



July 31, 2019

**TRW Automotive Benefits Service Center  
PO Box 770003  
Cincinnati, OH 45277-0070  
Attn: Legal Counsel**

**Participant:**



**File No.: W713790-14MAY19**

**Re: Request for Waiver of Recoupment of Assessed Pension Benefit  
Overpayment**

**CLAIM FOR BENEFITS**

██████████ has contacted the Mid-America Pension Rights Project (MAPRP) seeking legal representation. I have included a copy of his executed and notarized Authorization for Release of Records and Appointment of Representative giving MAPRP, and its authorized agents, permission to represent him in all pension related matters.

MAPRP is a program of Elder Law of Michigan, Inc. (ELM), a private, non-profit organization recognized by the State Bar of Michigan as a statewide agency providing Legal Aid and Legal Services. I am an attorney with ELM.

**Background**

On May 17, 2019, ██████████ received a letter from TRW Automotive Benefits Service Center stating that "it was determined that an error was made in distributing your pension benefit. Our records indicate that payments in the amount of \$661.91 were issued from August 1, 2015 to May 1, 2019. However, it has recently been confirmed that this benefit should have been adjusted to the amount of \$485.39 effective August 1, 2015



per plan rules based on the 75% Joint and Survivor annuity benefit option." This letter further states that an overpayment of \$8,119.92 has been assessed. A copy of this letter is enclosed.

██████ sent a letter, dated May 31, 2019, requesting the summary plan description, detailed calculations of the overpayment for the overpayment period and post overpayment period. On June 4, 2019, TRW Automotive sent a response letter stating, "that the benefit was not reduced after your attainment of age 62 in calculation version 065, which caused an overpayment."

On June 7, 2019, TRW Automotive sent a second response letter stating, "[e]ffective June 01, 2019, your benefit has been corrected to \$485.39 which you will receive for the remainder of your life." Copies of the June letters are enclosed. ██████ was never provided a hardship waiver form.

The MAPRP does not concur with this determination and now submits this claim for benefits for the reasons listed below.

### **Lifetime Payments and Unjust Enrichment**

The inequitable impact<sup>1</sup> of TRW Automotive's recoupment of this overpayment and reduction of ██████ monthly retirement benefit for life is punitive. TRW Automotive's letter, dated May 17, 2019, states, "[y]our monthly benefit would be permanently adjusted to the revised amount for the rest of your lifetime, and the overpayment would be considered recovered in full regardless of how long you live."

This letter further alleges that ██████ was overpaid for 46 months, or \$8,119.92. ██████ is currently 66 years old and owes a finite amount of \$8,119.92. Anything recouped by TRW Automotive over the \$8,119.92 should be considered punitive against ██████ and would unjustly enrich TRW.

Black's Law Dictionary defines "unjust enrichment" as, "A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense."

By collecting lifetime payments, it appears that TRW Automotive is being disingenuous and is not legally justified to collect any amount over \$8,119.92. TRW Automotive would be making money on the penalty that TRW Automotive caused due to their error. TRW Automotive's plan administrators owe ██████ a fiduciary duty to properly calculate the amount and not over assess damages to him.

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<sup>1</sup> *Wells v. United States Steel & Carnegie Pension Fund, Inc.*, 950 F.2d 1244.

### **The Plan is Required to Follow its Plan Document**

Pursuant to the Employee Retirement Income Securities Act ("ERISA"), 29 U.S.C. § 1104 (a)(1)(D) and the Restatement Second of Trusts § 164 (2012), a plan administrator owes a fiduciary duty to the plan participants and shall act "in accordance with documents and instruments governing the plan."

The plan document does not mention recoupment. Here, TRW Automotive Salaried Pension Plan Summary Plan Description, effective January 1, 2007 (which was provided by TRW Automotive to [REDACTED]) does not contain any provision authorizing the plan administrator to recoup an overpayment from a participant, nor does it contain any provision disclosing to participants the potential for recoupment of overpayments. Therefore, TRW Automotive does not have a right to recover payments made to [REDACTED] under ERISA and the express terms of the Plan to recover payments.<sup>2</sup>

### **The IRS Does Not Demand That Plans Recoup Overpayments**

The May 17, 2019 letter from TRW Automotive states, "[i]n the event of an overpayment, the Plan is required to recover the amount of the overpayment (\$8,119.92)" under the Internal Revenue Code. This statement is incorrect.

In 2015, the Internal Revenue Service revised its Employee Plans Compliance Resolution System (EPCRS) 2013-12 to prevent pension plans from imposing undue hardship on plan participants.<sup>3</sup> IRS Revenue Procedure 2013-12 provides that corrections should be reasonable and appropriate; however, the IRS was informed that plan administrators have been **misinterpreting the rules by aggressively seeking recoupment of large amounts from plan participants and beneficiaries in order to correct plan administrator errors.** Therefore, the IRS modified this procedure. Because many of the affected participants and beneficiaries are older people who have financial difficulty meeting such corrective actions, the IRS has revised its regulations under the EPCRS to clarify its position on recoupment action.

Internal Revenue Procedure 2015-27 was issued to provide that plans have flexibility in correcting overpayment failures and the plan administrator may not need to require that beneficiaries and plan participants return the overpayment to the plan.

Under the **Internal Revenue Procedure 2015-27, Section 3(.02)(2), Flexibility in Correction of Overpayment failures.** Some plans may be interpreting the correction rules in Rev. Proc. 2013-12 as requiring a demand for recoupment from plan participants and beneficiaries in all cases. However, depending upon the facts and circumstances, correcting an Overpayment under EPCRS may not need to include

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<sup>2</sup> *Johnson v. Ret. Program Plan for Empl.*, 2007 U.S. Dist. LEXIS 14595.

<sup>3</sup> 2015 IRB LEXIS 74 (I.R.S. February 2, 2015).



requesting that an Overpayment be returned to the plan by plan participants and beneficiaries.

Under the **Internal Revenue Procedure 2015-27 Section 3(.02)(3) Description of modifications to clarify that there is flexibility in correcting Overpayment failures, Sections 6.06(3) and 6.06(3) and 6.06(4) of Rev. Prov. 2013-12**, are modified to clarify that there is flexibility in correcting an Overpayment under EPCRS. For example, depending on the nature of the Overpayment failure (such as Overpayment failure resulting from a benefit calculation error), an appropriate correction method may include...having the employer or another person contribute the amount of the Overpayment (with appropriate interest) to the plan in lieu of seeking recoupment from plan participants and beneficiaries.

Thus, the IRS issued this Internal Revenue Procedure so that plan administrators are aware that they are not required to recoup overpayments from plan participants, especially when the overpayment is due to the plan's error. TRW Automotive erroneously informed [REDACTED] that "the plan is required to recover the amount of the overpayment." Such a statement is false, and TRW Automotive may and should seek alternative means of recouping the overpayment rather than aggressively demanding repayment from [REDACTED]. The May 17, 2019 letter from TRW Automotive states "it was determined that an error was made in distributing your pension benefit." This payment error was due to TRW Automotive's mistake, rather than the result of any action on the part of [REDACTED], and therefore, adverse action should not be taken against [REDACTED].

### **The Balance of Equities Does Not Support Recoupment**

When a plan does not specifically allow for recoupment, but nevertheless it does so, it exercises extra-statutory devices to do so.<sup>4</sup> By reducing [REDACTED] monthly benefits to recoup past overpayments, TRW Automotive has availed itself of the common law remedy of restitution. Several courts have refused to allow restitution in similar circumstances to [REDACTED]. In *Agathos v. Starlite Motel*, it was found that the holding welfare fund was not entitled to reimbursement for benefits it paid to employee who was ineligible to receive benefits, since damages at issue flowed from fund's failure to adequately police employer's account.<sup>5</sup> In *Burger v. Life Ins. Co. of N. Am.* the holding issuer waives its rights to recover overpayments account.<sup>6</sup> In *Dandurand v. Unum Life Ins. Co. of Am.* the holding that equities did not weigh in favor of requiring participant to pay restitution for overpayment.<sup>7</sup>

The Fifth Circuit characterizes the duty of plan administrators and trustees as fiduciary and establishes that the concept of fiduciary duty is to be broadly construed within the

<sup>4</sup> *Phillips v. Maritime Ass'n - I.L.A. Local Pension Plan*, 194 F. Supp. 2d 549.

<sup>5</sup> *Agathos V. Starlite Motel*, 60 F.3d 1432015 IRB Lexis 74 (I.R.S. February 2, 2015).

<sup>6</sup> *Burger v. Life Ins Co. of N. Am.*, 103 F. Supp 2d 1344.

<sup>7</sup> *Dandurand v. Unum Life Ins. Co. Am.*, 150 F. Supp. 2d 178.

context of ERISA.<sup>8</sup> Here, the fiduciary, or TRW Automotive should exert at least a duty of a reasonably prudent person who would exert in his own affairs under similar circumstances. "ERISA provides that the fiduciary shall discharge her duties 'with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims'."<sup>9</sup>

TRW Automotive owed a duty to [REDACTED] to detect errors in payment within a reasonable amount of time. Here, the length of time it took to detect the overpayments (four years), weigh against restitution and would thus result is inequitable. The overpayments were the result of more than just a clerical mistake, they were the results of TRW Automotive's breach of fiduciary duty.

In addition, in *Phillips v. Maritime Association*<sup>10</sup>, the court held that the Plan could not recover an overpayment that was made in error because the beneficiaries had no way of knowing that they had been overpaid and had "rationally planned their lives on the amounts . . . paid to them by the Plan for years, and as a result had a change of position."

The court in *Dandurand*<sup>11</sup> ruled that the balance of equities do not support recoupment of an overpayment made to a participant. The court reasoned that "it was reasonable for *Dandurand*<sup>12</sup> to believe that Unum conducted its accounting on a periodic basis and that it would correct payment errors within a reasonable period of time. Allowing an . . . error to persist for four years . . . does not fall within a reasonable period of time."

The court in *Phillips v. Brink's Co.* determined that the plan administrator's interpretation of the plan allowing it to make such deductions was plausible, equitable considerations prevented recoupment of amounts previously paid in error.<sup>13</sup>

Similarly, as in *Phillips*<sup>14</sup>, [REDACTED] has reasonably relied on the calculation of his pension benefit for four years and has planned his life based on that amount.

As in *Dandurand*<sup>15</sup>, it is reasonable for [REDACTED] to believe that TRW Automotive was correct in calculating his pension benefit in 2015 and that TRW Automotive would correct any errors within a reasonable time. The *Dandurand*<sup>16</sup> court found that four years is not a reasonable period of time for an accounting error to be corrected, and

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<sup>8</sup> *Wright v. Nimmons*, 641 F. Supp. 1391.

<sup>9</sup> *Phillips v. Maritime Ass'n - I.L.A. Local Pension Plan*, 194 F. Supp. 2d 549, 556, 29 U.S.C. § 1104(a)(1)(B)

<sup>10</sup> *Id.*

<sup>11</sup> *Dandurand v. Unum Life Ins. Co. of Am.*, 150 F. Supp. 2d 178, 187

<sup>12</sup> *Id.* at 189.

<sup>13</sup> *Phillips v. Brink's Co.*, 632 F. Supp. 2d 563

<sup>14</sup> *Phillips v. Maritime Ass'n - I.L.A. Local Pension Plan*, 194 F. Supp. 2d 549

<sup>15</sup> *Dandurand v. Unum Life Ins. Co. of Am.*, 150 F. Supp. 2d 178, 187

<sup>16</sup> *Id.* at 187.

this calculation correction is occurring almost 5 years after [REDACTED] benefits were initiated, and four years after the error occurred.

### **Unfair Tax Consequences**

[REDACTED] has already paid taxes on the amount TRW Automotive is trying to recoup. Therefore, in addition to the financial hardship, this reduction in monthly income also requires [REDACTED] to incur the cost of hiring a tax professional to file amended tax returns for the years in which benefits are being recouped.

### **Detrimental Reliance**

A plan may not be able to recoup overpayments where participants or beneficiaries can show detrimental reliance. It is reasonable for TRW Automotive to conduct an accounting on a periodic basis and that it would correct payment errors within a reasonable period of time.

In *Kapp v. Sedgwick CMS*, the court held that the equitable principle of laches barred a long-term disability plan from recouping overpayments it had made over eight years.<sup>17</sup> The court determined that although ERISA permits a plan to recoup overpayments that were entirely the plan's fault, the court would also consider whether the participant had relied on the benefit calculation to his detriment. The court considered six factors that were outlined in *Thorn v. United States Steel & Carnegie Steel Pension Fund*:

- The amount of time which had passed since the overpayment was made.
- The effect that recoupment would have on the participant's benefit income.
- The nature of the mistake by the administrator.
- The amount of the overpayment.
- The beneficiary's total income.
- The beneficiary's use of the money at issue.<sup>18</sup>

Similarly, this overpayment was made August 1, 2015 and [REDACTED] received notice of the error approximately four years later, in a letter dated May 17, 2019.

A recoupment of this benefit would have the effect of dramatically reducing the present value of [REDACTED] pension plan. [REDACTED] relied on TRW Automotive's determination that the amount distributed to him was accurate and he planned his retirement and his resources based on that determination. [REDACTED] included the monthly amount in its totality in his household budget to pay for the necessities of life such as food, clothing, medical expenses, insurance, utilities, etc. [REDACTED] lives modestly and did not use the pension payments to accumulate a large investment or make extravagant purchases.

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<sup>17</sup> *Kapp v. Sedgwick CMS, AT&T Benefit Umbrella Plan 1*, 2013 WL 26051, 3 (S.D. Ohio, Jan. 2, 2013).

<sup>18</sup> *Thorn v. United States Steel and Carnegie Pension Fund*, CV-P-1829-S (M.D. Ala. 1983).



Therefore, the Plan must not seek recoupment from [REDACTED] because he detrimentally relied on an erroneous benefit determination and does not have the resources to recover the amount that would be lost through recoupment.

### **Undue Financial Hardship**

The Department of Labor in issuing guidance to plan administrators has stated that “depending on the facts and circumstances involved, the hardship to the participant or beneficiary resulting from such recovery or the cost to the Fund of collection efforts may be such that it would be prudent, within the meaning of section 404(a)(1)(B), for the Fund not to seek recovery from the participant or beneficiary of overpayment made to him.”<sup>19</sup>

In *Wells v. United States Steel & Carnegie Pension Fund, Inc.*, the Sixth Circuit Court considered equity in recoupment.<sup>20</sup> The court also found that “[a]lthough the Plan language permits recoupment, this court is concerned with the possible inequitable impact recoupment may have on the individual retirees [...] We thus remand this case to the district court to consider whether, under principles of equity or trust law, relief is unwarranted.”<sup>21</sup>

TRW Automotive is seeking recoupment on an error they committed almost four years ago. Such a lengthy time period exacerbates the mistake creating an even greater hardship.

[REDACTED] is 66 years old, receives a limited fixed income from Social Security, and is unable to return to work to supplement his income to repay this large sum of money. Plus, the monthly income (\$661.91) on which he has relied since retirement, has been reduced. [REDACTED] depended on this benefit to pay for life’s necessities during retirement after working for TRW Automotive for 12 years. [REDACTED] relied on TRW Automotive’s determination of his pension benefits to his detriment. TRW Automotive did not discover their error for almost 4 years.

### **Remedy**

**Because of all the reasons stated above, [REDACTED] respectfully requests that his full benefit of \$8,119.92 be restored, his alleged overpayment amount and any interest that may be owed on that amount be waived, and that TRW Automotive restore the plan by another means.**

**Thank you for your review of this matter. If you have any questions you can contact me at (517) 853-7188, or by email at [csteinmetz@elderlawofmi.org](mailto:csteinmetz@elderlawofmi.org).**

<sup>19</sup> Department of Labor Advisory Opinion 77-08, pg. 4.

<sup>20</sup> *Wells v. United States Steel & Carnegie Pension Fund, Inc.*, 950 F.2d 1244

<sup>21</sup> *Id.* at 45.

Respectfully submitted,

Christine Steinmetz  
Attorney

*Enclosures:*

Authorization for Release of Information

Copy of letter from TRW Automotive, dated May 17, 2019

Copy of letter from TRW Automotive, dated June 4, 2019

Copy of letter from TRW Automotive, dated June 7, 2019



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December 2, 2019

## VIA EMAIL (CSTEINMETZ@ELDERLAWOFMI.ORG) AND FIRST CLASS MAIL

Christine Steinmetz  
Attorney  
Mid-America Pension Rights Project  
3815 W. St. Joseph, Suite C-200  
Lansing, MI 48917

Re: *Request for Waiver of Recoupment of Pension Overpayment from the TRW Automotive, Inc. Salaried Pension Plan to Participant [REDACTED]; Your File Number W713790-14MAY19*

Dear Ms. Steinmetz:

I represent ZF Active Safety and Electronics US LLC, formerly known as TRW Automotive, U.S. LLC, with respect to the TRW Automotive Salaried Pension Plan (the "Plan"). As you know from the previous correspondence sent to you by Fidelity Investments, the recordkeeper and administrator of the Plan, [REDACTED] was incorrectly overpaid his pension benefit beginning August 1, 2015. The terms of the Plan provide for an enhanced pension benefit for someone who commences payment after age 55 and before age 62, provided they meet other requirements to qualify for the supplement. [REDACTED] met those requirements and thus received the enhanced pension benefit in the amount of \$661.91 per month beginning November 1, 2014. This qualified Social Security supplemental benefit is eliminated under the terms of the Plan once the retiree attains age 62. At that time, the monthly pension is supposed to drop down to what it otherwise would be under the Plan's benefit formula. In [REDACTED] case, that would have been \$485.39 per month. However, due to an administrative oversight, the reduction in his pension benefit did not occur on August 1, 2015, resulting in an overpayment to him of \$176.52, from that date through May 1, 2019, when the error was discovered and corrected.

On behalf of the Plan, TRW and Fidelity have proposed recouping the overpayment either through a lump sum repayment by [REDACTED] or a small additional reduction in the amount of his monthly pension to recover the overpayment through an actuarial adjustment. In your letter,

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

you have stated that the Plan is not legally entitled to recover anything other than the finite amount due and that a permanent reduction in his monthly payment to recover that amount actuarially would result in unjust enrichment.


The unjust enrichment has been that of your client, [REDACTED], at the expense of the Plan, which exists not just to provide his pension benefit but that of thousands of others. The fiduciaries that administer the Plan are bound to do so in accordance with its terms and therefore necessarily were and are required to reduce his benefit to the correct amount. You do not seem to be arguing that reduction is improper but only challenging our right to request that he repay the amount he has been overpaid to date. Note that the Plan does require the administrative board that oversees its operations to correct or adjust any errors in the calculation or other determinations of benefits under the Plan. In fact, the board does not have the power to modify any provisions of the Plan or change or add to any benefit provided by the Plan, which they would de facto be doing if they permitted the overpayment either to continue or not to be recovered.

In addition, ERISA generally requires that the restoration of benefits owed to a plan as a result of an overpayment include appropriate interest or lost earnings, not just the base amount of the overpayment. The IRS Employee Plans Compliance Resolution procedures reflected in Rev. Proc. 2019-19, Appendix B Section 2.04(1) require the plan's sponsor to take reasonable steps to have such an overpayment (with appropriate interest) returned by the recipient to the plan and reduce future benefit payments to the appropriate amount. If the amount is not returned with earnings, then someone else must make up that amount to the plan. You will note that the Plan sponsor and administrator have not requested your client to also contribute the lost earnings but will instead make up that amount, believing that is only equitable given the error was not his. However, it does not follow that he should retain the overpayment amount he has received.

In fact, it is standard, as an accommodation in a situation like this, to offer the participant the alternatives of repaying the excess amount received or having future payments further reduced to recover the amount on an actuarial basis. You suggest that the latter would result in an unjust enrichment, potentially depending upon how long he survives and receives payments. The same holds true should the full amount never be recovered from the reduction in payments. That possibility is a risk shouldered by both sides.

Finally, let me note that the Plan is undertaking an additional lump sum payment offer for participants and retirees in pay status, including [REDACTED] and have offered to simply reduce the amount of his lump sum by the amount of the overpayment. Should he decide to elect that offer, this will resolve the matter at this time. Otherwise, please feel free to contact me to discuss this issue further.

Very truly yours,

  
Georgeann G. Peters

Email from Attny Peters-

Good morning, Christine. I am responding to you again, copying Erika at ZF/TRW, so that she has this final email as a record for the appeal. This is to confirm again that the letter Fidelity sent was in process independently of the appeal and so sent in error to [REDACTED]. The Committee has determined it will not pursue repayment from [REDACTED] and Fidelity has now been advised not to send any further demand letters to him. If he should receive anything further, it will be a mistake and we would ask you or him to forward to us so we can follow up again, if needed. Thank you for understanding.

Georgeann

Georgeann Peters  
Partner

12/20/2019, Steinmetz, Christine  
Email recd from TRW

Dear Ms. Steinmetz: You are correct that our prior letter was not intended to be claim denial because we were simply wanting to ensure [REDACTED] understood his lump sum offer and I had not yet conferred with the committee regarding the denial of his claim. I have done that now, and so can advise that, consistent with how all other claims for an overpayment of benefits above those called for under the terms of the plan have been handled, his claim to have the past overpayment nullified is in fact denied. TRW understands its obligation to administer the plan in accordance with its terms on the same basis for all participants and does not make exceptions. However, I can also advise you that TRW will not take any further action to pursue recovery from [REDACTED] of the past overpayment. Thus, since his benefit has already been adjusted to the correct "post 62" amount, we will view this matter as resolved.

In accordance with the requirements to provide citations to the plan sections on which this determination is based, see the below cut and paste of plan section 4.3 regarding the QSUPP benefit, which clearly provides that its payment ends at age 62. As you are aware, upon denial of his claim, [REDACTED] may now have the right to bring a civil action under ERISA. In that regard, please be aware that the Plan provides as follows: For purposes of filing any civil action against the Plan upon the exhaustion of all other administrative remedies, including under Section 502(a) of ERISA, legal action may be brought no later than one year from the date of completion of the Plan's claims appeals process, or if earlier, two years from the date the claimant became entitled thereto or, if later, knew or should have known that such claim existed.

Please let me know if this communication will suffice for the purpose of advising you of the outcome of his claim or if you require a more formal response. Thank you,

~~Georgeann~~

Georgeann Peters  
Partner