clean up if the polluter failed to remove hazardous waste when properly requested. Under CERCLA, the government may request a responsible party to remedy a site. If the party fails to clean up the site, the government may direct the clean up and then sue the responsible party for "response costs." The law also provides that the government may recover punitive damages of three times its response costs if the responsible party fails to clean up the site. At issue in this case was whether punitive damages are additional to the recovery of response costs. The district court refused to allow what amounted to quadruple damages, but the court of appeals reversed.

In concluding that punitive damages were additional to recovery of response costs, the court of appeals had only the statutory language as a guide. It initially noted that the legislative history of CERCLA did not discuss how the provisions for response costs and punitive damages were to operate together. Moreover, this case was apparently the first to present the issue although other courts and commentators had indicated that punitive damages were additional to response costs. To solve the interpretive problem, the court tracked the language of the applicable statutes. The provision allowing treble damages described them as punitive. The ordinary meaning of punitive damages is that they are in addition to compensatory damages. Moreover, the provision concerning response costs provided for actual recover of those costs despite recovery under any other provision. To give full effect to both the punitive damages and response cost provisions, therefore, CERCLA permitted a recovery of four times the response costs.

Due Process Permits Punitive Damages Five Hundred Times Compensatory Damages

Eichenseer v. Reserve Life Insurance Co., 934 F.2d 1377 (5th Cir. 1991).

The Fifth Circuit Court of Appeals concluded in a case remanded from the Supreme Court after its decision in *Pacific Mutual Life Insurance Co. v. Haslip* that an award of punitive damages five hundred times the amount of the compensatory damages did not violate due process. In this case, Eichenseer sought to recover damages for the mishandling of her insurance claim. After she filed a claim for medical expenses of a hysterectomy in 1983, Reserve Life failed to make payment and repeatedly delayed resolution of the claim. Eichenseer sued for breach of contract and tort damages. The insurer finally agreed to pay the medical claim, but Eichenseer successfully pursued the tort claim and recovered $1000 in compensatory damages and $500,000 in punitive damages in a trial before a judge sitting without a jury. On an appeal that the judgment was so excessive as to violate due process, the court of appeals affirmed the decision of the trial court.

Under the *Haslip* standard, the court must first determine if the level of punitive damages is reasonable. In this case, the court of appeals noted several facts that indicated that the decision of the trial court was reasonable. First, the action of the insurer was especially egregious. Although it had the information to process the claim properly, it failed to do so for over three years. The court also attributed part of the delay to the insurer's desire to save money at the expense of the insured. Second, a large award was appropriate in light of the size of the insurer. To deter Reserve from doing the same thing again, the damages must be significant. Third, a prior award of $150,000 against the company had not changed its practice. Thus, a larger award was necessary to attract the insurer's attention. Based on these factors, the court concluded that the level of damages was not unreasonable.

Under the *Haslip* standard, the court must also determine if the decision was made with sufficient procedural safeguards. Comprehensive safeguards include complete instructions to juries, limits within state law to the amount of punitive damages, and a rigorous system of judicial review. In this case, the state law limited the considerations on which a judge or jury could award punitive damages to that necessary for punishment, deterrence, and the pecuniary ability of the defendant to pay the award. Although this standard left the court with a great deal of discretion, the court felt that the decision was confined to retribution and deterrence. Besides a sufficient standard, the parties tried this case before a judge rather than a jury. This fact made the likelihood of a procedural problem less apparent because the judge was familiar with state law limitations. Based on this procedural safeguard, the court felt that the limited level of appellate review provided by state law did not render the trial court's action unconstitutional.

Medical Benefits May Contractually Vest

Sprague v. General Motors Corp., 13 Employee Benefits Cas. (BNA) 2678 (E.D. Mich. 1991).

A Michigan district court, in a case that is likely to be watched by industries implementing early retirement programs, concluded that medical benefits promised in exchange for early retirement may vest. In this case, retirees from General Motors complained when G.M. changed the medical package to require up to a $750 charge on benefits it had previously funded. The retirees complained that the Employee Retirement Income Security Act prevented the change. On cross motions for summary judgment, the court dismissed the claims of many of the retirees because the contracts for medical benefits did not vest. The court, however, refused to dismiss the claims of about 40,000 retirees who took early retirement and signed releases that promised medical benefits.

Under ERISA, a medical benefit plan does not vest unless the plan provides for vesting contractually. According to the legislative history, vesting by statutory requirement applies only to pension benefits. Medical benefits were not included because insurance must account for inflation, changes in medical practice and technology, and increases in cost independent of inflation. The parties, however, may contract in the plan to allow medical benefits to vest. In this case, the plan documents indicated that the retirees were to receive medical benefits, but most of the documents contained a reservation by G.M. that it