuts were like gateway drugs: The first one produced a mild high; the next two were more potent; then ¡BM moved on to the equivalent of heroin: the "pension equity plan." The very name was deceptive, like "low-fat" and "organic." "Equity" suggested fairness. More than that, the pension equity plan looked as though it *favored* older workers. At first glance, pension equity plans, which went by the zippy acronym PEP, looked similar to cash-balance plans. An employee received an “account” that would grow with an employer “contribution” based on the employee’s average pay over the prior five years or so. This pay figure would then be multiplied by a factor that increased the longer a person worked at the company. This sounded fair since, if the figure is rising, the pension must be increasing each year, too—right?

Well, here’s the beauty of the hat trick: If you multiply three items—all positive numbers—which keep growing each year (the years on the job, the salary, the multiplier), the result is an account with a rising balance. But if you then multiply the result by a declining number, the result can be a pension that isn’t growing—and might even be declining—in value.

That’s what happens in pension equity plans: The interest rate used to calculate the pensions—a rate that wasn’t disclosed—would get smaller as people got older. It was 5 percent for employees under age forty-five, 4 percent for those aged forty-five to fifty-five, and 0.5 percent less for each year above age fifty-five. So, even though the company “contributions” rose as a person got older, multiplying it by a declining (embedded) interest rate caused the pension’s rate of growth to shrink as a person aged. The “easy-to-understand” pension equity plan was a Rube Goldberg contraption of moving parts. “The plan took me months to understand;’ Donald Sauvigne, head of retirement benefits at IBM—who had twenty-five years’ experience with pensions—told an audience at a 1995 actuaries conference in Vancouver.

After warming up with the series of modest pension trims, IBM was looking for something that would enable it to ditch its costly “early-retirement subsidy;’ which allowed employees in their fifties to retire with nearly the pension they would have at sixty-five. This feature was once common at larger companies, and IBM had added it to its pension plan in the 1980s as an incentive to get workers to leave in their fifties rather than hang around until sixty-five to max out their pensions. It “encouraged departures,” so it “served us well.’ Sauvigne told his colleagues at the conference. But IBM found that the subsidy also had the unwelcome effect of encouraging people to stick around until at least age fifty-five so they could lock in the subsidy.

IBM couldn’t just pull the plug on the subsidy, because pension law doesn’t allow a company to take away a benefit a person has already earned or take away a pension right or feature the company has granted. “So we had to design something different,” Sauvigne said. Enter Louis V. Gerstner Jr., IBM’s new president. He’d headed RJR Nabisco in 1993 when it faced a similar dilemma: how to reduce pensions and remove the retirement subsidy without obviously violating the law or provoking an employee backlash. Gerstner and IBM turned to Watson Wyatt, the same consulting firm that had helped Nabisco solve its pension problem.

Watson Wyatt had been marketing its “pension equity plan” design to large employers, with considerable success. Its brochure summed up the benefits: “Younger employees are happier because they see an account-based benefit; older employees are happy because benefits are still rich enough to achieve retirement security at long tenures; the CFO is happy because the PEP eliminates the expensive—and from a business sense counter-productive—early retirement subsidy.”

The brochure didn’t point out another benefit—deception—but it was no secret among the consulting community. “It is not until they are ready to retire that they understand how little they are actually getting,” said a Watson Wyatt actuary at a 1998 panel entitled “Introduction to Cash Balance/Pension Equity Plans,” That got a good laugh from the audience, as did the response by a fellow panelist, who was with Mercer: “Right, but they’re happy while they’re employed. ... You switch to a cash-balance plan where the people are probably getting smaller benefits, at least the older, longer-service people; but they are really happy, and they think you are great for doing it.” More laughter.

Watson Wyatt epitomized the new breed of benefits consultants that was revolutionizing the compensation-and-benefits landscape. In prior decades, benefits specialists handled the garden-variety tasks of pension administration and human resources consulting. That began to change in the 1980s as consultants began more aggressively prospecting for business and developing niche specialties in cutting retiree benefits, boosting executive compensation, and managing mass layoffs and early retirement windows.

Watson Wyatt was particularly innovative. It developed a suite of demographically inspired services specifically aimed at helping employers evaluate—and reduce—the cost of their older workers. One service was the firm’s “Aging Diagnostic,” which marketing material described as “a tool designed to measure how the cost of compensation and benefits is affected by an aging workforce, so organizations can detect this trend early . . . and begin managing it, before it manages them.”

With one baby boomer turning 50 every eight seconds for the next 10 years, the economic issues of an aging workforee could become a major issue for your company. For every 50-year-old employee in your company, you are likely to pay:

- Twice as much in health care as for a 30-year-old.
- More in base salary and vacation leave, because of longer job tenure.
- Up to twice the employer match on defined contribution deferrals than you would for a 20-year-old, due to higher participation and savings rates.
- More than twice the pension plan contribution rate that you would pay for a 25-year-old.
- Companies that manage this trend early—before it manages them—will create a significant competitive advantage. … That’s where Watson Wyatt’s Aging DiagnosticTM comes in. Our state-of-the-art modeling system uses your data and the latest demographic research to project the total impact of an aging workforce on your compensation and benefits costs. … Companies that want to combat the cost spiral of changing demographics should take a careful look at their current workforce demographics, hiring practices and benefits design, paying special attention to retirement packages.

With little fanfare, IBM rolled out the pension equity plan in 1995 and heard not a peep from the employees. Three years later, it was ready for yet another pension cut. This time it decided to convert the pension equity plan to a cash-balance plan. IBM’s consultants at Mercer Human Resource Consulting and Watson Wyatt calculated that when it switched to the cash-balance plan, approximately 28,300 older IBM employees would stop earning pension benefits for one to five years, while younger employees would begin to build benefits immediately. The net result, though, would be that the pension plan would pay out $200 million less, and most of the savings would come from older, long-service employees, like Dave Finlay.

Finlay was exactly the kind of employee the company was taking aim at: He was fifty-five and had been at the company twenty-six years. As a senior engineer, he had a comfortable, though not lavish, salary. He expected his pension to be the same, and it would have been if IBM hadn't engineered its series of secret cuts. He began to figure this out in early 1999, after he got a brochure from IBM in the mail announcing that the company was modifying its pension plan to make it "more modern, easier-to-understand, and better suited for a mobile workforce." Finlay was close to retirement, so he scrutinized the document, trying to figure out how the new pension compared with his old one. The description of the new pension was thin on details, noting only vaguely that employees "will see varying effects" and that those retiring early will "see lower value." Not good enough.

Finlay went to the internal company Web site, where IBM had long offered a "Pension Estimator" that enabled employees to estimate how much their pension was—and would be—worth, depending on how long they'd worked, their estimated annual pay raises, and other factors. But IBM had taken the pension tool offline. When Finlay called administrators in IBM's human resources department to complain, they told him the company had taken the estimator down because "it really does not seem appropriate to be modeling a plan that no longer exists."

This response was common. The corporate finance departments that hatched these schemes typically kept most of the lower-level human resources managers and peons in the dark and fed them the same hooey they served up to the employees. For example, when IBM switched to a pension equity plan a few years earlier, it had sent a memo to managers stressing that the new pension equity plan was "the result of a recent study which concluded that the plan should be modified to meet the evolving needs of IBM and its increasingly diverse work force, and align more with industry' practices and trends." It didn't tell the HR staff any more than it told the employees that it was cutting pensions (including theirs) and that it was doing so to keep more money in the plan to enrich the company.

After getting no help from the benefits administrators, Finlay began to suspect that IBM was hiding something. Though Finlay didn't have the online pension estimator at his disposal, he had saved every benefits booklet, announcement, statement, and handout he'd ever received since he joined the company in W72 and was able to reconstruct the estimator. It became a personal challenge. For weeks, he bicycled home from work to his subdivision on the outskirts of Boulder, Colorado, and stared at his computer until nearly midnight. He spent weekends developing spreadsheets and reverse-engineering the algorithms with the information he hauled up from his basement. Finlay eventually figured out that the earlier 1995 change, one that he hadn't examined so thoroughly, had reduced his prospective pension from about $69,500 a year to about $57,700, a 17 percent drop. And the latest switch would cut his annual pension a further 20 percent, to about $45,800.

Finlay showed his spreadsheets to his manager and suggested sending them to the human resources department. Don't bother, his manager said: The human resources people wouldn't believe his figures and would tell the managers that he didn't know what he was talking about, At that point, the self-described Republican and Vietnam vet was steamed enough, he said, that he would have joined a union if the company had had one.

Backlash At Big Blue

To make up for the loss of the pension estimator, some IBMers launched a Web site on Yahoo! to compare notes and air gripes about the anticipated change. Finlay posted his spreadsheets and calculations, which gave his colleagues a way to measure how much their pensions would shrink, The site began getting fifteen thousand hits a day as many of IBM's 260,000 employees around the world began picking apart virtually every actuarial assumption related to IBM's calculation of benefits. "I'd like to think this group is too intelligent and motivated to let a bunch of corporate actuaries sell us down the river and think we're too stupid to figure out their half-truths," noted NiceGuys-Win-in-the-End.

The HR department was not popular. "The mathematically disadvantaged half-wits in HR can't hold up a conversation on the topic of calculating anything;' remarked IBM-Ghost. "They are more like used-car salesmen trying to sell a car with a sawdust filled transmission (my apologies to any used-car salesmen as you probably have more integrity than HR)," wrote idontknowaboutyou.

CEO Louis Gerstner was unpopular, too. One employee suggested hiring an airplane to drag a banner over the IBM facilities in Silicon Valley during lunchtime, with the message HEY LOU, "THOU 5HALT NOT STEAL."

Meanwhile, IBM insisted that it was instituting the change to make the plan more "modern" and not to save money. This was a common, though disingenuous, claim. Sure, IBM wasn't literally saving money, because it wasn't spending any money. (The pension plan was overfunded.) Rather, the pension cuts were enabling the company to keep $200 million, which otherwise would have gone to pay benefits to long-term employees.

Another popular whopper used by Lucent, AT&T, and so many others, was that the change wouldn't reduce a person's retirement benefits. What they didn't say was that in these calculations, they were also counting 40 1(k) savings as "pension benefits" and assuming that employees would be contributing a large percentage of pay that would receive double-digit returns. So, yes, the pension change wouldn't, perhaps, collectively reduce the employees' retirement benefits, as long as one included the fantasy portion. The pension change took place anyway, in July 1999, but employees didn't drop their demands that the company change it back. The irony was that they wanted IBM to change the cash-balance plan back to the pension equity plan, which the employees didn't realize—then or before—had already cut their pensions.

Employees formed the IBM Employee Benefits Action Coalition, which began to complain to the Equal Employment Opportunity Commission (EEOC), the IRS, Congress, and anyone else who would listen. August is usually a slow month that finds lawmakers at state fairs and pie-judging contests, but that year lawmakers in areas with large IBM populations were besieged in town hall meetings by angry IBM constituents, The largest was in Vermont, where eight hundred people jammed into an art center in Winooski for a meeting held by then Congressman Bernie Sanders. Sanders, a feisty independent, thought the IBM employees, who were asking IBM to let them remain in the old plan, had a point. "If converting to a new pension program doesn't save a company any money, as some companies say, it should not be too expensive for companies to offer all of their employees the choice to remain in their original pension plan."

A Senate committee decided to hold a hearing on whether employers were adequately disclosing pension cuts to employees. During the session, PricewaterhouseCoopers, a leading benefits consultant and accounting firm, circulated a briefing memo to lawmakers and the media stating that recent newspaper articles "leave readers with the unsubstantiated conclusion that corporate America uses cash-balance plans to mask significant reductions in pension benefits and costs." The memo also noted, "It is unfair to imply that employers chose to switch to cash-balance plans in order to mask benefit reductions."

But the impact of the consultants' briefing material was extinguished when a witness at the hearing played an audiotape of William Torne, a Pricewaterhouse actuary, telling a Society of Actuaries meeting the previous year that "converting to a cash-balance plan does have an advantage, as it masks a lot of the changes. … There is very little comparison that can be done between the two plans." he said.

The witness played other audiotapes of discussions among actuaries made in the 1990s at other professional conferences. "If you decide your plan's too rich, and you want to cut back, and you only want to do it for new hires, changing to a totally different type of plan will let you do that without being obvious about it," said Norman Clausen, a principal at Kwasha Lipton, which had become a unit of PricewaterhouseCoopers. An article about the tapes' contents had earlier appeared in The Wall Street Journal, and then NBC got hold of the tapes and played excerpts on the Nightly News.

Gerstner and other top managers were caught flat-footed by the backlash, and before long they were staging a partial retreat. The company agreed to allow 35,000 older employees to stay in the old pension, but it still saved plenty of money. The cash-balance plan boosted IBM's pretax income in 1999 by $184 million, or 6 percent.

A Moving Story

Despite the negative attention its pension changes were getting, IBM continued to devise sly ways to cut benefits. One was to pay them out as lump sums. Companies championed the lump-sum feature as something that made cash balance and other hybrid pensions better for "a more mobile workforce." Because employees change jobs more frequently than they did in the past, employers maintained, they need a portable pension, like a 401(k), that they can cash out when they leave and roll into an IRA (or blow on a bass boat or a Taco Bell franchise).

One flaw in this construct is that employers have always been free to provide lump sums from traditional pensions; lump sums aren't intrinsic to cash-balance plans. And in any case, most employers automatically distribute pensions in lump sums when the pensions are worth $5,000 or less, to spare themselves the trouble of keeping track of them over many years.

Watson Wyatt, ever the innovator, offered employers the Single Payment Optimizer Tool (SPOT), a software program that enabled employers "to compare the cost of lump-sum cash outs to the costs of keeping employees on the retirement rolls." "Often, lump sums are the most cost-effective form of pension payout because of lower administrative costs over time," the accompanying marketing material says. It went on to note that sometimes employers are better off not offering lump sums if they can earn a higher rate of return on the assets than they will have to pay out to employees, adding that "SPOT can tell an employer when it is more cost effective to pay a lump sum and when an annuity is best. … With organizations scrutinizing every expense for bottom-line impact, every bit of savings helps." So much for the concern about providing lump sums to help more-mobile workers build retirement benefits.

Another fallacy is that workers are more mobile. Younger workers are, indeed, more mobile—Bureau of Labor Statistics data show that they tend to change jobs seven times before they're thirty-two. But pensions, including cash-balance plans, require five years on the job before one vests, so few younger, more-mobile workers remain in place long enough to collect a pension at all.

Older workers, by contrast, aren't mobile at all (at least not voluntarily). As IBM and other employers were painfully aware, older workers tend to stay on the job untìl they lock in a bigger pension. That was the portion of the workforce IBM aid other companies wanted to dislodge. Lump sums offered a twofold solution. For one thing, they were an enormous carrot to get people out the door. Companies knew that employees found lump sums irresistible. "Choosey Employees Choose Lump Sums!" was the title of one of Watson Wyatt's surveys.

The carrot was especially effective when presented along with a stick: As part of their retirement "windows," numerous companies told employees that if they agreed to leave now, they could take a pension as a lump sum. If not, they could take their chances and get laid off next year and have only the option of a monthly check in retirement. Another benefit of lump sums—from employers' perspective—is that they shift longevity risk to retirees. Employers have been acutely aware that life spans are increasing, which explains why companies with a large percentage of women and white-collar professionals have been eager to provide lump sums.* If the pension is based on a life expectancy of seventy-eight, then an engineer who lives to age ninety will have drawn a pension for roughly twelve years longer than the amount the lump sum would have been based on.

By contrast, coal miners and factory workers tend to have shorter life spans than the national average, so it's no surprise that they are less likely to have a lump-sum option. General Motors, for instance, doesn't allow most of its factory workers to take a lump-sum payout. But it does allow its white-collar workers to take a lump sum if they leave before retirement age.†

Government data show a strong correlation between longevity and payout options: Bureau of Labor statistics show that about one-third of blue-collar workers have a lump-sum option in their pension plans, while 60 percent of white-collar workers do.

This concept is understood by noncorporate pension managers as well: The Marine Engineers' Beneficial Association, which covers ship engineers and deck officers, requires workers to take a medical exam before being eligible for a lump sum. Retirees in good health can take a lump sum, but those in poor health may not be allowed to.

Thus, despite all the talk about the burden of longer life spans, employers that pay out pensions in lump sums actually face none at all: The longevity risk has been passed on to the retirees.

* Employers began using unisex mortality tables in the 1980s, which has been disadvantageous for women taking lump sums rather than annuities.

† In recent years, some employers have argued that their workers are actually dying younger; this would enable employers to contribute less to their pension plans. Law makers bought it: The

Pension Protection Act of 2006 allows large companies to use their own mortality assumptions when they figure out how much money to contribute to pension plans. Lower life spans mean lower contributions.

Taking Their Lumps

Lumps sums provided employers with yet another benefit. Companies used them to secretly cut pensions even as people walked out the door. The mechanism was simple: If someone's pension, converted to a lump sum, was worth $400,000, the employer could offer a lump sum worth, say, $350,000. How can this be legal, given anti-cutback rules?

Simple: Companies didn't tell employees that the lump sum was worth less, and employees couldn't tell. But as long as the employee chooses the lump sum—unknowingly cutting his own pension—the anti-cutback law hasn't been violated. (A key reason the lump sums are smaller is that they might not include the value of any early-retirement subsidy, which can be worth 20 percent or more of the total value.)

Few employees would knowingly give up tens of thousands of dollars' worth of pension, but unless employers provided apples-to-apples comparisons of the actual values of the monthly pension and the lump sum, there was no way to compare. In 1999, Mary Fletcher, a marketing services trainer and fourteen-year veteran of IBM, had to decide between taking a lump sum and a monthly pension when IBM sold a unit with three thousand U.S. employees to AT&T. She hired an adviser who calculated that while the monthly pension would be worth $101,000 if cashed out, the lump sum IBM offered Fletcher was worth only $71,500. Still, she took the lump sum. Almost all employees do, figuring they can invest the money and eventually end up with more. She was forty-seven and figured she was better off having nothing more to do with the IBM pension plan.

Employee advocates, including the Pension Rights Center and AARP, demanded better disclosure rules, but employers fought back. Lobbyists for the American Society of Pension Actuaries, the ERISA Industry Committee, and the U.S. Chamber of Commerce told Senate staffers that employees would only become confused if they were presented with too much complex information, and that providing more disclosure would be a "daunting task." Lawmakers didn't completely buy this, so in 2004 the IRS began requiring employers to tell people more clearly if the value of the lump sum wasn't equal to the monthly pension.

In 2006, the Pension Protection Act banned wear-away prospectively, meaning that if an employer set up a cash-balance plan after the 2006 law went into effect, it couldn't include a wear-away period.

But the issue of pension deception is still playing out in the courts. Cigna employees, who hadn't been told their pensions were essentially frozen when the company changed to a cash-balance plan, sued the company in 2001, In 2008, a federal court concluded that Cigna deliberately deceived its employees when it changed its pension plan in 1998, gave them "downright misleading" information about their pensions to negate the risk of an employee backlash. "CIGNA's successful efforts to conceal the full effects of the transition to [the new pension] deprived [plaintiffs] of the opportunity to take timely action ... whether that action was protesting at the time [the change] was implemented, leaving CIGNA for another employer with a more favorable pension plan, or filing a lawsuit like this one."

The district court ordered Cigna to restore the pension benefits it had led employees to believe they would be receiving. Cigna appealed to the Second Circuit, and lost, but that wasn't the end of it. Cigna dìdn't try to appeal the court's finding that it deceived its employees—the memos and documents that surfaced in the case were too damning.

But in a kind of hail Mary pass, Cigna appealed to the Supreme Court, arguing that in order to get the benefits, each individual employee must prove he'd acted on the misinformation—that is, didn't change jobs or save more money, and thus suffered financial harm.

During oral arguments before the Supreme Court late in 2010, it became clear that the majority of justices were troubled by the fact that if they adopted the "detrimental reliance" standard Cigna was advocating, then employers would suffer no consequences even for the most egregious deception. "Doesn't this give an incredible windfall to your client, Cigna, or to other companies that commit this kind of intentional misconduct?" Justice Elena Kagan asked Cigna's attorney. In May 2011, the justices sent the case back to the lower court with instructions that it review its decisions, based on the portion of pension law that requires employers to tell employees, clearly and unambiguously, when it is cutting their pensions.

If the judge comes to the same decision to award the benefits to the employees—a total of $82 million—this would be the biggest award for employees whose employer hid pension cuts.

But Cigna has already taken steps to soften the blow: It froze the pension plan in 2009 and cut health, disability, and life insurance benefits for retirees, giving it a gain of $92 million.