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*Corporate cuts spur suits by angry workers*

*Employees seek protection for benefit, pension plans*

By Jam Crawford Greenburg

Washington Bureau

WASHINGTON-James Mullins worked his entire career for the same company, just a football field away from the house his three children grew up in.

His \$35,000 annual salary as a lab technician was a good income in the aging and at times struggling New England shipbuilding towns of Groton, Conn. Like other employees of the pharmaceutical giant Pfizer Inc., Mullins was glad to be part of the "Pfizer Family."

But six weeks after his 1990 retirement, Mullins looked at the company differently. It lied to him, he said, first by denying that it was considering a corporate downsizing and then by encouraging him to retire early and take a

pension of less than \$12,000 a year. Six weeks later, Pfizer offered buyouts to employees that would have given Mullins another \$39,000.

In a lawsuit that dragged on for nearly six years, a jury took less than an hour last year to agree with him. It awarded him the package he said Pfizer unfairly denied him: a year's salary of \$35,000, plus \$4,000 in education training. And on March 12, the judge in the case approved \$188,000 in fees for his lawyers and \$200,000 in expenses.

Mullins' case has made corporate officials and their lawyers sit up and take notice. As companies trim costs by cutting benefits or laying off workers, employees are turning to the courts for protection—either to get more money or benefits, or their jobs back.

And, some legal experts say, the Supreme Court has made it easier for employees to sue. Earlier this month, the court sided with employees who claimed that Buffalo-based Varsity Corp. lied about an employee health benefit plan.

Legal experts, such as Jenner & Block's Henry Eickelberg, said that case could dramatically increase court battles over changes in benefit plans. That's because it authorizes individual workers to sue for damages when they feel the company has misled them.

"After Varsity vs. Howe, there will probably be a more favorable atmosphere in the courtroom for plaintiff's than there was before," said attorney Bill Scogland, also of Chicago's Jenner & Block. "I think we're going to have to beef up our practices in response to that."

Already, courts are grappling with lawsuits like the one brought by Mullins. Disputes about severance plans are a volatile and "rapidly evolving area of the law" the federal judge in his case wrote.

"This is as widespread as any phenomenon in the workplace has ever been" said Thomas Moukawsher, Mullins' lawyer. "I've been hearing from people all over the country, at employers of every size."

The incidents are so common, Moukawsher said, that eight of some two dozen potential jurors in Mullins' case were disqualified because they or a close relative had lost out on benefits in a corporate downsizing.

"There's a whole generation that worked 30 years and 40 years at companies, most of them looking forward to a comfortable retirement," he said.

"But a lot of them are finding out that the pension plans they waited 30 years to get have either changed to their disadvantage, or, in many cases, the buyouts they were led to believe were coming (to them) were offered only after they retired."

Although courts generally agree that most employers can change pension plans or even stop health benefits whenever they want, there are many exceptions that are creating complicated legal issues in corporate downsizing, experts say.

Part of the problem is that the cases are governed by laws written in a more secure time, before companies started cutting benefits to strengthen their bottom lines. Some lawyers say the benefits area is so heavily regulated that it makes it more difficult for the employers to offer items like packages

Complicating the matter is that some companies' benefits plans were written decades ago, when medical costs were much lower and employees received such features as lifetime benefits, and now many companies are changing those plans, Scogland said.

Most of the cases fall under the Employee Retirement Income Security Act, or ERISA, which governs company-sponsored retirement plans. The law protects

employee pensions and other benefits by providing insurance and outlining such matters as how and when employees are vested in pensions.

It's pretty well legally established that employers can end or change benefits plans, so long as they have researched the right to do so in the plans and spell it out to employees.

But problems arise when the company's benefits information is unclear or ambiguous. That's why, lawyers say, employees should demand as much information as possible, and employers should be precise.

"The employee doesn't have too much bargaining power in these situations unless they're union, of course." said Susan Serota, a New York lawyer who specializes in the union situation, an employee should ask the right questions and be sure they understand exactly what's being offered to them."

But, Serota and others note, some employers get into trouble by talking too much. A manager who is laying off an employee may try to ease the blow through conversation but if he misleads the worker about the benefits information, the worker could later sue.

Mullins' case shows the kind of problems that can arise if a company misleads workers about their plans to offer early retirement packages. In this area, the law still is evolving, legal experts say.

There are other problems that can arise when the company offers early retirement to trim its staff.

First, lawyers say, employers must be careful in selecting which employees are targeted for downsizing, because "they could be vulnerable to lawsuits for race, age or sex discrimination.

"It's something you want to remind them: that those (anti-discrimination) laws must be complied with and that you can justify (the layoffs), that it's not due to race, age or sex that you've chosen them," Serota said.

Most employers offering buyouts to employees require that workers taking the packages pledge they won't later sue for discrimination.

Federal law says those pledges are valid with some stipulations, including that the employee has enough time to think about it and can change his mind for up to seven days.

Finally, legal experts note that there has been a big shift in pension planning and the kind of plans employers offer.

Benefits plans often change when businesses are sold. Many companies have shifted from defined-benefit plans, in which employees received a specific amount based on their time of service, to plans in which the employee makes a contribution, such as a 401(k) plan, Scogland said.

"There's not much in the way of legal protection," Scogland said. "Whatever benefits the person has accrued under the existing plan he gets to keep, but there is no obligation on the buyer to continue that plan."