
2025 PIABA Mid-Year Meeting

FIDUCIARY DUTIES AND ERISA-BASED CLAIMS IN RETIREMENT ACCOUNTS – A RISING TREND OF CLAIMS

Alan Rosca, Joseph Peiffer
Erin Koepfel, Maureen Thompson, Mike Salmanson

The Basic of Lit Claims for Breaches of Fiduciary Duty Under ERISA.....	2-160
CFP Board General One Pager.....	161-162
CFP Professionals’ Fiduciary Duty When Providing Financial Advice.....	163-166
The 2024 Department of Labor Retirement Security Rule is Very Different From the 2016 DOL Conflict of Interest Rule: A DOL Fiduciary Rule Comparison.....	167-170
CFP Board Letter to Lisa M. Gomez, Re: Definition of Fiduciary – RIN 1210-AC02 Retirement Security and Related Exemptions.....	171-185
U.S. Department of Labor – Understanding the Retirement Security Rule: For Investors.....	172-187

Public Investors Advocate Bar Association
1300 McGee Dr., Ste. 112
Norman, Oklahoma 73072
Office: 405.360.8776
E-Mail: piaba@piaba.org

2025 © PIABA

The information provided in this publication is for the convenience of the members of PIABA and is designed to provide practical and useful information on the subject matter being discussed. Although this information has been obtained from sources which we believe to be reliable, it does not constitute the rendering of legal advice and should not be used and/or otherwise relied on without independent verification. The information and opinions expressed herein do not necessarily reflect the views, policies and/or opinions of PIABA and/or its Board of Directors.

The basics of Litigating Claims for Breaches of Fiduciary Duty under ERISA

CONTENTS

- Statute:
 - Basic Duties
 - 29 U.S.C. Section 1001
- Liability for Breaches of Fiduciary Duty
 - 29 U.S.C. Section 1105
- What is a Prohibited Transaction
 - 29 U.S.C. Section 1106
- Remedies for Breach
 - 29 U.S.C. Section 1109
- 29 U.S.C. Section 1110
 - Exculpatory Provisions Generally Prohibited
 - Statute of Limitations
- Remedies for Fiduciary Breach
 - 29 U.S.C. Section 1132
 - CIGNA Co. v. Amara, 131 S.Ct. 1866, 1870 (2011)

- Montanile v. Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan, 577 U.S. 136 (2016)
- Mertens v. Hewitt Associates, 508 U. S. 248 (1993)
- Great-West Life & Annuity Ins. Co. v. Knudson, 534 U. S. 204 (2002)
- US Airways, Inc. v. McCutchen, 569 U. S. ____ (2013) - 569 U.S. 88, *88; 133 S. Ct. 1537, **1537; 185 L. Ed. 2d 654, ***654; 2013 U.S. LEXIS 3156, ****1
- Sereboff v. Mid Atlantic Medical Services, Inc., 547 U. S. 356

- Attorneys Fees

- Technical Requirement - Don't Forget to Serve the Government!

- HUGHES et al. v. NORTHWESTERN UNIVERSITY et al. 595 U.S. 170, *170; 142 S. Ct. 737, **737; 211 L. Ed. 2d 558, ***558; 2022 U.S. LEXIS 622, ****1

Statute

[29 USCS § 1104](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > REGULATORY PROVISIONS (§§ 1021 — 1193c) > Fiduciary Responsibility (§§ 1101 — 1114)

§ 1104. Fiduciary duties

(a) Prudent man standard of care.

(1) Subject to sections 403(c) and (d), 4042, and 4044 [[29 USCS §§ 1103\(c\)](#), (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

- (i)** providing benefits to participants and their beneficiaries; and
- (ii)** defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3) [[29 USCS § 1107\(d\)\(3\)](#)]), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5) [[29 USCS § 1107\(d\)\(4\)](#) and (5)]).

(b) Indicia of ownership of assets outside jurisdiction of district courts. Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) Control over assets by participant or beneficiary.

(1)

(A) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(i) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(ii) no person who is otherwise a fiduciary shall be liable under this part [[29 USCS §§ 1101](#) et seq.] for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control, except that this clause shall not apply in connection with such

29 USCS § 1104

participant or beneficiary for any blackout period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary.

(B) If a person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing and implementing the blackout period, any person who is otherwise a fiduciary shall not be liable under this title for any loss occurring during such period.

(C) For purposes of this paragraph, the term “blackout period” has the meaning given such term by section 101(i)(7) [[29 USCS § 1021\(i\)\(7\)](#)].

(2) In the case of a simple retirement account established pursuant to a qualified salary reduction arrangement under [section 408\(p\) of the Internal Revenue Code of 1986](#) [[26 USCS § 408\(p\)](#)], a participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account upon the earliest of—

- (A)** an affirmative election among investment options with respect to the initial investment of any contribution,
- (B)** a rollover to any other simple retirement account or individual retirement plan, or
- (C)** one year after the simple retirement account is established.

No reports, other than those required under section 101(g) [[29 USCS § 1021\(g\)](#)], shall be required with respect to a simple retirement account established pursuant to such a qualified salary reduction arrangement.

(3) In the case of a pension plan which makes a transfer to an individual retirement account or annuity of a designated trustee or issuer under [section 401\(a\)\(31\)\(B\) of the Internal Revenue Code of 1986](#), the participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account or annuity upon—

- (A)** the earlier of—
 - (i)** a rollover of all or a portion of the amount to another individual retirement account or annuity; or
 - (ii)** one year after the transfer is made; or
- (B)** a transfer that is made in a manner consistent with guidance provided by the Secretary.

(4)

(A) In any case in which a qualified change in investment options occurs in connection with an individual account plan, a participant or beneficiary shall not be treated for purposes of paragraph (1) as not exercising control over the assets in his account in connection with such change if the requirements of subparagraph (C) are met in connection with such change.

(B) For purposes of subparagraph (A), the term “qualified change in investment options” means, in connection with an individual account plan, a change in the investment options offered to the participant or beneficiary under the terms of the plan, under which—

- (i)** the account of the participant or beneficiary is reallocated among one or more remaining or new investment options which are offered in lieu of one or more investment options offered immediately prior to the effective date of the change, and
- (ii)** the stated characteristics of the remaining or new investment options provided under clause (i), including characteristics relating to risk and rate of return, are, as of immediately after the change, reasonably similar to those of the existing investment options as of immediately before the change.

(C) The requirements of this subparagraph are met in connection with a qualified change in investment options if—

29 USCS § 1104

- (i) at least 30 days and no more than 60 days prior to the effective date of the change, the plan administrator furnishes written notice of the change to the participants and beneficiaries, including information comparing the existing and new investment options and an explanation that, in the absence of affirmative investment instructions from the participant or beneficiary to the contrary, the account of the participant or beneficiary will be invested in the manner described in subparagraph (B),
- (ii) the participant or beneficiary has not provided to the plan administrator, in advance of the effective date of the change, affirmative investment instructions contrary to the change, and
- (iii) the investments under the plan of the participant or beneficiary as in effect immediately prior to the effective date of the change were the product of the exercise by such participant or beneficiary of control over the assets of the account within the meaning of paragraph (1).

(5) Default investment arrangements.

(A) In general. For purposes of paragraph (1), a participant or beneficiary in an individual account plan meeting the notice requirements of subparagraph (B) shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant or beneficiary, are invested by the plan in accordance with regulations prescribed by the Secretary. The regulations under this subparagraph shall provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both.

(B) Notice requirements.

- (i) In general. The requirements of this subparagraph are met if each participant—
 - (I) receives, within a reasonable period of time before each plan year, a notice explaining the employee's right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant or beneficiary, such contributions and earnings will be invested, and
 - (II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation.
- (ii) Form of notice. The requirements of clauses (i) and (ii) of [section 401\(k\)\(12\)\(D\) of the Internal Revenue Code of 1986 \[26 USCS § 401\(k\)\(12\)\(D\)\]](#) shall apply with respect to the notices described in this subparagraph.

(6) Default investment arrangements for a pension-linked emergency savings account. For purposes of paragraph (1), a participant in a pension-linked emergency savings account shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which are invested in accordance with section 801(c)(1)(A)(iii) [\[29 USCS § 1193\(c\)\(1\)\(A\)\(iii\)\]](#).

(d) Plan terminations.

(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under [section 4980\(d\) of the Internal Revenue Code of 1986 \[26 USCS § 4980\(d\)\]](#), a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

- (A)** In the case of a fiduciary of the terminated plan, any requirement—
 - (i) under section 4980(d)(2)(B) of such Code [\[26 USCS § 4980\(d\)\(2\)\(B\)\]](#) with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and
 - (ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code [\[26 USCS § 4980\(d\)\(2\)\(B\)\(ii\) or \(3\)\]](#) with respect to any increase in benefits under the terminated plan.
- (B)** In the case of a fiduciary of a qualified replacement plan, any requirement—

29 USCS § 1104

- (i) under section 4980(d)(2)(A) of such Code [[26 USCS § 4980\(d\)\(2\)\(A\)](#)] with respect to participation in the qualified replacement plan of active participants in the terminated plan,
- (ii) under section 4980(d)(2)(B) of such Code [[26 USCS § 4980\(d\)\(2\)\(B\)](#)] with respect to the receipt of assets from the terminated plan, and
- (iii) under section 4980(d)(2)(C) of such Code [[26 USCS § 4980\(d\)\(2\)\(C\)](#)] with respect to the allocation of assets to participants of the qualified replacement plan.

(2) For purposes of this subsection—

- (A) any term used in this subsection which is also used in [section 4980\(d\) of the Internal Revenue Code of 1986](#) [[26 USCS § 4980\(d\)](#)] shall have the same meaning as when used in such section, and
- (B) any reference in this subsection to the Internal Revenue Code of 1986 [[26 USCS §§ 1](#) et seq.] shall be a reference to such Code as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990 [enacted Nov. 5, 1990].

(e) Safe harbor for annuity selection.

- (1) In general. With respect to the selection of an insurer for a guaranteed retirement income contract, the requirements of subsection (a)(1)(B) will be deemed to be satisfied if a fiduciary—
 - (A) engages in an objective, thorough, and analytical search for the purpose of identifying insurers from which to purchase such contracts;
 - (B) with respect to each insurer identified under subparagraph (A)—
 - (i) considers the financial capability of such insurer to satisfy its obligations under the guaranteed retirement income contract; and
 - (ii) considers the cost (including fees and commissions) of the guaranteed retirement income contract offered by the insurer in relation to the benefits and product features of the contract and administrative services to be provided under such contract; and
 - (C) on the basis of such consideration, concludes that—
 - (i) at the time of the selection, the insurer is financially capable of satisfying its obligations under the guaranteed retirement income contract; and
 - (ii) the relative cost of the selected guaranteed retirement income contract as described in subparagraph (B)(ii) is reasonable.
- (2) Financial capability of the insurer. A fiduciary will be deemed to satisfy the requirements of paragraphs (1)(B)(i) and (1)(C)(i) if—
 - (A) the fiduciary obtains written representations from the insurer that—
 - (i) the insurer is licensed to offer guaranteed retirement income contracts;
 - (ii) the insurer, at the time of selection and for each of the immediately preceding 7 plan years—
 - (I) operates under a certificate of authority from the insurance commissioner of its domiciliary State which has not been revoked or suspended;
 - (II) has filed audited financial statements in accordance with the laws of its domiciliary State under applicable statutory accounting principles;
 - (III) maintains (and has maintained) reserves which satisfies all the statutory requirements of all States where the insurer does business; and
 - (IV) is not operating under an order of supervision, rehabilitation, or liquidation;

29 USCS § 1104

(iii) the insurer undergoes, at least every 5 years, a financial examination (within the meaning of the law of its domiciliary State) by the insurance commissioner of the domiciliary State (or representative, designee, or other party approved by such commissioner); and

(iv) the insurer will notify the fiduciary of any change in circumstances occurring after the provision of the representations in clauses (i), (ii), and (iii) which would preclude the insurer from making such representations at the time of issuance of the guaranteed retirement income contract; and

(B) after receiving such representations and as of the time of selection, the fiduciary has not received any notice described in subparagraph (A)(iv) and is in possession of no other information which would cause the fiduciary to question the representations provided.

(3) No requirement to select lowest cost. Nothing in this subsection shall be construed to require a fiduciary to select the lowest cost contract. A fiduciary may consider the value of a contract, including features and benefits of the contract and attributes of the insurer (including, without limitation, the insurer's financial strength) in conjunction with the cost of the contract.

(4) Time of selection.

(A) In general. For purposes of this subsection, the time of selection is—

(i) the time that the insurer and the contract are selected for distribution of benefits to a specific participant or beneficiary; or

(ii) if the fiduciary periodically reviews the continuing appropriateness of the conclusion described in paragraph (1)(C) with respect to a selected insurer, taking into account the considerations described in such paragraph, the time that the insurer and the contract are selected to provide benefits at future dates to participants or beneficiaries under the plan.

Nothing in the preceding sentence shall be construed to require the fiduciary to review the appropriateness of a selection after the purchase of a contract for a participant or beneficiary.

(B) Periodic review. A fiduciary will be deemed to have conducted the periodic review described in subparagraph (A)(ii) if the fiduciary obtains the written representations described in clauses (i), (ii), and (iii) of paragraph (2)(A) from the insurer on an annual basis, unless the fiduciary receives any notice described in paragraph (2)(A)(iv) or otherwise becomes aware of facts that would cause the fiduciary to question such representations.

(5) Limited liability. A fiduciary which satisfies the requirements of this subsection shall not be liable following the distribution of any benefit, or the investment by or on behalf of a participant or beneficiary pursuant to the selected guaranteed retirement income contract, for any losses that may result to the participant or beneficiary due to an insurer's inability to satisfy its financial obligations under the terms of such contract.

(6) Definitions. For purposes of this subsection—

(A) Insurer. The term "insurer" means an insurance company, insurance service, or insurance organization, including affiliates of such companies.

(B) Guaranteed retirement income contract. The term "guaranteed retirement income contract" means an annuity contract for a fixed term or a contract (or provision or feature thereof) which provides guaranteed benefits annually (or more frequently) for at least the remainder of the life of the participant or the joint lives of the participant and the participant's designated beneficiary as part of an individual account plan.

History

HISTORY:

Sept. 2, 1974, *P. L. 93-406*, Title I, Subtitle B, Part 4, § 404, *88 Stat. 877*; Sept. 26, 1980, *P. L. 96-364*, Title III, § 309, [94 Stat. 1296](#); Nov. 5, 1990, *P. L. 101-508*, Title XII, Subtitle A, § 12002(b)(1), (2)(A) *104 Stat. 1388-565*; Aug. 20, 1996, *P. L. 104-188*, Title I, Subtitle D, Ch 2, Subch A, § 1421(d)(2), *110 Stat. 1799*; June 7, 2001, *P. L. 107-16*, Title VI, Subtitle E, Part I, § 657(c)(1), *115 Stat. 136*; March 9, 2002, *P. L. 107-147*, Title IV, Subtitle B, § 411(t), *116 Stat. 51*; Aug. 17, 2006, *P. L. 109-280*, Title VI, Subtitle C, §§ 621(a), 624(a), *120 Stat. 978, 980*; Dec. 23, 2008, *P. L. 110-458*, Title I, Subtitle A, § 106(d), *122 Stat. 5107*; Dec. 20, 2019, *P.L. 116-94*, Div O, Title II, § 204, *133 Stat. 3165*; Dec. 29, 2022, *P.L. 117-328*, Div T, Title I, § 127(d), *136 Stat. 5324*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES**References in text:****Effective date of section:****Amendment Notes**

1980.

1990.

1996.

2001.

2002.

2006.

2008.

2019.

2022.

Other provisions:**References in text:**

“This title”, referred to in this section, is Title I of Act Sept. 2, 1974, *P. L. 93-406*, which appears generally as [29 USCS §§ 1001](#) et seq. For full classification of such Title, consult USCS Tables volumes.

“Title IV”, referred to in this section, is Title IV of Act Sept 2, 1974, *P. L. 93-406*, which appears generally as [29 USCS §§ 1301](#) et seq. For full classification of such Title, consult USCS Tables volumes.

Effective date of section:

For effective date of this section, see [29 USCS § 1114](#).

Amendment Notes**1980.**

Act Sept. 26, 1980 (effective upon enactment, as provided by 29 USCS § 1461(e)), in subsec. (a)(1)(D), inserted “or title IV”.

1990.

Act Nov. 5, 1990 (applicable as provided by § 12003 of such Act, which appears 29 USCS § 1002 note), in subsec. (a)(1)(D), substituted “this title and title IV” for “this title or title IV”; and added subsec. (d).

1996.

Act Aug. 20, 1996 (applicable to taxable years beginning after 12/31/96, as provided by § 1421(e) of such Act, which appears as 26 USCS § 72 note), in subsec. (c), designated the existing text as para. (1), redesignated paras. (1) and (2) as subparas. (A) and (B), respectively, and added para. (2).

2001.

Act June 7, 2001 (applicable as provided by § 657(d) of such Act, which appears as 26 USCS § 401 note), in subsec. (c), added para. (3).

2002.

Act March 9, 2002 (effective as if included in § 657 of Act June 7, 2001, pursuant to § 411(x) of Act March 9, 2002, which appears as 26 USCS § 25B note), in subsec. (c)(3), in subpara. (A), in the introductory matter, deleted “the earlier of” following “of”, and, in subpara. (B), substituted “a transfer that” for “if the transfer”.

2006.

Act Aug. 17, 2006 (applicable to plan years beginning after 12/31/2007, as provided by § 621(b) of such Act, which appears as a note to this section), in subsec. (c), in para. (1), redesignated subparas. (A) and (B) as cls. (i) and (ii), respectively, inserted a new subparagraph “(A)” designation, in subpara. (A)(ii) as redesignated, inserted “, except that this clause shall not apply in connection with such participant or beneficiary for any blackout period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary”, added subparas. (B) and (C), and added para. (4).

Such Act further (applicable to plan years beginning after 12/31/2006, as provided by § 624(b)(1) of such Act, which appears as a note to this section), added subsec. (c)(5).

2008.

Act Dec. 23, 2008 (effective as if included in the provisions of Act Aug. 17, 2006 to which the amendments relate, as provided by § 112 of Act Dec. 23, 2008, which appears as 26 USCS § 72 note), in subsec. (c)(5), substituted “participant or beneficiary” for “participant” in three places.

29 USCS § 1104

2019.

The 2019 amendment by P.L. 116-94 added (e).

2022.

The 2022 amendment by P.L. 117-328 (applicable to plan years beginning after 12/31/2023, as provided by § 127(g) of P.L. 117-328, which appears as 26 USCS § 72 note), added (c)(6).

Other provisions:

Promulgation of regulations. For provisions authorizing the Secretary to promulgate regulations, see [29 USCS §§ 1031](#) and [1114](#).

Plan amendments not required until January 1, 1998. For provisions directing that if any amendments made by § 1421(d)(2) of *P. L. 104-188* require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1998, see § 1465 of *P. L. 104-188*, which appears as [26 USCS § 401](#) note.

Application of amendments made by § 621 of Act Aug. 17, 2006. Act Aug. 17, 2006, *P. L. 109-280*, Title VI, Subtitle C, § 621(b), *120 Stat. 979*, provides:

“(1) In general. The amendments made by this section shall apply to plan years beginning after December 31, 2007.

“(2) Special rule for collectively bargained agreements. In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ‘December 31, 2007’ the earlier of—

“(A) the later of—

“(i) December 31, 2008, or

“(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

“(B) December 31, 2009.”.

Application of amendments made by § 624 of Act Aug. 17, 2006; regulations. Act Aug. 17, 2006, *P. L. 109-280*, Title VI, Subtitle C, § 624(b), *120 Stat. 980*, provides:

“(1) In general. The amendments made by this section [adding subsec. (c)(5) of this section] shall apply to plan years beginning after December 31, 2006.

“(2) Regulations. Final regulations under section 404(c)(5)(A) of the Employee Retirement Income Security Act of 1974 (as added by this section) shall be issued no later than 6 months after the date of the enactment of this Act.”.

Clarification of fiduciary rules. Act Aug. 17, 2006, *P. L. 109-280*, Title VI, Subtitle C, § 625, *120 Stat. 980*, provides:

“(a) In general. Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue final regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan to a participant or beneficiary—

29 USCS § 1104

“(1) is not subject to the safest available annuity standard under Interpretive Bulletin 95-1 ([29 CFR 2509.95-1](#)), and

“(2) is subject to all otherwise applicable fiduciary standards.

“(b) Effective date. This section shall take effect on the date of enactment of this Act.”.

Sunset provision not applicable. Section 901(a)(1), (b) of Act June 7, 2001, *P. L. 107-16* ([26 USCS § 1](#) note), provided that the amendments made to this section by such Act should not apply to taxable, plan, or limitation years beginning after December 31, 2010, and the Internal Revenue Code of 1986 should be applied and administered to such years as if the amendments had never been enacted; however, Act Aug. 17, 2006, *P. L. 109-280*, Title VIII, Subtitle B, § 811, *120 Stat. 996*, which appears as [26 USCS § 1](#) note, provides that such § 901 shall not apply to the amendments made by Subtitles A through F of Title VI of the 2001 Act.

Performance benchmarks for asset allocation funds.

Act Dec. 29, 2022, *P.L. 117-328*, Div T, Title III, § 318(a), *136 Stat. 5353*, provides: “Not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations under section 404 of the Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1104](#)) providing that, in the case of a designated investment alternative that contains a mix of asset classes, the administrator of a plan may, but is not required to, use a benchmark that is a blend of different broad-based securities market indices if—

“(1) the blend is reasonably representative of the asset class holdings of the designated investment alternative;

“(2) for purposes of determining the blend’s returns for 1-, 5-, and 10-calendar-year periods (or for the life of the alternative, if shorter), the blend is modified at least once per year if needed to reflect changes in the asset class holdings of the designated investment alternative;

“(3) the blend is furnished to participants and beneficiaries in a manner that is reasonably calculated to be understood by the average plan participant; and

“(4) each securities market index that is used for an associated asset class would separately satisfy the requirements of such regulation for such asset class.”.

NOTES TO DECISIONS

I.IN GENERAL

1.Effective date

2.Relationship to other laws

3.—Common law

4.—Federal Arbitration Act

5.—State laws

6.Applicability

7.Who is fiduciary

8.—Discretionary authority or control

9.Control over assets by participant or beneficiary

[29 USCS § 1001](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > GENERAL PROVISIONS (§§ 1001 — 1003)

§ 1001. Congressional findings and declaration of policy

(a) Benefit plans as affecting interstate commerce and the Federal taxing power. The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries. It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance. It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

Liability for Breaches of Fiduciary Duty

[29 USCS § 1105](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > REGULATORY PROVISIONS (§§ 1021 — 1193c) > Fiduciary Responsibility (§§ 1101 — 1114)

§ 1105. Liability for breach by co-fiduciary

(a) Circumstances giving rise to liability. In addition to any liability which he may have under any other provision of this part [[29 USCS §§ 1101](#) et seq.], a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1)** if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
- (2)** if, by his failure to comply with section 404(a)(1) [[29 USCS § 1104\(a\)\(1\)](#)] in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
- (3)** if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b) Assets held by two or more trustees.

(1) Except as otherwise provided in subsection (d) and in section 403(a)(1) and (2) [[29 USCS § 1103\(a\)\(1\)](#) and (2)], if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part [[29 USCS §§ 1101](#) et seq.].

(3)

(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 403(a)(1) [[29 USCS § 1103\(a\)\(1\)](#)].

(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities.

(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and

29 USCS § 1105

(B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 404(a)(1) [[29 USCS § 1104\(a\)\(1\)](#)]—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term “trustee responsibility” means any responsibility provided in the plan’s trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 402(c)(3) [[29 USCS § 1102\(c\)\(3\)](#)].

(d) Investment managers.

(1) If an investment manager or managers have been appointed under section 402(c)(3) [[29 USCS § 1102\(c\)\(3\)](#)], then, notwithstanding subsections (a) (2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part [[29 USCS §§ 1101 et seq.](#)] for any act of such trustee.

History

HISTORY:

Sept. 2, 1974, *P. L. 93-406*, Title I, Subtitle B, Part 4, § 405, *88 Stat. 878*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For effective date of this section, see [29 USCS § 1114](#).

NOTES TO DECISIONS

I.IN GENERAL

What Is a Prohibited Transaction

[29 USCS § 1106](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > REGULATORY PROVISIONS (§§ 1021 — 1193c) > Fiduciary Responsibility (§§ 1101 — 1114)

§ 1106. Prohibited transactions

(a) Transactions between plan and party in interest. Except as provided in **section** 408 [[29 USCS § 1108](#)]:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of **section** 407(a) [[29 USCS § 1107\(a\)](#)].

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates **section** 407(a) [[29 USCS § 1107\(a\)](#)].

(b) Transactions between plan and fiduciary. A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) Transfer of real or personal property to plan by party in interest. A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

History

HISTORY:

Sept. 2, 1974, *P. L. 93-406*, Title I, Subtitle B, Part 4, § 406, *88 Stat. 879*.

Annotations

Remedies for Breach

[29 USCS § 1109](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > REGULATORY PROVISIONS (§§ 1021 — 1193c) > Fiduciary Responsibility (§§ 1101 — 1114)

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act [[29 USCS § 1111](#)].

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

History

HISTORY:

Sept. 2, 1974, *P. L. 93-406*, Title I, Subtitle B, Part 4, § 409, *88 Stat. 886*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Effective date of section:

References in text:

“This title”, referred to in this section, is Title I of Act Sept. 2, 1974, *P. L. 93-406*, *88 Stat. 832*, popularly known as the Employee Retirement Income Security Act of 1974, which appears generally as [29 USCS §§ 1001](#) et seq. For full classification of such Title, consult USCS Tables volumes.

Effective date of section:

For effective date of this section, see [29 USCS § 1114](#).

**Exculpatory
Provisions Generally
Prohibited**

[29 USCS § 1110](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > REGULATORY PROVISIONS (§§ 1021 — 1193c) > Fiduciary Responsibility (§§ 1101 — 1114)

§ 1110. Exculpatory provisions; insurance

(a) Except as provided in **sections** 405(b)(1) and 405(d) [[29 USCS § 1105\(b\)\(1\)](#) and (d)], any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [[29 USCS §§ 1101](#) et seq.] shall be void as against public policy.

(b) Nothing in this subpart [part] shall preclude—

- (1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;
- (2) a fiduciary from purchasing insurance to cover liability under this part [[29 USCS §§ 1101](#) et seq.] from and for his own account; or
- (3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

History

HISTORY:

Sept. 2, 1974, *P. L. 93-406*, Title I, Subtitle B, Part 4, § 410, *88 Stat. 886*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Effective date of section:

Explanatory notes:

The bracketed word “part” has been inserted in subsec. (b) as the word probably intended by Congress.

Effective date of section:

Remedies for Fiduciary Breach

[29 USCS § 1104](#)

Current through Public Law 118-224, approved January 2, 2025, with a gap of Public Law 118-159.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM (§§ 1001 — 1461) > PROTECTION OF EMPLOYEE BENEFIT RIGHTS (§§ 1001 — 1193c) > REGULATORY PROVISIONS (§§ 1021 — 1193c) > Fiduciary Responsibility (§§ 1101 — 1114)

§ 1104. Fiduciary duties

(a) Prudent man standard of care.

(1) Subject to sections 403(c) and (d), 4042, and 4044 [[29 USCS §§ 1103\(c\)](#), (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

- (i)** providing benefits to participants and their beneficiaries; and
- (ii)** defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3) [[29 USCS § 1107\(d\)\(3\)](#)]), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5) [[29 USCS § 1107\(d\)\(4\)](#) and (5)]).

(b) Indicia of ownership of assets outside jurisdiction of district courts. Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) Control over assets by participant or beneficiary.

(1)

(A) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(i) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(ii) no person who is otherwise a fiduciary shall be liable under this part [[29 USCS §§ 1101](#) et seq.] for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control, except that this clause shall not apply in connection with such

29 USCS § 1104

participant or beneficiary for any blackout period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary.

(B) If a person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing and implementing the blackout period, any person who is otherwise a fiduciary shall not be liable under this title for any loss occurring during such period.

(C) For purposes of this paragraph, the term “blackout period” has the meaning given such term by section 101(i)(7) [[29 USCS § 1021\(i\)\(7\)](#)].

(2) In the case of a simple retirement account established pursuant to a qualified salary reduction arrangement under [section 408\(p\) of the Internal Revenue Code of 1986](#) [[26 USCS § 408\(p\)](#)], a participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account upon the earliest of—

(A) an affirmative election among investment options with respect to the initial investment of any contribution,

(B) a rollover to any other simple retirement account or individual retirement plan, or

(C) one year after the simple retirement account is established.

No reports, other than those required under section 101(g) [[29 USCS § 1021\(g\)](#)], shall be required with respect to a simple retirement account established pursuant to such a qualified salary reduction arrangement.

(3) In the case of a pension plan which makes a transfer to an individual retirement account or annuity of a designated trustee or issuer under [section 401\(a\)\(31\)\(B\) of the Internal Revenue Code of 1986](#), the participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account or annuity upon—

(A) the earlier of—

(i) a rollover of all or a portion of the amount to another individual retirement account or annuity; or

(ii) one year after the transfer is made; or

(B) a transfer that is made in a manner consistent with guidance provided by the Secretary.

(4)

(A) In any case in which a qualified change in investment options occurs in connection with an individual account plan, a participant or beneficiary shall not be treated for purposes of paragraph (1) as not exercising control over the assets in his account in connection with such change if the requirements of subparagraph (C) are met in connection with such change.

(B) For purposes of subparagraph (A), the term “qualified change in investment options” means, in connection with an individual account plan, a change in the investment options offered to the participant or beneficiary under the terms of the plan, under which—

(i) the account of the participant or beneficiary is reallocated among one or more remaining or new investment options which are offered in lieu of one or more investment options offered immediately prior to the effective date of the change, and

(ii) the stated characteristics of the remaining or new investment options provided under clause (i), including characteristics relating to risk and rate of return, are, as of immediately after the change, reasonably similar to those of the existing investment options as of immediately before the change.

(C) The requirements of this subparagraph are met in connection with a qualified change in investment options if—

29 USCS § 1104

- (i) at least 30 days and no more than 60 days prior to the effective date of the change, the plan administrator furnishes written notice of the change to the participants and beneficiaries, including information comparing the existing and new investment options and an explanation that, in the absence of affirmative investment instructions from the participant or beneficiary to the contrary, the account of the participant or beneficiary will be invested in the manner described in subparagraph (B),
- (ii) the participant or beneficiary has not provided to the plan administrator, in advance of the effective date of the change, affirmative investment instructions contrary to the change, and
- (iii) the investments under the plan of the participant or beneficiary as in effect immediately prior to the effective date of the change were the product of the exercise by such participant or beneficiary of control over the assets of the account within the meaning of paragraph (1).

(5) Default investment arrangements.

(A) In general. For purposes of paragraph (1), a participant or beneficiary in an individual account plan meeting the notice requirements of subparagraph (B) shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant or beneficiary, are invested by the plan in accordance with regulations prescribed by the Secretary. The regulations under this subparagraph shall provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both.

(B) Notice requirements.

- (i) In general. The requirements of this subparagraph are met if each participant—
 - (I) receives, within a reasonable period of time before each plan year, a notice explaining the employee's right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant or beneficiary, such contributions and earnings will be invested, and
 - (II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation.
- (ii) Form of notice. The requirements of clauses (i) and (ii) of [section 401\(k\)\(12\)\(D\) of the Internal Revenue Code of 1986 \[26 USCS § 401\(k\)\(12\)\(D\)\]](#) shall apply with respect to the notices described in this subparagraph.

(6) Default investment arrangements for a pension-linked emergency savings account. For purposes of paragraph (1), a participant in a pension-linked emergency savings account shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which are invested in accordance with section 801(c)(1)(A)(iii) [\[29 USCS § 1193\(c\)\(1\)\(A\)\(iii\)\]](#).

(d) Plan terminations.

(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under [section 4980\(d\) of the Internal Revenue Code of 1986 \[26 USCS § 4980\(d\)\]](#), a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

- (A)** In the case of a fiduciary of the terminated plan, any requirement—
 - (i) under section 4980(d)(2)(B) of such Code [\[26 USCS § 4980\(d\)\(2\)\(B\)\]](#) with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and
 - (ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code [\[26 USCS § 4980\(d\)\(2\)\(B\)\(ii\) or \(3\)\]](#) with respect to any increase in benefits under the terminated plan.
- (B)** In the case of a fiduciary of a qualified replacement plan, any requirement—

29 USCS § 1104

- (i) under section 4980(d)(2)(A) of such Code [[26 USCS § 4980\(d\)\(2\)\(A\)](#)] with respect to participation in the qualified replacement plan of active participants in the terminated plan,
- (ii) under section 4980(d)(2)(B) of such Code [[26 USCS § 4980\(d\)\(2\)\(B\)](#)] with respect to the receipt of assets from the terminated plan, and
- (iii) under section 4980(d)(2)(C) of such Code [[26 USCS § 4980\(d\)\(2\)\(C\)](#)] with respect to the allocation of assets to participants of the qualified replacement plan.

(2) For purposes of this subsection—

- (A)** any term used in this subsection which is also used in [section 4980\(d\) of the Internal Revenue Code of 1986](#) [[26 USCS § 4980\(d\)](#)] shall have the same meaning as when used in such section, and
- (B)** any reference in this subsection to the Internal Revenue Code of 1986 [[26 USCS §§ 1](#) et seq.] shall be a reference to such Code as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990 [enacted Nov. 5, 1990].

(e) Safe harbor for annuity selection.

- (1) In general.** With respect to the selection of an insurer for a guaranteed retirement income contract, the requirements of subsection (a)(1)(B) will be deemed to be satisfied if a fiduciary—
 - (A)** engages in an objective, thorough, and analytical search for the purpose of identifying insurers from which to purchase such contracts;
 - (B)** with respect to each insurer identified under subparagraph (A)—
 - (i)** considers the financial capability of such insurer to satisfy its obligations under the guaranteed retirement income contract; and
 - (ii)** considers the cost (including fees and commissions) of the guaranteed retirement income contract offered by the insurer in relation to the benefits and product features of the contract and administrative services to be provided under such contract; and
 - (C)** on the basis of such consideration, concludes that—
 - (i)** at the time of the selection, the insurer is financially capable of satisfying its obligations under the guaranteed retirement income contract; and
 - (ii)** the relative cost of the selected guaranteed retirement income contract as described in subparagraph (B)(ii) is reasonable.
- (2) Financial capability of the insurer.** A fiduciary will be deemed to satisfy the requirements of paragraphs (1)(B)(i) and (1)(C)(i) if—
 - (A)** the fiduciary obtains written representations from the insurer that—
 - (i)** the insurer is licensed to offer guaranteed retirement income contracts;
 - (ii)** the insurer, at the time of selection and for each of the immediately preceding 7 plan years—
 - (I)** operates under a certificate of authority from the insurance commissioner of its domiciliary State which has not been revoked or suspended;
 - (II)** has filed audited financial statements in accordance with the laws of its domiciliary State under applicable statutory accounting principles;
 - (III)** maintains (and has maintained) reserves which satisfies all the statutory requirements of all States where the insurer does business; and
 - (IV)** is not operating under an order of supervision, rehabilitation, or liquidation;

29 USCS § 1104

(iii) the insurer undergoes, at least every 5 years, a financial examination (within the meaning of the law of its domiciliary State) by the insurance commissioner of the domiciliary State (or representative, designee, or other party approved by such commissioner); and

(iv) the insurer will notify the fiduciary of any change in circumstances occurring after the provision of the representations in clauses (i), (ii), and (iii) which would preclude the insurer from making such representations at the time of issuance of the guaranteed retirement income contract; and

(B) after receiving such representations and as of the time of selection, the fiduciary has not received any notice described in subparagraph (A)(iv) and is in possession of no other information which would cause the fiduciary to question the representations provided.

(3) No requirement to select lowest cost. Nothing in this subsection shall be construed to require a fiduciary to select the lowest cost contract. A fiduciary may consider the value of a contract, including features and benefits of the contract and attributes of the insurer (including, without limitation, the insurer's financial strength) in conjunction with the cost of the contract.

(4) Time of selection.

(A) In general. For purposes of this subsection, the time of selection is—

(i) the time that the insurer and the contract are selected for distribution of benefits to a specific participant or beneficiary; or

(ii) if the fiduciary periodically reviews the continuing appropriateness of the conclusion described in paragraph (1)(C) with respect to a selected insurer, taking into account the considerations described in such paragraph, the time that the insurer and the contract are selected to provide benefits at future dates to participants or beneficiaries under the plan.

Nothing in the preceding sentence shall be construed to require the fiduciary to review the appropriateness of a selection after the purchase of a contract for a participant or beneficiary.

(B) Periodic review. A fiduciary will be deemed to have conducted the periodic review described in subparagraph (A)(ii) if the fiduciary obtains the written representations described in clauses (i), (ii), and (iii) of paragraph (2)(A) from the insurer on an annual basis, unless the fiduciary receives any notice described in paragraph (2)(A)(iv) or otherwise becomes aware of facts that would cause the fiduciary to question such representations.

(5) Limited liability. A fiduciary which satisfies the requirements of this subsection shall not be liable following the distribution of any benefit, or the investment by or on behalf of a participant or beneficiary pursuant to the selected guaranteed retirement income contract, for any losses that may result to the participant or beneficiary due to an insurer's inability to satisfy its financial obligations under the terms of such contract.

(6) Definitions. For purposes of this subsection—

(A) Insurer. The term "insurer" means an insurance company, insurance service, or insurance organization, including affiliates of such companies.

(B) Guaranteed retirement income contract. The term "guaranteed retirement income contract" means an annuity contract for a fixed term or a contract (or provision or feature thereof) which provides guaranteed benefits annually (or more frequently) for at least the remainder of the life of the participant or the joint lives of the participant and the participant's designated beneficiary as part of an individual account plan.

History



Questioned

As of: January 31, 2025 4:40 PM Z

[CIGNA Corp. v. Amara](#)

Supreme Court of the United States

November 30, 2010, Argued; May 16, 2011, Decided

No. 09-804

Reporter

563 U.S. 421 *; 131 S. Ct. 1866 **; 179 L. Ed. 2d 843 ***; 2011 U.S. LEXIS 3540 ****; 79 U.S.L.W. 4297; 161 Lab. Cas. (CCH) P10,380; 50 Employee Benefits Cas. (BNA) 2569; 22 Fla. L. Weekly Fed. S 985

CIGNA CORPORATION, et al., Petitioners v. JANICE C. AMARA, et al., individually and on behalf of all others similarly situated

Subsequent History: On remand at, Motion denied by [Amara v. Cigna Corp., 925 F. Supp. 2d 242, 2012 U.S. Dist. LEXIS 180355 \(D. Conn., Dec. 20, 2012\)](#)

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

[Amara v. CIGNA Corp., 348 Fed. Appx. 627, 2009 U.S. App. LEXIS 21941 \(2d Cir. Conn., 2009\)](#)

Disposition: Vacated and remanded.

Core Terms

district court, employees, retirement, new plan, annuity, benefits, terms, reformation, percent, terms of the plan, notice, equitable relief, court of equity, equitable, initial deposit, surcharge, annual, plan participant, authorizes, plan administrator, interest rate, violations, fiduciary, deposits, estoppel, salary, detrimental reliance, obligations, calculated, contracts

Case Summary

Procedural Posture

Respondent class of participants a pension plan brought an action against petitioner employer alleging that the employer changed the plan without adequate disclosures to the detriment of the participants. Upon the grant of a writ of certiorari, the employer appealed the judgment of U.S. Court of Appeals for the Second Circuit which upheld reformation of the plan and required the employer to comply with the reformed plan.

Overview

The employer contended that the district court lacked authority to reform the plan terms under [29 U.S.C.S. § 1132\(a\)\(1\)\(B\)](#), which authorized the participants to bring a civil action under the Employee Retirement Income Security Act of 1974 to recover plan benefits. The U.S. Supreme Court unanimously held that, while [§ 1132\(a\)\(1\)\(B\)](#) did not authorize reformation of the plan, [§ 1132\(a\)\(3\)](#) authorized equitable relief which reformation essentially provided. [Section 1132\(a\)\(1\)\(B\)](#) provided only for enforcement of the plans terms and not for changing the terms, and the misleading disclosures by the employer were not enforceable plan terms. However, reformation of the plan was consistent with the authorization in [§ 1132\(a\)\(3\)](#) to provide appropriate equitable relief, the district court's injunctions provided relief which was traditionally considered equitable, and the remaining relief granted by the

district court could be supported by equitable principles of contract reformation, equitable estoppel, and monetary relief for a trustee's breach of duty. It thus remained to determine the applicable equitable principles and to apply the standards applicable to such principles.

Outcome

The judgment upholding reformation of the plan was vacated, and the case was remanded for further proceedings.

LexisNexis® Headnotes

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN1](#) [↓] Remedies, Equitable Relief

[29 U.S.C.S. § 1132\(a\)\(3\)](#) allows an employee benefit plan participant, beneficiary, or fiduciary to obtain other appropriate equitable relief to redress violations of parts of the Employee Retirement Income Security Act of 1974 or the terms of the plan.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN2](#) [↓] Remedies, Equitable Relief

The term "appropriate equitable relief " in § 502(a)(3) of the Employee Retirement Income Security Act of 1974 refers to those categories of relief that, traditionally speaking (i.e., prior to the merger of law and equity) were typically available in equity.

Civil Procedure > ... > Equity > Maxims > Remedy Principle

[HN3](#) [↓] Maxims, Remedy Principle

A maxim of equity states that equity suffers not a right to be without a remedy.

Contracts Law > ... > Estoppel > Equitable Estoppel > General Overview

[HN4](#) [↓] Estoppel, Equitable Estoppel

Equitable estoppel operates to place the person entitled to its benefit in the same position he would have been in had the representations been true.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN5](#) [↓] Remedies, Equitable Relief

Section 502(a)(3) of the of the Employee Retirement Income Security Act of 1974 invokes the equitable powers of a district court.

Lawyers' Edition Display

Decision

[**843] [ERISA § 502\(a\)\(1\)\(B\)](#) ([29 U.S.C.S. § 1132\(a\)\(1\)\(B\)](#)) held not to authorize Federal District Court's reformation of pension plan allegedly changed by employer without adequate disclosures; but [ERISA § 502\(a\)\(3\)](#) ([29 U.S.C.S. § 1132\(a\)\(3\)](#)) held to authorize reformation under standard depending on equitable theory.

Summary

Procedural posture: Respondent class of participants a pension plan brought an action against petitioner employer alleging that the employer changed the plan without adequate disclosures to the detriment of the participants. Upon the grant of a writ of certiorari, the employer appealed the judgment of U.S. Court of Appeals for the Second Circuit which upheld reformation of the plan and required the employer to comply with the reformed plan.

Overview: The employer contended that the district court lacked authority to reform the plan terms under [29 U.S.C.S. § 1132\(a\)\(1\)\(B\)](#), which authorized the participants to bring a civil action under the Employee Retirement Income Security Act of 1974 to recover plan benefits. The U.S. Supreme Court unanimously held that, while [§ 1132\(a\)\(1\)\(B\)](#) did not authorize reformation of the plan, [§ 1132\(a\)\(3\)](#) authorized equitable relief which reformation essentially provided. [Section 1132\(a\)\(1\)\(B\)](#) provided only for enforcement of the plans terms and not for changing the terms, and the misleading disclosures by the employer were not enforceable plan terms. However, reformation of the plan was consistent with the authorization in [§ 1132\(a\)\(3\)](#) to provide appropriate equitable relief, the district court's injunctions provided relief which was traditionally considered equitable, and the remaining relief granted by the district court could be supported by equitable principles of contract reformation, equitable estoppel, and monetary relief for a trustee's breach of duty. It thus remained to determine the applicable equitable principles and to apply the standards applicable to such principles.

Outcome: The judgment upholding reformation of the plan was vacated, and the case was remanded for further proceedings.

Headnotes

[**844]

PENSIONS AND RETIREMENT FUNDS §13 > ERISA VIOLATIONS -- RELIEF > Headnote:

[LEdHN\[1\]](#) [1]

[29 U.S.C.S. § 1132\(a\)\(3\)](#) allows an employee benefit plan participant, beneficiary, or fiduciary to obtain other appropriate equitable relief to redress violations of parts of the Employee Retirement Income Security Act of 1974 or the terms of the plan. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA VIOLATIONS -- APPROPRIATE EQUITABLE RELIEF > Headnote:

[LEdHN\[2\]](#) [2]

The term “appropriate equitable relief” in [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 refers to those categories of relief that, traditionally speaking (i.e., prior to the merger of law and equity) were typically available in equity. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

EQUITY §87 > MAXIM -- REMEDY > Headnote:

[LEdHN\[3\]](#) [3]

A maxim of equity states that equity suffers not a right to be without a remedy. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

ESTOPPEL AND WAIVER §39 > EQUITABLE ESTOPPEL -- OPERATION > Headnote:

[LEdHN\[4\]](#) [4]

Equitable estoppel operates to place the person entitled to its benefit in the same position he would have been in had the representations been true. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE RELIEF > Headnote:

[LEdHN\[5\]](#) [5]

[Section 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 invokes the equitable powers of a district court. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

Syllabus

[*421] [***845] [**1868] Until 1998, petitioner CIGNA Corporation's pension plan provided a retiring employee with an annuity based on preretirement salary and length of service. Its new plan replaced that annuity with a cash balance based on a defined annual contribution from CIGNA, increased by compound interest. The new plan translated already-earned benefits under the old plan into an opening amount in the cash balance account. Respondents, on behalf of beneficiaries of the CIGNA Pension Plan (also a petitioner), challenged the new plan's adoption, claiming, as relevant here, that CIGNA's notice of the changes was improper, particularly because the new plan in certain respects provided them with less generous benefits. The District Court found that CIGNA's disclosures violated its obligations under [§§ 102\(a\)](#), [104\(b\)](#), and [204\(h\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA). In determining relief, it found that CIGNA's notice defects had caused the employees “likely harm.” It then reformed the new plan and ordered CIGNA to pay benefits accordingly, finding its authority [****2] in [ERISA § 502\(a\)\(1\)\(B\)](#), which authorizes a plan “participant or beneficiary” to bring a “civil action” to “recover benefits due . . . under the terms of his plan.” The Second Circuit affirmed.

Held:

1. Although [§ 502\(a\)\(1\)\(B\)](#) did not give the District Court authority to reform CIGNA's plan, relief is authorized by [§ 502\(a\)\(3\)](#), which allows a participant, beneficiary, or fiduciary “to obtain other appropriate equitable relief” to redress violations of ERISA “or the [plan's] terms.” *Pp.* _____, 179 L. Ed. 2d, at 854-858.

(a) The court ordered relief in two steps. Step 1: It ordered the terms of the plan reformed. Step 2: It ordered CIGNA to enforce the plan as reformed. Step 2 orders recovery of the benefits provided by the “terms of [the reformed] plan” and is thus consistent with [§ 502\(a\)\(1\)\(B\)](#). However, that provision--which speaks of “enforc[ing]” the plan’s terms, not changing them--does not suggest that it authorizes a court to alter those terms here, where the change, akin to reforming a contract, seems less like the simple enforcement of a contract as written and more like an equitable remedy. Nor can the Court accept the [*422] Solicitor General’s alternative rationale: that the District Court enforced the [****3] summary plan descriptions and that they are plan terms. That reading cannot be squared with [ERISA § 102\(a\)](#), [****846] which obliges plan administrators to furnish summary plan descriptions, but does not suggest that information about the plan provided by those disclosures is itself part of the plan. Nothing in [§ 502\(a\)\(1\)\(B\)](#) suggests the contrary. The Solicitor General’s reading also cannot be squared with the statute’s division of authority between a plan’s sponsor--who, like a trust’s settlor, creates the plan’s [**1869] basic terms and conditions, executes a written instrument containing those terms and conditions, and provides in that instrument a procedure for making amendments--and the plan’s administrator--a trustee-like fiduciary who manages the plan, follows its terms in doing so, and provides participants with the summary plan descriptions. ERISA carefully distinguishes these roles, and there is no reason to believe that the statute intends to mix the responsibilities by giving the administrator the power to set plan terms indirectly in the summaries, even when, as here, the administrator is also the plan sponsor. Finally, it is difficult to reconcile an interpretation that would make [****4] a summary’s language legally binding with the basic summary plan description objective of clear, simple communication. [Pp. _____ - _____, 179 L. Ed. 2d, at 854-855.](#)

(b) This Court has interpreted [§ 502\(a\)\(3\)](#)’s phrase “appropriate equitable relief” as referring to “ ‘those categories of relief ’ ” that, before the merger of law and equity, “ ‘were typically available in equity.’ ” [Sereboff v. Mid Atlantic Medical Services, Inc., 547 U.S. 356, 361, 126 S. Ct. 1869, 164 L. Ed. 2d 612.](#) This case--concerning a beneficiary’s suit against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust)--is the kind of lawsuit that, before the merger, could have been brought only in an equity court, where the remedies available were traditionally considered equitable remedies. The District Court’s injunctions obviously fall within this category. The other relief it ordered closely resembles three forms of traditional equitable relief. First, what the court did here may be regarded as the reformation of the plan’s terms, in order to remedy false or misleading information CIGNA provided. The power to reform contracts is a traditional power of an equity court and is used to prevent fraud. Second, the part [****5] of the remedy holding CIGNA to its promise that the new plan would not take from its employees previously accrued benefits resembles estoppel, also a traditional equitable remedy. Third, the injunctions require the plan administrator to pay already retired beneficiaries money owed them under the plan as reformed. Equity courts possessed the power to provide monetary “compensation” for a loss resulting from a trustee’s breach of duty, or to prevent the trustee’s unjust enrichment. That surcharge remedy extended to a breach of trust committed [*423] by a fiduciary encompassing any violation of duty imposed on that fiduciary. [Pp. 438-442.](#)

2. Because [§ 502\(a\)\(3\)](#) authorizes “appropriate equitable relief” for violations of ERISA, the relevant standard of harm will depend on the equitable theory by which the District Court provides relief. That court is to conduct the analysis in the first instance, but there are several equitable principles that it might apply on remand. Neither ERISA’s relevant substantive provisions nor [§ 502\(a\)\(3\)](#) sets a particular standard for determining [****847] harm. And equity law provides no general principle that “detrimental reliance” must be proved before a remedy is decreed. To [****6] the extent any such requirement arises, it is because the specific remedy being contemplated imposes that requirement. Thus, when a court exercises authority under [§ 502\(a\)\(3\)](#) to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made. However, equity courts did not insist on a detrimental reliance showing where they ordered reformation where a fraudulent suppression, omission, or insertion materially affected the substance of a contract. Nor did they require a detrimental reliance showing when they ordered surcharge. They simply ordered a trust or beneficiary [**1870] made whole following a trustee’s breach of trust. This flexible approach belies a strict detrimental reliance requirement. To be sure, a fiduciary can be surcharged under [§ 502\(a\)\(3\)](#) only upon a showing of actual harm, and such harm may consist of detrimental reliance. But it might also come from the loss of a right protected by ERISA or its trust-law antecedents. It is not difficult to imagine how the failure to provide proper summary information here, in violation of ERISA, injured employees even if they did not themselves act in reliance on the summaries. Thus, to obtain relief by surcharge for [****7] violations of [§§](#)

563 U.S. 421, *423; 131 S. Ct. 1866, **1870; 179 L. Ed. 2d 843, ***847; 2011 U.S. LEXIS 3540, ****7

[102\(a\)](#) and [104\(b\)](#), a plan participant or beneficiary must show that the violation caused injury, but need show only actual harm and causation, not detrimental reliance. [Pp. ____ - ____, 179 L. Ed. 2d, at 858-860.](#)

[348 Fed. Appx. 627](#), vacated and remanded.

Counsel: Theodore B. Olson argued the cause for petitioners.

Stephen R. Bruce argued the cause for respondents.

Edwin S. Kneedler argued the cause for the United States, as amicus curiae, by special leave of court.

Judges: Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ., joined. Scalia, J., filed an opinion concurring in the judgment, in which Thomas, J., joined. Sotomayor, J., took no part in the consideration or decision of the case.

Opinion by: BREYER

Opinion

[*424] Justice **Breyer** delivered the opinion of the Court.

In 1998, petitioner CIGNA Corporation changed the nature of its basic pension plan for employees. Previously, the plan provided a retiring employee with a defined benefit in the form of an annuity calculated on the basis of his preretirement salary and length of service. The new plan provided most retiring employees with a (lump sum) cash balance calculated on the basis of a defined annual contribution from CIGNA as increased by compound interest. Because many employees had already earned at least some old-plan benefits, the new plan translated already-earned benefits into an opening amount in the employee's cash [****8] balance account.

Respondents, acting on behalf of approximately 25,000 beneficiaries of the CIGNA Pension Plan (which is also a petitioner here), challenged CIGNA's adoption of the new plan. They claimed in part that CIGNA had failed to give them proper notice of changes to their benefits, particularly because the new plan in certain respects provided them with less generous benefits. See Employee Retirement Income Security Act of 1974 (ERISA) §§ 102(a), 104(b), 204(h), 88 Stat. 841, [*425] 848, 862, as amended, [29 U.S.C. §§ 1022\(a\), 1024\(b\), 1054\(h\)](#).

The District Court agreed that the [***848] disclosures made by CIGNA violated its obligations [**1871] under ERISA. In determining relief, the court found that CIGNA's notice failures had caused the employees "likely harm." The Court then reformed the new plan and ordered CIGNA to pay benefits accordingly. It found legal authority for doing so in [ERISA § 502\(a\)\(1\)\(B\)](#), [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#) (authorizing a plan "participant or beneficiary" to bring a "civil action" to "recover benefits due to him under the terms of his plan").

We agreed to decide whether the District Court applied the correct legal standard, namely, a "likely harm" standard, in determining that [****9] CIGNA's notice violations caused its employees sufficient injury to warrant legal relief. To reach that question, we must first consider a more general matter--whether the ERISA section just mentioned (ERISA's recovery-of-benefits-due provision, [§ 502\(a\)\(1\)\(B\)](#)) authorizes entry of the relief the District Court provided. We conclude that it does not authorize this relief. Nonetheless, we find that a different equity-related ERISA provision, to which the District Court also referred, authorizes forms of relief similar to those that the court entered. [§ 502\(a\)\(3\)](#), [29 U.S.C. § 1132\(a\)\(3\)](#).

[Section 502\(a\)\(3\)](#) authorizes "appropriate equitable relief " for violations of ERISA. Accordingly, the relevant standard of harm will depend upon the equitable theory by which the District Court provides relief. We leave it to the

District Court to conduct that analysis in the first instance, but we identify equitable principles that the court might apply on remand.

I

Because our decision rests in important part upon the circumstances present here, we shall describe those circumstances in some detail. We still simplify in doing so. But [*426] the interested reader can find a more thorough description in two District [****10] Court opinions, which set forth that court's findings reached after a lengthy trial. See [559 F. Supp. 2d 192 \(Conn. 2008\)](#); [534 F. Supp. 2d 288 \(Conn. 2008\)](#).

A

Under CIGNA's pre-1998 defined-benefit retirement plan, an employee with at least five years service would receive an annuity annually paying an amount that depended upon the employee's salary and length of service. Depending on when the employee had joined CIGNA, the annuity would equal either (1) 2 percent of the employee's average salary over his final three years with CIGNA, multiplied by the number of years worked (up to 30); or (2) 1 2/3 percent of the employee's average salary over his final five years with CIGNA, multiplied by the number of years worked (up to 35). Calculated either way, the annuity would approach 60 percent of a longtime employee's final salary. A well-paid longtime employee, earning, say, \$160,000 per year, could receive a retirement annuity paying the employee about \$96,000 per year until his death. The plan offered many employees at least one other benefit: They could retire early, at age 55, and receive an only-somewhat-reduced annuity.

In November 1997, CIGNA sent its employees a newsletter announcing [****11] that it intended to put in place a new pension plan. The new plan would substitute an "account balance plan" for CIGNA's pre-existing defined-benefit system. App. 991a (emphasis deleted). The newsletter added that [***849] the old plan would end on December 31, 1997, that CIGNA would introduce (and describe) the new plan sometime during 1998, and that the new plan would apply retroactively to January 1, 1998.

Eleven months later CIGNA filled in the details. Its new plan created an individual [**1872] retirement account for each employee. (The account consisted of a bookkeeping entry backed by a CIGNA-funded trust.) Each year CIGNA [*427] would contribute to the employee's individual account an amount equal to between 3 percent and 8.5 percent of the employee's salary, depending upon age, length of service, and certain other factors. The account balance would earn compound interest at a rate equal to the return on 5-year treasury bills plus one-quarter percent (but no less than 4.5 percent and no greater than 9 percent). Upon retirement the employee would receive the amount then in his or her individual account--in the form of either a lump sum or whatever annuity the lump sum then would buy. As promised, [****12] CIGNA would open the accounts and begin to make contributions as of January 1, 1998.

But what about the retirement benefits that employees had already earned prior to January 1, 1998? CIGNA promised to make an initial contribution to the individual's account equal to the value of that employee's already-earned benefits. And the new plan set forth a method for calculating that initial contribution. The method consisted of calculating the amount as of the employee's (future) retirement date of the annuity to which the employee's salary and length of service already (*i.e.*, as of December 31, 1997) entitled him and then discounting that sum to its present (*i.e.*, January 1, 1998) value.

An example will help: Imagine an employee born on January 1, 1966, who joined CIGNA in January 1991 on his 25th birthday, and who (during the five years preceding the plan changeover) earned an average salary of \$100,000 per year. As of January 1, 1998, the old plan would have entitled that employee to an annuity equal to \$100,000 times 7 (years then worked) times 1 2/3 percent, or \$11,667 per year--when he retired in 2031 at age 65. The 2031 price of an annuity paying \$11,667 per year until death depends [****13] upon interest rates and mortality assumptions at that time. If we assume the annuity would pay 7 percent until the holder's death (and we use the mortality assumptions used by the plan, see App. 407a (incorporating the mortality table prescribed by [Rev. Rul. 95-6, 1995-1 Cum. Bull. 80](#))), [*428] then the 2031 price of such an annuity would be about \$120,500. And CIGNA should initially deposit in this individual's account on January 1, 1998, an amount that will grow to become

\$120,500, 33 years later, in 2031, when the individual retires. If we assume a 5 percent average interest rate, then that amount presently (*i.e.*, as of January 1, 1998) equals about \$24,000. And (with one further mortality-related adjustment that we shall describe [infra, at _____, 179 L. Ed. 2d, at 850-851](#)) that is the amount, more or less, that the new plan's transition rules would have required CIGNA initially to deposit. Then CIGNA would make further annual deposits, and all the deposited amounts would earn compound interest. When the employee retired, he would receive the resulting lump sum.

[*850]** The new plan also provided employees a guarantee: An employee would receive upon retirement either (1) the amount to which he or she had become entitled **[****14]** as of January 1, 1998, or (2) the amount then in his or her individual account, whichever was greater. Thus, the employee in our example would receive (in 2031) no less than an annuity paying \$11,667 per year for life.

B

1

The District Court found that CIGNA's initial descriptions of its new plan were significantly incomplete and misled its employees. In November 1997, for example, CIGNA sent the employees a newsletter **[**1873]** that said the new plan would “significantly enhance” its “retirement program,” would produce “an overall improvement in . . . retirement benefits,” and would provide “the same benefit security” with “steadier benefit growth.” App. 990a, 991a, 993a. CIGNA also told its employees that they would “see the growth in [their] total retirement benefits from CIGNA every year,” *id.*, at 952a, that its initial deposit “represent[ed] the full value of the benefit [they] earned for service before 1998,” Record E-503 **[*429]** (Exh. 98), and that “[o]ne advantage the company *will not* get from the retirement program changes is cost savings,” App. 993a.

In fact, the new plan saved the company \$10 million annually (though CIGNA later said it devoted the savings to other employee benefits). Its initial **[****15]** deposit did not “represent[t] the full value of the benefit” that employees had “earned for service before 1998.” And the plan made a significant number of employees worse off in at least the following specific ways:

First, the initial deposit calculation ignored the fact that the old plan offered many CIGNA employees the right to retire early (beginning at age 55) with only somewhat reduced benefits. This right was valuable. For example, as of January 1, 1998, respondent Janice Amara had earned vested age-55 retirement benefits of \$1,833 per month, but CIGNA's initial deposit in her new-plan individual retirement account (ignoring this benefit) would have allowed her at age 55 to buy an annuity benefit of only \$900 per month.

Second, as we previously indicated but did not explain, [supra, at _____, 179 L. Ed. 2d, at 850](#), the new plan adjusted CIGNA's initial deposit downward to account for the fact that, unlike the old plan's lifetime annuity, an employee's survivors would receive the new plan's benefits (namely, the amount in the employee's individual account) even if the employee died before retiring. The downward adjustment consisted of multiplying the otherwise-required deposit by the probability that the **[****16]** employee would live until retirement--a 90 percent probability in the example of our 32-year-old, [supra, at _____, 179 L. Ed. 2d, at 849-850](#). And that meant that CIGNA's initial deposit in our example--the amount that was supposed to grow to \$120,500 by 2031--would be less than \$22,000, not \$24,000 (the number we computed). The employee, of course, would receive a benefit in return--namely, a form of life insurance. But at least some employees might have preferred the retirement **[*430]** benefit and consequently could reasonably have thought it important to know that the **[***851]** new plan traded away one-tenth of their already-earned benefits for a life insurance policy that they might not have wanted.

Third, the new plan shifted the risk of a fall in interest rates from CIGNA to its employees. Under the old plan, CIGNA had to buy a retiring employee an annuity that paid a specified sum irrespective of whether falling interest rates made it more expensive for CIGNA to pay for that annuity. And falling interest rates also meant that any sum CIGNA set aside to buy that annuity would grow more slowly over time, thereby requiring CIGNA to set aside more money to make any specific sum available at retirement. Under the new **[****17]** plan CIGNA did not have to buy a retiring employee an annuity that paid a specific sum. The employee would simply receive whatever sum his

account contained. And falling interest rates meant that the account's lump sum would earn less money each year after the employee retired. Annuities, for example, would become more expensive (any fixed purchase price paying for less annual income). At the same time falling interest meant that the individual account would grow more slowly over time, **[**1874]** leaving the employee with less money at retirement.

Of course, interest rates might rise instead of fall, leaving CIGNA's employees better off under the new plan. But the latter advantage does not cancel out the former disadvantage, for most individuals are risk averse. And that means that most of CIGNA's employees would have preferred that CIGNA, rather than they, bear these risks.

The amounts likely involved are significant. If, in our example, interest rates between 1998 and 2031 averaged 4 percent rather than the 5 percent we assumed, and if in 2031 annuities paid 6 percent rather than the 7 percent we assumed, then CIGNA would have had to make an initial deposit of \$35,500 (not \$24,000) to assure **[****18]** that employee the **[*431]** \$11,667 annual annuity payment to which he had already become entitled. Indeed, that \$24,000 that CIGNA would have contributed (leaving aside the life-insurance problem) would have provided enough money to buy (in 2031) an annuity that assured the employee an annual payment of only about \$8,000 (rather than \$11,667).

We recognize that the employee in our example (like others) might have continued to work for CIGNA after January 1, 1998; and he would thereby eventually have earned a pension that, by the time of his retirement, was worth far more than \$11,667. But that is so because CIGNA made an *additional* contribution for each year worked *after* January 1, 1998. If interest rates fell (as they did), it would take the employee several additional years of work simply to catch up (under the new plan) to where he had already been (under the old plan) as of January 1, 1998--a phenomenon known in pension jargon as "wear away," see [534 F. Supp. 2d, at 303-304](#) (referring to respondents' requiring 6 to 10 years to catch up).

The District Court found that CIGNA told its employees nothing about any of these features of the new plan--which individually and together made **[****19]** clear that CIGNA's descriptions of the plan were incomplete and inaccurate. The District Court also found that CIGNA intentionally misled its employees. A focus group and many employees asked CIGNA, **[***852]** for example, to " '[d]isclose details' " about the plan, to provide " 'individual comparisons,' " or to show " '[a]n actual projection for retirement.' " [Id., at 342](#). But CIGNA did not do so. Instead (in the words of one internal document), it " 'focus[ed] on NOT providing employees before and after samples of the Pension Plan changes.' " [Id., at 343](#).

The District Court concluded, as a matter of law, that CIGNA's representations (and omissions) about the plan, made between November 1997 (when it announced the plan) and December 1998 (when it put the plan into effect) violated:

[*432] (1) [ERISA § 204\(h\)](#), implemented by Treas. Reg. § 1.411(d)-6, 26 CFR § 1.411(d)-6 (2000), which (as it existed at the relevant time) forbade an amendment of a pension plan that would "provide for a significant reduction in the rate of future benefit accrual" unless the plan administrator also sent a "written notice" that provided either the text of the amendment or summarized its likely effects, [29 U.S.C. § 1054\(h\) \(2000 ed.\)](#) **[****20]** (amended 2001); Treas. Reg. § 1.411(d)-6, Q&A-10, [63 Fed. Reg. 68682 \(1998\)](#); and

(2) [ERISA §§ 102\(a\)](#) and [104\(b\)](#), which require a plan administrator to provide beneficiaries with summary plan descriptions and with summaries of material modifications, "written in a manner calculated to be understood by the average plan participant," that are "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their **[**1875]** rights and obligations under the plan," [29 U.S.C. §§ 1022\(a\), 1024\(b\) \(2006 ed. and Supp. III\)](#).

2

The District Court then turned to the remedy. First, the court agreed with CIGNA that only employees whom CIGNA's disclosure failures had harmed could obtain relief. But it did not require each individual member of the relevant CIGNA employee class to show individual injury. Rather, it found (1) that the evidence presented had

raised a presumption of “likely harm” [****21] suffered by the members of the relevant employee class, and (2) that CIGNA, though free to offer contrary evidence in respect to some or all of those employees, had failed to rebut that presumption. It concluded that this un rebutted showing was sufficient to warrant class-applicable relief.

Second, the court noted that [§ 204\(h\)](#) had been interpreted by the Second Circuit to permit the invalidation of plan amendments not preceded by a proper notice, prior to the 2001 amendment that made this power explicit. [559 F. Supp. 2d, at 207](#) (citing [Frommert v. Conkright](#), [***433**] [433 F.3d 254, 263 \(2006\)](#)); see [29 U.S.C. § 1054\(h\)\(6\) \(2006 ed.\)](#) (entitling participants to benefits “without regard to [the] amendment” in case of an “egregious failure”). But the court also thought that granting this relief here would harm, not help, the injured employees. That is because the notice failures all concerned the new plan that took effect in December 1998. The court thought that the notices in respect to the freezing of old-plan benefits, effective December 31, 1997, were valid. To strike the new plan while leaving in effect the frozen old plan would not help CIGNA's employees.

The court considered treating the November [****22] 1997 notice as a sham or [***853] treating that notice and the later 1998 notices as part and parcel of a single set of related events. But it pointed out that respondents “ha[d] argued none of these things.” [559 F. Supp. 2d, at 208](#). And it said that the court would “not make these arguments now on [respondents'] behalf.” *Ibid.*

Third, the court reformed the terms of the new plan's guarantee. It erased the portion that assured participants who retired the greater of “A” (that which they had already earned as of December 31, 1997, under the old plan, \$11,667 in our example) or “B” (that which they would earn via CIGNA's annual deposits under the new plan, including CIGNA's initial deposit). And it substituted a provision that would guarantee each employee “A” (that which they had already earned, as of December 31, 1997, under the old plan) plus “B” (that which they would earn via CIGNA's annual deposits under the new plan, excluding CIGNA's initial deposit). In our example, the District Court's remedy would no longer force our employee to choose upon retirement either an \$11,667 annuity or his new plan benefits (including both CIGNA's annual deposits and CIGNA's initial deposit). It would give [****23] him an \$11,667 annuity plus his new-plan benefits (with CIGNA's annual deposits but without CIGNA's initial deposit).

[*434] Fourth, the court “order[ed] and enjoin[ed] the CIGNA Plan to reform its records to reflect that all class members . . . now receive [the just described] 'A + B' benefits,” and that it pay appropriate benefits to those class members who had already retired. *Id.*, at 222.

Fifth, the court held that [ERISA § 502\(a\)\(1\)\(B\)](#) provided the legal authority to enter this relief. That provision states that a “civil action may be brought” by a plan “participant or beneficiary . . . to recover benefits due to him under the terms [**1876] of his plan.” [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#). The court wrote that its orders in effect awarded “benefits under the terms of the plan” as reformed. [559 F. Supp. 2d, at 212](#).

At the same time the court considered whether [ERISA § 502\(a\)\(3\)](#) also provided legal authority to enter this relief. That provision states that a civil action may be brought

“by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other *appropriate equitable relief* (i) to redress such [****24] violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.” [29 U.S.C. § 1132\(a\)\(3\)](#) (emphasis added).

The District Court decided not to answer this question because (1) it had just decided that the same relief was available under [§ 502\(a\)\(1\)\(B\)](#), regardless, cf. [Varity Corp. v. Howe](#), [516 U.S. 489, 515, 116 S. Ct. 1065, 134 L. Ed. 2d 130 \(1996\)](#); and (2) the Supreme Court has “issued several opinions . . . that have severely curtailed the kinds of relief that are available under [§ 502\(a\)\(3\)](#),” [559 F. Supp. 2d, at 205](#) (citing [Sereboff v. Mid Atlantic Medical Services, Inc.](#), [547 U.S. 356, 126 S. Ct. 1869, 164 L. Ed. 2d 612 \(2006\)](#); [Great-West Life & Annuity Ins. Co. v. Knudson](#), [534 U.S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635 \(2002\)](#); and [Mertens v. Hewitt Associates](#), [508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#)).

3

The parties cross-appealed the District [***854] Court's judgment. The Court of Appeals for the Second Circuit issued a brief [*435] summary order, rejecting all their claims, and affirming "the judgment of the district court for substantially the reasons stated" in the District Court's "well-reasoned and scholarly opinions." [348 Fed. Appx. 627 \(2009\)](#). The parties filed cross-petitions for writs of certiorari in this Court. We granted the request in CIGNA's petition to consider whether a showing of [****25] "likely harm" is sufficient to entitle plan participants to recover benefits based on faulty disclosures.

II

CIGNA in the merits briefing raises a preliminary question. Brief for Petitioners 13-20. It argues first and foremost that the statutory provision upon which the District Court rested its orders, namely, the provision for recovery of plan benefits, [§ 502\(a\)\(1\)\(B\)](#), does not in fact authorize the District Court to enter the kind of relief it entered here. And for that reason, CIGNA argues, whether the District Court did or did not use a proper standard for determining harm is beside the point. We believe that this preliminary question is closely enough related to the question presented that we shall consider it at the outset.

A

The District Court ordered relief in two steps. Step 1: It ordered the terms of the plan reformed (so that they provided an "A plus B," rather than a "greater of A or B" guarantee). Step 2: It ordered the plan administrator (which it found to be CIGNA) to enforce the plan as reformed. One can fairly describe step 2 as consistent with [§ 502\(a\)\(1\)\(B\)](#), for that provision grants a participant the right to bring a civil action to "recover benefits due . . . under [****26] the terms of his plan." [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#). And step 2 orders recovery of the benefits provided by the "terms of [the] plan" as *reformed*.

But what about step 1? Where does [§ 502\(a\)\(1\)\(B\)](#) grant a court the power to *change* the terms of the plan as they [*436] previously existed? The statutory language [**1877] speaks of "*enforc[ing]*" the "terms of the plan," not of *changing* them. [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#) (emphasis added). The provision allows a court to look outside the plan's written language in deciding what those terms are, *i.e.*, what the language means. See [UNUM Life Ins. Co. of America v. Ward, 526 U.S. 358, 377-379, 119 S. Ct. 1380, 143 L. Ed. 2d 462 \(1999\)](#) (permitting the insurance terms of an ERISA-governed plan to be interpreted in light of state insurance rules). But we have found nothing suggesting that the provision authorizes a court to alter those terms, at least not in present circumstances, where that change, akin to the reform of a contract, seems less like the simple enforcement of a contract as written and more like an equitable remedy. See [infra, at _____, 179 L. Ed. 2d, at 857](#).

Nor can we accept the Solicitor General's alternative rationale seeking to justify the use of this provision. The Solicitor General says that the District Court [****27] did enforce the plan's terms as written, adding that the "plan" includes the disclosures that constituted the summary plan descriptions. In other words, in the view of the Solicitor General, the terms of the summaries are terms of the plan.

Even if the District Court had viewed the summaries as plan "terms" (which it did not, see [supra, at \[***855\] _____, 179 L. Ed. 2d, at 853](#)), however, we cannot agree that the terms of statutorily required plan summaries (or summaries of plan modifications) necessarily may be enforced (under [§ 502\(a\)\(1\)\(B\)](#)) as the terms of the plan itself. For one thing, it is difficult to square the Solicitor General's reading of the statute with [ERISA § 102\(a\)](#), the provision that obliges plan administrators to furnish summary plan descriptions. The syntax of that provision, requiring that participants and beneficiaries be advised of their rights and obligations "under the plan," suggests that the information *about* the plan provided by those disclosures is not itself *part of* the plan. See [29 U.S.C. § 1022\(a\)](#). Nothing in [§ 502\(a\)\(1\)\(B\)](#) (or, as far as we can tell, anywhere else) suggests the contrary.

[*437] Nor do we find it easy to square the Solicitor General's reading with the statute's division of authority [****28] between a plan's sponsor and the plan's administrator. The plan's sponsor (*e.g.*, the employer), like a trust's settlor, creates the basic terms and conditions of the plan, executes a written instrument containing those

terms and conditions, and provides in that instrument “a procedure” for making amendments. [§ 402, 29 U.S.C. § 1102](#). The plan's administrator, a trustee-like fiduciary, manages the plan, follows its terms in doing so, and provides participants with the summary documents that describe the plan (and modifications) in readily understandable form. §§ 3(21)(A), 101(a), 102, 104, [29 U.S.C. §§ 1002\(21\)\(A\), 1021\(a\), 1022, 1024 \(2006 ed. and Supp. III\)](#). Here, the District Court found that the same entity, CIGNA, filled both roles. See [534 F. Supp. 2d, at 331](#). But that is not always the case. Regardless, we have found that ERISA carefully distinguishes these roles. See, e.g., [Varity Corp., 516 U.S., at 498, 116 S. Ct. 1065, 134 L. Ed. 2d 130](#). And we have no reason to believe that the statute intends to mix the responsibilities by giving the administrator the power to set plan terms indirectly by including them in the summary plan descriptions. See [Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 81-85, 115 S. Ct. 1223, 131 L. Ed. 2d 94 \(1995\)](#).

Finally, [****29] we find it difficult to reconcile the Solicitor General's interpretation with the basic summary plan description objective: clear, simple communication. See §§ 2(a), 102(a), [29 U.S.C. § 1001\(a\), 1022\(a\) \(2006 ed.\)](#). To make the language of a plan summary legally binding could [**1878] well lead plan administrators to sacrifice simplicity and comprehensibility in order to describe plan terms in the language of lawyers. Consider the difference between a will and the summary of a will or between a property deed and its summary. Consider, too, the length of Part I of this opinion, and then consider how much longer Part I would have to be if we had to include all the qualifications and nuances that a plan drafter [*438] might have found important and feared to omit lest they lose all legal significance. The District Court's opinions take up 109 pages of the Federal Supplement. None of this is to say that plan administrators can avoid providing complete and accurate summaries of plan terms in the manner required by ERISA and its implementing regulations. But we fear that the Solicitor General's rule might bring about complexity that would defeat the fundamental purpose of the summaries.

For these reasons [****30] taken together we conclude that the summary documents, important as they are, provide [***856] communication with beneficiaries *about* the plan, but that their statements do not themselves constitute the *terms* of the plan for purposes of [§ 502\(a\)\(1\)\(B\)](#). We also conclude that the District Court could not find authority in that section to reform CIGNA's plan as written.

B

If [§ 502\(a\)\(1\)\(B\)](#) does not authorize entry of the relief here at issue, what about nearby [§ 502\(a\)\(3\)](#)? [HN1\[↑\]](#) [LEdHN1\[↑\]](#) [1] That provision allows a participant, beneficiary, or fiduciary “to obtain other *appropriate equitable relief*” to redress violations of (here relevant) parts of ERISA “or the terms of the plan.” [29 U.S.C. § 1132\(a\)\(3\)](#) (emphasis added). The District Court strongly implied, but did not directly hold, that it would base its relief upon this subsection were it not for (1) the fact that the preceding “plan benefits due” provision, [§ 502\(a\)\(1\)\(B\)](#), provided sufficient authority; and (2) certain cases from this Court that narrowed the application of the term “appropriate equitable relief,” see, e.g., [Mertens, 508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#); [Great-West, 534 U.S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). Our holding in Part II-A, *supra*, removes the District Court's first obstacle. And given [****31] the likelihood that, on remand, the District Court will turn to and rely upon this alternative subsection, we consider the court's second concern. We find that concern misplaced.

[*439] We have interpreted [HN2\[↑\]](#) [LEdHN2\[↑\]](#) [2] the term “appropriate equitable relief” in [§ 502\(a\)\(3\)](#) as referring to “ ‘those categories of relief ’ ” that, traditionally speaking (*i.e.*, prior to the merger of law and equity), “ ‘were *typically* available in equity.’ ” [Sereboff, 547 U.S., at 361, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (quoting [Mertens, 508 U.S., at 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#)). In [Mertens](#), we applied this principle to a claim seeking money damages brought by a beneficiary against a private firm that provided a trustee with actuarial services. We found that the plaintiff sought “nothing other than compensatory damages” against a nonfiduciary. *Id.*, at 253, 255, [113 S. Ct. 2063, 124 L. Ed. 2d 161](#) (emphasis deleted). And we held that such a claim, traditionally speaking, was legal, not equitable, in nature. *Id.*, at 255, [113 S. Ct. 2063, 124 L. Ed. 2d 161](#).

In [Great-West](#), we considered a claim brought by a fiduciary against a tort-award-winning beneficiary seeking monetary reimbursement for medical outlays that the plan had previously made on the beneficiary's behalf. We noted that the fiduciary sought to obtain a lien attaching to (or a constructive trust imposed [****32] upon) money

that the beneficiary had received from the tort-case defendant. But we noted that the money in question was not the **[**1879]** “particular” money that the tort defendant had paid. And, traditionally speaking, relief that sought a lien or a constructive trust was legal relief, not equitable relief, unless the funds in question were “*particular funds or property in the defendant's possession.*” [534 U.S., at 213, 122 S. Ct. 708, 151 L. Ed. 2d 635](#) (emphasis added).

The case before us concerns a suit by a beneficiary against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust). See [LaRue v. DeWolff, Boberg & Associates, Inc., 552 U.S. 248, 253, n. 4, 128 S. Ct. 1020, 169 L. Ed. 2d 847 \(2008\)](#); [Varity Corp., 516 U.S., at 496-497, 116 S. Ct. 1065, 134 L. Ed. 2d \[***857\] 130](#). It is the kind of lawsuit that, before the merger of law and equity, respondents could have brought only in a court of equity, not a court of law. 4 A. Scott, W. Fratcher, & M. Ascher, *Trusts* § 24.1, p. 1654 (5th ed. 2007) (hereinafter Scott & Ascher) (“Trusts are, and always have been, the bailiwick **[*440]** of the courts of equity”); [Duvall v. Craig, 15 U.S. 45, 2 Wheat. 45, 56, 4 L. Ed. 180 \(1817\)](#) (a trustee was “only suable in equity”).

With the exception of the relief now provided by [§ 502\(a\)\(1\)\(B\)](#), **[****33]** *Restatement (Second) of Trusts* §§ 198(1)-(2) (1957) (hereinafter Second Restatement); 4 Scott & Ascher § 24.2.1, the remedies available to those courts of equity were traditionally considered equitable remedies, see Second *Restatement* § 199; J. Adams, *Doctrine of Equity: A Commentary on the Law as Administered by the Court of Chancery* 61 (7th Am. ed. 1881) (hereinafter Adams); 4 Scott & Ascher § 24.2.

The District Court's affirmative and negative injunctions obviously fall within this category. [Mertens, supra, at 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#) (identifying injunctions, mandamus, and restitution as equitable relief). And other relief ordered by the District Court resembles forms of traditional equitable relief. That is because equity chancellors developed a host of other “distinctively equitable” remedies—remedies that were “fitted to the nature of the primary right” they were intended to protect. 1 S. Symons, *Pomeroy's Equity Jurisprudence* § 108, pp. 139-140 (5th ed. 1941) (hereinafter Pomeroy). See generally 1 J. Story, *Commentaries on Equity Jurisprudence* § 692 (12th ed. 1877) (hereinafter Story). Indeed, [HN3](#) [LEdHN3](#) [3] a maxim of equity states that “[e]quity suffers not a right to be without a remedy.” R. Francis, *Maxims [****34] of Equity* 29 (1st Am. ed. 1823). And the relief entered here, insofar as it does not consist of injunctive relief, closely resembles three other traditional equitable remedies.

First, what the District Court did here may be regarded as the reformation of the terms of the plan, in order to remedy the false or misleading information CIGNA provided. The power to reform contracts (as contrasted with the power to enforce contracts as written) is a traditional power of an equity court, not a court of law, and was used to prevent fraud. See [Baltzer v. Raleigh & Augusta R. Co., 115 U.S. 634, 645, 6 S. Ct. 216, 29 L. Ed. 505 \(1885\)](#) (“[I]t is well settled that equity would reform **[*441]** the contract, and enforce it, as reformed, if the mistake or fraud were shown”); [Hearne v. Marine Ins. Co., 87 U.S. 488, 20 Wall. 488, 490, 22 L. Ed. 395 \(1874\)](#) (“The reformation of written contracts for fraud or mistake is an ordinary head of equity jurisdiction”); [Bradford v. Union Bank of Tenn., 54 U.S. 57, 13 How. 57, 66, 14 L. Ed. 49 \(1852\)](#); J. Eaton, *Handbook of Equity Jurisprudence* § 306, p. 618 (1901) (hereinafter Eaton) (courts of common law could only void or enforce, but not reform, a contract); 4 Pomeroy § 1375, at 1000 (reformation “chiefly occasioned by fraud or mistake,” which were themselves **[****35]** concerns of equity courts); 1 Story §§ 152-154; see also 4 Pomeroy § 1375, at 999 (equity often considered **[**1880]** reformation a “preparatory step” that “establishes the real contract”).

Second, the District Court's remedy essentially held CIGNA to what it had promised, namely, that the new plan would not take from its employees benefits they had already accrued. This aspect of the remedy resembles estoppel, a traditional equitable remedy. **[***858]** See, e.g., E. Merwin, *Principles of Equity and Equity Pleading* § 910 (H. Merwin ed. 1895); 3 Pomeroy § 804. [HN4](#) [LEdHN4](#) [4] Equitable estoppel “operates to place the person entitled to its benefit in the same position he would have been in had the representations been true.” Eaton § 62, at 176. And, as Justice Story long ago pointed out, equitable estoppel “forms a very essential element in . . . fair dealing, and rebuke of all fraudulent misrepresentation, which it is the boast of courts of equity constantly to promote.” 2 Story § 1533, at 776.

Third, the District Court injunctions require the plan administrator to pay to already retired beneficiaries money owed them under the plan as reformed. But the fact that this relief takes the form of a money payment does not remove

[****36] it from the category of traditionally equitable relief. Equity courts possessed the power to provide relief in the form of monetary “compensation” for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment. Restatement (Third) of Trusts § 95, and Comment a [*442] (Tent. Draft No. 5, Mar. 2, 2009) (hereinafter Third Restatement); Eaton §§ 211-212, at 440. Indeed, prior to the merger of law and equity this kind of monetary remedy against a trustee, sometimes called a “surcharge,” was “exclusively equitable.” *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456, 464, 59 S. Ct. 275, 83 L. Ed. 285 (1939); Third Restatement § 95, and Comment a; G. Bogert & G. Bogert, *Trusts and Trustees* § 862 (rev. 2d ed. 1995) (hereinafter Bogert); 4 Scott & Ascher §§ 24.2, 24.9, at 1659-1660, 1686; Second Restatement § 197; see also *Manhattan Bank of Memphis v. Walker*, 130 U.S. 267, 271, 9 S. Ct. 519, 32 L. Ed. 959 (1889) (“The suit is plainly one of equitable cognizance, the bill being filed to charge the defendant, as a trustee, for a breach of trust”); 1 J. Perry, *A Treatise on the Law of Trusts and Trustees* § 17, p. 13 (2d ed. 1874) (common-law attempts “to punish trustees for a breach of trust in damages, . . . w[ere] [****37] soon abandoned”).

The surcharge remedy extended to a breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary. See Second Restatement § 201; Adams 59; 4 Pomeroy § 1079; 2 Story §§ 1261, 1268. Thus, insofar as an award of make-whole relief is concerned, the fact that the defendant in this case, unlike the defendant in *Mertens*, is analogous to a trustee makes a critical difference. See *508 U.S.*, at 262-263, *113 S. Ct. 2063*, *124 L. Ed. 2d 161*. In sum, contrary to the District Court's fears, the types of remedies the court entered here fall within the scope of the term “appropriate equitable relief” in § 502(a)(3).

III

[HN5](#) [LEdHNJ5](#) [5] [Section 502\(a\)\(3\)](#) invokes the equitable powers of the District Court. We cannot know with certainty which remedy the District Court understood itself to be imposing, nor whether the District Court will find it appropriate to exercise its discretion under § 502(a)(3) to impose that remedy on remand. We need not decide which remedies are appropriate on the facts of this case in order to resolve the parties' dispute as to the appropriate legal standard in determining [*443] whether members of the relevant employee class were injured.

[**1881] The relevant substantive provisions of [****38] ERISA do not set forth any particular standard for determining harm. They simply require the plan administrator [***859] to write and to distribute written notices that are “sufficiently accurate and comprehensive to reasonably apprise” plan participants and beneficiaries of “their rights and obligations under the plan.” § 102(a); see also §§ 104(b), 204(h). Nor can we find a definite standard in the ERISA provision, § 502(a)(3) (which authorizes the court to enter “appropriate equitable relief” to redress ERISA “violations”). Hence any requirement of harm must come from the law of equity.

Looking to the law of equity, there is no general principle that “detrimental reliance” must be proved before a remedy is decreed. To the extent any such requirement arises, it is because the specific remedy being contemplated imposes such a requirement. Thus, as CIGNA points out, when equity courts used the remedy of *estoppel*, they insisted upon a showing akin to detrimental reliance, *i.e.*, that the defendant's statement “in truth, influenced the conduct of” the plaintiff, causing “prejudic[e].” Eaton § 61, at 175; see 3 Pomeroy § 805. Accordingly, when a court exercises its authority under § 502(a)(3) [****39] to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made.

But this showing is not always necessary for other equitable remedies. Equity courts, for example, would reform contracts to reflect the mutual understanding of the contracting parties where “fraudulent suppression[s], omission[s], or insertion[s],” 1 Story § 154, at 149, “material[ly] . . . affect[ed]” the “substance” of the contract, even if the “complaining part[y]” was negligent in not realizing its mistake, as long as its negligence did not fall below a standard of “reasonable prudence” and violate a legal duty, 3 Pomeroy §§ 856, 856b, at 334, 340-341. See *Baltzer*, *115 U.S.*, at 645, *6 S. Ct. 216*, *29 L. Ed. 505*; Eaton § 307(b).

[*444] Nor did equity courts insist upon a showing of detrimental reliance in cases where they ordered “surcharge.” Rather, they simply ordered a trust or beneficiary made whole following a trustee's breach of trust. In such instances equity courts would “mold the relief to protect the rights of the beneficiary according to the situation involved.” Bogert § 861, at 4. This flexible approach belies a strict requirement of “detrimental reliance.”

To be sure, just as a court of equity would not surcharge a [****40] trustee for a nonexistent harm, 4 Scott & Ascher § 24.9, a fiduciary can be surcharged under [§ 502\(a\)\(3\)](#) only upon a showing of actual harm--proved (under the default rule for civil cases) by a preponderance of the evidence. That actual harm may sometimes consist of detrimental reliance, but it might also come from the loss of a right protected by ERISA or its trust-law antecedents. In the present case, it is not difficult to imagine how the failure to provide proper summary information, in violation of the statute, injured employees even if they did not themselves act in reliance on summary documents--which they might not themselves have seen--for they may have thought fellow employees, or informal workplace discussion, would have let them know if, say, plan changes would likely prove harmful. We doubt that Congress would have wanted to bar those employees from relief.

The upshot is that we can agree with CIGNA only to a limited extent. We believe that, to obtain relief by [***860] surcharge for violations of [§§ 102\(a\)](#) and [104\(b\)](#), a plan participant or beneficiary must show that the violation injured him or her. But to do so, he or she need only show harm and causation. Although it is [****41] not always necessary [**1882] to meet the more rigorous standard implicit in the words "detrimental reliance," actual harm must be shown.

We are not asked to reassess the evidence. And we are not asked about the other prerequisites for relief. We are asked about the standard of prejudice. And we conclude [*445] that the standard of prejudice must be borrowed from equitable principles, as modified by the obligations and injuries identified by ERISA itself. Information-related circumstances, violations, and injuries are potentially too various in nature to insist that harm must always meet that more vigorous "detrimental harm" standard when equity imposed no such strict requirement.

IV

We have premised our discussion in Part III on the need for the District Court to revisit its determination of an appropriate remedy for the violations of ERISA it identified. Whether or not the general principles we have discussed above are properly applicable in this case is for it or the Court of Appeals to determine in the first instance. Because the District Court has not determined if an appropriate remedy may be imposed under [§ 502\(a\)\(3\)](#), we must vacate the judgment below and remand this case for further proceedings [****42] consistent with this opinion.

It is so ordered.

Justice **Sotomayor** took no part in the consideration or decision of this case.

Concur by: SCALIA

Concur

Justice **Scalia**, with whom Justice **Thomas** joins, concurring in the judgment.

I agree with the Court that [§ 502\(a\)\(1\)\(B\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#), does not authorize relief for misrepresentations in a summary plan description (SPD). I do not join the Court's opinion because I see no need and no justification for saying anything more than that.

[Section 502\(a\)\(1\)\(B\) of ERISA](#) states that a plan participant or beneficiary may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to [*446] future benefits under the terms of the plan." ERISA defines the word "plan" as "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both," [29 U.S.C. § 1002\(3\)](#), and it requires that a "plan" "be established and maintained pursuant to a written instrument," [§ 1102\(a\)\(1\)](#). An SPD, in contrast, is a disclosure meant "to reasonably apprise [plan] participants and beneficiaries of their rights [****43] and obligations under the plan." [§ 1022\(a\)](#). It would be peculiar for a document meant to "apprise" participants of their rights "under the plan" to be itself part of the "plan." Any doubt that it is not is eliminated by

ERISA's repeated differentiation of SPDs from the "written instruments" that constitute a plan, see, e.g., [§§ 1029\(c\), 1024\(b\)\(2\)](#), and ERISA's assignment to different entities of responsibility for drafting and amending **[***861]** SPDs on the one hand and plans on the other, see [§§ 1002\(1\), \(2\)\(A\)](#); 1021(a) (2006 ed. and Supp. III), 1024(b)(1) (2006 ed.); [Beck v. PACE Int'l Union, 551 U.S. 96, 101, 127 S. Ct. 2310, 168 L. Ed. 2d 1 \(2007\)](#). An SPD, moreover, would not fulfill its purpose of providing an easily accessible summary of the plan if it were an authoritative part of the plan itself; the minor omissions appropriate for a summary would risk revising the plan.

Nothing else needs to be said to dispose of this case. The District Court based the relief it awarded upon [ERISA § 502\(a\)\(1\)\(B\)](#), and that provision alone. **[**1883]** It thought that the "benefits" due "under the terms of the plan," [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#), could derive from an SPD, either because the SPD is part of the plan or because it is capable of somehow modifying **[****44]** the plan. Under either justification, that conclusion is wrong. An SPD is separate from a plan, and cannot amend a plan unless the plan so provides. See [Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 79, 85, 115 S. Ct. 1223, 131 L. Ed. 2d 94 \(1995\)](#). I would go no further.

The Court, however, ventures on to address a different question: whether respondents may recover under [§ 502\(a\)\(3\) of ERISA](#), which allows plan participants "to obtain other **[*447]** appropriate equitable relief." [29 U.S.C. § 1132\(a\)\(3\)](#). The District Court expressly declined to answer this question, stating that it "need not consider whether any relief ordered under [§ 502\(a\)\(1\)\(B\)](#) would also be available under [§ 502\(a\)\(3\)](#)." [559 F. Supp. 2d 192, 205 \(Conn. 2008\)](#). It did note that [§ 502\(a\)\(3\)](#) might not help respondents because that provision authorizes only relief that was "'typically available in equity.'" *Ibid.* (quoting [Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 210, 122 S. Ct. 708, 151 L. Ed. 2d 635 \(2002\)](#)): (some internal quotation marks omitted) But it described this question as "particularly complicated," [559 F. Supp. 2d, at 205](#), and said that "in view of these knotty issues . . . the Court need not, and does not, decide whether Plaintiffs could obtain relief under [§ 502\(a\)\(3\)](#)," *id.*, [at 206](#).

It is assuredly **[****45]** not our normal practice to decide issues that a lower court "need not, and does not, decide," see [Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S. 157, 168-169, 125 S. Ct. 577, 160 L. Ed. 2d 548 \(2004\)](#), and this case presents no exceptional reason to do so. To the contrary, it presents additional reasons not to do so. [Mertens v. Hewitt Associates, 508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#), the case the District Court feared had "severely curtailed the kinds of relief . . . available under [§ 502\(a\)\(3\)](#)," [559 F. Supp. 2d, at 205](#), is cited exactly one time in the parties' briefs--by the CIGNA petitioners for the utterly unrelated proposition that ERISA contains a "'carefully crafted and detailed enforcement scheme.'" Brief for Petitioners 2. And there is no discussion whatsoever of contract reformation or surcharge in the briefs of the parties or even *amici*.¹

The opinion for the Court states that the District Court "strongly implied . . . that it would base its relief upon [L § 502\(a\)\(3\)](#) were it not for (1) the fact that . . . [§ 502\(a\)\(1\)\(B\)](#) **[****46]** . . . provided sufficient authority; and (2) certain cases from **[*448]** this Court that **[***862]** narrowed the application of the term 'appropriate equitable relief.'" [Ante, at](#) [179 L. Ed. 2d, at 856](#). I find no such implication whatever--not even a weak one. The District Court simply said that [§ 502\(a\)\(1\)\(B\)](#) provided relief, and that under our cases [§ 502\(a\)\(3\)](#) might not do so. While some Members of this Court have sought to divine what legislators would have prescribed beyond what they did prescribe, none to my knowledge has hitherto sought to guess what district judges would have decided beyond what they did decide. And this, bear in mind, is not just a guess as to what the District Court would have done if it had known that its [§ 502\(a\)\(1\)\(B\)](#) relief was (as we today hold) improper. The apparent answer to that is that it would have denied relief, since it thought itself constrained by "certain cases from this Court that [have] narrowed [\[§ 502\(a\)\(3\)\]](#)," [ante, at](#) [179 L. Ed. 2d, at 856](#). No, the **[**1884]** course the Court guesses about is what the District Court would have done if it had known *both* that [§ 502\(a\)\(1\)\(B\)](#) denies relief *and* that [§ 502\(a\)\(3\)](#) provides it. This speculation upon speculation hardly renders our discussion of [§ 502\(a\)\(3\)](#) relevant **[****47]** to the decision below; it is utterly irrelevant.

Why the Court embarks on this peculiar path is beyond me. It cannot even be explained by an eagerness to demonstrate--by blatant dictum, if necessary--that, by George, plan members misled by an SPD will be

¹"[P]lan reformation" makes an appearance in one sentence of one footnote of the Government's brief, see Brief for United States as *Amicus Curiae* 30, n. 9. This cameo hardly qualifies as "discussion."

compensated. That they will normally be compensated is not in doubt. As the opinion for the Court notes, [ante, at _____, 179 L. Ed. 2d, at 852](#), the Second Circuit has interpreted ERISA as permitting the invalidation of plan amendments not preceded by proper notice, by reason of [§ 204\(h\)](#), which reads:

“An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual” [29 U.S.C. § 1054\(h\)\(1\) \(2006 ed., Supp. IV\)](#).

[*449] This provision appears a natural fit to respondents' claim, which is not that CIGNA was prohibited from changing its plan, but that CIGNA “failed to give them proper notice of changes to their benefits.” [Ante, at _____, 179 L. Ed. 2d, at 847](#). It was inapplicable here only because of the peculiar facts of this case and the manner in which respondents chose to argue the case.²

Rather than attempting to read the District Judge's palm, I would simply remand. If the District Court dismisses the case based on an incorrect reading of *Mertens*, the Second Circuit can correct its error, and if the Second Circuit does not do so this Court can grant certiorari. The Court's discussion of the relief available under [§ 502\(a\)\(3\)](#) and *Mertens* is purely dicta, binding upon neither us nor the District Court. The District Court need not read any of it--and, indeed, if it takes our suggestions to heart, we may very well reverse. Even if we adhere to our dicta that contract **[***863]** reformation, estoppel, and surcharge are “distinctively equitable” remedies,” [ante, at _____, 179 L. Ed. 2d, at 857](#), it is far from clear **[****49]** that they are available remedies in this case. The opinion for the Court does not say (much less hold) that they are and disclaims the implication, see [ante, at _____, 179 L. Ed. 2d, at 858](#).

Contract reformation is a standard remedy for altering the terms of a writing that fails to express the agreement of the parties “owing to the fraud of one of the parties and mistake of the other.” 27 R. Lord, *Williston on Contracts* § 69:55, p. 160 (4th ed. 2003). But here, the Court would be employing that doctrine to alter the terms of a contract in response to a third party's misrepresentations--not those of a party **[*450]** to the contract. The SPD is not part of the ERISA plan, and it was not written by the plan's sponsor. Although in this case CIGNA wrote both the plan and the SPD, it did so in different capacities: as sponsor when writing the plan, and as administrator when preparing the SPD. ERISA “carefully distinguishes these roles,” [ante, at _____, 179 L. Ed. 2d, at 855](#); see also [Beck, 551 U.S., at 101, 127 S. Ct. 2310, 168 L. Ed. 2d 1](#), and nothing the Court **[**1885]** cites suggests that they blend together when performed by the same entity.

Admittedly, reformation might be available if the third party was an agent of a contracting party and its misrepresentations could thus be attributed to it **[****50]** under agency law. But such a relationship has not been alleged and is unlikely here. An ERISA administrator's duty to provide employees with an SPD arises by statute, [29 U.S.C. § 1024\(b\)\(1\)\(2006 ed.\)](#); and not by reason of its relationship to the sponsor. The administrator is a legally distinct entity. Moreover, it is incoherent to think of the administrator as agent and the sponsor as principal. Were this the case, and were the administrator contracting with employees as an agent of the sponsor in producing the SPD, then the SPD would be part of the plan or would amend it--exactly what the opinion for the Court rejects in Part II-A, [ante, at _____ - _____, 179 L. Ed. 2d, at 854-856](#). And, in any event, SPDs may be furnished months after an employee accepts a pension or benefit plan. [§ 1024\(b\)\(1\)](#). Reformation is meant to effectuate mutual intent at the time of contracting, and that intent is not retroactively revised by subsequent misstatements.

Equitable estoppel and surcharge are perhaps better suited to the facts of this case. CIGNA admits that respondents might be able to recover under [§ 502\(a\)\(3\)](#) pursuant to an equitable estoppel theory, but it presumably

²The District Court found that [§ 204\(h\)](#) was unhelpful **[****48]** because CIGNA had provided a valid notice of its decision to freeze benefits under the old plan. If the new plan were invalidated because of a defective § 204(h) notice, the freeze would return to force, and respondents would be worse off. Respondents might (and likely should) have argued that the notice for the freeze was itself void, but they “argued none of these things,” and the District Court declined to “make these arguments now on [their] behalf.” [559 F. Supp. 2d 192, 208 \(Conn. 2008\)](#).

makes this concession only because questions of reliance would be individualized [****51] and potentially inappropriate for class-action treatment. Surcharge (which CIGNA does not concede and which is not briefed) may encounter the same problem. The amount for which an administrator may be surcharged is, as [*451] the opinion for the Court notes, the “actual harm” suffered by an employee, *ante, at* _____, *179 L. Ed. 2d, at 859*--that is, harm stemming from reliance on the SPD or the lost opportunity to contest or react to the switch. Cf. 3 A. Scott & W. Fratcher, *Law of Trusts* § 205, pp. 237-243 (4th ed. 1988). A remedy relating only to that harm would of [***864] course be far different from what the District Court imposed.³

* * *

I agree with the Court that an SPD is not part of an ERISA plan, and that, as a result, a plan participant or beneficiary may not recover for misrepresentations in an SPD under [§ 502\(a\)\(1\)\(B\)](#). Because this [****52] is the only question properly presented for our review, and the only question briefed and argued before us, I concur only in the judgment.

References

[29 U.S.C.S. §§1132\(a\)\(1\)\(B\), 1132\(a\)\(3\)](#)

6 Labor and Employment Law § 154.04 (Matthew Bender)

L Ed Digest, Pensions and Retirement Funds § 13

L Ed Index, Pensions and Retirement

Supreme Court's construction and application of [§ 502](#) of Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. § 1132](#)), providing for civil enforcement of ERISA. [151 L. Ed. 2d 1083](#).

End of Document

³ It is also not obvious that the relief sought in this case would constitute an equitable surcharge allowable under [Mertens v. Hewitt Associates](#), *508 U.S. 248*, *113 S. Ct. 2063*, *124 L. Ed. 2d 161* (1993). Cf. [Knieriem v. Group Health Plan, Inc.](#), *434 F.3d 1058*, *1063-1064 (CA8 2006)*. This question, however, like the Court's entire discussion of [§ 502\(a\)\(3\)](#), is best left for a case in which the issue is raised and briefed.



Caution

As of: January 31, 2025 4:41 PM Z

[Montanile v. Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan](#)

Supreme Court of the United States

November 9, 2015, Argued; January 20, 2016, Decided

No. 14-723

Reporter

577 U.S. 136 *; 136 S. Ct. 651 **; 193 L. Ed. 2d 556 ***; 2016 U.S. LEXIS 843 ****; 84 U.S.L.W. 4046; 61 Employee Benefits Cas. (BNA) 1165; 25 Fla. L. Weekly Fed. S 600

ROBERT MONTANILE, Petitioner v. BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan v. Montanile, 593 Fed. Appx. 903, 2014 U.S. App. LEXIS 22438 \(11th Cir. Fla., 2014\)](#)

Disposition: Reversed and remanded.

Core Terms

equitable lien, equitable, general assets, settlement, reimbursement, settlement fund, dissipated, court of equity, equitable relief, remedies, funds, fiduciaries, legal remedy, medical expenses, third party, nontraceable, possessed, quotation, swollen, marks, plans, proceedings, wrongfully, recovered, treatises, attach, traced

Case Summary

Overview

HOLDINGS: [1]-When a participant dissipated the whole settlement on nontraceable items, the fiduciary could not bring a suit to attach the participant's general assets under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), because the suit was not one for appropriate equitable relief; [2]-An ERISA fiduciary's [§ 1132\(a\)\(3\)](#) action seeking to enforce an equitable lien by agreement against the plan participant's assets was equitable in nature where the lien attached to the settlement funds that the participant recovered in a negligence action, rather than the participant's general assets, the right to recover money was a legal remedy, and the fiduciary had sufficient notice of the settlement to have taken steps to preserve those funds.

Outcome

Judgment reversed and case remanded; 8-1 Decision, 1 Dissent.

LexisNexis® Headnotes

Pensions & Benefits Law > ERISA > Civil Litigation > Causes of Action

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution

[HN1](#) **Civil Litigation, Causes of Action**

See [29 U.S.C.S. § 1132\(a\)\(3\)](#).

Pensions & Benefits Law > ERISA > Civil Litigation > Causes of Action

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution

[HN2](#) **Civil Litigation, Causes of Action**

When a participant dissipates the whole settlement on nontraceable items, the fiduciary cannot bring a suit to attach the participant's general assets under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), because the suit is not one for appropriate equitable relief.

Pensions & Benefits Law > ERISA > Civil Litigation > Causes of Action

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution

[HN3](#) **Civil Litigation, Causes of Action**

Case law explains that the term equitable relief in § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), is limited to those categories of relief that were typically available in equity during the days of the divided bench (meaning, the period before 1938 when courts of law and equity were separate). Under judicial precedents, whether the remedy a plaintiff seeks is legal or equitable depends on (1) the basis for the plaintiff's claim and (2) the nature of the underlying remedies sought. Judicial precedents also prescribe a framework for resolving this inquiry. To determine how to characterize the basis of a plaintiff's claim and the nature of the remedies sought, courts turn to standard treatises on equity, which establish the basic contours of what equitable relief was typically available in premerger equity courts.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution

[HN4](#) **Equitable Relief, Restitution**

Restitution in equity typically involves enforcement of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession.

Civil Procedure > Preliminary Considerations > Equity > Relief

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

[HN5](#)  Equity, Relief

Standard equity treatises make clear that a plaintiff could ordinarily enforce an equitable lien only against specifically identified funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds (e.g., identifiable property like a car). A defendant's expenditure of the entire identifiable fund on nontraceable items (like food or travel) destroys an equitable lien. The plaintiff then may have a personal claim against the defendant's general assets, but recovering out of those assets is a legal remedy, not an equitable one.

Civil Procedure > Preliminary Considerations > Equity > Relief

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

[HN6](#)  Equity, Relief

Equitable remedies are, as a general rule, directed against some specific thing; they give or enforce a right to or over some particular thing rather than a right to recover a sum of money generally out of the defendant's assets. Equitable liens thus are ordinarily enforceable only against a specifically identified fund because an equitable lien is simply a right of a special nature over the thing so that the very thing itself may be proceeded against in an equitable action. This general rule's application to equitable liens includes equitable liens by agreement, which depend on the notion that the contract creates some right or interest in or over specific property, and are enforceable only if the decree of the court can lay hold of that specific property.

Civil Procedure > Preliminary Considerations > Equity > Adequate Remedy at Law

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

Civil Procedure > Preliminary Considerations > Equity > Relief

[HN7](#)  Equity, Adequate Remedy at Law

If, instead of preserving the specific fund subject to the equitable lien, the defendant dissipated the entire fund on nontraceable items, that complete dissipation eliminates the lien. Even though the defendant's conduct is wrongful, the plaintiff can not attach the defendant's general assets instead. Absent specific exceptions, where a person wrongfully disposes of the property of another but the property cannot be traced into any product, the other cannot enforce a constructive trust or lien upon any part of the wrongdoer's property. The plaintiff has merely a personal claim against the wrongdoer, a quintessential action at law.

Civil Procedure > Preliminary Considerations > Equity > Adequate Remedy at Law

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

Civil Procedure > Preliminary Considerations > Equity > Relief

[HN8](#)  Equity, Adequate Remedy at Law

At equity, a plaintiff ordinarily can not enforce any type of equitable lien if the defendant once possessed a separate, identifiable fund to which the lien attached, but then dissipates it all. The plaintiff can not attach the

defendant's general assets instead because those assets are not part of the specific thing to which the lien attaches. This rule applies to equitable liens by agreement as well as other types of equitable liens.

Civil Procedure > Preliminary Considerations > Equity > Relief

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

[HN9](#) **Equity, Relief**

The basic premise of an equitable lien by agreement is that, rather than physically taking the plaintiff's property, the defendant constructively possesses a fund to which the plaintiff is entitled. But the plaintiff must still identify a specific fund in the defendant's possession to enforce the lien.

Civil Procedure > Preliminary Considerations > Equity > Relief

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

Pensions & Benefits Law > ... > Civil Litigation > Remedies > Equitable Relief

[HN10](#) **Equity, Relief**

Judicial precedent has long rejected the argument that equitable relief under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), means whatever relief a court of equity is empowered to provide in the particular case at issue, including ancillary legal remedies. In many situations an equity court could establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority. But these legal remedies are not relief typically available in equity, and interpreting them as such would eliminate any limit on the meaning of equitable relief and would render the modifier superfluous. As judicial precedent explains, as a general rule, plaintiffs cannot enforce an equitable lien against a defendant's general assets.

Pensions & Benefits Law > ... > Civil Litigation > Remedies > Equitable Relief

[HN11](#) **Remedies, Equitable Relief**

Legal remedies, even legal remedies that a court of equity could sometimes award, are not equitable relief under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#).

Civil Procedure > Preliminary Considerations > Equity > Relief

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

[HN12](#) **Equity, Relief**

To the extent that courts endorsed any version of the swollen assets theory, they adopt a more limited rule: that commingling a specifically identified fund, to which a lien attached, with a different fund of the defendant's did not destroy the lien. Instead, that commingling allowed the plaintiff to recover the amount of the lien from the entire pot of money.

Governments > Legislation > Interpretation

[HN13](#) [↓] Legislation, Interpretation

Vague notions of a statute's basic purpose are inadequate to overcome the words of its text regarding the specific issue under consideration.

Lawyers' Edition Display

Decision

[***556] When participant in Employee Retirement Income Security Act of 1974 ([29 U.S.C.S. § 1001 et seq.](#)) plan dissipated whole settlement on nontraceable items, fiduciary was not allowed to sue to attach participant's general assets under [29 U.S.C.S. § 1132\(a\)\(3\)](#).

Summary

Overview: HOLDINGS: [1]-When a participant dissipated the whole settlement on nontraceable items, the fiduciary could not bring a suit to attach the participant's general assets under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), because the suit was not one for appropriate equitable relief; [2]-An ERISA fiduciary's [§ 1132\(a\)\(3\)](#) action seeking to enforce an equitable lien by agreement against the plan participant's assets was equitable in nature where the lien attached to the settlement funds that the participant recovered in a negligence action, rather than the participant's general assets, the right to recover money was a legal remedy, and the fiduciary had sufficient notice of the settlement to have taken steps to preserve those funds.

Outcome: Judgment reversed and case remanded; 8-1 Decision, 1 Dissent.

Headnotes

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- VIOLATION -- ENFORCEMENT > Headnote:

[LEdHN\[1\]](#) [↓] [1]

See [29 U.S.C.S. § 1132\(a\)\(3\)](#), which authorizes a civil action by an Employee Retirement Income Security Act of 1974 (ERISA) ([29 U.S.C.S. § 1001 et seq.](#)) plan participant, beneficiary, or fiduciary to obtain equitable relief to address ERISA or plan violations or to enforce ERISA or the plan.

[***557]

PENSIONS AND RETIREMENT FUNDS §13 > ERISA PARTICIPANT -- ATTACHMENT OF ASSETS > Headnote:

[LEdHN\[2\]](#) [↓] [2]

When a participant dissipates the whole settlement on nontraceable items, the fiduciary cannot bring a suit to attach the participant's general assets under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), because the suit is not one for appropriate equitable relief. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE RELIEF > Headnote:

[LEdHN\[3\]](#) [3]

Case law explains that the term equitable relief in [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), is limited to those categories of relief that were typically available in equity during the days of the divided bench (meaning, the period before 1938 when courts of law and equity were separate). Under judicial precedents, whether the remedy a plaintiff seeks is legal or equitable depends on (1) the basis for the plaintiff's claim and (2) the nature of the underlying remedies sought. Judicial precedents also prescribe a framework for resolving this inquiry. To determine how to characterize the basis of a plaintiff's claim and the nature of the remedies sought, courts turn to standard treatises on equity, which establish the basic contours of what equitable relief was typically available in premerger equity courts. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

RESTITUTION, IMPLIED CONTRACTS, AND ASSUMPSIT ACTIONS §1 > RESTITUTION IN EQUITY > Headnote:

[LEdHN\[4\]](#) [4]

Restitution in equity typically involves enforcement of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

LIENS §5 > EQUITY -- SPECIFIC FUNDS > Headnote:

[LEdHN\[5\]](#) [5]

Standard equity treatises make clear that a plaintiff could ordinarily enforce an equitable lien only against specifically identified funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds (e.g., identifiable property like a car). A defendant's expenditure of the entire identifiable fund on nontraceable items (like food or travel) destroys an equitable lien. The plaintiff then may have a personal claim against the defendant's general assets, but recovering out of those assets is a legal remedy, not an equitable one. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

[*558]**

LIENS §5 > EQUITY -- SPECIFIC FUND > Headnote:

[LEdHN\[6\]](#) [6]

Equitable remedies are, as a general rule, directed against some specific thing; they give or enforce a right to or over some particular thing rather than a right to recover a sum of money generally out of the defendant's assets. Equitable liens thus are ordinarily enforceable only against a specifically identified fund because an equitable lien is simply a right of a special nature over the thing so that the very thing itself may be proceeded against in an equitable action. This general rule's application to equitable liens includes equitable liens by agreement, which depend on the notion that the contract creates some right or interest in or over specific property, and are

enforceable only if the decree of the court can lay hold of that specific property. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

LIENS §5 > EQUITY -- SPECIFIC FUND -- DISSIPATION > Headnote:

[LEdHN\[7\]](#) [7]

If, instead of preserving the specific fund subject to the equitable lien, the defendant dissipated the entire fund on nontraceable items, that complete dissipation eliminates the lien. Even though the defendant's conduct is wrongful, the plaintiff can not attach the defendant's general assets instead. Absent specific exceptions, where a person wrongfully disposes of the property of another but the property cannot be traced into any product, the other cannot enforce a constructive trust or lien upon any part of the wrongdoer's property. The plaintiff has merely a personal claim against the wrongdoer, a quintessential action at law. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

LIENS §5 > EQUITY -- SEPARATE FUND -- DISSIPATION > Headnote:

[LEdHN\[8\]](#) [8]

At equity, a plaintiff ordinarily can not enforce any type of equitable lien if the defendant once possessed a separate, identifiable fund to which the lien attached, but then dissipates it all. The plaintiff can not attach the defendant's general assets instead because those assets are not part of the specific thing to which the lien attaches. This rule applies to equitable liens by agreement as well as other types of equitable liens. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

LIENS §5 > EQUITY -- SPECIFIC FUND > Headnote:

[LEdHN\[9\]](#) [9]

The basic premise of an equitable lien by agreement is that, rather than physically taking the plaintiff's property, the defendant constructively possesses a fund to which the plaintiff is entitled. But the plaintiff must still identify a specific fund in the defendant's possession to enforce the lien. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE LIEN > Headnote:

[LEdHN\[10\]](#) [10]

Judicial precedent has long rejected the argument that equitable relief under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), means whatever relief a court of equity is empowered to provide in the particular case at issue, including ancillary legal remedies. In many situations an equity court could establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority. But these legal remedies are not relief typically available in equity, and interpreting them as such would eliminate any limit on the meaning of equitable relief and would render the modifier superfluous. As judicial precedent explains, as a general rule, plaintiffs cannot enforce an equitable lien against a defendant's

general assets. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

[***559]

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- LEGAL REMEDIES -- EQUITABLE RELIEF > Headnote:

[LEdHN\[11\]](#) [11]

Legal remedies, even legal remedies that a court of equity could sometimes award, are not equitable relief under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#). (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

LIENS §5 > EQUITY -- SWOLLEN-ASSETS THEORY > Headnote:

[LEdHN\[12\]](#) [12]

To the extent that courts endorsed any version of the swollen assets theory, they adopt a more limited rule: that commingling a specifically identified fund, to which a lien attached, with a different fund of the defendant's did not destroy the lien. Instead, that commingling allowed the plaintiff to recover the amount of the lien from the entire pot of money. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Alito, Sotomayor, and Kagan JJ.)

STATUTES §100 > BASIC PURPOSE > Headnote:

[LEdHN\[13\]](#) [13]

Vague notions of a statute's basic purpose are inadequate to overcome the words of its text regarding the specific issue under consideration. (Thomas, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Breyer, Sotomayor, and Kagan JJ.)

Syllabus

[***560] [**653] [*136] Employee benefits plans regulated by the Employee Retirement Income Security Act of 1974 (ERISA or Act) often contain subrogation clauses requiring a plan participant to reimburse the plan for medical expenses if the participant later recovers money from a third party for his injuries. Here, petitioner Montanile was seriously injured by a drunk driver, and his ERISA plan paid more than \$120,000 for his medical expenses. Montanile later sued the drunk driver, obtaining a \$500,000 settlement. Pursuant to the plan's subrogation clause, respondent plan administrator (the Board of Trustees of the National Elevator Industry Health Benefit Plan, or Board), sought reimbursement from the settlement. Montanile's attorney refused that request and subsequently informed the Board that the fund would be transferred from a client trust account to Montanile unless the Board objected. The Board did not respond, and Montanile received the settlement.

Six months later, the Board sued Montanile in Federal District Court under [§502\(a\)\(3\) of ERISA](#), which authorizes plan fiduciaries to file suit “to obtain . . . appropriate [****2] equitable relief . . . to enforce . . . the terms of the plan.” [29 U. S. C. §1132\(a\)\(3\)](#). The Board sought an equitable lien on any settlement funds or property in Montanile's possession and an order enjoining Montanile from dissipating any such funds. Montanile argued that because he had already spent almost all of the settlement, no identifiable fund existed against which to enforce the lien. The

District Court rejected Montanile's argument, and the Eleventh Circuit affirmed, holding that even if Montanile had completely dissipated the fund, the plan was entitled to reimbursement from Montanile's general assets.

Held: When an ERISA-plan participant wholly dissipates a third-party settlement on nontraceable items, the plan fiduciary may not bring suit under [§502\(a\)\(3\)](#) to attach the participant's separate assets. [Pp. 142 - 148, 193 L. Ed. 2d, at 564-570.](#)

(a) Plan fiduciaries are limited by [§502\(a\)\(3\)](#) to filing suits "to obtain . . . equitable relief." Whether the relief requested "is legal or equitable depends on [1] the basis for [the plaintiff's] claim and [2] the nature [*137] of the underlying remedies sought." [Sereboff v. Mid Atlantic Medical Services, Inc., 547 U. S. 356, 363, 126 S. Ct. 1869, 164 L. Ed. 2d 612. Pp. 142 - 144, 193 L. Ed. 2d, at 564-566.](#)

[**654] (1) This Court's precedents establish that the basis for the Board's claim--the enforcement of a lien created by an agreement to convey a particular [****3] fund to another party--is equitable. See [Sereboff, 547 U. S., at 363-364, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#). The Court's precedents also establish that the nature of the Board's underlying remedy--enforcement of a lien against "'specifically identifiable' funds that were within [Montanile's] possession and control," [id., 547 U.S. at 362-363, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#)--would also have been equitable had the Board immediately sued to enforce the lien against the fund. But those propositions do not resolve the question here: whether a plan is still seeking an equitable remedy when the defendant has dissipated all of a separate settlement fund, and the plan then seeks to [***561] recover out of the defendant's general assets. [Pp. 142 - 143, 193 L. Ed. 2d, at 564-565.](#)

(2) This Court holds today that a plan is not seeking equitable relief under those circumstances. In premerger equity courts, a plaintiff could ordinarily enforce an equitable lien, including, as here, an equitable lien by agreement, only against specifically identified funds that remained in the defendant's possession or against traceable items that the defendant purchased with the funds. See 4 S. Symons, Pomeroy's Equity Jurisprudence § 1234, pp. 693-695. If a defendant dissipated the entire fund on nontraceable items, the lien was eliminated and the plaintiff could not attach [****4] the defendant's general assets instead. See *Restatement of Restitution* §215(1), p. 866. [Pp. 143 - 144, 193 L. Ed. 2d, at 565-566.](#)

(b) The Board's arguments in favor of the enforcement of an equitable lien against Montanile's general assets are unsuccessful. *Sereboff* does not contain an exception to the general asset-tracing requirement for equitable liens by agreement. See [547 U. S., at 365, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#). Nor does historical equity practice support the enforcement of an equitable lien against general assets. And the Board's claim that ERISA's objectives are best served by allowing plans to enforce such liens is a "vague notio[n] of [the] statute's 'basic purpose' . . . inadequate to overcome the words of its text regarding the *specific* issue under consideration." [Mertens v. Hewitt Associates, 508 U. S. 248, 261, 113 S. Ct. 2063, 124 L. Ed. 2d 161. Pp. 144 - 147, 193 L. Ed. 2d, at 566-569.](#)

(c) The case is remanded for the District Court to determine, in the first instance, whether Montanile kept his settlement fund separate from his general assets and whether he dissipated the entire fund on nontraceable assets. [P. 147, 193 L. Ed. 2d, at 569.](#)

[593 Fed. Appx. 903](#), reversed and remanded.

Counsel: Peter K. Stris argued the cause for petitioner.

Ginger D. Anders argued the cause for the United States, as amicus curiae, by special leave of court.

Neal K. Katyal argued the cause for respondent.

Judges: Thomas, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Kennedy, Breyer, Sotomayor, and Kagan, JJ., joined, and in which Alito, J., joined except for Part III-C. Ginsburg, J., filed a dissenting opinion, *post*, p. ____.

Opinion by: Thomas

Opinion

[**655] [*139] Justice **Thomas** delivered the [****5] opinion of the Court.¹

When a third party injures a participant in an employee benefits plan under the Employee Retirement Income Security Act of 1974 (ERISA), *88 Stat. 829*, as amended, *29 U. S. C. §1001 et seq.*, the plan frequently pays covered medical expenses. The terms of these plans often include a subrogation clause requiring a participant to reimburse the plan if the participant later recovers money from the third party for his injuries. And under *ERISA §502(a)(3)*, *29 U. S. C. §1132(a)(3)*, plan fiduciaries can file [***562] civil suits “to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of the plan.”¹

In this case, we consider what happens when a participant obtains a settlement fund from a third party, but spends the whole settlement on nontraceable items (for instance, on services or consumable [****6] items like food). We evaluate in particular whether a plan fiduciary can sue under *§502(a)(3)* to recover from the participant’s remaining assets the medical expenses it paid on the participant’s behalf. We hold that, *HN2*[↑] *LEdHN2*[↑] [2]when a participant dissipates the whole settlement on nontraceable items, the fiduciary cannot bring a suit to attach the participant’s general assets under *§502(a)(3)* because the suit is not one for “appropriate equitable relief.” In this case, it is unclear whether the participant dissipated all of his settlement in this manner, so we remand for further proceedings.

I

Petitioner Robert Montanile was a participant in a health benefits plan governed by ERISA and administered by respondent, the Board of Trustees of the National Elevator Industry Health Benefit Plan (Board of Trustees or Board). The plan must pay for certain medical expenses that beneficiaries or participants incur. The plan may demand reimbursement, however, when a participant recovers money from a third party for medical expenses. The plan states: “Amounts that have been recovered by a [participant] from another party are assets of the Plan . . . and are not distributable to any person or entity without the Plan’s written [****7] release of its subrogation interest.” App. 45. The plan also provides that “any amounts” that a participant “recover[s] from another party by award, judgment, settlement or otherwise . . . will promptly be applied first to reimburse the Plan in full for benefits advanced by the Plan . . . and without reduction for attorneys’ fees, costs, expenses or damages claimed by the covered person.” *Id.*, at 46. Participants must notify the plan and obtain its consent before settling claims.

[*140] In December 2008, a drunk driver ran through a stop sign and crashed into Montanile’s vehicle. The accident severely injured Montanile, and the plan paid at least \$121,044.02 for his initial medical care. [**656] Montanile signed a reimbursement agreement reaffirming his obligation to reimburse the plan from any recovery he obtained “as a result of any legal action or settlement or otherwise.” *Id.*, at 51 (emphasis deleted).

¹ * Justice Alito joins this opinion, except for Part III-C.

¹ In full, the provision states: *HN1*[↑] *LEdHN1*[↑] [1]“A civil action may be brought— . . . (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.” *29 U. S. C. §1132(a)(3)*.

Thereafter, Montanile filed a negligence claim against the drunk driver and made a claim for uninsured motorist benefits under Montanile's car insurance. He obtained a \$500,000 settlement. Montanile then paid his attorneys \$200,000 and repaid about \$60,000 that they had advanced him. Thus, about \$240,000 remained of the settlement. [****8] Montanile's attorneys held most of that sum in a client trust [***563] account. This included enough money to satisfy Montanile's obligations to the plan.

The Board of Trustees sought reimbursement from Montanile on behalf of the plan, and Montanile's attorney argued that the plan was not entitled to any recovery. The parties attempted but failed to reach an agreement about reimbursement. After discussions broke down, Montanile's attorney informed the Board that he would distribute the remaining settlement funds to Montanile unless the Board objected within 14 days. The Board did not respond within that time, so Montanile's attorney gave Montanile the remainder of the funds.

Six months after negotiations ended, the Board sued Montanile in District Court under [ERISA §502\(a\)\(3\)](#), [29 U. S. C. §1132\(a\)\(3\)](#), seeking repayment of the \$121,044.02 the plan had expended on his medical care. The Board asked the court to enforce an equitable lien upon any settlement funds or any property which is "in [Montanile's] actual or constructive possession." [593 Fed. Appx. 903, 906 \(CA11 2014\)](#) (quoting complaint). Because Montanile had already taken possession of the settlement funds, the Board also sought an [*141] order enjoining Montanile from dissipating any such funds. Montanile then [****9] stipulated that he still possessed some of the settlement proceeds.

The District Court granted summary judgment to the Board. [No. 12-80746-Civ. \(SD Fla., Apr. 18, 2014\), 2014 U.S. Dist. LEXIS 36309, 2014 WL 8514011, *1](#). The court rejected Montanile's argument that, because he had by that time spent almost all of the settlement funds, there was no specific, identifiable fund separate from his general assets against which the Board's equitable lien could be enforced. [Id., 2014 U.S. Dist. LEXIS 36309, 2014 WL 8514011 at *8-*11](#). The court held that, even if Montanile had dissipated some or all of the settlement funds, the Board was entitled to reimbursement from Montanile's general assets. [Id., 2014 U.S. Dist. LEXIS 36309, 2014 WL 8514011 at *10-*11](#). The court entered judgment for the Board in the amount of \$121,044.02.

The Court of Appeals for the Eleventh Circuit affirmed. It reasoned that a plan can always enforce an equitable lien once the lien attaches, and that dissipation of the specific fund to which the lien attached cannot destroy the underlying reimbursement obligation. The court therefore held that the plan can recover out of a participant's general assets when the participant dissipates the specifically identified fund. [593 Fed. Appx., at 908](#).

We granted certiorari to resolve a conflict among the Courts of Appeals over whether an ERISA fiduciary can enforce an equitable lien against a defendant's [****10] general assets under these circumstances.² [**657] 575 U. S. 934, 135 S. Ct. 1700, 191 L. Ed. 2d 675 (2015). We hold that it cannot, and accordingly reverse the judgment of the Eleventh Circuit and remand for further proceedings.

[***564] [*142] II

A

As previously stated, [§502\(a\)\(3\) of ERISA](#) authorizes plan fiduciaries like the Board of Trustees to bring civil suits "to obtain other appropriate equitable relief . . . to enforce . . . the terms of the plan." [29 U. S. C. §1132\(a\)\(3\)](#). [HN3](#) [LEdHN3](#) [↑] [3] Our cases explain that the term "equitable relief" in [§502\(a\)\(3\)](#) is limited to "those categories of relief that were *typically* available in equity" during the days of the divided bench (meaning, the period before 1938

² Compare [Thurber v. Aetna Life Ins. Co., 712 F. 3d 654 \(CA2 2013\)](#), [Funk v. CIGNA Group Ins., 648 F. 3d 182 \(CA3 2011\)](#), [Cusson v. Liberty Life Assurance Co. of Boston, 592 F. 3d 215 \(CA1 2010\)](#), [Longaberger Co. v. Kolt, 586 F. 3d 459 \(CA6 2009\)](#), and [Gutta v. Standard Select Trust Ins. Plans, 530 F. 3d 614 \(CA7 2008\)](#), with [Treasurer, Trustees of Drury Industries, Inc. Health Care Plan & Trust v. Goding, 692 F. 3d 888 \(CA8 2012\)](#), and [Bilyeu v. Morgan Stanley Long Term Disability Plan, 683 F. 3d 1083 \(CA9 2012\)](#).

when courts of law and equity were separate). [Mertens v. Hewitt Associates, 508 U. S. 248, 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#). Under this Court’s precedents, whether the remedy a plaintiff seeks “is legal or equitable depends on [(1)] the basis for [the plaintiff’s] claim and [(2)] the nature of the underlying remedies sought.” [Sereboff v. Mid Atlantic Medical Services, Inc., 547 U. S. 356, 363, 126 S. Ct. 1869, 164 L. Ed. 2d 612 \(2006\)](#) (internal quotation marks omitted). Our precedents also prescribe a framework for resolving this inquiry. To determine how to characterize the basis of a plaintiff’s claim and the nature of the remedies sought, we turn to standard treatises on equity, which establish the “basic contours” of what equitable relief was typically available in premerger [****11] equity courts. [Great-West Life & Annuity Ins. Co. v. Knudson, 534 U. S. 204, 217, 122 S. Ct. 708, 151 L. Ed. 2d 635 \(2002\)](#).

We have employed this approach in three earlier cases where, as here, the plan fiduciary sought reimbursement for medical expenses after the plan beneficiary or participant recovered money from a third party. Under these precedents, the basis for the Board’s claim is equitable. But our cases do not resolve whether the *remedy* the Board now seeks—enforcement of an equitable lien by agreement against the defendant’s general assets—is equitable in nature.

First, in *Great-West*, we held that a plan with a claim for an equitable lien was—in the circumstances presented—[*143] seeking a legal rather than an equitable remedy. In that case, a plan sought to enforce an equitable lien by obtaining a money judgment from the defendants. The plan could not enforce the lien against the third-party settlement that the defendants had obtained because the defendants never actually possessed that fund; the fund went directly to the defendants’ attorneys and to a restricted trust. We held that the plan sought a legal remedy, not an equitable one, even though the plan claimed that the money judgment was a form of restitution. [Id., at 208-209, 213-214, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). We explained that [HN4](#) [↑] [LEdHN](#)[4][↑] [4]restitution in equity typically involved enforcement [****12] of “a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession.” [Id., at 213, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). But the restitution sought in *Great-West* was legal—not equitable—because the specific funds to which the fiduciaries “claim[ed] an entitlement . . . [we]re not in [the defendants’] possession.” [Id., at 214, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). Since both the basis for the claim and the particular remedy sought were not equitable, the plan could not sue under [§502\(a\)\(3\)](#).

[**658] Next, in *Sereboff*, we held that both [***565] the basis for the claim and the remedy sought were equitable. The plan there sought reimbursement from beneficiaries who had retained their settlement fund in a separate account. [547 U. S., at 359-360, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#). We held that the basis for the plan’s claim was equitable because the plan sought to enforce an equitable lien by agreement, a type of equitable lien created by an agreement to convey a particular fund to another party. See [id., at 363-364, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#). The lien existed in *Sereboff* because of the beneficiaries’ agreement with the plan to convey the proceeds of any third-party settlement. We explained that a claim to enforce such a lien is equitable because the plan “could rely [****13] on a familiar rul[e] of equity” to collect — specifically, the rule “that a contract to convey a specific object even before it is acquired will make the contractor a trustee [*144] as soon as he gets a title to the thing.” *Ibid.* (internal quotation marks omitted; alteration in original). The underlying remedies that the plan sought also were equitable, because the plan “sought specifically identifiable funds that were within the possession and control” of the beneficiaries — not recovery from the beneficiaries’ “assets generally.” [Id., at 362-363, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (internal quotation marks omitted).

Finally, in [US Airways, Inc. v. McCutchen, 569 U. S. 88, 133 S. Ct. 1537, 185 L. Ed. 2d 654 \(2013\)](#), we reaffirmed our analysis in *Sereboff* and again concluded that a plan sought to enforce an equitable claim by seeking equitable remedies. As in *Sereboff*, “the basis for [the plan’s] claim was equitable” because the plan’s terms created an equitable lien by agreement on a third-party settlement. See [569 U. S., at 95, 133 S. Ct. 1537, 185 L. Ed. 2d 654, 663](#) (internal quotation marks omitted). And, as in *Sereboff*, “[t]he nature of the recovery requested” by the plan “was equitable because [it] claimed specifically identifiable funds within the [beneficiaries’] control — that is, a portion of the settlement they had gotten.” [569 U. S., at 95, 133 S. Ct. 1537, 185 L. Ed. 2d 654, 663](#) (internal quotation marks omitted).

Under these principles, [****14] the basis for the Board's claim here is equitable: The Board had an equitable lien by agreement that attached to Montanile's settlement fund when he obtained title to that fund. And the nature of the Board's underlying *remedy* would have been equitable had it immediately sued to enforce the lien against the settlement fund then in Montanile's possession. That does not resolve this case, however. Our prior cases do not address whether a plan is still seeking an equitable remedy when the defendant, who once possessed the settlement fund, has dissipated it all, and the plan then seeks to recover out of the defendant's general assets.

B

To resolve this issue, we turn to standard equity treatises. As we explain below, [HN5](#) [↑] [LEdHN5](#) [↑] [5] those treatises make clear that a plaintiff could ordinarily enforce an equitable lien only against specifically identified funds that remain in the defendant's [*145] possession or against traceable items that the defendant purchased with the funds (*e.g.*, identifiable property like a car). A defendant's expenditure of the entire identifiable fund on nontraceable items (like food or travel) destroys an [***566] equitable lien. The plaintiff then may have a personal claim against the defendant's [****15] general assets—but recovering out of those assets is a *legal* remedy, not an equitable one.

[HN6](#) [↑] [LEdHN6](#) [↑] [6] Equitable remedies “are, as a general rule, directed against some specific thing; they give or enforce a right to or over some particular thing . . . rather than a right to recover a sum of money generally [**659] out of the defendant's assets.” 4 S. Symons, *Pomeroy's Equity Jurisprudence* §1234, p. 694 (5th ed. 1941) (Pomeroy). Equitable liens thus are ordinarily enforceable only against a specifically identified fund because an equitable lien “is simply a right of a special nature *over* the thing . . . so that the very thing itself may be proceeded against in an equitable action.” *Id.*, §1233, at 692; see also *Restatement of Restitution* §215, *Comment a*, p. 866 (1936) (Restatement) (enforcement of equitable lien requires showing that the defendant “still holds the property or property which is in whole or in part its product”); 1 D. Dobbs, *Law of Remedies* §1.4, p. 19 (2d ed. 1993) (Dobbs) (similar). This general rule's application to equitable liens includes equitable liens by agreement, which depend on “the notion . . . that the contract creates some right or interest in or over specific property,” and are enforceable only if “the decree of the court can lay [****16] hold of” that specific property. 4 Pomeroy §1234, at 694-695.

[HN7](#) [↑] [LEdHN7](#) [↑] [7] If, instead of preserving the specific fund subject to the lien, the defendant dissipated the entire fund on nontraceable items, that complete dissipation eliminated the lien. Even though the defendant's conduct was wrongful, the plaintiff could not attach the defendant's general assets instead. Absent specific exceptions not relevant here, “where a person wrongfully dispose[d] of the property of another but the property cannot be traced into any product, the other . . . [*146] cannot enforce a constructive trust or lien *upon any part of the wrongdoer's property*.” *Restatement* §215(1), at 866 (emphasis added); see also [Great-West, 534 U. S., at 213-214, 122 S. Ct. 708, 151 L. Ed. 2d 635](#) (citing *Restatement* §160). The plaintiff had “merely a personal claim against the wrongdoer”—a quintessential action at law. *Id.*, §215(1), at 866.

In sum, [HN8](#) [↑] [LEdHN8](#) [↑] [8] at equity, a plaintiff ordinarily could not enforce any type of equitable lien if the defendant once possessed a separate, identifiable fund to which the lien attached, but then dissipated it all. The plaintiff could not attach the defendant's general assets instead because those assets were not part of the specific thing to which the lien attached. This rule applied to equitable liens by agreement as well as other types [****17] of equitable liens.

III

The Board of Trustees nonetheless maintains that it can enforce its equitable lien against Montanile's general assets. We consider the Board's arguments in turn.

A

First, the Board argues that, while equity courts ordinarily required plaintiffs to trace a specific, identifiable fund in the defendant's possession to which the lien attached, there is an exception for equitable liens by agreement. The Board asserts that equitable liens by agreement require no such tracing, and can be enforced [***567] against a defendant's general assets. According to the Board, we recognized this exception in *Sereboff* by distinguishing

between equitable restitution (where a lien attaches because the defendant misappropriated property from the plaintiff) and equitable liens by agreement.

The Board misreads *Sereboff*, which left untouched the rule that *all* types of equitable liens must be enforced against a specifically identified fund in the defendant's possession. See 1 Dobbs §4.3(3), at 601, 603. The question we [*147] faced in *Sereboff* was whether plaintiffs seeking an equitable lien by agreement must “identify an asset they originally possessed, which was improperly acquired and converted into property [****18] [**660] the defendant held.” *547 U. S., at 365, 126 S. Ct. 1869, 164 L. Ed. 2d 612*. We observed that such a requirement, although characteristic of restitutionary relief, does not “appl[y] to equitable liens by agreement or assignment.” *Ibid.* (discussing *Barnes v. Alexander, 232 U. S. 117, 34 S. Ct. 276, 58 L. Ed. 530 (1914)*). That is because [HN9](#) [↑] [LEdHN9](#) [↑] [9] the basic premise of an equitable lien by agreement is that, rather than physically taking the plaintiff's property, the defendant constructively possesses a fund to which the plaintiff is entitled. But the plaintiff must still identify a specific fund in the defendant's possession to enforce the lien. See *id., at 123, 34 S. Ct. 276, 58 L. Ed. 530* (“Having a lien upon the fund, as soon as it was identified they could follow it into the hands of the appellant”).

B

Second, the Board contends that historical equity practice supports enforcement of its equitable lien against Montanile's general assets. The Board identifies three methods that equity courts purportedly employed to effectuate this principle: substitute money decrees, deficiency judgments, and the swollen assets doctrine. This argument also fails.

[HN10](#) [↑] [LEdHN10](#) [↑] [10] We have long rejected the argument that “equitable relief” under [§502\(a\)\(3\)](#) means “whatever relief a court of equity is empowered to provide in the particular case at issue,” including ancillary legal remedies. *Mertens, 508 U. S., at 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161*. In “many [****19] situations . . . an equity court could establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority.” *Ibid.* (internal quotation marks omitted). But these legal remedies were not relief “typically available in equity,” and interpreting them as such would eliminate any limit on the meaning of “equitable relief” and would “render the modifier superfluous.” *Id., at 256, 258, 113 S. Ct. 2063, 124 L. Ed. 2d 161* (emphasis deleted); see also *Great-West, supra, at 210, 122 S. Ct. 708, 151 L. Ed. 2d 635*. As we have explained—and as the [*148] Board conceded at oral argument—as a general rule, plaintiffs cannot enforce an equitable lien against a defendant's general assets. See Part II-B, *supra*. The Board contends that there is an exception if the defendant wrongfully dissipates the equitable lien to thwart its enforcement. But none of the Board's examples show that such relief was “typically available” in equity.³

The specific methods by which equity [***568] courts might have awarded relief from a defendant's general assets only confirm that the Board seeks legal, not equitable, remedies. While equity courts sometimes awarded money decrees as a substitute for the value of the equitable lien, they were still legal remedies, because they were [**661] “wholly pecuniary and personal.” 4 Pomeroy §1234, at 694. The same is true with respect to deficiency judgments. Equity courts could award both of these remedies as part of their ancillary jurisdiction to award complete relief. But the treatises make clear that when equity courts did so, “the rights of the parties are strictly legal, and the

³ The Board also interprets *CIGNA Corp. v. Amara, 563 U. S. 421, 131 S. Ct. 1866, 179 L. Ed. 2d 843 (2011)*, as all but overruling *Mertens v. Hewitt Associates, 508 U. S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161 (1993)*, and *Great-West Life & Annuity Ins. Co. v. Knudson, 534 U. S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635 (2002)*, in favor of the Board's broad interpretation of “equitable relief” under [§502\(a\)\(3\)](#). But *CIGNA* reaffirmed that “traditionally speaking, relief that sought a lien or a constructive trust was legal relief, not equitable relief, unless the funds in question were ‘particular funds or property in the defendant's [****20] possession.’” *563 U. S., at 439, 131 S. Ct. 1866, 179 L. Ed. 2d 843* (quoting *Great-West, supra, at 213, 122 S. Ct. 708, 151 L. Ed. 2d 635*; emphasis deleted). In any event, the Court's discussion of [§502\(a\)\(3\)](#) in *CIGNA* was not essential to resolving that case, and—as our later analysis in *US Airways, Inc. v. McCutchen, 569 U. S. 88, 133 S. Ct. 1537, 185 L. Ed. 2d 654 (2013)*, reinforces—our interpretation of “equitable relief” in *Mertens*, *Great-West*, and *Sereboff v. Mid Atlantic Medical Services, Inc., 547 U. S. 356, 126 S. Ct. 1869, 164 L. Ed. 2d 612 (2006)*, remains unchanged. See *McCutchen, supra, at 94-95, 133 S. Ct. 1537, 185 L. Ed. 2d 654*.

final remedy granted is of the kind which might be conferred by a court of law.” 1 *id.*, §231, at 410; see also 1 Dobbs §2.7, at 180-181, and §4.3(3), at 602 (similar); New Federal Equity Rules 10 (rev. 5th ed. 1925) (authorizing equity courts to award such relief). But [HN11](#) [↑] [LEdHN\[11\]](#) [↑] [11] [*149] legal remedies—even legal remedies that a [****21] court of equity could sometimes award—are not “equitable relief” under [§502\(a\)\(3\)](#). See [Mertens, supra, at 256-258, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#).

The swollen assets doctrine also does not establish that the relief the Board seeks is equitable. Under the Board’s view of this doctrine, even if a defendant spends all of a specifically identified fund, the mere fact that the defendant wrongfully had assets that belonged to another increased the defendant’s available assets, and justifies recovery from his general assets. But most equity courts and treatises rejected that theory. See Taft, Note, A Defense of a Limited Use of the Swollen Assets Theory Where Money Has Wrongfully Been Mingled With Other Money, 39 Colum. L. Rev. 172, 175 (1939) (describing the swollen assets doctrine as “often . . . rejected by the courts”); see also Oesterle, Deficiencies of the Restitutionary Right To Trace Misappropriated Property in Equity and in [UCC §9-306, 68 Cornell L. Rev. 172, 189](#), and n. 33 (1983) (similar). [HN12](#) [↑] [LEdHN\[12\]](#) [↑] [12] To the extent that courts endorsed any version of the swollen assets theory, they adopted a more limited rule: that commingling a specifically identified fund—to which a lien attached—with a different fund of the defendant’s did not destroy the lien. Instead, that commingling allowed the plaintiff [****22] to recover the amount of the lien from the entire pot of money. See *Restatement* §209, at 844; Scott, The Right To Follow Money Wrongfully Mingled With Other Money, 27 Harv. L. Rev. 125, 125-126 (1913). Thus, even under the version of the swollen assets doctrine adopted by some courts, recovery out of Montanile’s general assets — in the absence of commingling — would not have been “typically available” relief.

[***569] C

Finally, the Board argues that ERISA’s objectives — of enforcing plan documents according to their terms and of protecting plan assets — would be best served by allowing plans to enforce equitable liens against a participant’s general [*150] assets. The Board also contends that, unless plans can enforce reimbursement provisions against a defendant’s general assets, plans will lack effective or cost-efficient remedies, and participants will dissipate any settlement as quickly as possible, before fiduciaries can sue.

We have rejected these arguments before, and do so again. [HN13](#) [↑] [LEdHN\[13\]](#) [↑] [13] “[V]ague notions of a statute’s ‘basic purpose’ are . . . inadequate to overcome the words of its text regarding the *specific* issue under consideration.” [Mertens, 508 U.S., at 261, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#). Had Congress sought to prioritize the Board’s policy arguments, it could have drafted [§502\(a\)\(3\)](#) to mirror [****23] ERISA provisions governing civil actions. One of those provisions, for instance, allows participants and beneficiaries to bring civil actions “to enforce [their] rights under the terms of the plan” and does not limit them to equitable relief. [Great-West, 534 U. S., at 221, 122 S. Ct. 708, 151 L. Ed. 2d 635](#) (quoting [29 U. S. C. §1132\(a\)\(1\)\(B\) \(1994 ed.\)](#)).

[**662] In any event, our interpretation of [§502\(a\)\(3\)](#) promotes ERISA’s purposes by “allocat[ing] liability for plan-related misdeeds in reasonable proportion to respective actors’ power to control and prevent the misdeeds.” [Mertens, supra, at 262, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#). More than a decade has passed since we decided *Great-West*, and plans have developed safeguards against participants’ and beneficiaries’ efforts to evade reimbursement obligations. Plans that cover medical expenses know how much medical care that participants and beneficiaries require, and have the incentive to investigate and track expensive claims. Plan provisions—like the ones here—obligate participants and beneficiaries to notify the plan of legal process against third parties and to give the plan a right of subrogation.

The Board protests that tracking and participating in legal proceedings is hard and costly, and that settlements are often shrouded in secrecy. The facts of this case undercut that argument. The Board [****24] had sufficient notice of Montanile’s settlement to have taken various steps to preserve those funds. Most notably, when negotiations broke down and [*151] Montanile’s lawyer expressed his intent to disburse the remaining settlement funds to Montanile unless the plan objected within 14 days, the Board could have — but did not — object. Moreover, the Board could have filed suit immediately, rather than waiting half a year.

IV

Because the lower courts erroneously held that the plan could recover out of Montanile's general assets, they did not determine whether Montanile kept his settlement fund separate from his general assets or dissipated the entire fund on nontraceable assets. At oral argument, Montanile's counsel acknowledged "a genuine issue of . . . material fact on how much dissipation there was" and a lack of record evidence as to whether Montanile mixed the settlement fund with [***570] his general assets. Tr. of Oral Arg. 4. A remand is necessary so that the District Court can make that determination.

* * *

We reverse the judgment of the Eleventh Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Dissent by: Ginsburg

Dissent

JUSTICE **Ginsburg**, dissenting.

Montanile received a \$500,000 settlement [****25] out of which he had pledged to reimburse his health benefit plan for expenditures on his behalf of at least \$121,044.02. See [ante, at 140-141, 193 L. Ed. 2d, at 562-563](#). He can escape that reimbursement obligation, the Court decides, by spending the settlement funds rapidly on nontraceable items. See [ante, at 143, 193 L. Ed. 2d, at 565](#). What brings the Court to that bizarre conclusion? As developed in my dissenting opinion in [Great-West Life & Annuity Ins. Co. v. Knudson, 534 U. S. 204, 224-234, 122 S. Ct. 708, 151 L. Ed. 2d 635 \(2002\)](#), the Court erred profoundly in that case by reading the work product of a Congress sitting in 1974 as "unravell[ing] forty years of fusion of law and [*152] equity, solely by employing the benign sounding word 'equitable' when authorizing 'appropriate equitable relief.'" Langbein, What ERISA Means by "Equitable": The Supreme Court's Trail of Error in *Russell, Mertens*, and *Great-West*, [103 Colum. L. Rev. 1317, 1365 \(2003\)](#). The Court has been persuasively counseled "to confess its error." *Ibid.* I would not perpetuate *Great-West's* mistake, and would therefore affirm the judgment of the Court of Appeals for the Eleventh Circuit.

References

[29 U.S.C.S. § 1132\(a\)\(3\)](#)

6 Labor and Employment Law § 154.04 (Matthew Bender)

L Ed Digest, Pensions and Retirement Funds § 13

L Ed Index, Pensions and Retirement

Supreme Court's construction and application of [§ 502](#) of Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. § 1132](#)), providing for civil enforcement of ERISA. [151 L. Ed. 2d 1083](#).



Questioned

As of: January 31, 2025 4:42 PM Z

[CIGNA Corp. v. Amara](#)

Supreme Court of the United States

November 30, 2010, Argued; May 16, 2011, Decided

No. 09-804

Reporter

563 U.S. 421 *; 131 S. Ct. 1866 **; 179 L. Ed. 2d 843 ***; 2011 U.S. LEXIS 3540 ****; 79 U.S.L.W. 4297; 161 Lab. Cas. (CCH) P10,380; 50 Employee Benefits Cas. (BNA) 2569; 22 Fla. L. Weekly Fed. S 985

CIGNA CORPORATION, et al., Petitioners v. JANICE C. AMARA, et al., individually and on behalf of all others similarly situated

Subsequent History: On remand at, Motion denied by [Amara v. Cigna Corp., 925 F. Supp. 2d 242, 2012 U.S. Dist. LEXIS 180355 \(D. Conn., Dec. 20, 2012\)](#)

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

[Amara v. CIGNA Corp., 348 Fed. Appx. 627, 2009 U.S. App. LEXIS 21941 \(2d Cir. Conn., 2009\)](#)

Disposition: Vacated and remanded.

Core Terms

district court, employees, retirement, new plan, annuity, benefits, terms, reformation, percent, terms of the plan, notice, equitable relief, court of equity, equitable, initial deposit, surcharge, annual, plan participant, authorizes, plan administrator, interest rate, violations, fiduciary, deposits, estoppel, salary, detrimental reliance, obligations, calculated, contracts

Case Summary

Procedural Posture

Respondent class of participants a pension plan brought an action against petitioner employer alleging that the employer changed the plan without adequate disclosures to the detriment of the participants. Upon the grant of a writ of certiorari, the employer appealed the judgment of U.S. Court of Appeals for the Second Circuit which upheld reformation of the plan and required the employer to comply with the reformed plan.

Overview

The employer contended that the district court lacked authority to reform the plan terms under [29 U.S.C.S. § 1132\(a\)\(1\)\(B\)](#), which authorized the participants to bring a civil action under the Employee Retirement Income Security Act of 1974 to recover plan benefits. The U.S. Supreme Court unanimously held that, while [§ 1132\(a\)\(1\)\(B\)](#) did not authorize reformation of the plan, [§ 1132\(a\)\(3\)](#) authorized equitable relief which reformation essentially provided. [Section 1132\(a\)\(1\)\(B\)](#) provided only for enforcement of the plans terms and not for changing the terms, and the misleading disclosures by the employer were not enforceable plan terms. However, reformation of the plan was consistent with the authorization in [§ 1132\(a\)\(3\)](#) to provide appropriate equitable relief, the district court's injunctions provided relief which was traditionally considered equitable, and the remaining relief granted by the

district court could be supported by equitable principles of contract reformation, equitable estoppel, and monetary relief for a trustee's breach of duty. It thus remained to determine the applicable equitable principles and to apply the standards applicable to such principles.

Outcome

The judgment upholding reformation of the plan was vacated, and the case was remanded for further proceedings.

LexisNexis® Headnotes

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN1](#) [↓] Remedies, Equitable Relief

[29 U.S.C.S. § 1132\(a\)\(3\)](#) allows an employee benefit plan participant, beneficiary, or fiduciary to obtain other appropriate equitable relief to redress violations of parts of the Employee Retirement Income Security Act of 1974 or the terms of the plan.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN2](#) [↓] Remedies, Equitable Relief

The term "appropriate equitable relief " in § 502(a)(3) of the Employee Retirement Income Security Act of 1974 refers to those categories of relief that, traditionally speaking (i.e., prior to the merger of law and equity) were typically available in equity.

Civil Procedure > ... > Equity > Maxims > Remedy Principle

[HN3](#) [↓] Maxims, Remedy Principle

A maxim of equity states that equity suffers not a right to be without a remedy.

Contracts Law > ... > Estoppel > Equitable Estoppel > General Overview

[HN4](#) [↓] Estoppel, Equitable Estoppel

Equitable estoppel operates to place the person entitled to its benefit in the same position he would have been in had the representations been true.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN5](#) [↓] Remedies, Equitable Relief

Section 502(a)(3) of the of the Employee Retirement Income Security Act of 1974 invokes the equitable powers of a district court.

Lawyers' Edition Display

Decision

[***843] [ERISA § 502\(a\)\(1\)\(B\)](#) ([29 U.S.C.S. § 1132\(a\)\(1\)\(B\)](#)) held not to authorize Federal District Court's reformation of pension plan allegedly changed by employer without adequate disclosures; but [ERISA § 502\(a\)\(3\)](#) ([29 U.S.C.S. § 1132\(a\)\(3\)](#)) held to authorize reformation under standard depending on equitable theory.

Summary

Procedural posture: Respondent class of participants a pension plan brought an action against petitioner employer alleging that the employer changed the plan without adequate disclosures to the detriment of the participants. Upon the grant of a writ of certiorari, the employer appealed the judgment of U.S. Court of Appeals for the Second Circuit which upheld reformation of the plan and required the employer to comply with the reformed plan.

Overview: The employer contended that the district court lacked authority to reform the plan terms under [29 U.S.C.S. § 1132\(a\)\(1\)\(B\)](#), which authorized the participants to bring a civil action under the Employee Retirement Income Security Act of 1974 to recover plan benefits. The U.S. Supreme Court unanimously held that, while [§ 1132\(a\)\(1\)\(B\)](#) did not authorize reformation of the plan, [§ 1132\(a\)\(3\)](#) authorized equitable relief which reformation essentially provided. [Section 1132\(a\)\(1\)\(B\)](#) provided only for enforcement of the plans terms and not for changing the terms, and the misleading disclosures by the employer were not enforceable plan terms. However, reformation of the plan was consistent with the authorization in [§ 1132\(a\)\(3\)](#) to provide appropriate equitable relief, the district court's injunctions provided relief which was traditionally considered equitable, and the remaining relief granted by the district court could be supported by equitable principles of contract reformation, equitable estoppel, and monetary relief for a trustee's breach of duty. It thus remained to determine the applicable equitable principles and to apply the standards applicable to such principles.

Outcome: The judgment upholding reformation of the plan was vacated, and the case was remanded for further proceedings.

Headnotes

[***844]

PENSIONS AND RETIREMENT FUNDS §13 > ERISA VIOLATIONS -- RELIEF > Headnote:

[LEdHN\[1\]](#) [1]

[29 U.S.C.S. § 1132\(a\)\(3\)](#) allows an employee benefit plan participant, beneficiary, or fiduciary to obtain other appropriate equitable relief to redress violations of parts of the Employee Retirement Income Security Act of 1974 or the terms of the plan. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA VIOLATIONS -- APPROPRIATE EQUITABLE RELIEF > Headnote:

[LEdHN\[2\]](#) [2]

The term “appropriate equitable relief” in [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 refers to those categories of relief that, traditionally speaking (i.e., prior to the merger of law and equity) were typically available in equity. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

EQUITY §87 > MAXIM -- REMEDY > Headnote:

[LEdHN\[3\]](#) [3]

A maxim of equity states that equity suffers not a right to be without a remedy. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

ESTOPPEL AND WAIVER §39 > EQUITABLE ESTOPPEL -- OPERATION > Headnote:

[LEdHN\[4\]](#) [4]

Equitable estoppel operates to place the person entitled to its benefit in the same position he would have been in had the representations been true. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE RELIEF > Headnote:

[LEdHN\[5\]](#) [5]

[Section 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 invokes the equitable powers of a district court. (Breyer, J., joined by Roberts, Ch. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ.)

Syllabus

[*421] [***845] [**1868] Until 1998, petitioner CIGNA Corporation's pension plan provided a retiring employee with an annuity based on preretirement salary and length of service. Its new plan replaced that annuity with a cash balance based on a defined annual contribution from CIGNA, increased by compound interest. The new plan translated already-earned benefits under the old plan into an opening amount in the cash balance account. Respondents, on behalf of beneficiaries of the CIGNA Pension Plan (also a petitioner), challenged the new plan's adoption, claiming, as relevant here, that CIGNA's notice of the changes was improper, particularly because the new plan in certain respects provided them with less generous benefits. The District Court found that CIGNA's disclosures violated its obligations under [§§ 102\(a\)](#), [104\(b\)](#), and [204\(h\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA). In determining relief, it found that CIGNA's notice defects had caused the employees “likely harm.” It then reformed the new plan and ordered CIGNA to pay benefits accordingly, finding its authority [****2] in [ERISA § 502\(a\)\(1\)\(B\)](#), which authorizes a plan “participant or beneficiary” to bring a “civil action” to “recover benefits due . . . under the terms of his plan.” The Second Circuit affirmed.

Held:

1. Although [§ 502\(a\)\(1\)\(B\)](#) did not give the District Court authority to reform CIGNA's plan, relief is authorized by [§ 502\(a\)\(3\)](#), which allows a participant, beneficiary, or fiduciary “to obtain other appropriate equitable relief” to redress violations of ERISA “or the [plan's] terms.” *Pp.* _____, 179 L. Ed. 2d, at 854-858.

(a) The court ordered relief in two steps. Step 1: It ordered the terms of the plan reformed. Step 2: It ordered CIGNA to enforce the plan as reformed. Step 2 orders recovery of the benefits provided by the “terms of [the reformed] plan” and is thus consistent with [§ 502\(a\)\(1\)\(B\)](#). However, that provision--which speaks of “enforc[ing]” the plan’s terms, not changing them--does not suggest that it authorizes a court to alter those terms here, where the change, akin to reforming a contract, seems less like the simple enforcement of a contract as written and more like an equitable remedy. Nor can the Court accept the **[*422]** Solicitor General’s alternative rationale: that the District Court enforced the **[****3]** summary plan descriptions and that they are plan terms. That reading cannot be squared with [ERISA § 102\(a\)](#), **[***846]** which obliges plan administrators to furnish summary plan descriptions, but does not suggest that information about the plan provided by those disclosures is itself part of the plan. Nothing in [§ 502\(a\)\(1\)\(B\)](#) suggests the contrary. The Solicitor General’s reading also cannot be squared with the statute’s division of authority between a plan’s sponsor--who, like a trust’s settlor, creates the plan’s **[**1869]** basic terms and conditions, executes a written instrument containing those terms and conditions, and provides in that instrument a procedure for making amendments--and the plan’s administrator--a trustee-like fiduciary who manages the plan, follows its terms in doing so, and provides participants with the summary plan descriptions. ERISA carefully distinguishes these roles, and there is no reason to believe that the statute intends to mix the responsibilities by giving the administrator the power to set plan terms indirectly in the summaries, even when, as here, the administrator is also the plan sponsor. Finally, it is difficult to reconcile an interpretation that would make **[****4]** a summary’s language legally binding with the basic summary plan description objective of clear, simple communication. [Pp. _____ - _____, 179 L. Ed. 2d, at 854-855.](#)

(b) This Court has interpreted [§ 502\(a\)\(3\)](#)’s phrase “appropriate equitable relief” as referring to “ ‘those categories of relief ’ ” that, before the merger of law and equity, “ ‘were typically available in equity.’ ” [Sereboff v. Mid Atlantic Medical Services, Inc., 547 U.S. 356, 361, 126 S. Ct. 1869, 164 L. Ed. 2d 612.](#) This case--concerning a beneficiary’s suit against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust)--is the kind of lawsuit that, before the merger, could have been brought only in an equity court, where the remedies available were traditionally considered equitable remedies. The District Court’s injunctions obviously fall within this category. The other relief it ordered closely resembles three forms of traditional equitable relief. First, what the court did here may be regarded as the reformation of the plan’s terms, in order to remedy false or misleading information CIGNA provided. The power to reform contracts is a traditional power of an equity court and is used to prevent fraud. Second, the part **[****5]** of the remedy holding CIGNA to its promise that the new plan would not take from its employees previously accrued benefits resembles estoppel, also a traditional equitable remedy. Third, the injunctions require the plan administrator to pay already retired beneficiaries money owed them under the plan as reformed. Equity courts possessed the power to provide monetary “compensation” for a loss resulting from a trustee’s breach of duty, or to prevent the trustee’s unjust enrichment. That surcharge remedy extended to a breach of trust committed **[*423]** by a fiduciary encompassing any violation of duty imposed on that fiduciary. [Pp. 438-442.](#)

2. Because [§ 502\(a\)\(3\)](#) authorizes “appropriate equitable relief” for violations of ERISA, the relevant standard of harm will depend on the equitable theory by which the District Court provides relief. That court is to conduct the analysis in the first instance, but there are several equitable principles that it might apply on remand. Neither ERISA’s relevant substantive provisions nor [§ 502\(a\)\(3\)](#) sets a particular standard for determining **[***847]** harm. And equity law provides no general principle that “detrimental reliance” must be proved before a remedy is decreed. To **[****6]** the extent any such requirement arises, it is because the specific remedy being contemplated imposes that requirement. Thus, when a court exercises authority under [§ 502\(a\)\(3\)](#) to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made. However, equity courts did not insist on a detrimental reliance showing where they ordered reformation where a fraudulent suppression, omission, or insertion materially affected the substance of a contract. Nor did they require a detrimental reliance showing when they ordered surcharge. They simply ordered a trust or beneficiary **[**1870]** made whole following a trustee’s breach of trust. This flexible approach belies a strict detrimental reliance requirement. To be sure, a fiduciary can be surcharged under [§ 502\(a\)\(3\)](#) only upon a showing of actual harm, and such harm may consist of detrimental reliance. But it might also come from the loss of a right protected by ERISA or its trust-law antecedents. It is not difficult to imagine how the failure to provide proper summary information here, in violation of ERISA, injured employees even if they did not themselves act in reliance on the summaries. Thus, to obtain relief by surcharge for **[****7]** violations of [§§](#)

[102\(a\)](#) and [104\(b\)](#), a plan participant or beneficiary must show that the violation caused injury, but need show only actual harm and causation, not detrimental reliance. [Pp. _____ - _____, 179 L. Ed. 2d, at 858-860.](#)

[348 Fed. Appx. 627](#), vacated and remanded.

Counsel: Theodore B. Olson argued the cause for petitioners.

Stephen R. Bruce argued the cause for respondents.

Edwin S. Kneedler argued the cause for the United States, as amicus curiae, by special leave of court.

Judges: Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Ginsburg, Alito, and Kagan, JJ., joined. Scalia, J., filed an opinion concurring in the judgment, in which Thomas, J., joined. Sotomayor, J., took no part in the consideration or decision of the case.

Opinion by: BREYER

Opinion

[*424] Justice **Breyer** delivered the opinion of the Court.

In 1998, petitioner CIGNA Corporation changed the nature of its basic pension plan for employees. Previously, the plan provided a retiring employee with a defined benefit in the form of an annuity calculated on the basis of his preretirement salary and length of service. The new plan provided most retiring employees with a (lump sum) cash balance calculated on the basis of a defined annual contribution from CIGNA as increased by compound interest. Because many employees had already earned at least some old-plan benefits, the new plan translated already-earned benefits into an opening amount in the employee's cash [****8] balance account.

Respondents, acting on behalf of approximately 25,000 beneficiaries of the CIGNA Pension Plan (which is also a petitioner here), challenged CIGNA's adoption of the new plan. They claimed in part that CIGNA had failed to give them proper notice of changes to their benefits, particularly because the new plan in certain respects provided them with less generous benefits. See Employee Retirement Income Security Act of 1974 (ERISA) §§ 102(a), 104(b), 204(h), 88 Stat. 841, [*425] 848, 862, as amended, [29 U.S.C. §§ 1022\(a\), 1024\(b\), 1054\(h\)](#).

The District Court agreed that the [***848] disclosures made by CIGNA violated its obligations [**1871] under ERISA. In determining relief, the court found that CIGNA's notice failures had caused the employees "likely harm." The Court then reformed the new plan and ordered CIGNA to pay benefits accordingly. It found legal authority for doing so in [ERISA § 502\(a\)\(1\)\(B\)](#), [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#) (authorizing a plan "participant or beneficiary" to bring a "civil action" to "recover benefits due to him under the terms of his plan").

We agreed to decide whether the District Court applied the correct legal standard, namely, a "likely harm" standard, in determining that [****9] CIGNA's notice violations caused its employees sufficient injury to warrant legal relief. To reach that question, we must first consider a more general matter--whether the ERISA section just mentioned (ERISA's recovery-of-benefits-due provision, [§ 502\(a\)\(1\)\(B\)](#)) authorizes entry of the relief the District Court provided. We conclude that it does not authorize this relief. Nonetheless, we find that a different equity-related ERISA provision, to which the District Court also referred, authorizes forms of relief similar to those that the court entered. [§ 502\(a\)\(3\)](#), [29 U.S.C. § 1132\(a\)\(3\)](#).

[Section 502\(a\)\(3\)](#) authorizes "appropriate equitable relief " for violations of ERISA. Accordingly, the relevant standard of harm will depend upon the equitable theory by which the District Court provides relief. We leave it to the

District Court to conduct that analysis in the first instance, but we identify equitable principles that the court might apply on remand.

I

Because our decision rests in important part upon the circumstances present here, we shall describe those circumstances in some detail. We still simplify in doing so. But [*426] the interested reader can find a more thorough description in two District [****10] Court opinions, which set forth that court's findings reached after a lengthy trial. See [559 F. Supp. 2d 192 \(Conn. 2008\)](#); [534 F. Supp. 2d 288 \(Conn. 2008\)](#).

A

Under CIGNA's pre-1998 defined-benefit retirement plan, an employee with at least five years service would receive an annuity annually paying an amount that depended upon the employee's salary and length of service. Depending on when the employee had joined CIGNA, the annuity would equal either (1) 2 percent of the employee's average salary over his final three years with CIGNA, multiplied by the number of years worked (up to 30); or (2) 1 2/3 percent of the employee's average salary over his final five years with CIGNA, multiplied by the number of years worked (up to 35). Calculated either way, the annuity would approach 60 percent of a longtime employee's final salary. A well-paid longtime employee, earning, say, \$160,000 per year, could receive a retirement annuity paying the employee about \$96,000 per year until his death. The plan offered many employees at least one other benefit: They could retire early, at age 55, and receive an only-somewhat-reduced annuity.

In November 1997, CIGNA sent its employees a newsletter announcing [****11] that it intended to put in place a new pension plan. The new plan would substitute an "account balance plan" for CIGNA's pre-existing defined-benefit system. App. 991a (emphasis deleted). The newsletter added that [***849] the old plan would end on December 31, 1997, that CIGNA would introduce (and describe) the new plan sometime during 1998, and that the new plan would apply retroactively to January 1, 1998.

Eleven months later CIGNA filled in the details. Its new plan created an individual [**1872] retirement account for each employee. (The account consisted of a bookkeeping entry backed by a CIGNA-funded trust.) Each year CIGNA [*427] would contribute to the employee's individual account an amount equal to between 3 percent and 8.5 percent of the employee's salary, depending upon age, length of service, and certain other factors. The account balance would earn compound interest at a rate equal to the return on 5-year treasury bills plus one-quarter percent (but no less than 4.5 percent and no greater than 9 percent). Upon retirement the employee would receive the amount then in his or her individual account--in the form of either a lump sum or whatever annuity the lump sum then would buy. As promised, [****12] CIGNA would open the accounts and begin to make contributions as of January 1, 1998.

But what about the retirement benefits that employees had already earned prior to January 1, 1998? CIGNA promised to make an initial contribution to the individual's account equal to the value of that employee's already-earned benefits. And the new plan set forth a method for calculating that initial contribution. The method consisted of calculating the amount as of the employee's (future) retirement date of the annuity to which the employee's salary and length of service already (*i.e.*, as of December 31, 1997) entitled him and then discounting that sum to its present (*i.e.*, January 1, 1998) value.

An example will help: Imagine an employee born on January 1, 1966, who joined CIGNA in January 1991 on his 25th birthday, and who (during the five years preceding the plan changeover) earned an average salary of \$100,000 per year. As of January 1, 1998, the old plan would have entitled that employee to an annuity equal to \$100,000 times 7 (years then worked) times 1 2/3 percent, or \$11,667 per year--when he retired in 2031 at age 65. The 2031 price of an annuity paying \$11,667 per year until death depends [****13] upon interest rates and mortality assumptions at that time. If we assume the annuity would pay 7 percent until the holder's death (and we use the mortality assumptions used by the plan, see App. 407a (incorporating the mortality table prescribed by [Rev. Rul. 95-6, 1995-1 Cum. Bull. 80](#))), [*428] then the 2031 price of such an annuity would be about \$120,500. And CIGNA should initially deposit in this individual's account on January 1, 1998, an amount that will grow to become

\$120,500, 33 years later, in 2031, when the individual retires. If we assume a 5 percent average interest rate, then that amount presently (*i.e.*, as of January 1, 1998) equals about \$24,000. And (with one further mortality-related adjustment that we shall describe [infra, at _____, 179 L. Ed. 2d, at 850-851](#)) that is the amount, more or less, that the new plan's transition rules would have required CIGNA initially to deposit. Then CIGNA would make further annual deposits, and all the deposited amounts would earn compound interest. When the employee retired, he would receive the resulting lump sum.

[*850]** The new plan also provided employees a guarantee: An employee would receive upon retirement either (1) the amount to which he or she had become entitled **[****14]** as of January 1, 1998, or (2) the amount then in his or her individual account, whichever was greater. Thus, the employee in our example would receive (in 2031) no less than an annuity paying \$11,667 per year for life.

B

1

The District Court found that CIGNA's initial descriptions of its new plan were significantly incomplete and misled its employees. In November 1997, for example, CIGNA sent the employees a newsletter **[**1873]** that said the new plan would “significantly enhance” its “retirement program,” would produce “an overall improvement in . . . retirement benefits,” and would provide “the same benefit security” with “steadier benefit growth.” App. 990a, 991a, 993a. CIGNA also told its employees that they would “see the growth in [their] total retirement benefits from CIGNA every year,” *id.*, at 952a, that its initial deposit “represent[ed] the full value of the benefit [they] earned for service before 1998,” Record E-503 **[*429]** (Exh. 98), and that “[o]ne advantage the company *will not* get from the retirement program changes is cost savings,” App. 993a.

In fact, the new plan saved the company \$10 million annually (though CIGNA later said it devoted the savings to other employee benefits). Its initial **[****15]** deposit did not “represent[t] the full value of the benefit” that employees had “earned for service before 1998.” And the plan made a significant number of employees worse off in at least the following specific ways:

First, the initial deposit calculation ignored the fact that the old plan offered many CIGNA employees the right to retire early (beginning at age 55) with only somewhat reduced benefits. This right was valuable. For example, as of January 1, 1998, respondent Janice Amara had earned vested age-55 retirement benefits of \$1,833 per month, but CIGNA's initial deposit in her new-plan individual retirement account (ignoring this benefit) would have allowed her at age 55 to buy an annuity benefit of only \$900 per month.

Second, as we previously indicated but did not explain, [supra, at _____, 179 L. Ed. 2d, at 850](#), the new plan adjusted CIGNA's initial deposit downward to account for the fact that, unlike the old plan's lifetime annuity, an employee's survivors would receive the new plan's benefits (namely, the amount in the employee's individual account) even if the employee died before retiring. The downward adjustment consisted of multiplying the otherwise-required deposit by the probability that the **[****16]** employee would live until retirement--a 90 percent probability in the example of our 32-year-old, [supra, at _____, 179 L. Ed. 2d, at 849-850](#). And that meant that CIGNA's initial deposit in our example--the amount that was supposed to grow to \$120,500 by 2031--would be less than \$22,000, not \$24,000 (the number we computed). The employee, of course, would receive a benefit in return--namely, a form of life insurance. But at least some employees might have preferred the retirement **[*430]** benefit and consequently could reasonably have thought it important to know that the **[***851]** new plan traded away one-tenth of their already-earned benefits for a life insurance policy that they might not have wanted.

Third, the new plan shifted the risk of a fall in interest rates from CIGNA to its employees. Under the old plan, CIGNA had to buy a retiring employee an annuity that paid a specified sum irrespective of whether falling interest rates made it more expensive for CIGNA to pay for that annuity. And falling interest rates also meant that any sum CIGNA set aside to buy that annuity would grow more slowly over time, thereby requiring CIGNA to set aside more money to make any specific sum available at retirement. Under the new **[****17]** plan CIGNA did not have to buy a retiring employee an annuity that paid a specific sum. The employee would simply receive whatever sum his

account contained. And falling interest rates meant that the account's lump sum would earn less money each year after the employee retired. Annuities, for example, would become more expensive (any fixed purchase price paying for less annual income). At the same time falling interest meant that the individual account would grow more slowly over time, **[**1874]** leaving the employee with less money at retirement.

Of course, interest rates might rise instead of fall, leaving CIGNA's employees better off under the new plan. But the latter advantage does not cancel out the former disadvantage, for most individuals are risk averse. And that means that most of CIGNA's employees would have preferred that CIGNA, rather than they, bear these risks.

The amounts likely involved are significant. If, in our example, interest rates between 1998 and 2031 averaged 4 percent rather than the 5 percent we assumed, and if in 2031 annuities paid 6 percent rather than the 7 percent we assumed, then CIGNA would have had to make an initial deposit of \$35,500 (not \$24,000) to assure **[****18]** that employee the **[*431]** \$11,667 annual annuity payment to which he had already become entitled. Indeed, that \$24,000 that CIGNA would have contributed (leaving aside the life-insurance problem) would have provided enough money to buy (in 2031) an annuity that assured the employee an annual payment of only about \$8,000 (rather than \$11,667).

We recognize that the employee in our example (like others) might have continued to work for CIGNA after January 1, 1998; and he would thereby eventually have earned a pension that, by the time of his retirement, was worth far more than \$11,667. But that is so because CIGNA made an *additional* contribution for each year worked *after* January 1, 1998. If interest rates fell (as they did), it would take the employee several additional years of work simply to catch up (under the new plan) to where he had already been (under the old plan) as of January 1, 1998--a phenomenon known in pension jargon as "wear away," see [534 F. Supp. 2d, at 303-304](#) (referring to respondents' requiring 6 to 10 years to catch up).

The District Court found that CIGNA told its employees nothing about any of these features of the new plan--which individually and together made **[****19]** clear that CIGNA's descriptions of the plan were incomplete and inaccurate. The District Court also found that CIGNA intentionally misled its employees. A focus group and many employees asked CIGNA, **[***852]** for example, to " '[d]isclose details' " about the plan, to provide " 'individual comparisons,' " or to show " '[a]n actual projection for retirement.' " [Id., at 342](#). But CIGNA did not do so. Instead (in the words of one internal document), it " 'focus[ed] on NOT providing employees before and after samples of the Pension Plan changes.' " [Id., at 343](#).

The District Court concluded, as a matter of law, that CIGNA's representations (and omissions) about the plan, made between November 1997 (when it announced the plan) and December 1998 (when it put the plan into effect) violated:

[*432] (1) [ERISA § 204\(h\)](#), implemented by Treas. Reg. § 1.411(d)-6, 26 CFR § 1.411(d)-6 (2000), which (as it existed at the relevant time) forbade an amendment of a pension plan that would "provide for a significant reduction in the rate of future benefit accrual" unless the plan administrator also sent a "written notice" that provided either the text of the amendment or summarized its likely effects, [29 U.S.C. § 1054\(h\) \(2000 ed.\)](#) **[****20]** (amended 2001); Treas. Reg. § 1.411(d)-6, Q&A-10, [63 Fed. Reg. 68682 \(1998\)](#); and

(2) [ERISA §§ 102\(a\)](#) and [104\(b\)](#), which require a plan administrator to provide beneficiaries with summary plan descriptions and with summaries of material modifications, "written in a manner calculated to be understood by the average plan participant," that are "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their **[**1875]** rights and obligations under the plan," [29 U.S.C. §§ 1022\(a\), 1024\(b\) \(2006 ed. and Supp. III\)](#).

2

The District Court then turned to the remedy. First, the court agreed with CIGNA that only employees whom CIGNA's disclosure failures had harmed could obtain relief. But it did not require each individual member of the relevant CIGNA employee class to show individual injury. Rather, it found (1) that the evidence presented had

raised a presumption of “likely harm” [****21] suffered by the members of the relevant employee class, and (2) that CIGNA, though free to offer contrary evidence in respect to some or all of those employees, had failed to rebut that presumption. It concluded that this un rebutted showing was sufficient to warrant class-applicable relief.

Second, the court noted that [§ 204\(h\)](#) had been interpreted by the Second Circuit to permit the invalidation of plan amendments not preceded by a proper notice, prior to the 2001 amendment that made this power explicit. [559 F. Supp. 2d, at 207](#) (citing [Frommert v. Conkright](#), [***433**] [433 F.3d 254, 263 \(2006\)](#)); see [29 U.S.C. § 1054\(h\)\(6\) \(2006 ed.\)](#) (entitling participants to benefits “without regard to [the] amendment” in case of an “egregious failure”). But the court also thought that granting this relief here would harm, not help, the injured employees. That is because the notice failures all concerned the new plan that took effect in December 1998. The court thought that the notices in respect to the freezing of old-plan benefits, effective December 31, 1997, were valid. To strike the new plan while leaving in effect the frozen old plan would not help CIGNA's employees.

The court considered treating the November [****22] 1997 notice as a sham or [***853] treating that notice and the later 1998 notices as part and parcel of a single set of related events. But it pointed out that respondents “ha[d] argued none of these things.” [559 F. Supp. 2d, at 208](#). And it said that the court would “not make these arguments now on [respondents'] behalf.” *Ibid.*

Third, the court reformed the terms of the new plan's guarantee. It erased the portion that assured participants who retired the greater of “A” (that which they had already earned as of December 31, 1997, under the old plan, \$11,667 in our example) or “B” (that which they would earn via CIGNA's annual deposits under the new plan, including CIGNA's initial deposit). And it substituted a provision that would guarantee each employee “A” (that which they had already earned, as of December 31, 1997, under the old plan) plus “B” (that which they would earn via CIGNA's annual deposits under the new plan, excluding CIGNA's initial deposit). In our example, the District Court's remedy would no longer force our employee to choose upon retirement either an \$11,667 annuity or his new plan benefits (including both CIGNA's annual deposits and CIGNA's initial deposit). It would give [****23] him an \$11,667 annuity plus his new-plan benefits (with CIGNA's annual deposits but without CIGNA's initial deposit).

[*434] Fourth, the court “order[ed] and enjoin[ed] the CIGNA Plan to reform its records to reflect that all class members . . . now receive [the just described] 'A + B' benefits,” and that it pay appropriate benefits to those class members who had already retired. *Id.*, at 222.

Fifth, the court held that [ERISA § 502\(a\)\(1\)\(B\)](#) provided the legal authority to enter this relief. That provision states that a “civil action may be brought” by a plan “participant or beneficiary . . . to recover benefits due to him under the terms [**1876] of his plan.” [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#). The court wrote that its orders in effect awarded “benefits under the terms of the plan” as reformed. [559 F. Supp. 2d, at 212](#).

At the same time the court considered whether [ERISA § 502\(a\)\(3\)](#) also provided legal authority to enter this relief. That provision states that a civil action may be brought

“by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other *appropriate equitable relief* (i) to redress such [****24] violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.” [29 U.S.C. § 1132\(a\)\(3\)](#) (emphasis added).

The District Court decided not to answer this question because (1) it had just decided that the same relief was available under [§ 502\(a\)\(1\)\(B\)](#), regardless, cf. [Varity Corp. v. Howe](#), [516 U.S. 489, 515, 116 S. Ct. 1065, 134 L. Ed. 2d 130 \(1996\)](#); and (2) the Supreme Court has “issued several opinions . . . that have severely curtailed the kinds of relief that are available under [§ 502\(a\)\(3\)](#),” [559 F. Supp. 2d, at 205](#) (citing [Sereboff v. Mid Atlantic Medical Services, Inc.](#), [547 U.S. 356, 126 S. Ct. 1869, 164 L. Ed. 2d 612 \(2006\)](#); [Great-West Life & Annuity Ins. Co. v. Knudson](#), [534 U.S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635 \(2002\)](#); and [Mertens v. Hewitt Associates](#), [508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#)).

3

The parties cross-appealed the District [***854] Court's judgment. The Court of Appeals for the Second Circuit issued a brief [*435] summary order, rejecting all their claims, and affirming "the judgment of the district court for substantially the reasons stated" in the District Court's "well-reasoned and scholarly opinions." [348 Fed. Appx. 627 \(2009\)](#). The parties filed cross-petitions for writs of certiorari in this Court. We granted the request in CIGNA's petition to consider whether a showing of [****25] "likely harm" is sufficient to entitle plan participants to recover benefits based on faulty disclosures.

II

CIGNA in the merits briefing raises a preliminary question. Brief for Petitioners 13-20. It argues first and foremost that the statutory provision upon which the District Court rested its orders, namely, the provision for recovery of plan benefits, [§ 502\(a\)\(1\)\(B\)](#), does not in fact authorize the District Court to enter the kind of relief it entered here. And for that reason, CIGNA argues, whether the District Court did or did not use a proper standard for determining harm is beside the point. We believe that this preliminary question is closely enough related to the question presented that we shall consider it at the outset.

A

The District Court ordered relief in two steps. Step 1: It ordered the terms of the plan reformed (so that they provided an "A plus B," rather than a "greater of A or B" guarantee). Step 2: It ordered the plan administrator (which it found to be CIGNA) to enforce the plan as reformed. One can fairly describe step 2 as consistent with [§ 502\(a\)\(1\)\(B\)](#), for that provision grants a participant the right to bring a civil action to "recover benefits due . . . under [****26] the terms of his plan." [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#). And step 2 orders recovery of the benefits provided by the "terms of [the] plan" as *reformed*.

But what about step 1? Where does [§ 502\(a\)\(1\)\(B\)](#) grant a court the power to *change* the terms of the plan as they [*436] previously existed? The statutory language [**1877] speaks of "*enforc[ing]*" the "terms of the plan," not of *changing* them. [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#) (emphasis added). The provision allows a court to look outside the plan's written language in deciding what those terms are, *i.e.*, what the language means. See [UNUM Life Ins. Co. of America v. Ward, 526 U.S. 358, 377-379, 119 S. Ct. 1380, 143 L. Ed. 2d 462 \(1999\)](#) (permitting the insurance terms of an ERISA-governed plan to be interpreted in light of state insurance rules). But we have found nothing suggesting that the provision authorizes a court to alter those terms, at least not in present circumstances, where that change, akin to the reform of a contract, seems less like the simple enforcement of a contract as written and more like an equitable remedy. See [infra, at _____, 179 L. Ed. 2d, at 857](#).

Nor can we accept the Solicitor General's alternative rationale seeking to justify the use of this provision. The Solicitor General says that the District Court [****27] did enforce the plan's terms as written, adding that the "plan" includes the disclosures that constituted the summary plan descriptions. In other words, in the view of the Solicitor General, the terms of the summaries are terms of the plan.

Even if the District Court had viewed the summaries as plan "terms" (which it did not, see [supra, at \[***855\] _____, 179 L. Ed. 2d, at 853](#)), however, we cannot agree that the terms of statutorily required plan summaries (or summaries of plan modifications) necessarily may be enforced (under [§ 502\(a\)\(1\)\(B\)](#)) as the terms of the plan itself. For one thing, it is difficult to square the Solicitor General's reading of the statute with [ERISA § 102\(a\)](#), the provision that obliges plan administrators to furnish summary plan descriptions. The syntax of that provision, requiring that participants and beneficiaries be advised of their rights and obligations "under the plan," suggests that the information *about* the plan provided by those disclosures is not itself *part of* the plan. See [29 U.S.C. § 1022\(a\)](#). Nothing in [§ 502\(a\)\(1\)\(B\)](#) (or, as far as we can tell, anywhere else) suggests the contrary.

[*437] Nor do we find it easy to square the Solicitor General's reading with the statute's division of authority [****28] between a plan's sponsor and the plan's administrator. The plan's sponsor (*e.g.*, the employer), like a trust's settlor, creates the basic terms and conditions of the plan, executes a written instrument containing those

terms and conditions, and provides in that instrument “a procedure” for making amendments. [§ 402, 29 U.S.C. § 1102](#). The plan's administrator, a trustee-like fiduciary, manages the plan, follows its terms in doing so, and provides participants with the summary documents that describe the plan (and modifications) in readily understandable form. §§ 3(21)(A), 101(a), 102, 104, [29 U.S.C. §§ 1002\(21\)\(A\), 1021\(a\), 1022, 1024 \(2006 ed. and Supp. III\)](#). Here, the District Court found that the same entity, CIGNA, filled both roles. See [534 F. Supp. 2d, at 331](#). But that is not always the case. Regardless, we have found that ERISA carefully distinguishes these roles. See, e.g., [Varity Corp., 516 U.S., at 498, 116 S. Ct. 1065, 134 L. Ed. 2d 130](#). And we have no reason to believe that the statute intends to mix the responsibilities by giving the administrator the power to set plan terms indirectly by including them in the summary plan descriptions. See [Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 81-85, 115 S. Ct. 1223, 131 L. Ed. 2d 94 \(1995\)](#).

Finally, [****29] we find it difficult to reconcile the Solicitor General's interpretation with the basic summary plan description objective: clear, simple communication. See §§ 2(a), 102(a), [29 U.S.C. § 1001\(a\), 1022\(a\) \(2006 ed.\)](#). To make the language of a plan summary legally binding could [**1878] well lead plan administrators to sacrifice simplicity and comprehensibility in order to describe plan terms in the language of lawyers. Consider the difference between a will and the summary of a will or between a property deed and its summary. Consider, too, the length of Part I of this opinion, and then consider how much longer Part I would have to be if we had to include all the qualifications and nuances that a plan drafter [*438] might have found important and feared to omit lest they lose all legal significance. The District Court's opinions take up 109 pages of the Federal Supplement. None of this is to say that plan administrators can avoid providing complete and accurate summaries of plan terms in the manner required by ERISA and its implementing regulations. But we fear that the Solicitor General's rule might bring about complexity that would defeat the fundamental purpose of the summaries.

For these reasons [****30] taken together we conclude that the summary documents, important as they are, provide [***856] communication with beneficiaries *about* the plan, but that their statements do not themselves constitute the *terms* of the plan for purposes of [§ 502\(a\)\(1\)\(B\)](#). We also conclude that the District Court could not find authority in that section to reform CIGNA's plan as written.

B

If [§ 502\(a\)\(1\)\(B\)](#) does not authorize entry of the relief here at issue, what about nearby [§ 502\(a\)\(3\)](#)? [HN1\[↑\]](#) [LEdHN1\[↑\]](#) [1] That provision allows a participant, beneficiary, or fiduciary “to obtain other *appropriate equitable relief*” to redress violations of (here relevant) parts of ERISA “or the terms of the plan.” [29 U.S.C. § 1132\(a\)\(3\)](#) (emphasis added). The District Court strongly implied, but did not directly hold, that it would base its relief upon this subsection were it not for (1) the fact that the preceding “plan benefits due” provision, [§ 502\(a\)\(1\)\(B\)](#), provided sufficient authority; and (2) certain cases from this Court that narrowed the application of the term “appropriate equitable relief,” see, e.g., [Mertens, 508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#); [Great-West, 534 U.S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). Our holding in Part II-A, *supra*, removes the District Court's first obstacle. And given [****31] the likelihood that, on remand, the District Court will turn to and rely upon this alternative subsection, we consider the court's second concern. We find that concern misplaced.

[*439] We have interpreted [HN2\[↑\]](#) [LEdHN2\[↑\]](#) [2] the term “appropriate equitable relief” in [§ 502\(a\)\(3\)](#) as referring to “‘those categories of relief’” that, traditionally speaking (*i.e.*, prior to the merger of law and equity), “‘were *typically* available in equity.’” [Sereboff, 547 U.S., at 361, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (quoting [Mertens, 508 U.S., at 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#)). In [Mertens](#), we applied this principle to a claim seeking money damages brought by a beneficiary against a private firm that provided a trustee with actuarial services. We found that the plaintiff sought “nothing other than compensatory damages” against a nonfiduciary. *Id.*, at 253, 255, [113 S. Ct. 2063, 124 L. Ed. 2d 161](#) (emphasis deleted). And we held that such a claim, traditionally speaking, was legal, not equitable, in nature. *Id.*, at 255, [113 S. Ct. 2063, 124 L. Ed. 2d 161](#).

In [Great-West](#), we considered a claim brought by a fiduciary against a tort-award-winning beneficiary seeking monetary reimbursement for medical outlays that the plan had previously made on the beneficiary's behalf. We noted that the fiduciary sought to obtain a lien attaching to (or a constructive trust imposed [****32] upon) money

that the beneficiary had received from the tort-case defendant. But we noted that the money in question was not the **[**1879]** “particular” money that the tort defendant had paid. And, traditionally speaking, relief that sought a lien or a constructive trust was legal relief, not equitable relief, unless the funds in question were “*particular funds or property in the defendant's possession.*” [534 U.S., at 213, 122 S. Ct. 708, 151 L. Ed. 2d 635](#) (emphasis added).

The case before us concerns a suit by a beneficiary against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust). See [LaRue v. DeWolff, Boberg & Associates, Inc., 552 U.S. 248, 253, n. 4, 128 S. Ct. 1020, 169 L. Ed. 2d 847 \(2008\)](#); [Varity Corp., 516 U.S., at 496-497, 116 S. Ct. 1065, 134 L. Ed. 2d \[***857\] 130](#). It is the kind of lawsuit that, before the merger of law and equity, respondents could have brought only in a court of equity, not a court of law. 4 A. Scott, W. Fratcher, & M. Ascher, *Trusts* § 24.1, p. 1654 (5th ed. 2007) (hereinafter Scott & Ascher) (“Trusts are, and always have been, the bailiwick **[*440]** of the courts of equity”); [Duvall v. Craig, 15 U.S. 45, 2 Wheat. 45, 56, 4 L. Ed. 180 \(1817\)](#) (a trustee was “only suable in equity”).

With the exception of the relief now provided by [§ 502\(a\)\(1\)\(B\)](#), **[****33]** *Restatement (Second) of Trusts* §§ 198(1)-(2) (1957) (hereinafter Second Restatement); 4 Scott & Ascher § 24.2.1, the remedies available to those courts of equity were traditionally considered equitable remedies, see *Second Restatement* § 199; J. Adams, *Doctrine of Equity: A Commentary on the Law as Administered by the Court of Chancery* 61 (7th Am. ed. 1881) (hereinafter Adams); 4 Scott & Ascher § 24.2.

The District Court's affirmative and negative injunctions obviously fall within this category. [Mertens, supra, at 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#) (identifying injunctions, mandamus, and restitution as equitable relief). And other relief ordered by the District Court resembles forms of traditional equitable relief. That is because equity chancellors developed a host of other “distinctively equitable” remedies—remedies that were “fitted to the nature of the primary right” they were intended to protect. 1 S. Symons, *Pomeroy's Equity Jurisprudence* § 108, pp. 139-140 (5th ed. 1941) (hereinafter Pomeroy). See generally 1 J. Story, *Commentaries on Equity Jurisprudence* § 692 (12th ed. 1877) (hereinafter Story). Indeed, [HN3](#) [LEdHN3](#) [3] a maxim of equity states that “[e]quity suffers not a right to be without a remedy.” R. Francis, *Maxims [****34] of Equity* 29 (1st Am. ed. 1823). And the relief entered here, insofar as it does not consist of injunctive relief, closely resembles three other traditional equitable remedies.

First, what the District Court did here may be regarded as the reformation of the terms of the plan, in order to remedy the false or misleading information CIGNA provided. The power to reform contracts (as contrasted with the power to enforce contracts as written) is a traditional power of an equity court, not a court of law, and was used to prevent fraud. See [Baltzer v. Raleigh & Augusta R. Co., 115 U.S. 634, 645, 6 S. Ct. 216, 29 L. Ed. 505 \(1885\)](#) (“[I]t is well settled that equity would reform **[*441]** the contract, and enforce it, as reformed, if the mistake or fraud were shown”); [Hearne v. Marine Ins. Co., 87 U.S. 488, 20 Wall. 488, 490, 22 L. Ed. 395 \(1874\)](#) (“The reformation of written contracts for fraud or mistake is an ordinary head of equity jurisdiction”); [Bradford v. Union Bank of Tenn., 54 U.S. 57, 13 How. 57, 66, 14 L. Ed. 49 \(1852\)](#); J. Eaton, *Handbook of Equity Jurisprudence* § 306, p. 618 (1901) (hereinafter Eaton) (courts of common law could only void or enforce, but not reform, a contract); 4 Pomeroy § 1375, at 1000 (reformation “chiefly occasioned by fraud or mistake,” which were themselves **[****35]** concerns of equity courts); 1 Story §§ 152-154; see also 4 Pomeroy § 1375, at 999 (equity often considered **[**1880]** reformation a “preparatory step” that “establishes the real contract”).

Second, the District Court's remedy essentially held CIGNA to what it had promised, namely, that the new plan would not take from its employees benefits they had already accrued. This aspect of the remedy resembles estoppel, a traditional equitable remedy. **[***858]** See, e.g., E. Merwin, *Principles of Equity and Equity Pleading* § 910 (H. Merwin ed. 1895); 3 Pomeroy § 804. [HN4](#) [LEdHN4](#) [4] Equitable estoppel “operates to place the person entitled to its benefit in the same position he would have been in had the representations been true.” Eaton § 62, at 176. And, as Justice Story long ago pointed out, equitable estoppel “forms a very essential element in . . . fair dealing, and rebuke of all fraudulent misrepresentation, which it is the boast of courts of equity constantly to promote.” 2 Story § 1533, at 776.

Third, the District Court injunctions require the plan administrator to pay to already retired beneficiaries money owed them under the plan as reformed. But the fact that this relief takes the form of a money payment does not remove

[****36] it from the category of traditionally equitable relief. Equity courts possessed the power to provide relief in the form of monetary “compensation” for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment. Restatement (Third) of Trusts § 95, and Comment a [*442] (Tent. Draft No. 5, Mar. 2, 2009) (hereinafter Third Restatement); Eaton §§ 211-212, at 440. Indeed, prior to the merger of law and equity this kind of monetary remedy against a trustee, sometimes called a “surcharge,” was “exclusively equitable.” *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456, 464, 59 S. Ct. 275, 83 L. Ed. 285 (1939); Third Restatement § 95, and Comment a; G. Bogert & G. Bogert, Trusts and Trustees § 862 (rev. 2d ed. 1995) (hereinafter Bogert); 4 Scott & Ascher §§ 24.2, 24.9, at 1659-1660, 1686; Second Restatement § 197; see also *Manhattan Bank of Memphis v. Walker*, 130 U.S. 267, 271, 9 S. Ct. 519, 32 L. Ed. 959 (1889) (“The suit is plainly one of equitable cognizance, the bill being filed to charge the defendant, as a trustee, for a breach of trust”); 1 J. Perry, A Treatise on the Law of Trusts and Trustees § 17, p. 13 (2d ed. 1874) (common-law attempts “to punish trustees for a breach of trust in damages, . . . w[ere] [****37] soon abandoned”).

The surcharge remedy extended to a breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary. See Second Restatement § 201; Adams 59; 4 Pomeroy § 1079; 2 Story §§ 1261, 1268. Thus, insofar as an award of make-whole relief is concerned, the fact that the defendant in this case, unlike the defendant in *Mertens*, is analogous to a trustee makes a critical difference. See *508 U.S.*, at 262-263, 113 S. Ct. 2063, 124 L. Ed. 2d 161. In sum, contrary to the District Court's fears, the types of remedies the court entered here fall within the scope of the term “appropriate equitable relief” in § 502(a)(3).

III

[HN5](#) [LEdHNJ5](#) [5] [Section 502\(a\)\(3\)](#) invokes the equitable powers of the District Court. We cannot know with certainty which remedy the District Court understood itself to be imposing, nor whether the District Court will find it appropriate to exercise its discretion under § 502(a)(3) to impose that remedy on remand. We need not decide which remedies are appropriate on the facts of this case in order to resolve the parties' dispute as to the appropriate legal standard in determining [*443] whether members of the relevant employee class were injured.

[**1881] The relevant substantive provisions of [****38] ERISA do not set forth any particular standard for determining harm. They simply require the plan administrator [***859] to write and to distribute written notices that are “sufficiently accurate and comprehensive to reasonably apprise” plan participants and beneficiaries of “their rights and obligations under the plan.” § 102(a); see also §§ 104(b), 204(h). Nor can we find a definite standard in the ERISA provision, § 502(a)(3) (which authorizes the court to enter “appropriate equitable relief” to redress ERISA “violations”). Hence any requirement of harm must come from the law of equity.

Looking to the law of equity, there is no general principle that “detrimental reliance” must be proved before a remedy is decreed. To the extent any such requirement arises, it is because the specific remedy being contemplated imposes such a requirement. Thus, as CIGNA points out, when equity courts used the remedy of *estoppel*, they insisted upon a showing akin to detrimental reliance, *i.e.*, that the defendant's statement “in truth, influenced the conduct of” the plaintiff, causing “prejudic[e].” Eaton § 61, at 175; see 3 Pomeroy § 805. Accordingly, when a court exercises its authority under § 502(a)(3) [****39] to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made.

But this showing is not always necessary for other equitable remedies. Equity courts, for example, would reform contracts to reflect the mutual understanding of the contracting parties where “fraudulent suppression[s], omission[s], or insertion[s],” 1 Story § 154, at 149, “material[ly] . . . affect[ed]” the “substance” of the contract, even if the “complaining part[y]” was negligent in not realizing its mistake, as long as its negligence did not fall below a standard of “reasonable prudence” and violate a legal duty, 3 Pomeroy §§ 856, 856b, at 334, 340-341. See *Baltzer*, 115 U.S., at 645, 6 S. Ct. 216, 29 L. Ed. 505; Eaton § 307(b).

[*444] Nor did equity courts insist upon a showing of detrimental reliance in cases where they ordered “surcharge.” Rather, they simply ordered a trust or beneficiary made whole following a trustee's breach of trust. In such instances equity courts would “mold the relief to protect the rights of the beneficiary according to the situation involved.” Bogert § 861, at 4. This flexible approach belies a strict requirement of “detrimental reliance.”

To be sure, just as a court of equity would not surcharge a [****40] trustee for a nonexistent harm, 4 Scott & Ascher § 24.9, a fiduciary can be surcharged under [§ 502\(a\)\(3\)](#) only upon a showing of actual harm--proved (under the default rule for civil cases) by a preponderance of the evidence. That actual harm may sometimes consist of detrimental reliance, but it might also come from the loss of a right protected by ERISA or its trust-law antecedents. In the present case, it is not difficult to imagine how the failure to provide proper summary information, in violation of the statute, injured employees even if they did not themselves act in reliance on summary documents--which they might not themselves have seen--for they may have thought fellow employees, or informal workplace discussion, would have let them know if, say, plan changes would likely prove harmful. We doubt that Congress would have wanted to bar those employees from relief.

The upshot is that we can agree with CIGNA only to a limited extent. We believe that, to obtain relief by [***860] surcharge for violations of [§§ 102\(a\)](#) and [104\(b\)](#), a plan participant or beneficiary must show that the violation injured him or her. But to do so, he or she need only show harm and causation. Although it is [****41] not always necessary [**1882] to meet the more rigorous standard implicit in the words "detrimental reliance," actual harm must be shown.

We are not asked to reassess the evidence. And we are not asked about the other prerequisites for relief. We are asked about the standard of prejudice. And we conclude [*445] that the standard of prejudice must be borrowed from equitable principles, as modified by the obligations and injuries identified by ERISA itself. Information-related circumstances, violations, and injuries are potentially too various in nature to insist that harm must always meet that more vigorous "detrimental harm" standard when equity imposed no such strict requirement.

IV

We have premised our discussion in Part III on the need for the District Court to revisit its determination of an appropriate remedy for the violations of ERISA it identified. Whether or not the general principles we have discussed above are properly applicable in this case is for it or the Court of Appeals to determine in the first instance. Because the District Court has not determined if an appropriate remedy may be imposed under [§ 502\(a\)\(3\)](#), we must vacate the judgment below and remand this case for further proceedings [****42] consistent with this opinion.

It is so ordered.

Justice **Sotomayor** took no part in the consideration or decision of this case.

Concur by: SCALIA

Concur

Justice **Scalia**, with whom Justice **Thomas** joins, concurring in the judgment.

I agree with the Court that [§ 502\(a\)\(1\)\(B\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#), does not authorize relief for misrepresentations in a summary plan description (SPD). I do not join the Court's opinion because I see no need and no justification for saying anything more than that.

[Section 502\(a\)\(1\)\(B\) of ERISA](#) states that a plan participant or beneficiary may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to [*446] future benefits under the terms of the plan." ERISA defines the word "plan" as "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both," [29 U.S.C. § 1002\(3\)](#), and it requires that a "plan" "be established and maintained pursuant to a written instrument," [§ 1102\(a\)\(1\)](#). An SPD, in contrast, is a disclosure meant "to reasonably apprise [plan] participants and beneficiaries of their rights [****43] and obligations under the plan." [§ 1022\(a\)](#). It would be peculiar for a document meant to "apprise" participants of their rights "under the plan" to be itself part of the "plan." Any doubt that it is not is eliminated by

ERISA's repeated differentiation of SPDs from the "written instruments" that constitute a plan, see, e.g., [§§ 1029\(c\), 1024\(b\)\(2\)](#), and ERISA's assignment to different entities of responsibility for drafting and amending **[***861]** SPDs on the one hand and plans on the other, see [§§ 1002\(1\), \(2\)\(A\)](#); 1021(a) (2006 ed. and Supp. III), 1024(b)(1) (2006 ed.); [Beck v. PACE Int'l Union, 551 U.S. 96, 101, 127 S. Ct. 2310, 168 L. Ed. 2d 1 \(2007\)](#). An SPD, moreover, would not fulfill its purpose of providing an easily accessible summary of the plan if it were an authoritative part of the plan itself; the minor omissions appropriate for a summary would risk revising the plan.

Nothing else needs to be said to dispose of this case. The District Court based the relief it awarded upon [ERISA § 502\(a\)\(1\)\(B\)](#), and that provision alone. **[**1883]** It thought that the "benefits" due "under the terms of the plan," [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#), could derive from an SPD, either because the SPD is part of the plan or because it is capable of somehow modifying **[****44]** the plan. Under either justification, that conclusion is wrong. An SPD is separate from a plan, and cannot amend a plan unless the plan so provides. See [Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 79, 85, 115 S. Ct. 1223, 131 L. Ed. 2d 94 \(1995\)](#). I would go no further.

The Court, however, ventures on to address a different question: whether respondents may recover under [§ 502\(a\)\(3\) of ERISA](#), which allows plan participants "to obtain other **[*447]** appropriate equitable relief." [29 U.S.C. § 1132\(a\)\(3\)](#). The District Court expressly declined to answer this question, stating that it "need not consider whether any relief ordered under [§ 502\(a\)\(1\)\(B\)](#) would also be available under [§ 502\(a\)\(3\)](#)." [559 F. Supp. 2d 192, 205 \(Conn. 2008\)](#). It did note that [§ 502\(a\)\(3\)](#) might not help respondents because that provision authorizes only relief that was "'typically available in equity.'" *Ibid.* (quoting [Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 210, 122 S. Ct. 708, 151 L. Ed. 2d 635 \(2002\)](#)): (some internal quotation marks omitted) But it described this question as "particularly complicated," [559 F. Supp. 2d, at 205](#), and said that "in view of these knotty issues . . . the Court need not, and does not, decide whether Plaintiffs could obtain relief under [§ 502\(a\)\(3\)](#)," *id.*, [at 206](#).

It is assuredly **[****45]** not our normal practice to decide issues that a lower court "need not, and does not, decide," see [Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S. 157, 168-169, 125 S. Ct. 577, 160 L. Ed. 2d 548 \(2004\)](#), and this case presents no exceptional reason to do so. To the contrary, it presents additional reasons not to do so. [Mertens v. Hewitt Associates, 508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#), the case the District Court feared had "severely curtailed the kinds of relief . . . available under [§ 502\(a\)\(3\)](#)," [559 F. Supp. 2d, at 205](#), is cited exactly one time in the parties' briefs--by the CIGNA petitioners for the utterly unrelated proposition that ERISA contains a "'carefully crafted and detailed enforcement scheme.'" Brief for Petitioners 2. And there is no discussion whatsoever of contract reformation or surcharge in the briefs of the parties or even *amici*.¹

The opinion for the Court states that the District Court "strongly implied . . . that it would base its relief upon [L § 502\(a\)\(3\)](#) were it not for (1) the fact that . . . [§ 502\(a\)\(1\)\(B\)](#) **[****46]** . . . provided sufficient authority; and (2) certain cases from **[*448]** this Court that **[***862]** narrowed the application of the term 'appropriate equitable relief.'" [Ante, at](#) [179 L. Ed. 2d, at 856](#). I find no such implication whatever--not even a weak one. The District Court simply said that [§ 502\(a\)\(1\)\(B\)](#) provided relief, and that under our cases [§ 502\(a\)\(3\)](#) might not do so. While some Members of this Court have sought to divine what legislators would have prescribed beyond what they did prescribe, none to my knowledge has hitherto sought to guess what district judges would have decided beyond what they did decide. And this, bear in mind, is not just a guess as to what the District Court would have done if it had known that its [§ 502\(a\)\(1\)\(B\)](#) relief was (as we today hold) improper. The apparent answer to that is that it would have denied relief, since it thought itself constrained by "certain cases from this Court that [have] narrowed [\[§ 502\(a\)\(3\)\]](#)," [ante, at](#) [179 L. Ed. 2d, at 856](#). No, the **[**1884]** course the Court guesses about is what the District Court would have done if it had known *both* that [§ 502\(a\)\(1\)\(B\)](#) denies relief *and* that [§ 502\(a\)\(3\)](#) provides it. This speculation upon speculation hardly renders our discussion of [§ 502\(a\)\(3\)](#) relevant **[****47]** to the decision below; it is utterly irrelevant.

Why the Court embarks on this peculiar path is beyond me. It cannot even be explained by an eagerness to demonstrate--by blatant dictum, if necessary--that, by George, plan members misled by an SPD will be

¹"[P]lan reformation" makes an appearance in one sentence of one footnote of the Government's brief, see Brief for United States as *Amicus Curiae* 30, n. 9. This cameo hardly qualifies as "discussion."

compensated. That they will normally be compensated is not in doubt. As the opinion for the Court notes, [ante, at _____, 179 L. Ed. 2d, at 852](#), the Second Circuit has interpreted ERISA as permitting the invalidation of plan amendments not preceded by proper notice, by reason of [§ 204\(h\)](#), which reads:

“An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual” [29 U.S.C. § 1054\(h\)\(1\) \(2006 ed., Supp. IV\)](#).

[*449] This provision appears a natural fit to respondents' claim, which is not that CIGNA was prohibited from changing its plan, but that CIGNA “failed to give them proper notice of changes to their benefits.” [Ante, at _____, 179 L. Ed. 2d, at 847](#). It was inapplicable here only because of the peculiar facts of this case and the manner in which respondents chose to argue the case.²

Rather than attempting to read the District Judge's palm, I would simply remand. If the District Court dismisses the case based on an incorrect reading of *Mertens*, the Second Circuit can correct its error, and if the Second Circuit does not do so this Court can grant certiorari. The Court's discussion of the relief available under [§ 502\(a\)\(3\)](#) and *Mertens* is purely dicta, binding upon neither us nor the District Court. The District Court need not read any of it--and, indeed, if it takes our suggestions to heart, we may very well reverse. Even if we adhere to our dicta that contract **[***863]** reformation, estoppel, and surcharge are “distinctively equitable” remedies,” [ante, at _____, 179 L. Ed. 2d, at 857](#), it is far from clear **[****49]** that they are available remedies in this case. The opinion for the Court does not say (much less hold) that they are and disclaims the implication, see [ante, at _____, 179 L. Ed. 2d, at 858](#).

Contract reformation is a standard remedy for altering the terms of a writing that fails to express the agreement of the parties “owing to the fraud of one of the parties and mistake of the other.” 27 R. Lord, *Williston on Contracts* § 69:55, p. 160 (4th ed. 2003). But here, the Court would be employing that doctrine to alter the terms of a contract in response to a third party's misrepresentations--not those of a party **[*450]** to the contract. The SPD is not part of the ERISA plan, and it was not written by the plan's sponsor. Although in this case CIGNA wrote both the plan and the SPD, it did so in different capacities: as sponsor when writing the plan, and as administrator when preparing the SPD. ERISA “carefully distinguishes these roles,” [ante, at _____, 179 L. Ed. 2d, at 855](#); see also [Beck, 551 U.S., at 101, 127 S. Ct. 2310, 168 L. Ed. 2d 1](#), and nothing the Court **[**1885]** cites suggests that they blend together when performed by the same entity.

Admittedly, reformation might be available if the third party was an agent of a contracting party and its misrepresentations could thus be attributed to it **[****50]** under agency law. But such a relationship has not been alleged and is unlikely here. An ERISA administrator's duty to provide employees with an SPD arises by statute, [29 U.S.C. § 1024\(b\)\(1\)\(2006 ed.\)](#); and not by reason of its relationship to the sponsor. The administrator is a legally distinct entity. Moreover, it is incoherent to think of the administrator as agent and the sponsor as principal. Were this the case, and were the administrator contracting with employees as an agent of the sponsor in producing the SPD, then the SPD would be part of the plan or would amend it--exactly what the opinion for the Court rejects in Part II-A, [ante, at _____ - _____, 179 L. Ed. 2d, at 854-856](#). And, in any event, SPDs may be furnished months after an employee accepts a pension or benefit plan. [§ 1024\(b\)\(1\)](#). Reformation is meant to effectuate mutual intent at the time of contracting, and that intent is not retroactively revised by subsequent misstatements.

Equitable estoppel and surcharge are perhaps better suited to the facts of this case. CIGNA admits that respondents might be able to recover under [§ 502\(a\)\(3\)](#) pursuant to an equitable estoppel theory, but it presumably

²The District Court found that [§ 204\(h\)](#) was unhelpful **[****48]** because CIGNA had provided a valid notice of its decision to freeze benefits under the old plan. If the new plan were invalidated because of a defective § 204(h) notice, the freeze would return to force, and respondents would be worse off. Respondents might (and likely should) have argued that the notice for the freeze was itself void, but they “argued none of these things,” and the District Court declined to “make these arguments now on [their] behalf.” [559 F. Supp. 2d 192, 208 \(Conn. 2008\)](#).

makes this concession only because questions of reliance would be individualized [****51] and potentially inappropriate for class-action treatment. Surcharge (which CIGNA does not concede and which is not briefed) may encounter the same problem. The amount for which an administrator may be surcharged is, as [*451] the opinion for the Court notes, the “actual harm” suffered by an employee, *ante, at* _____, *179 L. Ed. 2d, at 859*--that is, harm stemming from reliance on the SPD or the lost opportunity to contest or react to the switch. Cf. 3 A. Scott & W. Fratcher, *Law of Trusts* § 205, pp. 237-243 (4th ed. 1988). A remedy relating only to that harm would of [***864] course be far different from what the District Court imposed.³

* * *

I agree with the Court that an SPD is not part of an ERISA plan, and that, as a result, a plan participant or beneficiary may not recover for misrepresentations in an SPD under [§ 502\(a\)\(1\)\(B\)](#). Because this [****52] is the only question properly presented for our review, and the only question briefed and argued before us, I concur only in the judgment.

References

[29 U.S.C.S. §§1132\(a\)\(1\)\(B\), 1132\(a\)\(3\)](#)

6 Labor and Employment Law § 154.04 (Matthew Bender)

L Ed Digest, Pensions and Retirement Funds § 13

L Ed Index, Pensions and Retirement

Supreme Court's construction and application of [§ 502](#) of Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. § 1132](#)), providing for civil enforcement of ERISA. [151 L. Ed. 2d 1083](#).

End of Document

³ It is also not obvious that the relief sought in this case would constitute an equitable surcharge allowable under [Mertens v. Hewitt Associates](#), *508 U.S. 248*, *113 S. Ct. 2063*, *124 L. Ed. 2d 161* (1993). Cf. [Knieriem v. Group Health Plan, Inc.](#), *434 F.3d 1058*, *1063-1064 (CA8 2006)*. This question, however, like the Court's entire discussion of [§ 502\(a\)\(3\)](#), is best left for a case in which the issue is raised and briefed.



Questioned

As of: January 31, 2025 4:43 PM Z

[Mertens v. Hewitt Assocs.](#)

Supreme Court of the United States

February 22, 1993, Argued ; June 1, 1993, Decided

No. 91-1671

Reporter

508 U.S. 248 *; 113 S. Ct. 2063 **; 124 L. Ed. 2d 161 ***; 1993 U.S. LEXIS 3742 ****; 61 U.S.L.W. 4510; 93 Cal. Daily Op. Service 3918; 16 Employee Benefits Cas. (BNA) 2169; 7 Fla. L. Weekly Fed. S 319

WILLIAM J. MERTENS, ALEX W. BANDROWSKI, JAMES A. CLARK, AND RUSSELL FRANZ, PETITIONERS v. HEWITT ASSOCIATES

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Disposition: [948 F. 2d 607](#), affirmed.

Core Terms

fiduciary, equitable relief, breach of trust, damages, court of equity, common law, equitable, nonfiduciaries, courts, remedies, trust law, trusts, participating, losses, punitive damages, restitution, authorizes, provisions, construing, cases, plans, compensatory damages, fiduciary duty, compensatory, common-law, actuaries, pension, breach of fiduciary duty, employee benefit plan, available remedy

Case Summary

Procedural Posture

Certiorari was granted to the United States Court of Appeals for the Ninth Circuit, which affirmed dismissal of a complaint against respondent actuary, a nonfiduciary who knowingly participated in a breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#) Respondent was held not liable for money damages for losses suffered by an employee benefit plan.

Overview

The United States Supreme Court affirmed the dismissal of petitioner employees' complaint against respondent actuary, a nonfiduciary who knowingly participated in the breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1001 et seq.](#) Petitioners sought money damages for losses that an employee benefit plan suffered as a result of respondent's breach of duty. The Court held that [29 U.S.C.S. § 1132\(a\)\(3\)](#), which authorized a plan beneficiary to bring a civil action to enjoin any act which violated ERISA or the terms of a plan, to "obtain other appropriate equitable relief" to redress a violation, did not permit a suit for money damages. The Court rejected petitioner's argument that because, at common law, courts of equity had exclusive jurisdiction over all actions by beneficiaries for breaches of trust and could award damages, [29 U.S.C.S. § 1132\(a\)\(3\)](#) authorized all forms of relief an equity court was empowered to grant. The Court held that to so interpret [29 U.S.C.S. § 1132\(a\)\(3\)](#) would not limit relief at all, and would give the term "equitable" a meaning different than that used elsewhere in ERISA.

Outcome

The court affirmed the dismissal of petitioner employees' complaint against respondent actuary, a nonfiduciary who knowingly participated in the breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974.

LexisNexis® Headnotes

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN1](#) ERISA, Civil Litigation

See § 502(a) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)](#).

Governments > Fiduciaries

Pensions & Benefits Law > ERISA > Fiduciaries > General Overview

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

Pensions & Benefits Law > ... > Civil Litigation > Causes of Action > General Overview

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Injunctions

[HN2](#) Governments, Fiduciaries

Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), which authorizes a plan beneficiary, participant, or fiduciary to bring a civil action, states: (A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of ERISA or the terms of the plan.

Governments > Fiduciaries

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN3](#) Governments, Fiduciaries

See § 502(l) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(l\)](#).

Lawyers' Edition Display

Decision

ERISA ([29 USCS 1001 et seq.](#)) held not to authorize suit, by pension plan participants, against nonfiduciary actuary who allegedly participated knowingly in plan fiduciaries' breach of fiduciary duty.

Summary

An employer's phasing out of its steelmaking operations prompted early retirement by a large number of employees who were participants in the employer's pension plan, which was qualified under the Employee Retirement Income Security Act of 1974 (ERISA) ([29 USCS 1001 et seq.](#)), 502(a)(3) ([29 USCS 1132\(a\)\(3\)](#)) of which permits pension plan participants to bring civil actions to obtain "appropriate equitable relief" to redress violations of ERISA or a pension plan. As a result of the failure of the plan's actuary to change the plan's actuarial assumptions to reflect the additional costs imposed on the plan by the early retirements, (1) the employer did not adequately fund the plan to satisfy its benefit obligations, and thus (2) former employees who were receiving benefits under the plan began to receive only the benefits guaranteed by ERISA, rather than the substantially greater benefits due generally to participants under the plan. Retirees who were receiving such guaranteed benefits brought against the actuary an action alleging in relevant part that the actuary, as a nonfiduciary of the plan, had violated ERISA by knowingly participating in the plan fiduciaries' breach of their fiduciary duties. The United States District Court for the Northern District of California dismissed the action, and the United States Court of Appeals affirmed the District Court judgment in relevant part ([948 F2d 607](#)).

On certiorari, the United States Supreme Court affirmed. In an opinion by Scalia, J., joined by Blackmun, Kennedy, Souter, and Thomas, JJ., it was held that ERISA did not authorize an action by the retirees for money damages against the actuary, as a nonfiduciary who allegedly had participated knowingly in the fiduciaries' breach of fiduciary duty, because (1) even assuming that 502(a)(3) made money damages available, it was not clear that 502(a)(3) made money damages available to the retirees, since (a) no term of the plan had been violated, nor would any have been enforced by the judgment requested by the retirees, and (b) no ERISA provision explicitly required nonfiduciaries to avoid participation, knowing or unknowing, in a fiduciary's breach of fiduciary duty; (2) the term "equitable relief" in 502(a)(3) did not include money damages, since (a) the Supreme Court had held similar language in another federal statute to preclude awards for damages, (b) in the context of ERISA, "equitable relief" referred to those categories of relief--which did not include compensatory damages--typically available in equity under the common law of trusts, and (c) given the availability, at common law, from a court of equity of all relief, including legal remedies, for breach of trust in particular cases, reading 502(a)(3) to authorize any relief available in a court of equity for breach of trust would have rendered the modifier "equitable" in 502(a)(3) superfluous; and (3) even an assumption that ERISA's broad pre-emption clause, 514(a) ([29 USCS 1144\(a\)](#)), pre-empted actions for damages previously available under state trust law against nonfiduciaries--so that interpreting 502(a)(3) not to authorize suits for damages against nonfiduciaries purportedly contradicted ERISA's basic goal of promoting the interests of employees and their beneficiaries in benefit plans--did not overcome ERISA's text regarding the specific issue under consideration.

White, J., joined by Rehnquist, Ch. J., and Stevens and O'Connor, JJ., dissented, expressing the view that the text of ERISA supported a reading of 502(a)(3) that would permit a court to award compensatory monetary relief where necessary to make an ERISA beneficiary whole for a breach of trust, because such a reading would (1) accord with (a) the established equitable remedies available under the common law of trusts, to which Congress had directed those construing ERISA, and (b) Congress' primary goal, in enacting ERISA, of protecting beneficiaries' financial security against corrupt or inept plan mismanagement; and (2) avoid the result of construing ERISA so as to deprive beneficiaries of remedies they enjoyed prior to ERISA's enactment.

Headnotes

PENSIONS AND RETIREMENT FUNDS §1 > ERISA -- suit against nonfiduciary -- money damages -- > Headnote:

[LEdHN\[1A\]](#) [↓] [1A] [LEdHN\[1B\]](#) [↓] [1B] [LEdHN\[1C\]](#) [↓] [1C] [LEdHN\[1D\]](#) [↓] [1D] [LEdHN\[1E\]](#) [↓] [1E] [LEdHN\[1F\]](#) [↓] [1F] [LEdHN\[1G\]](#) [↓] [1G]

The Employee Retirement Income Security Act of 1974 (ERISA) ([29 USCS 1001 et seq.](#)), 502(a)(3) ([29 USCS 1132\(a\)\(3\)](#)) of which permits pension plan participants to bring civil actions to obtain "appropriate equitable relief" to redress violations of ERISA or a pension plan, does not authorize a suit, by retired plan participants, for money damages against a nonfiduciary actuary who allegedly participated knowingly in the plan fiduciaries' breach of their fiduciary duty, by failing to change the plan's actuarial assumptions to reflect the additional costs imposed by the early retirement of many plan participants--where the failure to change the actuarial assumptions caused the retirees to receive benefits that were generally lower than those due under the plan--because (1) even assuming that 502(a)(3) makes money damages available, it is not clear that 502(a)(3) makes money damages available to the retirees, since (a) no term of the plan has been violated, nor would any be enforced by the judgment requested by the retirees, and (b) no ERISA provision explicitly requires nonfiduciaries to avoid participation, knowing or unknowing, in a fiduciary's breach of fiduciary duty; (2) the term "equitable relief" in 502(a)(3) does not include money damages, since (a) the Supreme Court has held similar language in another federal statute to preclude awards for damages, (b) in the context of ERISA, which has roots in the common law of trusts, "equitable relief" refers to those categories of relief--which do not include compensatory damages--typically available in equity under the common law of trusts, (c) given the availability, at common law, from a court of equity of all relief, including legal remedies, for breach of trust in particular cases, reading 502(a)(3) to authorize any relief available in a court of equity for breach of trust would render the modifier "equitable" in 502(a)(3) superfluous, and (d) such a reading of "equitable relief" would give the term a different meaning than it bears elsewhere in ERISA, or would deprive of all meaning the distinction, drawn by Congress elsewhere in ERISA, between "equitable" and "remedial" relief and between "equitable" and "legal" relief; (3) 502(l) of ERISA ([29 USCS 1132\(l\)](#))--which authorizes the Secretary of Labor to assess a civil penalty, based on the applicable recovery amount, against an "other person," who knowingly participates in a fiduciary's breach of fiduciary responsibility--is given scope and meaning without interpreting 502(a)(3) to authorize actions for damages against nonfiduciaries, as cofiduciaries are liable as "other persons" under 502(l); and (4) assuming, without deciding, that ERISA's broad pre-emption clause, 514(a) ([29 USCS 1144\(a\)](#)), pre-empts previously available actions under state trust law against nonfiduciaries for damages resulting from knowing participation in a pension plan trustee's breach of duty--so that interpreting 502(a)(3) not to authorize suits for damages against such nonfiduciaries purportedly contradicts ERISA's basic goal of promoting the interests of employees and their beneficiaries in benefit plans--vague notions of ERISA's basic purpose are inadequate to overcome ERISA's text regarding the specific issue under consideration, especially since ERISA is an enormously complex and detailed statute in which innumerable disputes between powerful and competing interests were not all resolved in favor of potential plaintiffs. (White, J., Rehnquist, Ch. J., and Stevens and O'Connor, JJ., dissented from this holding.)

EQUITY §1 > meaning of "equitable relief" -- > Headnote:

[LEdHN\[2\]](#) [2]

With respect to the term "equitable relief," it remains a question of interpretation in each case as to which meaning is intended, where the term can (1) mean whatever relief a court of equity is empowered, under common law, to provide in the particular case at issue, or (2) refer to those categories of relief typically available in equity.

STATUTES §170 > same language -- > Headnote:

[LEdHN\[3\]](#) [3]

Language used in one portion of a statute should be deemed to have the same meaning as the same language used elsewhere in the statute.

Syllabus

Petitioners allege that they represent a class of former employees who participated in the Kaiser Steel Retirement Plan, a qualified pension plan under the Employee Retirement Income Security Act of 1974 (ERISA); that respondent was the plan's actuary when Kaiser began to phase out its steelmaking operations, prompting early retirement by many plan participants; that respondent failed to change the plan's actuarial assumptions to reflect the additional retirement costs, causing the plan to be funded inadequately and eventually to be terminated; that petitioners now receive only the benefits guaranteed by ERISA, rather than the substantially greater pensions due them under the plan; and that respondent [****2] is liable for the plan's losses as a nonfiduciary that knowingly participated in the plan fiduciaries' breach of their fiduciary duties. The District Court dismissed the complaint, and the Court of Appeals affirmed.

Held: ERISA does not authorize suits for money damages against nonfiduciaries who knowingly participate in a fiduciary's breach of fiduciary duty. ERISA § 502(a)(3) permits plan participants to bring civil actions to obtain "appropriate equitable relief" to redress violations of the statute or a plan. Assuming, *arguendo*, that this creates a cause of action against nonfiduciaries who knowingly assist in a fiduciary's breach of duty, requiring respondent to make the plan whole for the losses it sustained would not constitute "appropriate equitable relief." What petitioners in fact seek is the classic form of legal relief, compensatory damages. We have held that similar language used in another statute precludes awarding damages. See [United States v. Burke, 504 U.S. 229, 238, 119 L. Ed. 2d 34, 112 S. Ct. 1867](#). And the text of ERISA leaves no doubt that Congress intended "equitable relief" to include only those types of relief that were typically [****3] available in equity, such as injunction, mandamus, and restitution. Given ERISA's roots in the law of trusts, "equitable relief" could in theory mean all relief available for breach of trust in the common-law courts of equity, which would include the relief sought here. Since *all* relief available for breach of trust could be obtained from an equity court, however, that interpretation would render the modifier "equitable" superfluous; that reading would also deprive of all meaning the distinction Congress drew between "equitable relief" and "remedial" and "legal" relief throughout ERISA. ERISA § 502(f), which authorizes the Secretary of Labor to assess a civil penalty based on the monetary recovery in actions against "other person[s]" who knowingly participate in a breach of fiduciary duty, can be given meaningful content without adopting petitioners' theory. Pp. 251-263.

Counsel: *Alfred H. Sigman* argued the cause for petitioners. With him on the brief were *Dan Feinberg, Jeffrey W. Kobrick, and Joseph L. Kociubes*.

Ronald J. Mann argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Starr, Deputy Solicitor General Mahoney, Allen H. Feldman, Nathaniel I. Spiller, and Mark S. Flynn*.

Steven H. Frankel argued the cause for respondent. With him on the brief were *Duane C. Quaini, Elpidio Villarreal, C. Lawrence Connolly III, and John M. Ryan*. *

* *Steven S. Zaleznick* and *Cathy Ventrell-Monsees* filed a brief for the American Association of Retired Persons as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Academy of Actuaries by *Lauren M. Bloom*; for the American Council of Life Insurance by *James F. Jorden, Waldemar J. Pflapsen, Jr., Stephen H. Goldberg, Richard E. Barnsback, Stephen W. Kraus, and Phillip E. Stano*; for the American Society of Pension Actuaries by *Chester J. Salkind*; and for Booke and Company et al. by *Paul J. Ondrasik, Jr., Suzanne E. Meeker, and Ellen A. Hennessy*.

[****5]

Judges: SCALIA, J., delivered the opinion of the Court, in which BLACKMUN, KENNEDY, SOUTER, and THOMAS, JJ., joined. WHITE, J., filed a dissenting opinion, in which REHNQUIST, C. J., and STEVENS and O'CONNOR, JJ., joined, post, p. 263.

Opinion by: SCALIA

Opinion

[*249] [***166] [**2065] JUSTICE SCALIA delivered the opinion of the Court.

[LEdHN\[1A\]](#)^[↑] [1A]The question presented is whether a nonfiduciary who knowingly participates in the breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 832, as amended, [29 U.S. C. § 1001 \[*250\] et seq.](#), is liable for losses that an employee benefit plan suffers as a result of the breach.

I

According to the complaint, the allegations of which we take as true, petitioners represent a class of former employees of the Kaiser Steel Corporation (Kaiser) who participated in the Kaiser Steel Retirement Plan, a qualified pension plan under ERISA. Respondent was the plan's actuary in 1980, when Kaiser began to phase out its steelmaking operations, prompting early retirement by a large number of plan participants. Respondent did not, however, change the plan's [****6] actuarial assumptions to reflect the additional costs imposed by the retirements. As a result, Kaiser did not adequately fund the plan, and eventually the plan's assets became insufficient to satisfy its benefit obligations, causing the Pension Benefit Guaranty Corporation (PBGC) to terminate the plan pursuant to [29 U.S. C. § 1341](#). Petitioners now receive only the benefits guaranteed by ERISA, see § 1322, which are in general substantially lower than the fully vested pensions due them under the plan.

Petitioners sued the fiduciaries of the failed plan, alleging breach of fiduciary duties. See [Mertens v. Black, 948 F.2d 1105 \(CA9 1991\)](#) (*per curiam*) (affirming denial of summary judgment). They also commenced this action against respondent, ¹ alleging that *it* had caused the losses by allowing Kaiser to select the plan's actuarial assumptions, by failing to disclose that Kaiser was [***167] one of its clients, and by failing to disclose the plan's funding shortfall. Petitioners claimed that these acts and omissions violated ERISA by effecting a breach of respondent's "professional duties" to the plan, for which they sought, [****7] *inter alia*, monetary relief. In opposing [*251] respondent's motion to dismiss, petitioners fleshed out this claim, asserting that [**2066] respondent was liable (1) as an ERISA fiduciary that committed a breach of its own fiduciary duties, (2) as a nonfiduciary that knowingly participated in the plan fiduciaries' breach of their fiduciary duties, and (3) as a nonfiduciary that committed a breach of nonfiduciary duties imposed on actuaries by ERISA. The District Court for the Northern District of California dismissed the complaint, App. to Pet. for Cert. A17, and the Court of Appeals for the Ninth Circuit affirmed in relevant part, [948 F.2d 607 \(1991\)](#).²

¹ The complaint also named as defendants the plan and the PBGC, in its capacity as the plan's statutory trustee. The District Court's dismissal of these defendants was not appealed, nor was its dismissal of the PBGC's cross-claim demanding that any recovery by petitioners be paid to it.

² Petitioners also claimed that respondent's activities constituted a party-in-interest transaction prohibited by ERISA and professional malpractice under state law. The District Court's dismissal of the former claim was not appealed, but the Court of Appeals reversed the dismissal of the pendent claim on state-law grounds. Petitioners also sought declaratory and injunctive relief, which the District Court deemed irrelevant, given that the plan had been terminated and with it respondent's position as the plan's actuary. The Court of Appeals did not address this point.

[****8]

[LEdHN1B](#)^[↑] [1B]Petitioners sought certiorari only on the question whether ERISA authorizes suits for money damages against nonfiduciaries who knowingly participate in a fiduciary's breach of fiduciary duty. We agreed to hear the case. *506 U.S. 812 (1992)*.

II

ERISA is, we have observed, a "comprehensive and reticulated statute," the product of a decade of congressional study of the Nation's private employee benefit system. *Nachman Corp. v. Pension Benefit Guaranty Corporation*, *446 U.S. 359, 361, 64 L. Ed. 2d 354, 100 S. Ct. 1723 (1980)*. The statute provides that not only the persons named as fiduciaries by a benefit plan, see *29 U.S.C. § 1102(a)*, but also anyone else who exercises discretionary control or authority over the plan's management, administration, or assets, see *§ 1002(21)(A)*, is an ERISA "fiduciary." Fiduciaries are assigned a number of detailed duties and responsibilities, which include "the proper management, administration, and investment of [plan] assets, the maintenance [*252] of proper records, the disclosure of specified information, and the avoidance of conflicts of interest." *Massachusetts Mut. Life Ins. Co. v. Russell*, *473 U.S. 134, 142-143, 87 L. Ed. 2d 96, 105 S. Ct. 3085 (1985)*; [****9] see *29 U.S.C. § 1104(a)*. Section 409(a), *29 U.S.C. § 1109(a)*, makes fiduciaries liable for breach of these duties, and specifies the remedies available against them: The fiduciary is personally liable for damages ("to make good to [the] plan any losses to the plan resulting from each such breach"), for restitution ("to restore to [the] plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary"), and for "such other equitable or remedial relief as the court may deem appropriate," including removal of the fiduciary. Section 502(a)(2), *29 U.S.C. § 1132(a)(2)* -- the second of ERISA's "six carefully integrated civil enforcement provisions," *Russell, supra, at 146*³ -- [*253] [***168] allows the Secretary of Labor or any plan beneficiary, [**2067] participant, or fiduciary to bring a civil action "for appropriate relief under section [409]."

[****10] The above described provisions are, however, limited by their terms to fiduciaries. The Court of Appeals decided that respondent was not a fiduciary, see *948 F.2d at 610*, and petitioners do not contest that holding.

³ Section 502(a) reads in its entirety:

[HN1](#)^[↑] "(a) Persons empowered to bring a civil action

"A civil action may be brought --

"(1) by a participant or beneficiary --

"(A) for the relief provided for in subsection (c) of this section, or

"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under [section 1109](#) of this title;

"(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

"(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of [section] 1025(c) of this title;

"(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

"(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (f) of this section." *29 U.S.C. § 1132(a) (1988 ed. and Supp. III)*.

Lacking equivalent provisions specifying nonfiduciaries as potential defendants, or damages as a remedy available against them, petitioners have turned to § 502(a)(3), [HN2](#) [↑](#) [29 U.S.C. § 1132\(a\)\(3\)](#), which authorizes a plan beneficiary, participant, or fiduciary to bring a civil action:

"(A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [ERISA] or the terms of the plan"

See also § 502(a)(5), [29 U.S.C. § 1132\(a\)\(5\)](#) (providing, in similar language, for civil suits by the Secretary based upon violation of ERISA provisions). Petitioners contend that requiring respondent to make the Kaiser plan whole for the losses resulting from its alleged knowing participation in the breach of fiduciary duty by the Kaiser plan's fiduciaries [****11] would constitute "other appropriate equitable relief" within the meaning of § 502(a)(3).

[LEdHN1C](#) [↑](#) [1C]We note at the outset that it is far from clear that, even if this provision does make money damages available, it makes them available for the actions at issue here. It does not, after all, authorize "appropriate equitable relief" *at large*, but only "appropriate equitable relief" for the purpose of "redress[ing any] violations or . . . enforc[ing] any provisions" of ERISA or an ERISA plan. No one suggests that any term of the Kaiser plan has been violated, nor would any be enforced by the requested judgment. And while ERISA contains various provisions that can be read as imposing obligations [*254] upon nonfiduciaries, including actuaries, ⁴ no provision explicitly [***169] requires them to avoid participation (knowing or unknowing) in a fiduciary's breach of fiduciary duty. It is unlikely, moreover, that this was an oversight, since ERISA *does* explicitly impose "knowing participation" liability on cofiduciaries. See § 405(a), [29 U.S.C. § 1105\(a\)](#). That limitation appears all the more deliberate in light of the fact that [****12] "knowing participation" liability on the part of *both* cotrustees *and* third persons was well established under the common law of trusts. See 3 A. Scott & W. Fratcher, *Law of Trusts* § 224.1, p. 404 (4th ed. 1988) (hereinafter *Scott & Fratcher*) (cotrustees); 4 *Scott & Fratcher* § 326, p. 291 (third persons). In *Russell* we emphasized our unwillingness to infer causes of action in the ERISA context, since that statute's carefully crafted and detailed enforcement scheme provides "strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." [473 U.S. at 146-147](#). All of this notwithstanding, petitioners and their *amicus* the United States seem to assume that respondent's alleged action (or inaction) violated ERISA, and address their arguments almost exclusively to what forms of relief are available. And respondent, despite considerable prompting by its *amici*, expressly disclaims reliance on this preliminary point. See Brief for Respondent 18, n.15; Tr. of Oral Arg. 46. Thus, although we acknowledge the oddity of resolving a dispute over remedies where it is unclear that a remediable wrong has been [****13] alleged, we [*255] decide this case on the narrow battlefield [**2068] the parties have chosen, and reserve decision of that antecedent question. ⁵

[****14]

[LEdHN1D](#) [↑](#) [1D]Petitioners maintain that the object of their suit is "appropriate *equitable* relief" under § 502(a)(3) (emphasis added). They do not, however, seek a remedy traditionally viewed as "equitable," such as injunction or restitution. (The Court of Appeals held that restitution was unavailable, see [948 F.2d at 612](#), and petitioners have not challenged that.) Although they often dance around the word, what petitioners in fact seek is

⁴ For example, a person who provides services to a plan is a "party in interest," [29 U.S.C. § 1002\(14\)\(B\)](#), and may not offer his services or engage in certain other transactions with the plan, § 1106(a), for more than reasonable compensation, § 1108(b)(2). See also § 1023(d)(8) (annual reports must include certification by enrolled actuary); § 1082(c)(3) (minimum funding standards for plan to be based on "reasonable" actuarial assumptions).

⁵ The dissent expresses its certitude that "the statute clearly does not bar such a suit." *Post*, at 265, n.1. That, of course, is not the issue. The issue is whether the statute affirmatively *authorizes* such a suit. To meet that requirement, it is not enough to observe that "trust beneficiaries clearly had such a remedy [against nonfiduciaries who actively assist in the fiduciary's breach] at common law." *Ibid*. They had such a *remedy* because nonfiduciaries had a *duty* to the beneficiaries not to assist in the fiduciary's breach. A similar duty is set forth in ERISA; but as we have noted, only *some* common-law "nonfiduciaries" are made subject to it, namely, those who fall within ERISA's artificial definition of "fiduciary."

nothing other than compensatory *damages* -- monetary relief for all losses their plan sustained as a result of the alleged breach of fiduciary duties. Money damages are, of course, the classic form of *legal* relief. [Curtis v. Loether](#), 415 U.S. 189, 196, 39 L. Ed. 2d 260, 94 S. Ct. 1005 (1974); [Teamsters v. Terry](#), 494 U.S. 558, 570-571, 108 L. Ed. 2d 519, 110 S. Ct. 1339 (1990); D. Dobbs, Remedies § 1.1, p. 3 (1973). And though we have never interpreted the precise phrase "other appropriate equitable relief," we have construed the similar [***170] language of Title VII of the Civil Rights Act of 1964 (before its 1991 amendments) -- "any other equitable relief as [****15] the court deems appropriate," 42 U.S.C. § 2000e-5 (g) -- to preclude "awards for compensatory or punitive damages." [United States v. Burke](#), 504 U.S. 229, 238, 119 L. Ed. 2d 34, 112 S. Ct. 1867 (1992).

Petitioners assert, however, that this reading of "equitable relief" fails to acknowledge ERISA's roots in the common law of trusts, see [Firestone Tire & Rubber Co. v. Bruch](#), 489 U.S. 101, 110-111, 103 L. Ed. 2d 80, 109 S. Ct. 948 (1989). "Although a beneficiary's action to recover losses resulting from a breach of duty superficially [*256] resembles an action at law for damages," the Solicitor General suggests, "such relief traditionally has been obtained in courts of equity" and therefore "is, by definition, 'equitable relief.'" Brief for United States as *Amicus Curiae* 13-14. It is true that, at common law, the courts of equity had exclusive jurisdiction over virtually all actions by beneficiaries for breach of trust. See *Lessee of* [Smith v. McCann](#), 65 U.S. 398, 407, 16 L. Ed. 714 (1861); 3 Scott & Fratcher § 197, p. 188. ⁶ It is also true that money damages were available in those courts [****16] against the trustee, see [United States v. Mitchell](#), 463 U.S. 206, 226, 77 L. Ed. 2d 580, 103 S. Ct. 2961 (1983); G. Bogert & G. Bogert, Law of Trusts and Trustees § 701, p. 198 (rev. 2d ed. 1982) (hereinafter Bogert & Bogert), and against third persons who knowingly participated in the trustee's breach, see [Seminole Nation v. United States](#), 316 U.S. 286, 296-297, 86 L. Ed. 1480, 62 S. Ct. 1049 (1942); Scott, Participation in a Breach of Trust, 34 Harv. L. Rev. 454 (1921).

[LEdHN\[2\]](#) [↑] [2] At common law, however, there were many situations -- not limited to those involving enforcement of a trust -- in which an equity court could "establish purely legal [****17] rights and grant legal remedies which would otherwise be beyond the scope of its authority." 1 J. Pomeroy, Equity Jurisprudence § 181, p. 257 (5th ed. 1941). The term "equitable relief" can assuredly mean, as petitioners and the Solicitor General would have it, whatever relief a court of equity is empowered to provide in the particular case at issue. But [**2069] as indicated by the foregoing quotation -- which speaks of "legal remedies" granted by an equity court -- "equitable relief" can also refer to those categories of relief that were *typically* available in equity (such as injunction, mandamus, and restitution, but not compensatory damages). As memories of the divided bench, and familiarity with its technical refinements, recede further into the past, the former meaning [*257] becomes, perhaps, increasingly unlikely; but it remains a question of interpretation in each case which meaning is intended.

[LEdHN\[1E\]](#) [↑] [1E] In the context of the present statute, we think there can be no doubt. Since *all* relief available for breach of trust could be obtained from a court of equity, limiting the sort of relief obtainable under § 502(a)(3) to "equitable relief" [****18] [***171] in the sense of "whatever relief a common-law court of equity could provide in such a case" would limit the relief *not at all*. ⁷ [****20] [*258] We will not read the statute to render the modifier

⁶The only exceptions were actions at law to obtain payment of money or transfer of chattels immediately and unconditionally due the beneficiary, see 3 Scott & Fratcher § 198 -- and even then the courts were divided over whether equivalent actions could also be brought in equity, see *id.*, § 198.3.

⁷The dissent argues that it would limit the relief by rendering punitive damages unavailable. *Post*, at 270-272. The notion that concern about punitive damages motivated Congress is a classic example of projecting current attitudes upon the helpless past. Unlike the availability of money damages, which always has been a central concern of courts and legislatures in fashioning causes of action, the availability of punitive damages is a major issue today, but was not in 1974, when ERISA was enacted. See [Pacific Mut. Life Ins. Co. v. Haslip](#), 499 U.S. 1, 61-62, 113 L. Ed. 2d 1, 111 S. Ct. 1032 (1991) (O'CONNOR, J., dissenting); P. Huber, Liability 127 (1988); Ellis, Fairness and Efficiency in the Law of Punitive Damages, 56 S. Cal. L. Rev. 1, 2-3 (1982). That is particularly so for breach-of-trust cases. The 1988 edition of Scott & Fratcher cites no pre-ERISA case on the issue of punitive damages, see 3 Scott & Fratcher § 205, p. 239, n.2; the 1982 edition of Bogert & Bogert cites two, see Bogert & Bogert

superfluous. See [United States v. Nordic Village, Inc., 503 U.S. 30, 36, 117 L. Ed. 2d 181, 112 S. Ct. 1011 \(1992\)](#); [Moskal v. United States, 498 U.S. 103, 109-110, 112 L. Ed. 2d 449, 111 S. Ct. 461 \(1990\)](#). Regarding "equitable" relief in § 502(a)(3) to mean "all relief available for breach of trust at common law" would also require us either to give the term a different meaning there than it bears elsewhere in ERISA, or to deprive of all meaning [**2070] the distinction Congress drew between "equitable" and "remedial" relief in § 409(a),⁸ [***172] and between "equitable" and "legal" relief in the very same section of ERISA, see [29 U.S.C. § 1132\(g\)\(2\)\(E\)](#); in the same subchapter of ERISA, see [§ 1024\(a\)\(5\)\(C\)](#); and in the ERISA subchapter dealing [**259] with the PBGC, see [§§ 1303\(e\)\(1\), 1451\(a\)\(1\)](#).⁹ Neither option is acceptable. See [Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 479, 120 L. Ed. 2d 379, 112 S. Ct. 2589 \(1992\)](#); [****19] cf. [Lorillard v. Pons, 434 U.S. 575, 583, 55 L. Ed. 2d 40, 98 S. Ct. 866 \(1978\)](#). The authority of courts to develop a "federal common law" under ERISA, see [Firestone, 489 U.S. at 110](#), is not the authority to revise the text of the statute.

[****21] Petitioners point to ERISA § 502(l), which was added to the statute in 1989, see Omnibus Budget Reconciliation Act of 1989 (OBRA), Pub. L. 101-239, § 2101, 103 Stat. 2123, and provides as follows:

§ 862, p. 41, n.12. The 1992 supplements to these treatises, however, each cite more than a dozen cases on the issue from the 1980's.

But even if Congress *had* been concerned about "extracompensatory forms of relief," *post*, at 270, it would have been foolhardy to believe that excluding "legal" relief was the way to prohibit them (while still permitting *other* forms of monetary relief) in breach-of-trust cases. The dissent's confident assertion that punitive damages "were not available" in equity, *ibid.*, simply does not correspond to the state of the law when ERISA was enacted. A year earlier, a major treatise on remedies was prepared to say only that "a majority of courts that have examined the point probably still refuse to grant punitive damages in equity cases." D. Dobbs, *Remedies* § 3.9, p. 211 (1973). That, of course, was speaking of equity cases *in general*. It would have been even riskier to presume that punitive damages were unavailable in that subclass of equity cases in which law-type damages were routinely awarded, namely, breach-of-trust cases. The few trust cases that *did* allow punitive damages were not exclusively actions at law. See [Rivero v. Thomas, 86 Cal. App. 2d 225, 194 P.2d 533 \(1948\)](#). The two decisions upon which the dissent relies, [Fleishman v. Krause, Lindsay & Nahstoll, 261 Ore. 505, 495 P.2d 268 \(1972\)](#), and [Dixon v. Northwestern Nat. Bank of Minneapolis, 297 F. Supp. 485 \(Minn. 1969\)](#), see *post*, at 271, held only that the breach-of-trust actions at issue could be brought at law, thus entitling the plaintiffs to a jury trial. While both decisions noted in passing that the plaintiffs sought punitive as well as compensatory damages, neither said that those damages could be obtained, much less that they could be obtained *only at law*.

The dissent's claim that the Courts of Appeals have adopted its theory that "equitable relief" was used in ERISA to exclude punitive damages, see *post*, at 272, n.6, is also unfounded. The only opinion the dissent cites that permits punitive damages when an "equitable relief" limitation does not exist (*viz.*, under § 502(a)(2), which permits not only "equitable," but also "remedial," relief) is [Kuntz v. Reese, 760 F.2d 926 \(CA9 1985\)](#). That opinion (a) was based on the Ninth Circuit precedent we subsequently reversed in [Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 87 L. Ed. 2d 96, 105 S. Ct. 3085 \(1985\)](#), see [Kuntz, supra, at 938](#); (b) was formally withdrawn after being vacated on other grounds, see [785 F.2d 1410 \(per curiam\)](#), cert. denied, [479 U.S. 916 \(1986\)](#); and (c) has never been relied upon again, even by the Ninth Circuit.

⁸We agree with the dissent, see *post*, at 269, n.4, that the distinction between "equitable" and "remedial" relief is artless, but do not agree that we are therefore free to consider it meaningless. "Equitable" relief must mean *something* less than *all* relief. Congress has, it may be noted, used the same language ("other equitable or remedial relief") elsewhere. See [5 U.S.C. § 8477\(e\)\(1\)\(A\)](#).

⁹The dissent postulates that Congress used the "legal or equitable relief" language only where the cause of action it was authorizing lacked "any discernible analogue in the common law of trusts," as a means of indicating that the courts are "free to craft whatever relief is most appropriate." *Post*, at 268-269. That is demonstrably not so. Administrative accounting requirements like the ones enforced through [29 U.S.C. § 1024\(a\)\(5\)\(C\)](#) (which uses the "legal or equitable" formulation) were not unheard-of before ERISA, see 2A Scott & Fratcher § 172, p. 456, and they have an "analogue" in the basic duty of trustees to keep and render accounts upon demand by the beneficiary, see *id.*, § 172; Bogert & Bogert § 861, pp. 7-9. Moreover, in a 1986 amendment to the subchapter dealing with the PBGC, Congress created a cause of action to enforce the provisions governing termination of single-employer plans, using the same "other appropriate equitable relief" language as appears in § 502(a)(3). See [29 U.S.C. § 1370\(a\)\(2\)](#). That cause of action no more reflects some common-law "analogue" than do those created by the other PBGC provisions referred to in text (which employ the "legal or equitable" formulation).

[HN3](#)^[↑] "(1) In the case of --

"(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or

"(B) any knowing participation in such a breach or violation by any other person,

"the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount." [29 U.S.C. § 1132\(l\)\(1\)](#) (1988 ed., Supp. III).

[*260] The Secretary may waive or reduce this penalty if he believes that "the fiduciary or other person will [otherwise] not be able to restore all losses to the plan without severe financial hardship." [§ 1132\(l\)\(3\)\(B\)](#). "Applicable recovery amount" is defined (in [§ 502\(l\)\(2\)\(B\)](#)) as "any amount . . . ordered by a court to be paid by such fiduciary or other person to a plan or its participants or beneficiaries in a judicial proceeding instituted by the Secretary under [[§§ 502\(a\)\(2\) or \(a\)\(5\)](#)]." It will be recalled that the latter **[****22]** subsection, [§ 502\(a\)\(5\)](#), authorizes relief in actions by the Secretary on the same terms ("appropriate equitable relief") as in the private-party actions authorized by [§ 502\(a\)\(3\)](#). Petitioners argue that [§ 502\(l\)](#) confirms that [§ 502\(a\)\(5\)](#) -- and hence, since it uses the same language, [§ 502\(a\)\(3\)](#) -- allows actions for damages, since otherwise there could be no "applicable recovery amount" against some "other person" than the fiduciary, and the **[***173]** Secretary would have no occasion to worry about whether any such "other person" would be able to "restore all losses to the plan" without financial hardship.

[LEdHN1F](#)^[↑] [1F] [LEdHN3](#)^[↑] [3] We certainly agree with petitioners that language used in one portion of a statute ([§ 502\(a\)\(3\)](#)) should be deemed to have the same meaning as the same language used elsewhere in the statute ([§ 502\(a\)\(5\)](#)). Indeed, we are even more zealous advocates of that principle than petitioners, who stop **[**2071]** short of applying it directly to the term "equitable relief." We cannot agree, however, that [§ 502\(l\)](#) establishes the existence of a damages remedy under [§ 502\(a\)\(5\)](#) -- *i. e.*, that it is otherwise so inexplicable that **[****23]** we must give the term "equitable relief" the expansive meaning "all relief available for breach of trust." For even in its more limited sense, the "equitable relief" awardable under [§ 502\(a\)\(5\)](#) includes restitution of ill-gotten plan assets or profits, providing an "applicable recovery amount" to use to calculate the penalty, which the Secretary may waive or reduce if paying it would prevent the restoration of those gains to the plan; and even assuming nonfiduciaries are not liable at all for knowing participation **[*261]** in a fiduciary's breach of duty, see [supra, at 253-254](#), cofiduciaries expressly are, see [§ 405\(a\)](#), so there are some "other person[s]" than fiduciaries-in-breach liable under [§ 502\(l\)\(1\)\(B\)](#). These applications of [§ 502\(l\)](#) give it meaning and scope without resort to the strange interpretation of "equitable relief" in [§ 502\(a\)\(3\)](#) that petitioners propose. The Secretary's initial interpretation of [§ 502\(l\)](#) accords with our view. The prologue of the proposed regulation implementing [§ 502\(l\)](#), to be codified at [29 CFR § 2560.502l-1](#), states that when a court awards "equitable relief" -- as opposed to "monetary damages" **[****24]** -- a [§ 502\(l\)](#) penalty will be assessed only if the award involves the transfer to the plan of money or property. [55 Fed. Reg. 25288, 25289, and n.9 \(1990\)](#).

In the last analysis, petitioners and the United States ask us to give a strained interpretation to [§ 502\(a\)\(3\)](#) in order to achieve the "purpose of ERISA to protect plan participants and beneficiaries." Brief for Petitioners 31. They note, as we have, that before ERISA nonfiduciaries were generally liable under state trust law for damages resulting from knowing participation in a trustee's breach of duty, and they assert that such actions are now pre-empted by ERISA's broad pre-emption clause, [§ 514\(a\)](#), [29 U.S.C. § 1144\(a\)](#), see [Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139-140, 112 L. Ed. 2d 474, 111 S. Ct. 478 \(1990\)](#). Thus, they contend, our construction of [§ 502\(a\)\(3\)](#) leaves beneficiaries like petitioners with *less* protection than existed before ERISA, contradicting ERISA's basic goal of "promot[ing] the interests of employees and their beneficiaries in employee benefit plans," [Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 90, 77 L. Ed. 2d 490, 103 S. Ct. 2890 \(1983\)](#). **[****25]** See [Firestone Tire & Rubber Co. v. Bruch, supra, at 114](#).

[LEdHN1G](#)^[↑] [1G] Even assuming (without deciding) that petitioners are correct about the pre-emption of previously available state court actions, vague notions of a statute's "basic purpose" are nonetheless inadequate to overcome the words of its text regarding the *specific* issue under consideration. **[***174]** See [Pension \[*262\] Benefit Guaranty Corporation v. LTV Corp., 496 U.S. 633, 646-647, 110 L. Ed. 2d 579, 110 S. Ct. 2668 \(1990\)](#). This

is especially true with legislation such as ERISA, an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests -- not all in favor of potential plaintiffs. See, e. g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54-56, 95 L. Ed. 2d 39, 107 S. Ct. 1549 (1987). The text that we have described is certainly not nonsensical; it allocates liability for plan-related misdeeds in reasonable proportion to respective actors' power to control and prevent the misdeeds. Under traditional trust law, although a beneficiary could obtain damages from third persons for [****26] knowing participation in a trustee's breach of fiduciary duties, only the trustee had fiduciary duties. See 1 Scott & Fratcher § 2.5, p. 43. ERISA, however, defines "fiduciary" not in terms of formal trusteeship, but in *functional* terms of control and authority over the plan, see 29 U.S.C. § 1002(21)(A), thus expanding the universe of persons subject to fiduciary duties -- and to damages -- under § 409(a). Professional service providers such as actuaries become liable for damages when they cross the line from adviser to fiduciary; must disgorge assets and profits obtained through participation as parties-in-interest in transactions [**2072] prohibited by § 406, and pay related civil penalties, see § 502(i), 29 U.S.C. § 1132(i), or excise taxes, see 26 U.S.C. § 4975; and (assuming nonfiduciaries can be sued under § 502(a)(3)) may be enjoined from participating in a fiduciary's breaches, compelled to make restitution, and subjected to other equitable decrees. All that ERISA has eliminated, on these assumptions, is the common law's joint and several liability, for *all* direct and consequential damages [****27] suffered by the plan, on the part of persons who had no real power to control what the plan did. Exposure to that sort of liability would impose high insurance costs upon persons who regularly deal with and offer advice to ERISA plans, and hence upon ERISA plans themselves. There is, in other words, a "tension between the primary [ERISA] goal of benefiting employees and the [*263] subsidiary goal of containing pension costs." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 515, 68 L. Ed. 2d 402, 101 S. Ct. 1895 (1981); see also *Russell*, 473 U.S. at 148, n.17. We will not attempt to adjust the balance between those competing goals that the text adopted by Congress has struck.

* * *

The judgment of the Court of Appeals is

Affirmed.

Dissent by: WHITE

Dissent

JUSTICE **WHITE**, with whom THE CHIEF JUSTICE, JUSTICE **STEVENS**, and JUSTICE **O'CONNOR** join, dissenting.

The majority candidly acknowledges that it is plausible to interpret the phrase "appropriate equitable relief" as used in § 502(a)(3), 88 Stat. 891, 29 U.S.C. § 1132(a)(3), at least standing alone, as meaning that relief which was available in the courts of equity [****28] for a breach of trust. *Ante*, at 256. The majority also acknowledges that the relief petitioners seek here -- a compensatory monetary award -- was available in [***175] the equity courts under the common law of trusts, not only against trustees for breach of duty, but also against nonfiduciaries knowingly participating in a breach of trust, *ante*, at 256, 261, 262. Finally, there can be no dispute that ERISA was grounded in this common-law experience and that "we are [to be] guided by principles of trust law" in construing the terms of the statute. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111, 103 L. Ed. 2d 80, 109 S. Ct. 948 (1989). Nevertheless, the majority today holds that in enacting ERISA Congress stripped ERISA trust beneficiaries of a remedy against trustees and third parties that they enjoyed in the equity courts under common law. Although it is assumed that a cause of action against a third party such as respondent is provided by ERISA, the remedies available are limited to the "traditional" equitable remedies, such as injunction and restitution, and do not include compensatory damages -- "the classic form of *legal* relief. [****29] " *Ante*, at 255 (emphasis in original). [*264] Because I do not believe that the statutory language requires this result and because we have elsewhere recognized the anomaly of construing ERISA in a way that "would afford *less* protection to employees and their

beneficiaries than they enjoyed before ERISA was enacted," [Firestone, supra, at 114](#) (emphasis added), I must dissent.

I

Concerned that many pension plans were being corruptly or ineptly mismanaged and that American workers were losing their financial security in retirement as a result, Congress in 1974 enacted ERISA, "declar[ing] [it] to be the policy of [the statute] to protect . . . the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect [to the plans], by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." [29 U.S.C. § 1001\(b\)](#).

[**2073] As we have noted previously, [****30] "ERISA's legislative history confirms that the Act's fiduciary responsibility provisions, [29 U.S.C. §§ 1101-1114](#), 'codify and make applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.'" [Firestone, supra, at 110](#) (quoting H. R. Rep. No. 93-533, p. 11 (1973)). ERISA, we have explained, "abounds with the language and terminology of trust law" and must be construed against the background of the common law of trusts. [Firestone, supra, at 110-111](#); see also [Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., 472 U.S. 559, 570-571, 86 L. Ed. 2d 447, 105 S. Ct. 2833 \(1985\)](#). Indeed, absent some express statutory departure -- such as ERISA's broader definition of a responsible "fiduciary," see *ante*, at 262 -- Congress intended that the courts would look to the settled experience of the common law in giving shape to a "federal common law of rights and obligations under ERISA-regulated [***176] plans." [Firestone, supra, at \[*265\] 110](#); see also H.R. Rep. No. 93-533, [supra, at 11](#); S. Rep. No. 93-127, p. [****31] 29 (1973); 120 Cong. Rec. 29928, 29932 (1974) (statement of Sen. Williams).

Accordingly, it is to the common law of trusts that we must look in construing the scope of the "appropriate equitable relief" for breaches of trust contemplated by § 502(a)(3), [29 U.S.C. § 1132\(a\)\(3\)](#).¹ As the majority notes, at common law [*266] the courts of equity were the predominant forum for beneficiaries' claims arising from a breach of trust. These courts were not, however, the exclusive forum. In some instances, there was jurisdiction both in law and in equity and it was generally (although not universally) acknowledged that the beneficiary could elect between his or her legal and equitable remedies. See [Clews v. Jamieson, 182 U.S. 461, 480-481, 45 L. Ed. 1183, 21 S. Ct. 845 \(1901\)](#); G. Bogert & G. Bogert, *Law of Trusts and Trustees* § 870, pp. 101-107 (2d rev. ed. 1982); 3 A. Scott &

¹ As an initial matter, the majority expresses some uncertainty about whether § 502(a)(3) affords a cause of action and *any* sort of remedy against nonfiduciaries who participate in a fiduciary's breach of duty under the statute. See *ante*, at 253-254. In my view, however, the statute clearly does not bar such a suit. Section 502(a)(3) gives a cause of action to any participant, beneficiary, or fiduciary of an ERISA-governed plan "to redress . . . violations" of the statute. There can be no dispute that when an ERISA fiduciary breaches his or her duty of care in managing the plan, there has been a violation of the statute. See [29 U.S.C. § 1104](#). The only question then is whether the remedies provided by § 502(a)(3) "to redress such [a] violation" must stop with the breaching fiduciary or may extend to nonfiduciaries who actively assist in the fiduciary's breach. Section 502(a)(3) does not expressly provide for such a limitation and it does not seem appropriate to import one given that trust beneficiaries clearly had such a remedy at common law, see *ante*, at 256, 261, 262, and that ERISA is grounded in that common law and was intended, above all, to protect the interests of beneficiaries.

Moreover, the amendment of the statute in 1989, adding § 502(l), seems clearly to reflect Congress' understanding that ERISA provides such a remedy. As the majority notes, see *ante*, at 259, § 502(l) empowers the Secretary of Labor to assess a civil penalty against nonfiduciaries who "knowingly participate" in a fiduciary's breach of trust. [29 U.S.C. § 1132\(l\)\(1\)\(B\)](#) (1988 ed., Supp. III). The subsection further provides that this penalty shall be "equal to 20 percent of the applicable recovery amount" obtained from the nonfiduciary in a proceeding under § 502(a)(5), which provides a cause of action to the Secretary that parallels that provided to beneficiaries under § 502(a)(3). [§§ 1132\(l\)\(1\)](#) and (2); see also *ante*, at 260. This provision clearly contemplates that some remedy may be had under § 502(a)(5) -- and, by necessary implication, under § 502(a)(3) -- against nonfiduciaries for "knowing participation" in a fiduciary's "breach of fiduciary responsibilit[ies]." [§ 1132\(l\)\(1\)](#). Given that this understanding accords with well-established common-law trust principles undergirding ERISA and that it is also compatible with the language of § 502(a)(3), I see no basis for doubting the validity of petitioners' cause of action.

W. Fratcher, *Law of Trusts* § 198, pp. 194-203 (4th ed. 1988); J. Hill, *Trustees* *518-*519; Annot., *Remedy at Law Available to Beneficiary of [**2074] Trust as Exclusive of Remedy in Equity*, 171 A. L. R. 429 (1947). Indeed, the Restatement of Trusts [****32] sets out in separate, successive sections the "legal" and "equitable" remedies available to beneficiaries under the common law of trusts. See *Restatement (Second) of Trusts* §§ 198, 199 (1959).

[****33] The traditional "equitable remedies" available to a trust beneficiary included compensatory damages. [***177] Equity "endeavor[ed] as far as possible to replace the parties in the same situation as they would have been in, if no breach of trust had been committed." Hill, *supra*, at *522; see also J. Tiffany & E. Bullard, *Law of Trusts and Trustees* 585-586 (1862) (defendant is chargeable with any losses caused to trust or with any profits trust might have earned absent the breach). This included, where necessary, the payment of a monetary award to make the victims of the breach whole. *Clews v. Jamieson, supra, at 479-480*; Hill, *supra*, at *522; Bogert & Bogert, *supra*, § 862; see also *United States v. Mitchell, 463 U.S. 206, 226, 77 L. Ed. 2d 580, 103 S. Ct. 2961 (1983)*; *Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 154, n.10, 87 L. Ed. 2d 96, 105 S. Ct. 3085 (1985)* (Brennan, J., concurring in judgment).

Given this history, it is entirely reasonable in my view to construe § 502(a)(3)'s reference to "appropriate equitable relief" to encompass what was equity's routine remedy for such breaches [****34] -- a compensatory monetary award calculated to make the victims whole, a remedy that was available against [*267] both fiduciaries and participating nonfiduciaries. Construing the statute in this manner also avoids the anomaly of interpreting ERISA so as to leave those Congress set out to protect -- the participants in ERISA-governed plans and their beneficiaries -- with "less protection . . . than they enjoyed before ERISA was enacted." *Firestone, 489 U.S. at 114*.² Indeed, this is precisely how four Justices of this Court read § 502(a)(3)'s reference to "appropriate equitable relief" in *Russell*. See *473 U.S. at 154*, and n.10 (Brennan, J., joined by WHITE, Marshall, and BLACKMUN, JJ., concurring in judgment).

[****35] II

The majority, however, struggles to find on the face of the statute evidence that § 502(a)(3) is to be more narrowly construed. First, it observes that ERISA elsewhere uses the terms "remedial relief" and "legal relief" and reasons that Congress must therefore have intended to differentiate between these concepts and "equitable relief." Second, it is noted that the crucial language of § 502(a)(3) describes the available relief as *equitable* relief. It is then asserted that "since *all* relief available for breach of trust could be obtained from a court of equity, limiting the sort of relief obtainable under § 502(a)(3) to 'equitable relief' in the sense of 'whatever relief a common-law court of equity could provide in such a case' would limit the relief *not at all*," rendering Congress' imposition of the modifier "equitable" a nullity. *Ante*, at 257 (emphasis in original). Searching for some way [*268] in which to give "appropriate [***178] equitable relief" a limiting effect, the majority feels compelled to read the phrase as encompassing only "those categories of relief that were *typically* available" in the broad run of equity cases, without regard [****36] to the particular equitable remedies available in trust cases. See *ante*, at 256 (emphasis in [**2075] original). This would include injunction and restitution, for example, but not money damages. See *ibid*. As I see it, however, the words "appropriate equitable relief" are no more than descriptive and simply refer to all remedies available in equity under the common law of trusts, whether or not they were or are the exclusive remedies for breach of trust.

I disagree with the majority's inference that by using the term "legal . . . relief" elsewhere in ERISA, Congress demonstrated a considered judgment to constrict the relief available under § 502(a)(3). To be sure, § 502(g)(2)(E) of the statute empowers courts to award appropriate "legal or equitable relief" where a fiduciary successfully sues

² Section 514(a) of ERISA pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" governed by ERISA. *29 U.S.C. § 1144(a)*. Although the majority stops short of deciding the pre-emption implications of its holding, see *ante*, at 261, it is difficult to imagine how any common-law remedy for the harm alleged here -- participation in a breach of fiduciary duty concerning an ERISA-governed plan -- could have survived enactment of ERISA's "'deliberately expansive" pre-emption provision, *Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138, 112 L. Ed. 2d 474, 111 S. Ct. 478 (1990)* (citation omitted).

an employer for failing to make required contributions to a "multiemployer plan." [§ 1132\(g\)\(2\)\(E\)](#). Likewise, § 104(a)(5)(C) authorizes the Secretary of Labor to bring "a civil action for such legal or equitable relief as may be appropriate" to force the administrator of an employee benefit plan to file certain plan documents with the Secretary. [29 U.S.C. § 1024](#) [****37] [\(a\)\(5\)\(C\)](#). And, finally, §§ 4003(e)(1) and 4301(a)(1) of the statute, also cited by the majority, empower courts to dispense "appropriate relief, legal or equitable or both," in actions brought by the Pension Benefit Guaranty Corporation (PBGC) or by plan fiduciaries, participants, or beneficiaries with respect to the peculiar statutory duties relating to the PBGC. [29 U.S.C. § 1303\(e\)\(1\)](#); see also [§ 1451\(a\)\(1\)](#) (authorizing "an action for appropriate legal or equitable relief, or both"). Significantly, however, none of the causes of action described in these sections -- relating to the financing of "multiemployer plans," administrative filing requirements, and the PBGC -- had any discernible analogue in the common [*269] law of trusts. Accordingly, there being no common-law tradition either in law or in equity to which Congress might direct the courts, it is not at all surprising that Congress would refer to both legal and equitable relief in making clear that the courts are free to craft whatever relief is most appropriate. ³ [****39] It seems to me a treacherous leap to draw from these sections a congressional intention to foreclose compensatory monetary awards [****38] under § 502(a)(3) notwithstanding that such awards [***179] had always been considered "appropriate equitable relief" for breach of trust at common law. See [supra](#), [at 266-267](#). ⁴

[*270] Even accepting, however, that "equitable" relief is to be distinguished from "legal" relief under the statute, the [****40] majority is wrong in supposing that the former concept swallows the latter if § 502(a)(3)'s reference to "appropriate equitable relief" is understood [**2076] to encompass those remedies that were traditionally available in the equity courts for breach of trust. The fact of the matter is that not all forms of relief were available in the common-law courts of equity for a breach of trust. Although the equity courts could award monetary relief to make the victim of a breach of trust whole, extracompensatory forms of relief, such as punitive damages, were not available. As this Court has long recognized, courts of equity would not -- absent some express statutory authorization -- enforce penalties or award punitive damages. See [Tull v. United States](#), [481 U.S. 412, 422, 95 L. Ed. 2d 365, 107 S. Ct. 1831, and n.7 \(1987\)](#); [Stevens v. Gladding](#), [58 U.S. 447, 454-455, 15 L. Ed. 155 \(1855\)](#); [Livingston v. Woodworth](#), [56 U.S. 546, 559-560, 14 L. Ed. 809 \(1854\)](#); see also 2 J. Sutherland, *Law of Damages* § 392, p. 1089 (3d ed. 1903); W. Hale, *Law of Damages* 319 (2d ed. 1912); 1 T. Sedgwick, *Measure of Damages* § 371, p. 531 (8th ed. [****41] 1891). As JUSTICE KENNEDY has observed, this limitation on equitable relief applied in the trust context as well, where plaintiffs could recover compensatory monetary relief for a breach of trust, but not punitive or exemplary damages. See [Teamsters v. Terry](#), [494 U.S. 558, 587, 108 L. Ed. 2d 519, 110 S. Ct. 1339 \(1990\)](#) (dissenting opinion). ⁵

³The majority claims to find a common-law analogue for an action under § 104(a)(5)(C), likening an action by the Secretary of Labor to enforce ERISA's administrative filing requirements to a common-law action against a trustee for failure to keep and render accounts. *Ante*, at 259, n.9. The analogy seems to me a long reach. The common-law duty of trustees to account to beneficiaries for all transactions made on behalf of the trust bears, at best, only slight resemblance to the ERISA-created duty of plan administrators to file with the Secretary of Labor specified annual reports, plan descriptions, and summary plan descriptions. See [29 U.S.C. § 1024\(a\)\(1\)](#). So, too, the fact that some States -- by *statute* -- have required trustees to render an accounting to state courts, see 2A A. Scott & W. Fratcher, *Law of Trusts* § 172, p. 456 (4th ed. 1988), cited *ante*, at 259, n.9, fails to establish a *common-law* analogue for actions by the Secretary under § 104(a)(5)(C).

⁴Moreover, if the text of the statute reflects Congress' careful differentiation between "legal" and "equitable" relief, as the majority posits, it presumably must also reflect a careful differentiation between "equitable" and "remedial" relief and, for that matter, between "legal" and "remedial" relief. See [29 U.S.C. § 1109\(a\)](#) (breaching fiduciary "shall be subject to such other equitable or remedial relief as the court may deem appropriate"). What limiting principle Congress could have intended to convey by this latter term I cannot readily imagine. "Remedial," after all, simply means "intended as a remedy," Webster's Ninth New Collegiate Dictionary 996 (1983), and "relief" is commonly understood to be a synonym for "remedy," *id.*, [at 995](#). At the very least, Congress' apparent imprecision in this regard undermines my confidence in the strong inferences drawn by the majority from Congress' varying phraseology concerning relief under ERISA.

⁵JUSTICE KENNEDY's observation is well grounded in legal history. In crafting a remedy for a breach of trust the exclusive aim of the common-law equity courts was to make the victim whole, "endeavor[ing] as far as possible to replace the parties in the

[****42] [*271] [***180] By contrast, punitive damages were among the "legal remedies" available in common-law trust cases. In those trust cases that historically could have been brought as actions at law -- such as where a trustee is under an immediate and unconditional duty to pay over funds to a beneficiary, see *ante*, at 256, n.6 -- it has been acknowledged that the beneficiary may recover punitive as well as compensatory damages. See [Fleishman v. Krause, Lindsay & Nahstoll, 261 Ore. 505, 495 P.2d 268 \(1972\)](#) (reversing and remanding for jury trial beneficiary's claim for punitive and compensatory damages); [Dixon v. Northwestern Nat. Bank of Minneapolis, 297 F. Supp. 485 \(Minn. 1969\)](#) (same). Moreover, while the majority of courts adhere to the view that equity courts, even in trust cases, cannot award punitive damages, see Note, Participant and Beneficiary Remedies Under ERISA: Extrac contractual and Punitive Damages After *Massachusetts Mutual Life Insurance Co. v. Russell*, [71 Cornell L. Rev. 1014, 1029-1030 \(1986\)](#); [*272] see also D. [**2077] Dobbs, Remedies § 3.9, pp. 211-212 (1973), a number of courts in more [****43] recent decades have drawn upon their "legal" powers to award punitive damages even in cases that historically could have been brought only in equity. While acknowledging the traditional bar against such relief in equity, these courts have concluded that the merger of law and equity authorizes modern courts to draw upon both legal and equitable powers in crafting an appropriate remedy for a breach of trust. See *I. H. P. Corp. v. 210 Central Park South Corp.*, 16 A.D.2d 461, 464-466, [228 N.Y.S.2d 883, 887-888 \(1962\)](#), aff'd, [12 N.Y.2d 329, 189 N.E.2d 812, 239 N.Y.S.2d 547 \(1963\)](#); [Gould v. Starr, 558 S.W.2d 755, 771 \(Mo. App. 1977\)](#), cert. denied, 436 U.S. 905 (1978); [Citizens & Southern Nat. Bank v. Haskins, 254 Ga. 131, 136-137, 327 S.E.2d 192, 199 \(1985\)](#); see also [New Jersey Division, Horsemen's Benevolent Protective Assn. v. New Jersey Racing Comm'n, 251 N.J. Super. 589, 605, 598 A.2d 1243, 1251 \(1991\)](#) (present-day Chancery Division can "afford the full range of equitable and legal remedies for breach of trust," including punitive damages); cf. [Charles v. Epperson & Co., 258 Iowa 409, 137 N.W.2d 605, 618 \(Iowa 1965\)](#). [****44]

Because some forms of "legal" relief in trust cases were thus not available at equity, limiting the scope of relief under § 502(a)(3) to the sort of relief historically provided by the equity courts for a breach of trust provides a meaningful limitation and, if one is needed, a basis for distinguishing "equitable" from "legal" relief. ⁶ [****45]

same situation as they would have been in, if no breach of trust had been committed." J. Hill, Trustees *522; see also **Restatement (Second) of Trusts § 205** (1959). Historically, punitive damages were unavailable in any equitable action on the theory that "the Court of Chancery as the Equity Court is a court of conscience and will permit only what is just and right with no element of vengeance." [Beals v. Washington International, Inc., 386 A.2d 1156, 1159 \(Del. Ch. 1978\)](#); accord, [Williamson v. Chicago Mill & Lumber Corp., 59 F.2d 918, 922 \(CA8 1932\)](#); [Stolz v. Franklin, 258 Ark. 999, 1008, 531 S.W.2d 1, 7 \(1975\)](#); [Superior Constr. Co. v. Elmo, 204 Md. 1, 16, 104 A.2d 581, 583 \(1954\)](#); [Given v. United Fuel Gas Co., 84 W. Va. 301, 306, 99 S.E. 476, 478 \(1919\)](#); [Orkin Exterminating Co. of South Florida v. Truly Nolen, Inc., 117 So. 2d 419, 422-423 \(Fla. App. 1960\)](#); D. Dobbs, Remedies § 3.9, pp. 211-212 (1973). Thus, even "where, in equitable actions, it becomes necessary to award damages, only compensatory damages should be allowed." [Karns v. Allen, 135 Wis. 48, 58, 115 N.W. 357, 361 \(1908\)](#); see also [Coca-Cola Co. v. Dixi-Cola Laboratories, 155 F.2d 59, 63 \(CA4\)](#), cert. denied, **329 U.S. 773 (1946)**; [United States v. Bernard, 202 F. 728, 732 \(CA9 1913\)](#); 1 T. Sedgwick, Measure of Damages § 371, p. 531 (8th ed. 1891).

The majority denigrates this traditional rule by citing to Professor Dobbs' 1973 treatise on remedies. That treatise noted a "modern" trend among some courts (on the eve of ERISA's enactment) to allow punitive damages in equity cases, but it also noted that the majority rule remained otherwise. Moreover, the trend Professor Dobbs identified was driven in large part by the "modern" merger of law and equity and by the consequent belief that there is no longer any reason to disallow "legal" remedies in what traditionally were "equitable" actions. See *ante*, at 258, n.8. Accordingly, the majority's observation in no way undermines the validity of the traditional rule -- well ensconced at the time of ERISA's enactment -- that punitive damages were not an appropriate *equitable* remedy, even in trust cases.

⁶Not surprisingly, in light of this history, "the Courts of Appeals which have passed on [the question] have concluded that the statutory language and legislative history of section 502(a)(3) of ERISA prohibit recovery of punitive damages." [Varhola v. Doe, 820 F.2d 809, 817 \(CA6 1987\)](#); see also [Harsch v. Eisenberg, 956 F.2d 651, 661 \(CA7\)](#), cert. denied *sub nom. Bihler v. Eisenberg*, **506 U.S. 818, 121 L. Ed. 2d 29, 113 S. Ct. 61 (1992)**; [Drinkwater v. Metropolitan Life Ins. Co., 846 F.2d 821, 825 \(CA1\)](#), cert. denied, **488 U.S. 909, 102 L. Ed. 2d 249, 109 S. Ct. 261 (1988)**; [Amos v. Blue Cross-Blue Shield of Alabama, 868 F.2d 430, 431, n.2 \(CA11\)](#), cert. denied, **493 U.S. 855, 107 L. Ed. 2d 116, 110 S. Ct. 158 (1989)**; [Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enterprises, Inc., 793 F.2d 1456, 1464-1465 \(CA5 1986\)](#), cert. denied, **479 U.S. 1034, 93 L. Ed. 2d 837, 107 S. Ct. 884 (1987)**; [Powell v. Chesapeake & Potomac Telephone Co. of Virginia, 780 F.2d 419, 424 \(CA4 1985\)](#), cert. denied, **476 U.S. 1170, 90 L. Ed. 2d 980, 106 S. Ct. 2892 (1986)**. With respect to § 502(a)(2), however, under which

Accordingly, the statutory [*273] text does not compel the [***181] majority's rejection of the reading of "appropriate equitable relief" advanced by petitioners and the Solicitor General -- a reading that the majority acknowledges is otherwise plausible, see *ante*, at 256.⁷

III

Although the trust beneficiary historically had an equitable suit for damages against a [**2078] fiduciary for breach of trust, as well as against a participating nonfiduciary, the majority today construes § 502(a)(3) as not affording such a remedy against any fiduciary or participating third party on the ground that damages are not "appropriate equitable [****46] relief." The majority's conclusion, as I see it, rests on transparently [*274] insufficient grounds. The text of the statute supports a reading of § 502(a)(3) that would permit a court to award compensatory monetary relief where necessary to make an ERISA beneficiary whole for a breach of trust. Such a reading would accord with the established equitable remedies available under the common law of trusts, to which Congress has directed us in construing ERISA, and with Congress' primary goal in enacting the statute, the protection of beneficiaries' financial security against corrupt or inept plan mismanagement. Finally, such a reading would avoid the perverse and, in this case, entirely needless result of construing ERISA so as to *deprive* beneficiaries of remedies they enjoyed prior to the statute's enactment. For these reasons, I respectfully dissent.

References

60A Am Jur 2d, Pensions and Retirement Funds 1230- 1244

[****47] 27 Federal Procedure, L Ed, Pensions and Retirement Systems 61:163, 61:216, 61:217

13A Federal Procedural Forms, L Ed, Pensions and Retirement Systems 53:131

19A Am Jur Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 35, 36, 38

[29 USCS 1001 et seq., 1132\(a\)\(3\)](#)

Pension Coordinator 77113-77115

L Ed Digest, Pensions and Retirement Funds 1

L Ed Index, Equity; Pensions and Retirement

ALR Index, Equity; Employee Retirement Income Security Act

Annotation References:

a beneficiary may claim both "equitable" and "remedial" relief, see [29 U.S.C. § 1132\(a\)\(2\)](#) (allowing "for appropriate relief under [section 1109](#) of this title"), the courts are split over whether punitive damages may be recovered. Compare [Kuntz v. Reese, 760 F.2d 926, 938 \(CA9 1985\)](#) (allowing such a recovery), vacated on other grounds, [785 F.2d 1410](#), cert. denied, [479 U.S. 916 \(1986\)](#), with [Sommers Drug Stores, supra, at 1463](#) (disallowing such a recovery); see also [Cox v. Eichler, 765 F. Supp. 601, 610-611 \(ND Cal. 1990\)](#) (punitive damages available under § 502(a)(2) but not under § 502(a)(3)). This Court in *Russell* expressly reserved judgment on whether punitive damages might be recovered on behalf of an ERISA-governed plan under § 502(a)(2). [Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 144, n.12, 87 L. Ed. 2d 96, 105 S. Ct. 3085 \(1985\)](#).

⁷The majority faults "the notion that concern about punitive damages motivated Congress" in drafting ERISA on the grounds that the availability of punitive damages was not "a major issue" in 1974. *Ante*, at 257, n.7. Neither, of course, is there anything to suggest that the availability of *compensatory* damages was a "major issue" in 1974, although the majority does not hesitate to attribute this concern to the 93d Congress. In any event, it seems to me considerably less fanciful to suppose that Congress was motivated by a desire to limit the availability of punitive damages than that it was moved by a desire to take from the statute's intended beneficiaries their traditional and possibly their only means of makewhole relief.

508 U.S. 248, *274; 113 S. Ct. 2063, **2078; 124 L. Ed. 2d 161, ***181; 1993 U.S. LEXIS 3742, ****47

What constitutes "other appropriate equitable relief," under 502(a)(3)(B), 502(a)(5)(B) of Employee Retirement Income Security Act ([29 USCS 1132\(a\)\(3\)\(B\)](#), [1132\(a\)\(5\)\(B\)](#)), which may be obtained to redress violations, or to enforce provisions, of [Act. 98 ALR Fed 705](#).

Pre-emption of state fair employment laws under provisions of 514 of Employee Retirement Income Security Act ([29 USCS 1144](#)). [72 ALR Fed 489](#).

Who is "fiduciary" within meaning of 3(21) of Employee Retirement Income Security Act of 1974 ([29 USCS 1002](#) [****48] [\(21\)](#)). [67 ALR Fed 186](#).

Right of pension plan, as entity, to bring civil enforcement action under 502 of Employee Retirement Income Security Act of 1974 ([29 USCS 1132](#)). [67 ALR Fed 947](#).

Construction and operation of private pension plan provision for distribution of pension funds upon termination of plan. [55 ALR3d 767](#).

End of Document



Questioned

As of: January 31, 2025 4:44 PM Z

[Great-West Life & Annuity Ins. Co. v. Knudson](#)

Supreme Court of the United States

October 1, 2001, Argued ; January 8, 2002, Decided

No. 99-1786

Reporter

534 U.S. 204 *; 122 S. Ct. 708 **; 151 L. Ed. 2d 635 ***; 2002 U.S. LEXIS 399 ****; 70 U.S.L.W. 4056; 27 Employee Benefits Cas. (BNA) 1065; 2002 Cal. Daily Op. Service 142; 2002 Daily Journal DAR 187; 15 Fla. L. Weekly Fed. S 53

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY, ET AL., PETITIONERS v. JANETTE KNUDSON AND ERIC KNUDSON

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Disposition: 208 F.3d 221, affirmed.

Core Terms

restitution, equitable, equitable relief, funds, cases, injunction, settlement, remedies, damages, federal court, reimbursement provision, constructive trust, respondents', state court, violations, courts, terms, court of equity, authorize, reimburse, third party, fiduciaries, suits, specific performance, personal liability, equitable remedy, past due, restitutionary, contractual, state-court

Case Summary

Procedural Posture

Petitioner insurance companies sued respondent beneficiaries to enforce a reimbursement provision of a plan subject to the Employee Retirement Income Security Act of 1974 (ERISA). The insurance companies were granted a writ of certiorari to the United States Court of Appeals for the Ninth Circuit, which held that the judicially decreed reimbursement was not authorized by [29 U.S.C.S. § 1132\(a\)\(3\)](#).

Overview

The insurance companies had paid one beneficiary's medical expenses pursuant to a stop-loss insurance agreement with an ERISA benefit plan. After the beneficiaries received a settlement from a car manufacturer in a state court action, the insurance companies sought to enforce the ERISA plan's reimbursement provision under [29 U.S.C.S. § 1132\(a\)\(3\)](#). The insurance companies were not entitled to relief under [§ 1132\(a\)\(3\)](#) because the relief they sought was not equitable in nature. Rather, it was a claim for money damages. The court rejected the insurance companies' arguments that they sought to enjoin an act or practice because an injunction to compel the payment of money was not typically available in equity. Moreover, the fact that the insurance companies had sought restitution did not make the claim for relief an equitable one because the kind of restitution they sought, personal liability for the benefits they had conferred on the beneficiaries, was a legal remedy. Likewise, the court rejected the argument that the common law of trusts provided the insurance companies with equitable remedies because that form of relief was not typically available in equity.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Governments > Fiduciaries

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Injunctions

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN1](#) Governments, Fiduciaries

Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, codified at [29 U.S.C.S. § 1132\(a\)\(3\)](#), authorizes a civil action by a participant, beneficiary, or fiduciary (1) to enjoin any act or practice which violates the terms of the plan, or (2) to obtain other appropriate equitable relief to redress such violations or to enforce any provisions of the terms of the plan.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN2](#) Remedies, Equitable Relief

For purposes of [29 U.S.C.S. § 1132\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974, "equitable" relief must mean something less than all relief.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN3](#) Remedies, Equitable Relief

The term "equitable relief" in § 502(a)(3) of the Employee Retirement Income Security Act of 1974, codified at [29 U.S.C.S. § 1132\(a\)\(3\)](#), refers to those categories of relief that are typically available in equity.

Civil Procedure > Remedies > Damages > Monetary Damages

Contracts Law > Remedies > Equitable Relief > Injunctions

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Injunctions

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN4](#) **Damages, Monetary Damages**

For purposes of determining whether a claim for relief is available under the Employee Retirement Income Security Act of 1974, a claim for money due and owing under a contract is quintessentially an action at law. Almost invariably suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for money damages, as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty. And money damages are, of course, the classic form of legal relief.

[Contracts Law > Remedies > Equitable Relief > Injunctions](#)

[Pensions & Benefits Law > ERISA > Civil Litigation > General Overview](#)

[Contracts Law > Remedies > Specific Performance](#)

[Pensions & Benefits Law > ... > Remedies > Equitable Relief > Injunctions](#)

[HN5](#) **Equitable Relief, Injunctions**

For purposes of determining whether a claim for relief is available under the Employee Retirement Income Security Act of 1974, an injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, is not typically available in equity.

[Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity](#)

[Pensions & Benefits Law > ERISA > Civil Litigation > Jury Trial Prohibition](#)

[Pensions & Benefits Law > ERISA > Civil Litigation > General Overview](#)

[Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview](#)

[Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution](#)

[HN6](#) **Right to Jury Trial, Actions in Equity**

In the context of determining whether a claim of relief is available under the Employee Retirement Income Security Act of 1974, not all relief falling under the rubric of restitution is available in equity. In the days of the divided bench, restitution was available in certain cases at law, and in certain others in equity. Thus, restitution is a legal remedy when ordered in a case at law and an equitable remedy when ordered in an equity case, and whether it is legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought.

[Labor & Employment Law > ... > Title VII Discrimination > Remedies > Affirmative & Equitable Relief](#)

[Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution](#)

[Labor & Employment Law > ... > Title VII Discrimination > Remedies > General Overview](#)

[Pensions & Benefits Law > ERISA > Civil Litigation > General Overview](#)

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN7](#) Remedies, Affirmative & Equitable Relief

Respecting Congress's choice to limit the relief available under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, codified at [29 U.S.C.S. § 1132\(a\)\(3\)](#), to "equitable relief" requires the court to recognize the difference between legal and equitable forms of restitution. When claimants seek only the former, their suit is not authorized by § 502(a)(3).

Governments > Legislation > Interpretation

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

Governments > Legislation > Vagueness

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN8](#) Legislation, Interpretation

Vague notions of a statute's "basic purpose" are inadequate to overcome the words of its text regarding the specific issue under consideration.

Lawyers' Edition Display

Decision

Action to enforce medical insurance plan provision that allowed plan to recover benefits payments that beneficiary was entitled to recover from third party held not authorized as action for "other appropriate equitable relief" under 502(a)(3) of ERISA ([29 USCS 1132\(a\)\(3\)](#)).

Summary

An employer's health and welfare benefits plan covered some of the medical expenses incurred by an employee's spouse as a result of an automobile accident, where a portion of the covered benefits was paid by an insurer under an agreement with the plan. The plan included a provision that allowed the plan to recover from a plan beneficiary any benefit paid by the plan that the beneficiary was entitled to recover from a third party.

After the employee and spouse settled a tort action that they had brought in a California state court against the automobile manufacturer and other alleged tortfeasors, the plan, employer, and insurer filed in the United States District Court for the Central District of California an action under 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) ([29 USCS 1132\(a\)\(3\)](#))--which authorized a civil action to enjoin any act that violated an ERISA-covered employee welfare benefit plan or to obtain "other appropriate equitable relief" for violation of such a plan--seeking injunctive and declaratory relief to require the employee and spouse, under the plan's reimbursement provision, to pay the plan, out of any proceeds recovered from third parties, the medical expense benefits that had been paid to the employer and spouse through the plan.

After the state court approved the settlement, the District Court granted summary judgment to the employee and spouse. The United States Court of Appeals for the Ninth Circuit, in affirming, expressed the view that judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party was not equitable relief and was therefore not authorized by 502(a)(3) (*208 F3d 221*, reported in full [2000 US App LEXIS 1771](#)).

On certiorari, the United States Supreme Court affirmed. In an opinion by Scalia, J., joined by Rehnquist, Ch. J., and O'Connor, Kennedy, and Thomas, JJ., it was held that the action seeking relief under 502(a)(3) was not authorized as an action for "other appropriate equitable relief," because the action sought legal rather than equitable relief, as the action sought, in essence, to impose personal liability on the employee and the spouse for a contractual obligation to pay money, for:

(1) Such relief was quintessentially an action at law.

(2) An injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, was not typically available in equity.

Stevens, J., dissenting, said that Congress intended the word "enjoin" in 502(a)(3) to authorize any appropriate order that prohibited or terminated a violation of an ERISA plan.

Ginsburg, J., joined by Stevens, Souter, and Breyer, JJ., dissenting, said that the court's interpretation of 502(a)(3) yielded results that were demonstrably at odds with Congress' goals, in enacting ERISA, to (1) establish a uniform administrative scheme; and (2) insure that welfare benefit plan provisions would be enforced in federal court, free of the threat of conflicting or inconsistent state and local regulation.

Headnotes

EQUITY §21 > PENSIONS RETIREMENT FUNDS §1.3 > RESTITUTION IMPLIED CONTRACTS ASSUMPSIT ACTIONS
 §36 > -- ERISA plan -- reimbursement of benefits > Headnote:

[LEdHN\[1A\]](#) [1A] [LEdHN\[1B\]](#) [1B] [LEdHN\[1C\]](#) [1C] [LEdHN\[1D\]](#) [1D] [LEdHN\[1E\]](#) [1E] [LEdHN\[1F\]](#) [1F] [LEdHN\[1G\]](#) [1G] [LEdHN\[1H\]](#) [1H] [LEdHN\[1I\]](#) [1I]

In a case in which an employee and the employee's spouse who, as a result of the spouse being injured in an automobile accident, received in a state tort action a settlement from the automobile manufacturer and other alleged tortfeasors, an action--by the employee's employer, the employer's health and welfare plan, and the insurer that paid part of the amount of the spouse's accident-related medical expense benefits that were covered by the plan, which action sought injunctive and declaratory relief under 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) ([29 USCS 1132\(a\)\(3\)](#)), which authorized a civil action to enjoin any act that violated an ERISA-covered employee welfare benefit plan or to obtain "other appropriate equitable relief" for violation of such a plan--to enforce a plan provision that allowed the plan to recover the benefits payments that a beneficiary was entitled to recover from a third party was not authorized as an action for "other appropriate equitable relief" under 502(a)(3), because the employer, the plan, and the insurer sought, in essence, to impose personal liability on the employee and the spouse for a contractual obligation to pay money, which relief was quintessentially an action at law, for:

(1) An injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, was not typically available in equity.

(2) As to the argument that the action in question sought restitution, the basis for the action was not that the employee and spouse held particular funds that, in good conscience, belonged to the plan, but that the plan, employer, and insurer were contractually entitled to some funds for benefits that they conferred, which kind of restitution was not equitable but legal.

(3) As to the argument that the law-equity dichotomy was an ancient classification and an obsolete distinction, this classification and distinction was specified by 502(a)(3), and there was no way to give the specification meaning except by adverting to the differences between law and equity to which the statute referred.

534 U.S. 204, *204; 122 S. Ct. 708, **708; 151 L. Ed. 2d 635, ***635; 2002 U.S. LEXIS 399, ****1

(4) If Congress meant in 502(a)(3) to rule out nothing more than compensatory and punitive damages, then Congress could simply have said that.

(5) Certain trust remedies that purportedly were analogous to the remedy sought in the instant case were inapposite.

(Stevens, Ginsburg, Souter, and Breyer, JJ., dissented from this holding.)

EQUITY §1 > -- relief > Headnote:

[LEdHN\[2\]](#) [2]

Equitable relief must mean something less than all relief, as otherwise the modifier "equitable" would be superfluous.

INJUNCTION §1 > STATUTES §178 > -- equitable remedy -- reference > Headnote:

[LEdHN\[3A\]](#) [3A] [LEdHN\[3B\]](#) [3B]

Injunction is inherently an equitable remedy, and statutory reference to that remedy must, absent other indication, be deemed to contain the limitations upon the remedy's availability that equity typically imposes, as without this rule of construction, a statutory limitation to injunctive relief would be meaningless, since any claim for legal relief can, with lawyerly inventiveness, be phrased in terms of an injunction.

PENSIONS RETIREMENT FUNDS §1.3 > RESTITUTION IMPLIED CONTRACTS ASSUMPSIT ACTIONS §1 > -- legal or equitable remedy -- ERISA > Headnote:

[LEdHN\[4A\]](#) [4A] [LEdHN\[4B\]](#) [4B]

Restitution is a legal remedy when ordered in a case at law and an equitable remedy when ordered in an equity case. Whether restitution is a legal or equitable remedy depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought, as:

(1) A prior United States Supreme Court decision did not purport to change the well-settled principle that restitution is not an exclusively equitable remedy.

(2) Whether restitution is a legal or equitable remedy in a particular case, and hence whether it is authorized by 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) ([29 USCS 1132\(a\)\(3\)](#))--which authorizes a civil action to enjoin any act that violates an ERISA-covered employee welfare benefit plan or to obtain "other appropriate equitable relief" for violation of such a plan--remains dependent on the nature of the relief sought.

ACCOUNTS ACCOUNTING §1 > RESTITUTION IMPLIED CONTRACTS ASSUMPSIT ACTIONS §1 > -- profits > Headnote:

[LEdHN\[5A\]](#) [5A] [LEdHN\[5B\]](#) [5B]

For restitution to lie in equity, an action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession. There is a limited exception for an accounting for profits, as, for example, if a plaintiff is entitled to a constructive trust on particular property held by the defendant, then the plaintiff may also recover profits produced by the defendant's use of that property, even if the plaintiff cannot identify a particular res containing the profits sought to be recovered.

COURTS §92.5 > -- duty -- Congress' reasons > Headnote:

[LEdHN\[6\]](#) [6]

It is not the United States Supreme Court's job to find reasons for what Congress has plainly done; and it is the court's job to avoid rendering what Congress has plainly done devoid of reason and effect.

STATUTES §100 > -- basic purpose > Headnote:

[LEdHN\[7\]](#) [7]

Vague notions of a statute's "basic purpose" are inadequate to overcome the words of its text regarding the specific issue under consideration.

Syllabus

When respondent Janette Knudson was injured in a car accident, the health plan (Plan) of petitioner Earth Systems, Inc., the employer of Janette's then-husband, respondent Eric Knudson, covered \$ 411,157.11 of her medical expenses, most of which was paid by petitioner Great-West Life & Annuity Insurance Co. The Plan's reimbursement provision gives it the right to recover from a beneficiary any payment for benefits paid by the Plan that the beneficiary is entitled to recover from a third party. A separate agreement assigns Great-West the Plan's rights to any reimbursement provision claim. After the Knudsons filed a state-court tort action [****2] to recover from the manufacturer of their car and others, they negotiated a settlement which allocated the bulk of the recovery to attorney's fees and to a trust for Janette's medical care, and earmarked \$ 13,828.70 (the portion of the settlement attributable to past medical expenses) to satisfy Great-West's reimbursement claim. Approving the settlement, the state court ordered the defendants to pay the trust amount directly and the remainder to respondents' attorney, who, in turn, would tender checks to Great-West and other creditors. Instead of cashing its check, Great-West filed this federal action under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) to enforce the Plan's reimbursement provision by requiring the Knudsons to pay the Plan \$ 411,157.11 of any proceeds recovered from third parties. The District Court granted the Knudsons summary judgment, holding that the terms of the Plan limited its right of reimbursement to the \$ 13,828.70 determined by the state court. The Ninth Circuit affirmed on different grounds, holding that judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party is not "equitable [****3] relief" authorized by § 502(a)(3).

Held: Because petitioners are seeking legal relief -- the imposition of personal liability on respondents for a contractual obligation to pay money -- § 502(a)(3) does not authorize this action. Pp. 4-17.

(a) Under § 502(a)(3) -- which authorizes a civil action "to enjoin any act or practice which violates . . . the terms of the plan, or . . . to obtain other appropriate equitable relief" -- the term "equitable relief" refers to those categories of relief that were typically available in equity. [Mertens v. Hewitt Associates, 508 U.S. 248, 256, 124 L. Ed. 2d 161, 113 S. Ct. 2063](#); [508 U.S. 248, 124 L. Ed. 2d 161, 113 S. Ct. 2063](#). Here, petitioners seek, in essence, to impose personal contractual liability on respondents -- relief that was not typically available in equity, but is the classic form

of legal relief. *Id.*, at 255. Petitioners' and the Government's efforts to characterize the relief sought as "equitable" are not persuasive. Pp. 4-5.

(b) The Court rejects petitioners' argument that they are entitled to relief under § 502(a)(3)(A) because they seek "to enjoin an act or practice" -- respondents' failure to reimburse the Plan -- "which violates . . . the [plan's] [****4] terms." An injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, was not typically available in equity. Those rare cases in which an equity court would decree specific performance of a contract to transfer funds were suits that, unlike the present case, sought to prevent future losses that were either incalculable or would be greater than the sum awarded. *Bowen v. Massachusetts*, 487 U.S. 879, 101 L. Ed. 2d 749, 108 S. Ct. 2722, distinguished. Pp. 5-7.

(c) Also rejected is petitioners' argument that their suit is authorized by § 502(a)(3)(B) because they seek restitution, which they characterize as a form of equitable relief. Restitution is a legal remedy when ordered in a case at law and an equitable remedy when ordered in an equity case, and whether it is legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought. For restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession. Here, the basis for petitioners' claim is not [****5] that respondents hold particular funds that, in good conscience, belong to petitioners, but that petitioners are contractually entitled to some funds for benefits that they conferred. The kind of restitution that petitioners seek, therefore, is not equitable, but legal. *Mertens, supra*, at 256, and *Harris Trust and Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 253, 147 L. Ed. 2d 187, 120 S. Ct. 2180, distinguished. Pp. 7-14.

(d) Finally, the Court rejects the Government's argument that the common law of trusts provides petitioners with equitable remedies that allow them to bring this action under § 502(a)(3). Such trust remedies are simply inapposite, see *Mertens, supra*, at 256, and, in any event, do not give a trustee a separate equitable cause of action for payment from moneys other than the beneficiary's interest in the trust. Pp. 14-15.

208 F.3d 221, affirmed.

Counsel: James F. Jorden argued the cause for petitioners.

Paul R. Q. Wolfson argued the cause for the United States, as amicus curiae, by special leave of court.

Richard G. Taranto argued the cause for respondents.

Judges: SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined.

Opinion by: SCALIA

Opinion

[***640] [****6] [**711] [*206] JUSTICE SCALIA delivered the opinion of the Court.

[LEdHN1A](#)^[↑] [1A]The question presented is whether § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891, [29 U.S.C. § 1132\(a\)\(3\) \(1994 ed.\)](#), authorizes this action by petitioners to enforce a reimbursement provision of an ERISA plan.

[*207] |

Respondent Janette Knudson was rendered quadriplegic by a car accident in June 1992. Because her [***641] then-husband, respondent Eric Knudson, was employed by petitioner Earth Systems, Inc., Janette was covered by

the Health and Welfare Plan for Employees and Dependents of Earth Systems, Inc. (Plan). The Plan covered \$ 411,157.11 of Janette's medical expenses, of which all except \$ 75,000 was paid by petitioner Great-West Life & Annuity Insurance Co. pursuant to a "stop-loss" insurance agreement with the Plan.

The Plan includes a reimbursement provision that is the basis for the present lawsuit. This provides that the Plan shall have "the right to recover from the [beneficiary] any payment for benefits" paid by the Plan that the beneficiary is entitled to recover from a third party. App. 58. Specifically, the Plan has "a first lien upon any recovery, whether [****7] by settlement, judgment or otherwise," that the beneficiary receives from the third party, not to exceed "the amount of benefits paid [by the Plan] . . . [or] the amount received by the [beneficiary] for such medical treatment" *Id.*, at 58-59. If the beneficiary recovers from a third party and fails to reimburse the Plan, "then he will be personally liable to [the Plan] . . . up to the amount of the first lien." *Id.*, at 59. Pursuant to an agreement between the Plan and Great-West, the Plan "assigned to Great-West all of its rights to make, litigate, negotiate, settle, compromise, release or waive" any claim under the reimbursement provision. *Id.*, at 45.

In late 1993, the Knudsons filed a tort action in California state court seeking to recover from Hyundai Motor Company, the manufacturer of the car they were riding in at the time of the accident, and other alleged tortfeasors. The parties to that action negotiated a \$ 650,000 settlement, a notice of which was mailed to Great-West. This allocated \$ 256,745.30 to a Special Needs Trust under [Cal. Prob. Code Ann. § 3611](#) (West 1991 and Supp. 1993) to provide for [*208] Janette's medical care; \$ 373,426 to attorney's [****8] fees and costs; \$ 5,000 to reimburse the California Medicaid program (Medi-Cal); and \$ 13,828.70 (the portion of the settlement attributable to past medical expenses) to satisfy Great-West's claim under the reimbursement provision of the Plan.

The day before the hearing scheduled for judicial approval of the settlement, Great-West, calling itself a defendant and asserting that the state-court action involved federal claims related to ERISA, filed in the United States District Court for the Central District of California a notice of removal pursuant to [28 U.S.C. § 1441 \(1994 ed.\)](#). That court concluded that Great-West was not a defendant and could not remove the case, and therefore remanded to the state court, which approved the settlement. The state court's order provided that the defendants would pay the settlement amount allocated to the Special Needs Trust directly to the trust, and the remaining amounts to respondents' attorney, who, in turn, would tender checks to Medi-Cal and Great-West.

[**712] Great-West, however, never cashed the check it received from respondents' attorney. Instead, at the same time that Great-West sought to remove the state-law tort action, [****9] it filed this action in the same federal court (the United States District Court for the Central District of California), seeking injunctive and declaratory relief under § 502(a)(3) to [***642] enforce the reimbursement provision of the Plan by requiring the Knudsons to pay the Plan \$ 411,157.11 of any proceeds recovered from third parties. Great-West subsequently filed an amended complaint adding Earth Systems and the Plan as plaintiffs and seeking a temporary restraining order against continuation of the state-court proceedings for approval of the settlement. The District Court denied the temporary restraining order, a ruling that petitioners did not appeal. After the state court approved the settlement and the money was disbursed, the District Court granted summary judgment to the Knudsons. It held that the language of the Plan limited its right of reimbursement to the amount received by [*209] respondents from third parties *for past medical treatment*, an amount that the state court determined was \$ 13,828.70. The United States Court of Appeals for the Ninth Circuit affirmed on different grounds. Judgt. order reported at 208 F.3d 221 (2000). Citing [FMC Medical Plan v. Owens, 122 F.3d 1258 \(CA9 1997\)](#), [****10] it held that judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party is not equitable relief and is therefore not authorized by § 502(a)(3). We granted certiorari. 531 U.S. 1124, 148 L. Ed. 2d 788, 121 S. Ct. 876(2001).

II

We have observed repeatedly that ERISA is a "comprehensive and reticulated statute," the product of a decade of congressional study of the Nation's private employee benefit system." [Mertens v. Hewitt Associates, 508 U.S. 248, 251, 124 L. Ed. 2d 161, 113 S. Ct. 2063; 508 U.S. 248, 124 L. Ed. 2d 161, 113 S. Ct. 2063 \(1993\)](#) (quoting [Nachman Corp. v. Pension Benefit Guaranty Corporation, 446 U.S. 359, 361, 64 L. Ed. 2d 354, 100 S. Ct. 1723 \(1980\)](#)). We have therefore been especially "reluctant to tamper with [the] enforcement scheme" embodied in the statute by extending remedies not specifically authorized by its text. [Massachusetts Mut. Life Ins. Co. v. Russell,](#)

[473 U.S. 134, 147, 87 L. Ed. 2d 96, 105 S. Ct. 3085 \(1985\)](#). Indeed, we have noted that ERISA's "carefully crafted and detailed enforcement scheme provides 'strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.'" [Mertens, supra, at 254](#) (quoting [Russell, supra, at 146-147](#)).

[HN1](#) [↑] Section [****11] 502(a)(3) authorizes a civil action:

"by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates . . . the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of . . . the terms of the plan." [29 U.S.C. § 1132\(a\)\(3\) \(1994 ed.\)](#).

[LEdHN2](#) [↑] [2] [HN2](#) [↑] As we explained in *Mertens*, "equitable' relief must mean *something* less than *all* relief." [508 U.S. at 258, n. 8](#). [*210] Thus, in *Mertens* we rejected a reading of the statute that would extend the relief obtainable under § 502(a)(3) to whatever relief a court of equity is empowered to provide in the particular case at issue (which could include legal remedies that would otherwise be beyond the scope of the equity court's authority). Such a reading, we said, would "limit the relief *not at all*" and "render the [***643] modifier [equitable] superfluous." [Id., at 257-258](#). [HN3](#) [↑] Instead, we held that the term "equitable relief" in § 502(a)(3) must refer to "those categories of relief that were *typically* available in equity . . ." [Id., at 256](#).

[LEdHN1B](#) [↑] [1B] Here, petitioners seek, [****12] in essence, to impose personal liability on respondents [**713] for a contractual obligation to pay money -- relief that was not typically available in equity. [HN4](#) [↑] "A claim for money due and owing under a contract is 'quintessentially an action at law.'" *Wal-Mart Stores, Inc. Associates' Health & Welfare Plan v. Wells*, 213 F.3d 398, 401 (CA7 2000) (Posner, J.). "Almost invariably . . . suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty." [Bowen v. Massachusetts](#), 487 U.S. 879, 918-919, 101 L. Ed. 2d 749, 108 S. Ct. 2722 (1988) (SCALIA, J., dissenting). And "money damages are, of course, the classic form of *legal* relief." [Mertens, supra, at 255](#).

Nevertheless, petitioners, along with their *amicus* the United States, struggle to characterize the relief sought as "equitable" under the standard set by *Mertens*. We are not persuaded.

A

[LEdHN1C](#) [↑] [1C] [LEdHN3A](#) [↑] [3A] First, petitioners argue that they are entitled to relief under § 502(a)(3)(A) because they seek "to enjoin an act or practice" [****13] -- respondents' failure to reimburse the Plan -- "which violates . . . the terms of the plan." [HN5](#) [↑] But an injunction to compel the payment of money past due under a contract, [*211] or specific performance of a past due monetary obligation, was not typically available in equity. ¹ See, e.g., 3 *Restatement (Second) of Contracts* § 359 (1979); 3 Dobbs § 12.8(2), at 199; 5A A. Corbin, *Contracts* § 1142, p. 119 (1964) (hereinafter Corbin). Those rare cases in which a court of equity would decree specific

¹ At oral argument, petitioners' counsel argued that the injunction specifically authorized by § 502(a)(3)(A) need not be a form of equitable relief. Petitioners' brief, however, conceded that the reference in § 502(a)(3)(B) to "other appropriate equitable relief" suggests that the relief authorized in § 502(a)(3)(A) "to enjoin any act or practice which violates . . . the terms of [a] plan" is, itself, "appropriate *equitable* relief." See Brief for Petitioners 15, n. 6 (emphasis added). In any event, injunction is inherently an equitable remedy, see, e.g., [Reich v. Continental Casualty Co.](#), 33 F.3d 754, 756 (CA7 1994); 1 D. Dobbs, *Law of Remedies* § 1.2, p. 11 (2d ed. 1993) (hereinafter Dobbs), and statutory reference to that remedy must, absent other indication, be deemed to contain the limitations upon its availability that equity typically imposes. Without this rule of construction, a statutory limitation to injunctive relief would be meaningless, since any claim for legal relief can, with lawyerly inventiveness, be phrased in terms of an injunction. Here, of course, there is not only no contrary indication, but the positive indication in paragraph (B) that the injunction referred to in paragraph (A) is an equitable injunction.

performance of a contract to transfer funds were suits that, unlike the present case, sought to prevent future losses that were either incalculable or would be greater than the sum awarded. For example, specific performance might be available to enforce an agreement to lend money "when the unavailability of alternative financing would leave the plaintiff with injuries that are difficult to value; or to enforce an obligor's duty to make future [***644] monthly payments, after the obligor had consistently refused to make past payments concededly due, and thus threatened the obligee with the burden of bringing multiple damages actions." *Bowen, supra, at 918* (SCALIA, J., dissenting). See also 3 [****14] Dobbs § 12.8(2), at 200; 5A Corbin § 1142, at 117-118. Typically, however, specific performance of a contract to pay money was not available in equity.

[LEdHN/3B](#)[\[↑\]](#) [3B]

[****15] [*212] *Bowen v. Massachusetts, supra*, upon which petitioners rely, is not to the contrary. We held in *Bowen* that the provision of the Administrative Procedure Act that precludes actions seeking "money damages" against federal agencies, *5 U.S.C. § 702*, does not bar a State from seeking specific relief to obtain money to which it claims entitlement under the federal Medicaid statute, *42 U.S.C. § 1396b(d) (1994 ed. and Supp. V)*. *Bowen* [**714] "did not turn on distinctions between 'equitable' actions and other actions . . . but rather [on] what Congress meant by 'other than money damages'" in the Administrative Procedure Act. *Department of Army v. Blue Fox, Inc., 525 U.S. 255, 261, 142 L. Ed. 2d 718, 119 S. Ct. 687 (1999)*. Furthermore, *Bowen*, unlike petitioners' claim, did not deal with specific performance of a *contractual* obligation to pay *past due* sums. Rather, Massachusetts claimed that the Federal Government not only failed to reimburse it for past expenses pursuant to a statutory obligation, but that the method the Federal Government used to calculate reimbursements would lead to underpayments in the future. Thus, the [****16] suit was not merely for past due sums, but for an injunction to correct the method of calculating payments going forward. *Bowen, supra, at 889*. *Bowen* has no bearing on the unavailability of an injunction to enforce a contractual obligation to pay money past due.

B

[LEdHN/1D](#)[\[↑\]](#) [1D] [LEdHN/4A](#)[\[↑\]](#) [4A]Second, petitioners argue that their suit is authorized by § 502(a)(3)(B) because they seek restitution, which they characterize as a form of equitable relief. [HN6](#)[\[↑\]](#) However, not all relief falling under the rubric of restitution is available in equity. In the days of the divided bench, restitution was available in certain cases at law, and in certain others in equity. See, e.g., 1 Dobbs § 1.2, at 11; *id.*, § 4.1(1), at 556; *id.*, § 4.1(3), at 564-565; *id.*, §§ 4.2-4.3, at 570-624; 5 Corbin § 1102, at 550; Muir, ERISA Remedies: Chimera or Congressional Compromise?, *81 Iowa L. Rev. 1, 36-37 (1995)*; Redish, *Seventh Amendment* Right to Jury Trial: A Study in the Irrationality [*213] of Rational Decision Making, 70 *Nw. U. L. Rev.* 486, 528 (1975). Thus, "restitution is a legal remedy when ordered in a case at law and an equitable remedy . . . when ordered in an equity case," and [****17] whether it is legal or equitable depends on "the basis for [the plaintiff's] claim" and the nature of the underlying remedies sought. *Reich v. Continental Casualty Co., 33 F.3d 754, 756 (CA7 1994)* (Posner, J.).

In cases in which the plaintiff "could not assert title or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant had received from him," the plaintiff had a right to restitution at law through an action derived from the common law writ of assumpsit. 1 Dobbs § 4.2(1), [***645] at 571. See also Muir, *supra*, at 37. In such cases, the plaintiff's claim was considered legal because he sought "to obtain a judgment imposing a merely personal liability upon the defendant to pay a sum of money." *Restatement of Restitution § 160, Comment a*, pp. 641-642 (1936). Such claims were viewed essentially as actions at law for breach of contract (whether the contract was actual or implied).

[LEdHN/5A](#)[\[↑\]](#) [5A]In contrast, a plaintiff could seek restitution *in equity*, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified [****18] as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession. See 1 Dobbs § 4.3(1), at 587-588; *Restatement of Restitution, supra*, § 160, *Comment a*, at 641-642; 1 G. Palmer, *Law of Restitution* § 1.4, p. 17; § 3.7, p. 262 (1978). A court of equity could then order a defendant to transfer title (in the case of the constructive trust) or to give a security interest (in the case of the equitable lien) to a plaintiff who was, in the eyes of equity, the true owner. But where "the property [sought to be recovered] or its proceeds have been dissipated so that no product remains, [the plaintiff's] claim is only that of a general creditor," and the plaintiff "cannot enforce a

constructive [*214] trust of or an equitable lien upon other property of the [defendant]." *Restatement of Restitution, supra*, § 215, *Comment a*, at 867. Thus, for restitution to lie in equity, the action generally must seek [*715] not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession.²

[LEdHN/5B](#)[↑] [5B]

[****19] [LEdHN/1E](#)[↑] [1E]Here, the funds to which petitioners claim an entitlement under the Plan's reimbursement provision -- the proceeds from the settlement of respondents' tort action -- are not in respondents' possession. As the order of the state court approving the settlement makes clear, the disbursements from the settlement were paid by two checks, one made payable to the Special Needs Trust and the other to respondents' attorney (who, after deducting his own fees and costs, placed the remaining funds in a client trust account from which he tendered checks to respondents' other creditors, Great-West and Medi-Cal). The basis for petitioners' claim is not that respondents hold particular funds that, in good conscience, belong to petitioners, but that petitioners are contractually entitled to *some* funds for benefits that they conferred. The kind of restitution that petitioners seek, therefore, is not equitable -- the imposition of a constructive trust or equitable lien on particular property -- but legal -- the imposition of personal liability for the benefits that they conferred upon respondents.

[LEdHN/4B](#)[↑] [4B]Admittedly, our cases have not previously drawn this fine distinction between restitution at law and [****20] restitution in equity, but neither have they involved an issue to which the [***646] [*215] distinction was relevant. In *Mertens*, we mentioned in dicta that "injunction, mandamus, and *restitution*" are categories of relief that were typically available in equity. [508 U.S. at 256](#) (emphasis added). *Mertens*, however, did not involve a claim for restitution at all; rather, we addressed the question whether a nonfiduciary who knowingly participates in the breach of a fiduciary duty imposed by ERISA is liable to the plan for compensatory damages. [Id., at 249-250](#). Thus, as courts and commentators have noted, "all the [Supreme] Court meant [in *Mertens* and other cases] was that restitution, in contrast to damages, is a remedy commonly ordered in equity cases and therefore an equitable remedy in a sense in which damages, though *occasionally* awarded in equity cases, are not." [Reich v. Continental Casualty Co., supra, at 756](#). *Mertens* did not purport to change the well-settled principle that restitution is "not an *exclusively* equitable remedy," and whether it is legal or equitable in a particular case (and hence whether [****21] it is authorized by § 502(a)(3)) remains dependent on the nature of the relief sought. *Ibid.* See also Muir, 81 Iowa L. Rev., at 36 (analyzing *Mertens* and explaining that "only equitable restitution will be available under Section 502(a)(3)").

Likewise, in [Harris Trust and Sav. Bank v. Salomon Smith Barney Inc., 530 U.S. 238, 147 L. Ed. 2d 187, 120 S. Ct. 2180 \(2000\)](#), we noted that "an action for restitution against a transferee of tainted plan assets" is "appropriate equitable relief" within the meaning of § 502(a)(3). [Id., at 253](#). While we did not expressly distinguish between legal and equitable restitution, the nature of the relief we described in *Harris Trust* -- a claim to specific property (or its proceeds) held by the defendant -- accords with the restitution we describe as equitable today. [Id., at 250](#) ("The trustee or beneficiaries may then maintain an action for restitution *of the property* (if not already disposed of) or *disgorgement of proceeds* [*716] (if already disposed of) . . ." (emphasis added)); [id., at 250-251](#) ("Whenever the *legal title to property* is obtained through means or under [*216] circumstances [****22] 'which render it unconscientious *for the holder of the legal title to retain and enjoy the beneficial interest*, equity impresses a constructive trust *on the property thus acquired* in favor of the one who is truly and equitably entitled to the same . . ." (emphasis added) (internal quotation marks and citations omitted)).

²There is a limited exception for an accounting for profits, a form of equitable restitution that is not at issue in this case. If, for example, a plaintiff is entitled to a constructive trust on particular property held by the defendant, he may also recover profits produced by the defendant's use of that property, even if he cannot identify a particular res containing the profits sought to be recovered. See 1 Dobbs § 4.3(1), at 588; *id.*, § 4.3(5), at 608. Petitioners do not claim the profits (if any) produced by the proceeds from the state-court settlement, and are not entitled to the constructive trust in those proceeds that would support such a claim.

JUSTICE GINSBURG's dissent finds it dispositive that *some* restitutionary remedies were typically available in equity. In her view, the touchstone for distinguishing legal from equitable relief is the "substance of the relief requested," *post*, at 6 -- and since the "substantive" relief of restitution is typically available in equity, it is, she concludes, available under § 502(a)(3). It is doubtful, to begin with, that "restitution" -- or at least restitution defined broadly enough to embrace those forms of restitution available at law -- pertains to the *substance* of the relief rather than to the legal theory under which it is awarded. The "substance" of a money judgment is a compelled transfer of money; a money judgment *for restitution* [***647] could be thought to identify a particular *type* of relief (rather than merely the theory on which relief [****23] is awarded) only if one were to limit restitution to the return of identifiable funds (or property) belonging to the plaintiff and held by the defendant -- that is, to limit restitution to the form of restitution traditionally available in equity.

[LEdHN\[1F\]](#) [↑] [1F] In any event, JUSTICE GINSBURG's approach, which looks only to the nature of the relief and not to the conditions that equity attached to its provision, logically leads to the same untenable conclusion reached by JUSTICE STEVENS's dissent -- which is that § 502(a)(3)(A)'s explicit authorization of injunction, which it identifies as a form of equitable relief, permits (what equity would never permit) an injunction against failure to pay a simple indebtedness -- or, for that matter, an injunction against failure to pay punitive damages. The problem with that conclusion, of course, is that it renders the statute's limitation of relief to "[injunction] . . . or other appropriate equitable relief" utterly pointless. It [*217] is easy to disparage the law-equity dichotomy as "an ancient classification," *post*, at 1 (opinion of GINSBURG, J.), and an "obsolete distinction," *post*, at 1 (opinion of STEVENS, J.). Like it or not, however, that classification [****24] and distinction has been specified by the statute; and there is no way to give the specification meaning -- indeed, there is no way to render the unmistakable limitation of the statute a limitation *at all* -- except by adverting to the differences between law and equity to which the statute refers. The dissents greatly exaggerate, moreover, the difficulty of that task. Congress felt comfortable referring to equitable relief in this statute -- as it has in many others ³ -- precisely because the basic contours of the term are well known. Rarely will there be need for any more "antiquarian inquiry," *post*, at 11 (opinion of GINSBURG, J.), than consulting, as we have done, standard current works such as Dobbs, Palmer, Corbin, and the Restatements, which make the answer clear. It is an inquiry, moreover, that we are accustomed to pursuing, and will always have to pursue, in other contexts. See, e.g., [Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 318, 144 L. Ed. 2d 319, 119 S. Ct. 1961 \(1999\)](#) (powers of federal courts under the Judiciary Act's grant of jurisdiction over "all . . . suits in equity"); [Curtis v. Loether, 415 U.S. 189, 192, 39 L. Ed. 2d 260, 94 S. Ct. 1005 \(1974\)](#) [****25] (scope of the [Seventh Amendment](#) right to jury trial "in suits at common law"). What *will* introduce a high degree of confusion into [**717] congressional use (and lawyers' understanding) of the statutory term "equity" is the rolling revision of its content contemplated by the dissents.

[LEdHN\[1G\]](#) [↑] [1G] [LEdHN\[6\]](#) [↑] [6] JUSTICE STEVENS finds it "difficult . . . to understand why Congress would not have wanted to provide recourse in federal court for the plan violation disclosed by the record in this case," *post*, at 2-3. It is, however, not our job to find reasons for what Congress has plainly done; and it *is* our job to avoid rendering what Congress has plainly done (here, [*218] limit the available relief) devoid of [***648] reason and effect. If, as JUSTICE GINSBURG surmises, *post*, at 9, Congress meant to rule out nothing more than "compensatory and punitive damages," it could simply have said that. That Congress sought to achieve this result [****26] by subtle reliance upon the dissenters' novel and expansive view of equity is most implausible.

[LEdHN\[1H\]](#) [↑] [1H] [HN7](#) [↑] Respecting Congress's choice to limit the relief available under § 502(a)(3) to "equitable relief" requires us to recognize the difference between legal and equitable forms of restitution. ⁴ Because petitioners seek only the former, their suit is not authorized by § 502(a)(3).

³ A Westlaw search discloses that the term "equitable relief" appears in 77 provisions of the United States Code.

⁴ In support of its argument that Congress intended all restitution to be "equitable relief" under § 502(a)(3), JUSTICE GINSBURG's dissent asserts that Congress has treated backpay, "a type of restitution," *post*, at 7, as equitable for purposes of Title VII of the Civil Rights Act of 1964. The authorities of this Court cited for the proposition that backpay is a type of restitution are [Curtis v. Loether, 415 U.S. 189, 197, 39 L. Ed. 2d 260, 94 S. Ct. 1005 \(1974\)](#), and [Teamsters v. Terry, 494 U.S. 558, 572, 108 L. Ed. 2d 519, 110 S. Ct. 1339 \(1990\)](#). It is notable, however, that these cases do *not* say that *since* it is restitutionary, it is

[****27] [*219] C

Third, the United States, as petitioners' *amicus*, argues that the common law of trusts provides petitioners with equitable remedies that allow them to bring this action under § 502(a)(3). Analogizing respondents to beneficiaries of a trust, the [*718] United States argues that a trustee could bring a suit to enforce an agreement by a beneficiary to pay money into a trust or to repay an advance made from the trust. See Brief for United States as *Amicus Curiae* 17-19 (citing [***649] *Restatement (Second) of Trusts* §§ 252, 255 (1959) (hereinafter *Restatement of Trusts*)). These trust remedies are simply inapposite. In *Mertens*, we rejected the claim that the special equity-court powers applicable to trusts define the reach of § 502(a)(3). Instead, we held that the term "equitable relief" in § 502(a)(3) must refer to "those categories of relief that were typically available in equity" [508 U.S. at 256](#). In any event, the cited sections of the *Restatement*, by their terms, merely allow a trustee to charge the beneficiary's interest in the trust in order to capture money owed. See *Restatement of Trusts* § 252 ("If one of the beneficiaries [*220] of a trust contracts to pay [****28] money to the trustee to be held as part of the trust estate and he fails to make the payment, his beneficial interest is subject to a charge for the amount of his liability"); *id.*, § 255 ("If the trustee makes an advance or loan of trust money to a beneficiary, the beneficiary's interest is subject to a charge for the repayment of the amount advanced or lent"). These setoff remedies do not give the trustee a separate equitable cause of action for payment from other moneys.

III

In the end, petitioners ask us to interpret § 502(a)(3) so as to prevent them "from being deprived of any remedy under circumstances where such a result clearly would be inconsistent with a primary purpose of ERISA," namely, the enforcement of the terms of a plan. See Brief for Petitioners 30-31. We note, though it is not necessary to our decision, that there may have been other means for petitioners to obtain the essentially legal relief that they seek. We express no opinion as to whether petitioners could have intervened in the state-court tort action brought by respondents or whether a direct action by petitioners against respondents asserting state-law claims such as breach of contract would have [****29] been pre-empted by ERISA. Nor do we decide whether petitioners could have obtained equitable relief against respondents' attorney and the trustee of the Special Needs Trust, since

therefore equitable. *Curtis*, in fact, explicitly refuses to do so. [415 U.S. at 197](#) ("Whatever may be the merit of the 'equitable' characterization [of backpay] in Title VII cases . . ." (footnote omitted)). And in *Terry*, while we noted that "we have characterized damages as equitable where they are restitutionary," [494 U.S. at 570](#), we did not (and could not) say that *all* forms of restitution are equitable.

Congress "treated [backpay] as equitable" in Title VII, *post*, at 7 (opinion of GINSBURG, J.), only in the narrow sense that it allowed backpay to be awarded *together with* equitable relief:

"The court may . . . order such affirmative action as may be appropriate, which may include, but is not limited to, *reinstatement or hiring of employees, with or without back pay* . . ., or any other equitable relief as the court deems appropriate." [42 U.S.C. § 2000e-5\(g\)\(1\)](#) (emphasis added).

If the referent of "other equitable relief" were "back pay," it could be said, in a sense relevant here, that Congress "treated" backpay as equitable relief. In fact, however, the referent is "reinstatement or hiring of employees," which is modified by the phrase "with or without back pay." *Curtis* recognized that courts of appeals had treated Title VII backpay as equitable because § [2000e-5\(g\)\(1\)](#) had made backpay "an integral part of an equitable remedy," [415 U.S. at 197](#). See [Grayson v. Wickes Corp.](#), [607 F.2d 1194](#), [1196 \(CA7 1979\)](#) (Title VII backpay is "an integral part of the equitable remedy of reinstatement"); [Harmon v. May Broadcasting Co.](#), [583 F.2d 410](#), [411 \(CA8 1978\)](#) (same); [Slack v. Havens](#), [522 F.2d 1091](#), [1094 \(CA9 1975\)](#) (same); [Johnson v. Georgia Highway Express, Inc.](#), [417 F.2d 1122](#), [1125 \(CA5 1969\)](#) (same).

The statement in *Terry* on which JUSTICE GINSBURG relies -- that "Congress specifically characterized backpay under Title VII as a form of 'equitable relief,'" [494 U.S. at 572](#) -- is plainly inaccurate unless it is understood to mean that Title VII backpay was "specifically" made part of an equitable remedy. That is the only sense which the *Terry* discussion requires, and is reinforced by the immediately following citation of the portion of *Curtis* that called Title VII backpay "an integral part of an equitable remedy," [Curtis, supra, at 197](#). See [Terry, supra, at 572](#). The restitution sought here by Great-West is not that, but a freestanding claim for money damages. Title VII has nothing to do with this case.

petitioners did not appeal the District Court's denial of their motion to amend their complaint to add these individuals as codefendants.

[LEdHN\[1\]\[↑\]](#) [11][LEdHN\[7\]\[↑\]](#) [7]We need not decide these issues because, as we explained in *Mertens*, "even assuming . . . that petitioners are correct about the pre-emption of previously available state-court actions" or the lack of other means to obtain relief, [HN8\[↑\]](#) "vague notions of a statute's 'basic purpose' are nonetheless inadequate to overcome the words of its text regarding the *specific* issue under consideration." [508 U.S. at 261](#). In the [*221] very same section of ERISA as § 502(a)(3), Congress authorized "a participant or beneficiary" to bring a civil action "to enforce his rights under the terms of the plan," without reference to whether the relief sought is legal or equitable. [29 U.S.C. § 1132\(a\)\(1\)\(B\) \(1994 ed.\)](#). But Congress did not extend the same authorization to fiduciaries. Rather, § 502(a)(3), by its terms, only allows for *equitable* relief. [****30] We will not attempt to adjust the "carefully crafted and detailed enforcement scheme" embodied in the text that [****650] Congress has adopted.⁵ [Mertens, \[**719\] supra, at 254](#). Because petitioners are seeking legal relief -- the imposition of personal liability on respondents for a contractual obligation to pay money -- § 502(a)(3) does not authorize this action. Accordingly, we affirm the judgment of the Court of Appeals.

[****31] It is so ordered.

Dissent by: STEVENS; GINSBURG

Dissent

JUSTICE STEVENS, dissenting.

In her lucid dissent, which I join, JUSTICE GINSBURG has explained why it is fanciful to assume that in 1974 Congress [*222] intended to revive the obsolete distinctions between law and equity as a basis for defining the remedies available in federal court for violations of the terms of a plan under the Employee Retirement Income Security Act of 1974 (ERISA). She has also convincingly argued that the relief sought in the present case is permissible even under the Court's favored test for determining what qualifies as "equitable relief" under § 502(a)(3)(B) of ERISA. I add this postscript because I am persuaded that Congress intended the word "enjoin," as used in § 502(a)(3)(A), to authorize any appropriate order that prohibits or terminates a violation of an ERISA plan, regardless of whether a precedent for such an order can be found in English Chancery cases.

I read the word "other" in § 502(a)(3)(B) as having been intended to enlarge, not contract, a federal judge's remedial authority. Consequently, and contrary to the Court's view in [Mertens v. Hewitt Associates, 508 U.S. 248, 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#), [****32] I would neither read § 502(a)(3)(B) as placing a *limitation*

⁵ [Varity Corp. v. Howe, 516 U.S. 489, 134 L. Ed. 2d 130, 116 S. Ct. 1065 \(1996\)](#), upon which petitioners rely, is not to the contrary. In *Varity Corp.*, we explained that § 502(a)(3) is a "catchall" provision that "acts as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." [Id., at 512](#). Thus, we concluded that § 502(a)(3) authorizes lawsuits by beneficiaries for individualized equitable relief for breach of fiduciary obligations, notwithstanding the petitioner's argument that such relief is not "appropriate" because § 502(a)(2) and § 409 of ERISA specifically address liability for breach of fiduciary duty and preclude individualized relief. [Id., at 507-515](#). In *Varity Corp.*, however, it was undisputed that respondents were seeking *equitable* relief, and the question was whether such relief was "appropriate" in light of the apparent lack of alternative remedies. [Id., at 508](#). *Varity Corp.* did not hold, as petitioners urge us to conclude today, that § 502(a)(3) is a catchall provision that authorizes *all* relief that is consistent with ERISA's purposes and is not explicitly provided elsewhere. To accept petitioners' argument is to ignore the plain language of the statute, which provides fiduciaries with only equitable relief.

on a judge's authority under § 502(a)(3)(A), nor shackle an analysis of what constitutes "equitable relief " under § 502(a)(3)(B) to the sort of historical analysis that the Court has chosen.

Nevertheless, *Mertens* is the law, and an inquiry under § 502(a)(3)(B) now entails an analysis of what relief would have been "typically available in equity." [508 U.S. at 256](#). This does not mean, however, that all inquiries under § 502(a)(3) must involve historical analysis, as the Court seems to believe, e.g., *ante*, at 4-5. In *Mertens*, our task was to interpret "other appropriate equitable relief" [***651] under § 502(a)(3)(B), and our holding thus did not extend to the meaning of "to enjoin" in § 502(a)(3)(A). As a result, an analysis of tradition is unnecessary with respect to § 502(a)(3)(A). Moreover, that section provides a proper basis for federal jurisdiction in the present case, as petitioners brought suit "to enjoin any act or practice which violates . . . the terms of [a] plan." § 502(a)(3)(A).

[*223] Not only is an inclusive reading of § 502(a)(3) consonant with the text of the statute, but [****33] it accomplishes Congress' goal of providing a federal remedy for violations of the terms of plans governed by ERISA. Contrary to the Court's current reluctance to conclude that wrongs should be remedied,¹ [****34] I believe that the historic presumption favoring the provision of remedies for violations of federal rights² [**720] should inform our construction of the remedial provisions of federal statutes. It is difficult for me to understand why Congress would not have wanted to provide recourse in federal court for the plan violation disclosed by the record in this case. Cf., e.g., [Varity Corp. v. Howe, 516 U.S. 489, 512-513, 515, 134 L. Ed. 2d 130, 116 S. Ct. 1065 \(1996\)](#) ("We are not aware of any ERISA-related purpose that denial of a remedy would serve"). It is thus unsurprising that the Court's opinion contains no discussion of why Congress would have intended its reading of § 502(a)(3) and the resulting denial of a federal remedy in this case. Absent such discussion, the Court's opinion is remarkably unpersuasive.³

[****35] I respectfully dissent.

[*224] JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

Today's holding, the majority declares, is compelled by "Congress's choice to limit the relief available under § 502(a)(3)." *Ante*, at 13. In the Court's view, Congress' placement of the word "equitable" in that provision signaled an intent to exhume the "fine distinctions" borne of the "days of the divided bench," *ante*, at 7, 10; to treat as dispositive an ancient classification unrelated to the substance of the relief sought; and to obstruct the general goals of ERISA by relegating to state court (or to no court at all) an array of suits involving the interpretation of employee health plan [***652] provisions. Because it is plain that Congress made no such "choice," I dissent.

I

The Court purports to resolve this case by determining the "nature of the relief" Great-West seeks. *Ante*, at 10. The opinion's analysis, however, trains on the question, deemed subsidiary, whether the disputed claim could have been brought in an equity court "in the days of the divided bench." *Ante*, at 7-11 (inquiring whether the claim is akin to "an action derived from the [****36] common-law writ of assumpsit" that would have been brought at law, or

¹ See, e.g., [Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 151 L. Ed. 2d 456, 122 S. Ct. 515 \(2001\)](#) (STEVENS, J., dissenting); [Alexander v. Sandoval, 532 U.S. 275, 294-297, 149 L. Ed. 2d 517, 121 S. Ct. 1511 \(2001\)](#) (STEVENS, J., dissenting).

² See, e.g., [Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 392, 29 L. Ed. 2d 619, 91 S. Ct. 1999 \(1971\)](#) ("Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief" (quoting [Bell v. Hood, 327 U.S. 678, 684, 90 L. Ed. 939, 66 S. Ct. 773 \(1946\)](#)); [403 U.S. at 397](#) ("The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury" (quoting [Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 163, 2 L. Ed. 60 \(1803\)](#))).

³ In a response to this dissent that echoes Tennyson's poem about the Light Brigade -- "Theirs not to reason why, Theirs but to do and die" -- the Court states that it is "not our job to find reasons for what Congress has plainly done," *ante*, at 13. Congress, of course, has the power to enact unreasonable laws. Nevertheless, instead of blind obedience to what at first blush appears to be such a law, I think it both prudent and respectful to pause to ask why Congress would do so.

instead resembles a claim for return of particular assets that would "lie in equity"). To answer that question, the Court scrutinizes the form of the claim and contrasts its features with the technical requirements that once governed the jurisdictional divide between the premerger courts. Finding no clear match on the equitable side of the line, the Court concludes that Great-West's claim is beyond the scope of § 502(a)(3) and therefore outside federal jurisdiction.

The rarified rules underlying this rigid and time-bound conception of the term "equity" were hardly at the fingertips of those who enacted § 502(a)(3). By 1974, when ERISA became law, the "days of the divided bench" were a fading memory, for that era had ended nearly 40 years earlier with [*225] the advent of the Federal Rules of Civil Procedure. Those rules instruct: "There shall be one form of action" cognizable in the federal courts. [Fed. Rule Civ. Proc. 2](#). Except where reference to historical practice might be necessary to preserve a right established before the merger, see, e.g., [Curtis v. Loether, 415 U.S. 189, 195, 39 L. Ed. 2d 260, 94 S. Ct. 1005 \(1974\)](#) ([Seventh \[****37\] Amendment](#) jury trial), the doctrinal rules delineating the boundaries [**721] of the divided courts had receded. See 4 C. Wright & A. Miller, *Federal Practice and Procedure* § 1041, p. 135 (1987); C. Wright, *Handbook on Law of Federal Courts* § 67, p. 282 (2d ed. 1970) ("Instances in which the old distinctions continue to rule from their graves are quite rare.").

It is thus fanciful to attribute to members of the 93d Congress familiarity with those "needless and obsolete distinctions," 4 C. Wright & A. Miller, *supra*, § 1041, at 131, much less a deliberate "choice" to resurrect and import them wholesale into the modern regulatory scheme laid out in ERISA. "There is nothing to suggest that ERISA's drafters wanted to embed their work in a time warp." [Health Cost Controls of Ill. v. Washington, 187 F.3d 703, 711 \(CA7 1999\)](#) (Posner, J.); cf. [Mertens v. Hewitt Associates, 508 U.S. 248, 257, n.7, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#) (meaning of "equitable relief" in § 502(a)(3) must be determined based on "the state of the law when ERISA was enacted").

That Congress did not intend to strap § 502(a)(3) with the anachronistic rules on which the majority relies is corroborated by [****38] the anomalous results to which the supposed legislative "choice" leads. Although the Court recognizes that it need not decide the issue, see *ante*, at 15-16, its opinion surely contemplates that a constructive trust claim would lie; hence, the outcome of this case would be different if Great-West had sued the trustee of the Special [***653] Needs Trust, who has "possession" of the requested funds, instead of the Knudsons, who do not. See *ante*, at 8-9 (constructive trust unavailable because "the funds to which petitioners claim an entitlement . . . are not in respondents' possession"). Under [*226] that view, whether relief is "equitable" would turn entirely on the designation of the defendant, even though the substance of the relief Great-West could have obtained in a suit against the trustee -- a judgment ordering the return of wrongfully withheld funds -- is identical to the relief Great-West in fact sought from the Knudsons. Unlike today's majority, I resist this "rule unjustified in reason, which produces different results for breaches of duty in situations that cannot be differentiated in policy." [Moragne v. States Marine Lines, Inc., 398 U.S. 375, 405, 26 L. Ed. 2d 339, 90 S. Ct. 1772 \(1970\)](#).

The [****39] procedural history of this case highlights the anomaly of upholding a judgment neither party supports,¹ one that will at least protract and perhaps preclude judicial resolution of the nub of the controversy -- *i.e.*, what recoupment does the Plan's reimbursement provision call for. Great-West named the Knudsons as defendants before Janet Knudson's Special Needs Trust had been approved. There was no other defendant then in the picture. Seeking at that time to preserve the status quo, Great-West requested from the District Court preliminary injunctive relief to stop the Knudsons from disposing of the funds Hyundai paid to settle the state-court action. Only after the District Court denied that relief did the state court approve of, and order that the settlement funds be paid into, the

¹ In the District Court, both parties sought decision on the amount Great-West was entitled to recoup under the Plan's provision for recovery of benefits paid, and the court resolved that issue in the Knudsons' favor. The Ninth Circuit, however, refused to review the District Court's resolution of that question, holding instead that federal courts are without authority to grant any relief to parties in Great-West's situation. Because neither party defended that ruling in this Court, Motion to Dismiss as Improvidently Granted 1, we appointed an *amicus curiae* to argue in support of the Ninth Circuit's judgment. See [532 U.S. 917, 149 L. Ed. 2d 283, 121 S. Ct. 1352 \(2001\)](#). Both on brief and at oral argument, appointed counsel commendably developed the position the majority now adopts.

Special Needs Trust. Great-West then moved for leave to amend its complaint to add the trustee as a defendant, but the District Court denied [*227] that motion without consideration in light of its judgment for the Knudsons [**722] on the merits. Had the District Court ruled differently on this peripheral issue, the majority would presumably reverse rather than affirm a disposition of this case that left in limbo [****40] the meaning of the Plan's reimbursement provision. If that is so, then the Court's decision rests on Great-West's failure to appeal an interlocutory issue made moot by the District Court's final judgment, an issue that, to all involved, must have seemed utterly inconsequential post judgment day.

[****41] The majority's avowed obedience to Congress' "choice" is further belied by the conflict between the Court's holding and Congress' stated goals in enacting ERISA. After today, ERISA plans and fiduciaries unable to fit their suits within the confines the Court's opinion constructs are barred from a federal forum; they may seek enforcement of reimbursement provisions like the one here at issue only in state court. Many such [***654] suits may be precluded by antissubrogation laws, see Brief for Maryland HMO Subrogation Plaintiffs as *Amici Curiae* 4-5, n. 2, others may be preempted by ERISA itself, and those that survive may produce diverse and potentially contradictory interpretations of the disputed plan terms.

We have recognized that Congress sought through ERISA "to establish a uniform administrative scheme" and to ensure that plan provisions would be enforced in federal court, free of "the threat of conflicting or inconsistent State and local regulation." [Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 9, 96 L. Ed. 2d 1, 107 S. Ct. 2211 \(1987\)](#) (internal quotation marks omitted) (quoting 120 Cong. Rec. 29933 (1974)). The majority's construction frustrates those goals by ascribing to Congress the paradoxical [****42] intent to enact a specific provision, § 502(a)(3), that thwarts the purposes of the general scheme of which it is part. The Court is no doubt correct that "vague notions of a statute's 'basic purpose' are . . . inadequate to overcome the words of its text regarding the specific issue under consideration." [*228] *Ante*, at 16 (quoting [Mertens, 508 U.S. at 261](#)) (emphasis deleted). But when Congress' clearly stated purpose so starkly conflicts with questionable inferences drawn from a single word in the statute, it is the latter, and not the former, that must give way.

It is particularly ironic that the majority acts in the name of equity as it sacrifices congressional intent and statutory purpose to archaic and unyielding doctrine. "Equity eschews mechanical rules; it depends on flexibility." [Holmberg v. Armbrecht, 327 U.S. 392, 396, 90 L. Ed. 743, 66 S. Ct. 582 \(1946\)](#). And "as this Court long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to . . . give effect to the policy of the legislature.'" [Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 291-292, 4 L. Ed. 2d 323, 80 S. Ct. 332 \(1960\)](#) (quoting [Clark v. Smith, 38 U.S. 195, 13 Pet. 195, 203, 10 L. Ed. 123 \(1839\)](#)); [****43] see [Albemarle Paper Co. v. Moody, 422 U.S. 405, 417, 45 L. Ed. 2d 280, 95 S. Ct. 2362 \(1975\)](#) ("When Congress invokes the Chancellor's conscience to further transcendent legislative purposes, what is required is the principled application of standards consistent with those purposes."); cf. [Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 336, 144 L. Ed. 2d 319, 119 S. Ct. 1961 \(1999\)](#) (GINSBURG, J., dissenting) (Court similarly "relied on an unjustifiably static conception of equity jurisdiction").

II

Unprepared to agree that Congress chose to infuse § 502(a)(3) with the recondite distinctions on which the majority relies, I would accord a different meaning to the term "equitable." Consistent with what Congress likely intended and with our decision in *Mertens*, I would look to the substance of the relief requested and ask whether relief of that character was "typically available in equity." [Mertens, 508 U.S. at 256](#). Great-West seeks restitution, a category of relief [**723] fully meeting that measure even if the remedy was also available in cases brought at law. Accordingly, I would not oust this case from the federal courts.

[*229] That Great-West requests restitution [****44] is beyond dispute. The relief [***655] would operate to transfer from the Knudsons funds over which Great-West claims to be the rightful owner. See [Curtis, 415 U.S. at 197](#) (describing an award as restitutionary if it would "require the defendant to disgorge funds wrongfully withheld from the plaintiff"); [Porter v. Warner Holding Co., 328 U.S. 395, 402, 90 L. Ed. 1332, 66 S. Ct. 1086 \(1946\)](#) (restitution encompasses a decree "ordering the return of that which rightfully belongs to" the plaintiff). Great-West alleges that the Knudsons would be unjustly enriched if permitted to retain the funds. See 1 D. Dobbs, *Law of*

Remedies § 4.1(2), p. 557 (2d ed. 1993) ("The fundamental substantive basis for restitution is that the defendant has been unjustly enriched by receiving something, tangible or intangible, that properly belongs to the plaintiff."). And Great-West sued to recover an amount representing the Knudsons' unjust gain, rather than Great-West's loss. See 3 *id.*, § 12.1(1), at 9 ("Restitutory recoveries are based on the defendant's gain, not on the plaintiff's loss.").

As the majority appears to admit, see *ante*, at 10, our cases have invariably described restitutionary relief [****45] as "equitable" without even mentioning, much less dwelling upon, the ancient classifications on which today's holding rests. See, e.g., [Tull v. United States](#), 481 U.S. 412, 424, 95 L. Ed. 2d 365, 107 S. Ct. 1831 (1987) (restitution "traditionally considered an equitable remedy"); [Mertens](#), 508 U.S. at 255 (restitution is a "remedy traditionally viewed as 'equitable'"); [Teamsters v. Terry](#), 494 U.S. 558, 570, 108 L. Ed. 2d 519, 110 S. Ct. 1339 (1990) ("We have characterized [money] damages as equitable where they are restitutionary."); [Mitchell](#), 361 U.S. at 291-293 (District Court could exercise equitable authority under Fair Labor Standards Act to order restitution); cf. *Moses v. Macferlan*, 2 Burr. 1005, 1012, 97 Eng. Rep. 676, 681 (K. B. 1760) ("In one word, the gist of this kind of action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."). These cases establish what the Court does not [*230] and cannot dispute: Restitution was "within the recognized power and within the highest tradition of a court of equity." [Porter](#), 328 U.S. at 402.

More important, if [****46] one's concern is to follow the Legislature's will, Congress itself has treated as equitable a type of restitution substantially similar to the relief Great-West seeks here. Congress placed in Title VII of the Civil Rights Act of 1964 the instruction that, to redress violations of the Act, courts may award, *inter alia*, "appropriate . . . equitable relief," including "reinstatement or hiring of employees, with or without back pay." [42 U.S.C. § 2000e-5\(g\)\(1\)](#) (1994 ed.). Interpreting this provision, we have recognized that backpay is "a form of restitution," [Curtis](#), 415 U.S. at 197; see [Terry](#), 494 U.S. at 572, and that "Congress specifically characterized backpay under Title VII as a form of 'equitable relief,'" *ibid.* The *Mertens* majority used Title VII's "equitable relief" provision as the touchstone for its interpretation of § 502(a)(3), see [508 U.S. at 255](#); [***656] today's majority declares, with remarkable inconsistency, that "Title VII has nothing to do with this case," *ante*, at 14, n. 4. The Court inexplicably fails to offer any reason why Congress did not intend "equitable relief" in § 502(a)(3) [****47] to include a plaintiff's "recover[er] of] money to pay for some benefit the defendant had received from him," *ante*, at 8 (internal quotation marks omitted), but did intend those words to encompass such relief in a measure (Title VII) enacted years earlier.²

²The Courts of Appeals have not aligned behind the Court's theory that Congress treated Title VII backpay as equitable "only in the narrow sense that" such relief is an "integral part" of the statutory remedy of reinstatement. *Ante*, at 14, n.4. While some courts have employed the majority's rationale, others have adopted the position the Court denies: that Title VII backpay is restitutionary and "therefore equitable," *ante*, at 13, n.4. See, e.g., [EEOC v. Detroit Edison Co.](#), 515 F.2d 301, 308 (CA6 1975) ("Back pay in Title VII cases is considered a form of restitution, not an award of damages. Since restitution is an equitable remedy a jury is not required for the award of back pay."), vacated on other grounds, [431 U.S. 951](#), 53 L. Ed. 2d 267, 97 S. Ct. 2668, 97 S. Ct. 2669 (1977); [Rogers v. Loether](#), 467 F.2d 1110, 1121 (CA7 1972) ("It is not unreasonable to regard an award of back pay [under Title VII] as an appropriate exercise of a chancellor's power to require restitution. Restitution is clearly an equitable remedy.") (footnote omitted), *aff'd*, [415 U.S. 189](#), 94 S. Ct. 1005, 39 L. Ed. 2d 260 (1974). See also [Hubbard v. EPA](#), 292 U.S. App. D.C. 278, 949 F.2d 453, 462 (CADC 1991) ("Courts have recognized the equitable nature of back pay awards in a number of different contexts. Generally, these decisions hold that back pay constitutes the very thing that the plaintiff would have received but for the defendant's illegal action; back pay is thus seen to reflect equitable restitution."), *aff'd* on other grounds, [299 U.S. App. D.C. 143](#), 982 F.2d 531 (CADC 1992) (en banc).

Such a reading of [§ 2000e-5\(g\)\(1\)](#) accords with our recognition in [Teamsters v. Terry](#), 494 U.S. 558, 572, 108 L. Ed. 2d 519, 110 S. Ct. 1339 (1990), that "Congress specifically characterized backpay under Title VII as a form of 'equitable relief.'" (Emphasis added). We were somewhat ambiguous in [Curtis v. Loether](#), 415 U.S. 189, 197, 39 L. Ed. 2d 260, 94 S. Ct. 1005 (1974), about the rationale of the Courts of Appeals, reasoning that they had treated Title VII backpay as equitable because Congress had made backpay "an integral part of an equitable remedy, a form of restitution." But we spoke with greater clarity in [Terry](#), 494 U.S. at 570-571, explaining that we could find an "exception to the general rule" that monetary relief is legal, rather than equitable, in two situations: *either* "where th[e] relief is] restitutionary," a category into which we suggested Title VII backpay might fall, see *id.*, at 572 ("backpay sought from an employer under Title VII would generally be restitutionary in nature"); or where "a monetary award [is] 'incidental to or intertwined with injunctive relief,'" *id.*, at 571 (quoting [Tull v. United States](#), 481 U.S. 412, 424, 95 L. Ed. 2d 365, 107 S. Ct. 1831 (1987)).

[****48] [**724] [*231] I agree that "not *all* relief falling under the rubric of restitution [was] available in equity," *ante*, at 7 (emphasis added); restitution was also available in claims brought at law, and the majority may be correct that in such cases restitution would have been termed "legal," *ante*, at 8. But that in no way affects the answer to the question at the core of this case. Section 502(a)(3) as interpreted in *Mertens* encompasses those "categories of relief that were *typically* available in equity," [508 U.S. at 256](#) (emphasis in original), not those that were *exclusively* so. Restitution plainly fits that bill. By insisting that § 502(a)(3) embraces only those *claims* that, in the circumstances of the particular case, could be brought in chancery in times of yore, the majority labors against the holding of that case. Indeed, *Mertens* explicitly [*232] rejected a position close to the one embraced by the Court today; *Mertens* recognized that [****657] "as memories of the divided bench, and familiarity with its technical refinements, recede further into the past, [an interpretation of § 502(a)(3) keyed to the relief a court of equity could award in a particular [****49] case] becomes, perhaps, increasingly unlikely." [508 U.S. at 256-257](#).

My objection to the inquiry the Court today adopts in spite of *Mertens* does not turn on "the difficulty of the task," *ante*, at 12. To be sure, I question the Court's confidence in the ability of "the standard works" to "make the answer clear"; the Court does not indicate what rule prevails, for example, when those works conflict, as they do on key points, compare *Restatement of Restitution* § 160, *comment e*, p. 645 (1936) (constructive trust over money available only where transfer procured by abuse of fiduciary relation or where legal remedy inadequate), with 1 Dobbs, *Law of Remedies* § 4.3(2), at 595, 597 (limitation of constructive trust to "misdealings by [**725] fiduciaries" a "misconception"; adequacy of legal remedy "seems irrelevant"). And courts have recognized that this Court's preferred method is indeed "difficult to apply," [Ross v. Bernhard, 396 U.S. 531, 538, n.10, 24 L. Ed. 2d 729, 90 S. Ct. 733 \(1970\)](#), calling for analysis that "may seem to reek unduly of the study," [Damsky v. Zavatt, 289 F.2d 46, 48 \(CA2 1961\)](#) (Friendly, J.), "if not of the museum," *id.*, at 59 [****50] (Clark, J., dissenting).

Even if the Court's chosen texts always yielded a quick and plain answer, however, I would think it no less implausible that Congress intended to make controlling the doctrine those texts describe. See *supra*, at 2-6. Our reliance on that doctrine in the context of the [Seventh Amendment](#) and Judiciary Act of 1789, see *ante*, at 12, underscores the incongruity of applying it here. It may be arguable that "preserving" the meaning of those founding-era provisions requires courts to determine which tribunal would have entertained a particular claim in 18th-century England. See [*233] [Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, 527 U.S. 308 at 318-319, 119 S. Ct. 1961, 144 L. Ed. 2d 319; Terry, 494 U.S. at 593](#) (KENNEDY, J., dissenting) ("We cannot preserve a right existing in 1791 unless we look to history to identify it."). But no such rationale conceivably justifies asking that question in cases arising under § 502(a)(3)(B), a provision of a distinctly modern statute Congress passed in 1974.

That the import of the term "equity" might depend on context does not signify a "rolling revision of its content," *ante*, at 13, but rather a recognition that equity, characteristically, was and should [****51] remain an evolving and dynamic jurisprudence, see [Grupo Mexicano, 527 U.S. at 336-337](#) (GINSBURG, J., dissenting). Cf. [Mertens, 508 U.S. at 257](#) ("It remains a question of interpretation in each case which meaning [Congress] intended" to impart to the term "equitable relief."). As courts in the common-law realm have reaffirmed: "Principles of equity, we were all taught, were introduced by Lord Chancellors and their deputies . . . in order to provide relief from the inflexibility of common law rules." *Medforth v. Blake*, [1999] 3 All E.R. 97, 110 [****658] (C. A.); see *Boulting v. Association of Cinematograph, Television and Allied Technicians*, [1963] 2 QB 606, 636 (C. A.) ("All rules of equity [are] flexible, in the sense that [they] develop to meet the changing situations and conditions of the time."); *Pettkus v. Becker*, [1980] 2 S. C. R. 834, 847, 117 D.L.R. (3d) 257, 273 ("The great advantage of ancient principles of equity is their flexibility: the judiciary is thus able to shape these malleable principles so as to accommodate the changing needs and mores of society."). This [****52] Court's equation of "equity" with the rigid application of rules frozen in a bygone era, I maintain, is thus "unjustifiable" even as applied to a law grounded in that era. [Grupo Mexicano, 527 U.S. at 336](#) (GINSBURG, J., dissenting). As applied to a statute like ERISA, however, such insistence is senseless.

Thus, there is no reason to ask what court would have entertained Great-West's claim "in the days of the divided bench," *ante*, at 7, and no need to engage in the antiquarian [*234] inquiry through which the majority attempts to answer that question. Nor would reading § 502(a)(3) to encompass restitution render the modifier "equitable" "utterly pointless," as the Court fears, *ante*, at 12. Such a construction would confine the scope of that provision to significantly "less than *all* relief," *ante*, at 4 (quoting [Mertens, 508 U.S. at 258, n.8](#)). Most notably, it would exclude

compensatory and punitive damages, see *id.*, at 255, which, "though *occasionally* awarded in equity" under the "clean up doctrine," *Reich v. Continental Casualty Co.*, 33 F.3d 754, 756 (CA7 1994), were not typically available in [****53] such courts. See 1 S. Symons, Pomeroy's Equity Jurisprudence § 181, p. 257 (5th ed. 1941). That large limitation is indeed [**726] "unmistakable." But cf. *ante*, at 12. In sum, the reading I would adopt is entirely faithful to the core holding of *Mertens*: "equitable relief" in § 502(a)(3) "refers to those categories of relief that were *typically* available in equity (such as injunction, mandamus, and restitution, but not compensatory damages)." *508 U.S. at 256*.

* * *

Today's decision needlessly obscures the meaning and complicates the application of § 502(a)(3). The Court's interpretation of that provision embroils federal courts in "recondite controversies better left to legal historians," *Terry*, 494 U.S. at 576 (Brennan, J., concurring in part and concurring in judgment), and yields results that are demonstrably at odds with Congress' goals in enacting ERISA. Because in my view Congress cannot plausibly be said to have "carefully crafted" such confusion, *ante*, at 16, I dissent.

References

60A Am Jur 2d, Pensions and Retirement Funds 1230-1244

[29 USCS 1132\(a\)\(3\)](#)

L [****54] Ed Digest, Pensions and Retirement Funds 1.3

L Ed Index, Equity; Pensions and Retirement; Restitution and Implied Contracts

Annotation References:

Standing of employer to bring civil action under 502 of ERISA ([29 USCS 1132](#)). [104 ALR Fed 611](#).

What constitutes "other appropriate equitable relief," under 502(a)(3)(B), 502(a)(5)(B) of Employee Retirement Income Security Act ([29 USCS 1132\(a\)\(3\)\(B\)](#), [1132\(a\)\(5\)\(B\)](#)), which may be obtained to redress violations, or to enforce provisions, of [Act. 98 ALR Fed 705](#).

Right of pension plan, as entity, to bring civil enforcement action under 502 of Employee Retirement Income Security Act of 1974 ([29 USCS 1132](#)). [67 ALR Fed 947](#).



Caution

As of: January 31, 2025 4:45 PM Z

[US Airways, Inc. v. McCutchen](#)

Supreme Court of the United States

November 27, 2012, Argued; April 16, 2013, Decided

No. 11-1285

Reporter

569 U.S. 88 *; 133 S. Ct. 1537 **; 185 L. Ed. 2d 654 ***; 2013 U.S. LEXIS 3156 ****; 81 U.S.L.W. 4236; 55 Employee Benefits Cas. (BNA) 1845; 24 Fla. L. Weekly Fed. S 138; 2013 WL 1567371

US AIRWAYS, INC., in its capacity as fiduciary and plan administrator of the US AIRWAYS, INC. EMPLOYEE BENEFITS PLAN, Petitioner v. JAMES E. McCUTCHEEN et al.

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[US Airways, Inc. v. McCutchen, 663 F.3d 671, 2011 U.S. App. LEXIS 22883 \(3d Cir. Pa., 2011\)](#)

Disposition: Vacated and remanded.

Core Terms

common-fund, reimbursement, equitable, costs, unjust enrichment, third party, double-recovery, insurer, terms, principles, reimbursement provision, equitable relief, medical expenses, recovered, override, parties, court of equity, equitable lien, third-party, courts, funds, equitable doctrine, equitable defense, terms of the plan

Case Summary

Procedural Posture

Petitioner employer filed an action against respondent employee, pursuant to [29 U.S.C.S. § 1132\(a\)\(3\)](#), claiming that it was entitled to recover medical payments it made on behalf of the employee from funds he received when he settled a case he filed against a tortfeasor and his insurer. The U.S. Court of Appeals for the Third Circuit vacated the district court's judgment in favor of the employer, and the U.S. Supreme Court granted certiorari.

Overview

The employee was covered by a health benefits plan his employer established under the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), at the time he was injured in an automobile accident, and the plan paid \$66,866 in medical expenses he incurred. The employee sued a tortfeasor who caused the accident but received only \$10,000 from the tortfeasor and an additional \$100,000 from his insurance company because the tortfeasor had limited coverage, and after his attorneys deducted \$44,000 in attorneys' fees, he received \$66,000. The employer demanded that the employee reimburse the \$66,866 in medical expenses it paid under his plan, pursuant to a clause in a summary description of the plan, and the employer sued the employee after he refused that demand. The Supreme Court held that the employer was allowed under [29 U.S.C.S. § 1132\(a\)\(3\)](#) to enforce the reimbursement provision in its plan. However, because the plan did not address the parties' obligations for paying attorneys' fees, it was properly read to retain the common-fund doctrine and remand was required so the lower courts could determine the amount of fees the employer had to pay.

Outcome

The Supreme Court vacated the Third Circuit's decision and remanded the case. 5-4 Decision; 1 dissent.

LexisNexis® Headnotes

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN1](#)  Remedies, Equitable Relief

The United States Supreme Court has held that a health-plan administrator may enforce a reimbursement provision in an employee health plan by filing suit under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#). That section authorizes a civil action to obtain appropriate equitable relief to enforce the terms of a plan.

Pensions & Benefits Law > ERISA > Civil Litigation > Reasonable Expectations

[HN2](#)  Civil Litigation, Reasonable Expectations

The United States Supreme Court has made it clear that statements in a summary plan description communicate with beneficiaries about the plan, but do not themselves constitute the terms of the plan.

Civil Procedure > Preliminary Considerations > Equity > Relief

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN3](#)  Equity, Relief

A health-plan administrator may bring suit under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), for appropriate equitable relief to enforce the terms of the plan. That provision authorizes the kinds of relief typically available in equity in the days of “the divided bench,” before law and equity merged.

Civil Procedure > Preliminary Considerations > Equity > Relief

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Injunctions

[HN4](#)  Equity, Relief

Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), provides that a plan administrator may bring a civil action (A) to enjoin any act or practice which violates any provision of the ERISA or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of the ERISA or the terms of the plan.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

[HN5](#) **Basis of Recovery, American Rule**

Under the common-fund doctrine, a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

[HN6](#) **Basis of Recovery, American Rule**

Both United States Supreme Court decisions and secondary sources confirm a characterization of the common-fund and double-recovery rules as deriving primarily from principles of unjust enrichment.

Civil Procedure > ... > Justiciability > Standing > Third Party Standing

Insurance Law > Claim, Contract & Practice Issues > Subrogation > General Overview

[HN7](#) **Standing, Third Party Standing**

"Subrogation" simply means substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights against a third party.

Contracts Law > Contract Interpretation > Intent

[HN8](#) **Contract Interpretation, Intent**

The modern-day equivalent of an "equitable lien by agreement" — as its name announces — both arises from and serves to carry out a contract's provisions. So enforcing the lien means holding the parties to their mutual promises. Conversely, it means declining to apply rules — even if they would be "equitable" in a contract's absence — at odds with the parties' expressed commitments. Those principles, as the United States Supreme Court said in *Sereboff v. Mid Atlantic Medical Services, Inc.*, are "beside the point" when parties demand what they bargained for in a valid agreement. In those circumstances, hewing to the parties' exchange yields "appropriate" as well as "equitable" relief.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Contracts Law > Contract Interpretation > Intent

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

Contracts Law > Remedies > Equitable Relief > Quantum Meruit

[HN9](#) **Basis of Recovery, American Rule**

The common-fund doctrine has deep roots in equity. Those roots, however, are set in the soil of unjust enrichment. To allow others to obtain full benefit from a plaintiff's efforts without contributing to the litigation expenses, the United States Supreme Court has often noted, would be to enrich the others unjustly at the plaintiff's expense. Principles of unjust enrichment give way when a court enforces an equitable lien by agreement. The agreement itself becomes the measure of the parties' equities; so if a contract abrogates the common-fund doctrine, an insurer is not unjustly enriched by claiming the benefit of its bargain. Even in equity, when a party sought to enforce a lien by agreement, all provisions of that agreement controlled.

Pensions & Benefits Law > ERISA > Plan Establishment
Business & Corporate Compliance > Pensions & Benefits > Employee Retirement Income Security Act (ERISA) > Plan Establishment

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

Pensions & Benefits Law > ... > Fiduciaries > Fiduciary Responsibilities > General Overview

[HN10](#) **Employee Retirement Income Security Act (ERISA), Plan Establishment**

Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), does not authorize "appropriate equitable relief" at large; rather, it countenances only such relief as will enforce the terms of a plan or the statute. [29 U.S.C.S. § 1132\(a\)\(3\)](#). That limitation reflects ERISA's principal function: to protect contractually defined benefits. The statutory scheme, the United States Supreme Court has often noted, is built around reliance on the face of written plan documents. Every employee benefit plan shall be established and maintained pursuant to a written instrument, [29 U.S.C.S. § 1102\(a\)\(1\)](#), and an administrator must act in accordance with the documents and instruments governing the plan insofar as they accord with the statute, [29 U.S.C.S. § 1104\(a\)\(1\)\(D\)](#). A plan, in short, is at the center of ERISA.

Contracts Law > Contract Interpretation > Parol Evidence > General Overview

Pensions & Benefits Law > ERISA > Civil Litigation > Reasonable Expectations

Contracts Law > Contract Interpretation > Intent

[HN11](#) **Contract Interpretation, Parol Evidence**

Courts construe employee benefit plans that are subject to the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), as they do other contracts, by looking to the terms of the plan as well as to other manifestations of the parties' intent. The words of a plan may speak clearly, but they may also leave gaps. And so a court must often look outside a plan's written language to decide what an agreement means. In undertaking that task, a court properly takes account of background legal rules -- the doctrines that typically or traditionally have governed a given situation when no agreement states otherwise. Indeed, ignoring those rules is likely to frustrate the parties' intent and produce perverse consequences.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

[HN12](#)  Basis of Recovery, American Rule

The common-fund rule addresses not how to allocate a third-party recovery, but instead how to pay for the costs of obtaining it.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

Pensions & Benefits Law > ERISA > Civil Litigation > Reasonable Expectations

[HN13](#)  Basis of Recovery, American Rule

The United States Supreme Court has recognized consistently that someone who recovers a common fund for the benefit of persons other than himself is due a reasonable attorney's fee from the fund as whole. The Court has understood that rule as reflecting the traditional practice in courts of equity, and has applied it in a wide range of circumstances as part of its inherent authority. State courts have done the same; the overwhelming majority of state courts routinely use the common-fund rule to allocate the costs of third-party recoveries between insurers and beneficiaries. A party would not typically expect or intend a plan saying nothing about attorney's fees to abrogate so strong and uniform a background rule. And that means a court should be loath to read such a plan in that way.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

[HN14](#)  Basis of Recovery, American Rule

Almost every state court that has confronted the issue has applied the common-fund doctrine in the face of a contract giving an insurer a general right to recoup funds from an insured's third-party recovery, without specifically addressing attorney's fees.

Insurance Law > Claim, Contract & Practice Issues > Unjust Enrichment Doctrine

[HN15](#)  Claim, Contract & Practice Issues, Unjust Enrichment Doctrine

Third-party recoveries do not often come free. To get one, an insured must incur lawyer's fees and expenses. Without cost sharing, an insurer free rides on its beneficiary's efforts — taking the fruits while contributing nothing to the labor. Odder still, in some cases a beneficiary is made worse off by pursuing a third party. The prospect of generating those strange results militates against reading a general reimbursement provision for more than it is worth.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Contracts Law > Contract Interpretation > Intent

Pensions & Benefits Law > ERISA > Civil Litigation > Reasonable Expectations

Contracts Law > Remedies > Equitable Relief > Quantum Meruit

[HN16](#) Basis of Recovery, American Rule

In an action brought under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), that is based on an equitable lien by agreement, the terms of the ERISA plan govern. Neither general principles of unjust enrichment nor specific doctrines reflecting those principles—such as the double-recovery or common-fund rules — can override the applicable contract. But the common-fund rule can inform interpretation of a plan's reimbursement provision, and when a reimbursement provision does not advert to the costs of recovery, it is properly read to retain the common-fund doctrine.

Lawyers' Edition Display

Decision

[***654] In action, based on asserted equitable lien by agreement, under [ERISA § 502\(a\)\(3\)](#) ([29 U.S.C.S. § 1132\(a\)\(3\)](#)), (1) plan's terms held to govern; but (2) equitable rules held possibly to aid in properly construing plan's reimbursement provision.

Summary

Procedural posture: Petitioner employer filed an action against respondent employee, pursuant to [29 U.S.C.S. § 1132\(a\)\(3\)](#), claiming that it was entitled to recover medical payments it made on behalf of the employee from funds he received when he settled a case he filed against a tortfeasor and his insurer. The U.S. Court of Appeals for the Third Circuit vacated the district court's judgment in favor of the employer, and the U.S. Supreme Court granted certiorari.

Overview: The employee was covered by a health benefits plan his employer established under the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), at the time he was injured in an automobile accident, and the plan paid \$66,866 in medical expenses he incurred. The employee sued a tortfeasor who caused the accident but received only \$10,000 from the tortfeasor and an additional \$100,000 from his insurance company because the tortfeasor had limited coverage, and after his attorneys deducted \$44,000 in attorneys' fees, he received \$66,000. The employer demanded that the employee reimburse the \$66,866 in medical expenses it paid under his plan, pursuant to a clause in a summary description of the plan, and the employer sued the employee after he refused that demand. The Supreme Court held that the employer was allowed under [29 U.S.C.S. § 1132\(a\)\(3\)](#) to enforce the reimbursement provision in its plan. However, because the plan did not address the parties' obligations for paying attorneys' fees, it was properly read to retain the common-fund doctrine and remand was required so the lower courts could determine the amount of fees the employer had to pay.

Outcome: The Supreme Court vacated the Third Circuit's decision and remanded the case. 5-4 Decision; 1 dissent.

Headnotes

[***655]

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- PLAN ENFORCEMENT > Headnote:

[LEdHN\[1\]](#) [1]

The United States Supreme Court has held that a health-plan administrator may enforce a reimbursement provision in an employee health plan by filing suit under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of

569 U.S. 88, *88; 133 S. Ct. 1537, **1537; 185 L. Ed. 2d 654, ***655; 2013 U.S. LEXIS 3156, ****1

1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#). That section authorizes a civil action to obtain appropriate equitable relief to enforce the terms of a plan. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

PENSIONS AND RETIREMENT FUNDS §7 > SUMMARY PLAN DESCRIPTION > Headnote:

[LEdHN\[2\]](#) [2]

The United States Supreme Court has made it clear that statements in a summary plan description communicate with beneficiaries about the plan, but do not themselves constitute the terms of the plan. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE RELIEF > Headnote:

[LEdHN\[3\]](#) [3]

A health-plan administrator may bring suit under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1132\(a\)\(3\)](#), for appropriate equitable relief to enforce the terms of the plan. That provision authorizes the kinds of relief typically available in equity in the days of “the divided bench,” before law and equity merged. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- CIVIL ACTION > Headnote:

[LEdHN\[4\]](#) [4]

[Section 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), provides that a plan administrator may bring a civil action to (1) enjoin any act or practice which violates any provision of ERISA or the terms of the plan; or (2) obtain other appropriate equitable relief to (a) redress such violations, or (b) enforce any provisions of ERISA or the terms of the plan. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

COSTS AND FEES §21 > COMMON FUND -- ATTORNEY'S FEE > Headnote:

[LEdHN\[5\]](#) [5]

Under the common-fund doctrine, a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

COSTS AND FEES §21 RESTITUTION, IMPLIED CONTRACTS, AND ASSUMPSIT ACTIONS §3 > COMMON FUND --

DOUBLE RECOVERY > Headnote:

[LEdHN\[6\]](#) [6]

Both United States Supreme Court decisions and secondary sources confirm a characterization of the common-fund and double-recovery rules as deriving primarily from principles of unjust enrichment. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[***656]

CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §21 > SUBROGATION > Headnote:

[LEdHN\[7\]](#) [7]

“Subrogation” simply means substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights against a third party. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

LIENS §4 > BY AGREEMENT -- EQUITY > Headnote:

[LEdHN\[8\]](#) [8]

The modern-day equivalent of an “equitable lien by agreement” --as its name announces--both arises from and serves to carry out a contract's provisions. So enforcing the lien means holding the parties to their mutual promises. Conversely, it means declining to apply rules--even if they would be “equitable” in a contract's absence--at odds with the parties' expressed commitments. Those principles, as the United States Supreme Court said in *Sereboff v. Mid Atlantic Medical Services, Inc.*, are “beside the point” when parties demand what they bargained for in a valid agreement. In those circumstances, hewing to the parties' exchange yields “appropriate” as well as “equitable” relief. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

COSTS AND FEES §21LIENS §4 > COMMON FUND -- UNJUST ENRICHMENT -- LIEN BY AGREEMENT > Headnote:

[LEdHN\[9\]](#) [9]

The common-fund doctrine has deep roots in equity. Those roots, however, are set in the soil of unjust enrichment. To allow others to obtain full benefit from a plaintiff's efforts without contributing to the litigation expenses, the United States Supreme Court has often noted, would be to enrich the others unjustly at the plaintiff's expense. Principles of unjust enrichment give way when a court enforces an equitable lien by agreement. The agreement itself becomes the measure of the parties' equities; so if a contract abrogates the common-fund doctrine, an insurer is not unjustly enriched by claiming the benefit of its bargain. Even in equity, when a party sought to enforce a lien by agreement, all provisions of that agreement controlled. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE RELIEF > Headnote:

[LEdHN\[10\]](#) [10]

[Section 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), does not authorize “appropriate equitable relief” at large; rather, it countenances only such relief as will enforce the terms of a plan or the statute. [29 U.S.C.S. § 1132\(a\)\(3\)](#). That limitation reflects ERISA's principal function: to protect contractually defined benefits. The statutory scheme, the United States Supreme Court has often noted, is built

around reliance on the face of written plan documents. Every employee benefit plan shall be established and maintained pursuant to a written instrument, [29 U.S.C.S. § 1102\(a\)\(1\)](#), and an administrator must act in accordance with the documents and instruments governing the plan insofar as they accord with the statute, [29 U.S.C.S. § 1104\(a\)\(1\)\(D\)](#). A plan, in short, is at the center of ERISA. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[***657]

STATUTES §145.1 STATUTES §164.5 > ERISA -- TERMS OF PLAN -- BACKGROUND > Headnote:

[LEdHN\[11\]](#) [11]

Courts construe employee benefit plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1001 et seq.](#), as they do other contracts, by looking to the terms of the plan as well as to other manifestations of the parties' intent. The words of a plan may speak clearly, but they may also leave gaps. And so a court must often look outside a plan's written language to decide what an agreement means. In undertaking that task, a court properly takes account of background legal rules--the doctrines that typically or traditionally have governed a given situation when no agreement states otherwise. Indeed, ignoring those rules is likely to frustrate the parties' intent and produce perverse consequences. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

COSTS AND FEES §21 > COMMON FUND > Headnote:

[LEdHN\[12\]](#) [12]

The common-fund rule addresses not how to allocate a third-party recovery, but instead how to pay for the costs of obtaining it. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

COSTS AND FEES §21 > COMMON FUND -- ATTORNEY'S FEE > Headnote:

[LEdHN\[13\]](#) [13]

The United States Supreme Court has recognized consistently that someone who recovers a common fund for the benefit of persons other than himself is due a reasonable attorney's fee from the fund as whole. The Court has understood that rule as reflecting the traditional practice in courts of equity, and has applied it in a wide range of circumstances as part of its inherent authority. State courts have done the same; the overwhelming majority of state courts routinely use the common-fund rule to allocate the costs of third-party recoveries between insurers and beneficiaries. A party would not typically expect or intend a plan saying nothing about attorney's fees to abrogate so strong and uniform a background rule. And that means a court should be loath to read such a plan in that way. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

INSURANCE §275 > COMMON FUND -- RECOUPMENT BY INSURER > Headnote:

[LEdHN\[14\]](#) [14]

Almost every state court that has confronted the issue has applied the common-fund doctrine in the face of a contract giving an insurer a general right to recoup funds from an insured's third-party recovery, without specifically addressing attorney's fees. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

INSURANCE §275 > RECOVERY FROM THIRD PARTY -- COST SHARING BY INSURED AND INSURER > Headnote:

[LEdHN\[15\]](#) [15]

Third-party recoveries do not often come free. To get one, an insured must incur lawyer's fees and expenses. Without cost sharing, an insurer free rides on its beneficiary's efforts--taking the fruits while contributing nothing to the labor. Odder still, in some cases a beneficiary is made worse off by pursuing a third party. The prospect of generating those strange results militates against reading a general reimbursement provision for more than it is worth. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

[***658]

PENSIONS AND RETIREMENT FUNDS §13 > ERISA -- EQUITABLE LIEN BY AGREEMENT -- TERMS OF PLAN

> Headnote:

[LEdHN\[16\]](#) [16]

In an action brought under [§ 502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1132\(a\)\(3\)](#), that is based on an equitable lien by agreement, the terms of the ERISA plan govern. Neither general principles of unjust enrichment nor specific doctrines reflecting those principles--such as the double-recovery or common-fund rules--can override the applicable contract. But the common-fund rule can inform interpretation of a plan's reimbursement provision, and when a reimbursement provision does not advert to the costs of recovery, it is properly read to retain the common-fund doctrine. (Kagan, J., joined by Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.)

Syllabus

[**1540] [*88] The health benefits plan established by petitioner US Airways paid \$66,866 in medical expenses for injuries suffered by respondent McCutchen, a US Airways employee, in a car accident caused by a third party. The plan entitled US Airways to reimbursement if McCutchen later recovered money from the third party. McCutchen's attorneys secured \$110,000 in payments, and McCutchen received \$66,000 after deducting the lawyers' 40% contingency fee. US Airways demanded reimbursement of the full \$66,866 it had paid. When McCutchen did not comply, US Airways filed suit under [§502\(a\)\(3\)](#) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes [***659] health-plan administrators to bring a civil action "to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of the plan." McCutchen raised two defenses to US Airways' request for an equitable lien on the \$66,866 it demanded: that, absent over-recovery on his part, US Airways' right to reimbursement did not kick in; and that US Airways had to contribute its fair share to the costs he incurred to get [****2] his recovery, so any reimbursement had to be reduced by 40%, to cover the contingency fee. Rejecting both arguments, the District Court granted summary judgment to US Airways. The Third Circuit vacated. Reasoning that traditional "equitable doctrines and defenses" applied to [§502\(a\)\(3\)](#) suits, it held that the principle of unjust enrichment overrode US Airways' reimbursement clause because the clause would leave McCutchen with less [**1541] than full payment for his medical bills and would give US Airways a windfall.

Held:

1. In a [§ 502\(a\)\(3\)](#) action based on an equitable lien by agreement--like this one--the ERISA plan's terms govern. Neither general unjust enrichment principles nor specific doctrines reflecting those principles--such as the double-recovery or common-fund rules invoked by McCutchen--can override the applicable contract. [Pp. 94-101, 185 L. Ed. 2d, at 662-667.](#)

(a) [Section 502\(a\)\(3\)](#) authorizes the kinds of relief “typically available in equity” before the merger of law and equity. [Mertens v. Hewitt \[*89\] Associates, 508 U.S. 248, 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161.](#) In [Sereboff v. Mid Atlantic Medical Services, Inc., 547 U.S. 356, 126 S. Ct. 1869, 164 L. Ed. 2d 612,](#) the Court permitted a health-plan administrator to bring a suit just like this one. The administrator's claim to enforce [\[****3\]](#) its reimbursement clause, the Court explained, was the modern-day equivalent of an action in equity to enforce a contract-based lien--called an “equitable lien 'by agreement.' ” [Id., at 364-365.](#) Accordingly, the administrator could use [§ 502\(a\)\(3\)](#) to obtain funds that its beneficiaries had promised to turn over. The parties agree that US Airways can do the same here. [Pp. 94-95, 185 L. Ed. 2d, at 662-664.](#)

(b) *Sereboff's* logic dooms McCutchen's argument that two equitable doctrines meant to prevent unjust enrichment--the double-recovery rule and common-fund doctrine--can override the terms of an ERISA plan in such a suit. As in *Sereboff*, US Airways is seeking to enforce the modern-day equivalent of an equitable lien by agreement. Such a lien both arises from and serves to carry out a contract's provisions. See [547 U.S., at 363-364.](#) Thus, enforcing the lien means holding the parties to their mutual promises and declining to apply rules--even if they would be “equitable” absent a contract--at odds with the parties' expressed commitments. The Court has found nothing to the contrary in the historic practice of equity courts. McCutchen identifies a slew of cases in which courts applied the equitable doctrines invoked here, [\[****4\]](#) but none in which they did so to override a clear contract that provided otherwise. This result comports with ERISA's focus on what a plan provides: [Section 502\(a\)\(3\)](#) does not “authorize 'appropriate equitable relief' at large,” [Mertens, 508 U.S., at 253,](#) but countenances only such relief as will [\[***660\]](#) enforce “the terms of the plan” or the statute. [Pp. 95-101, 185 L. Ed. 2d, at 663-667.](#)

2. While McCutchen's equitable rules cannot trump a reimbursement provision, they may aid in properly construing it. US Airways' plan is silent on the allocation of attorney's fees, and the common-fund doctrine provides the appropriate default rule to fill that gap. [Pp. 101-106, 185 L. Ed. 2d, at 667-669.](#)

(a) Ordinary contract interpretation principles support this conclusion. Courts construe ERISA plans, as they do other contracts, by “looking to the terms of the plan” as well as to “other manifestations of the parties' intent.” [Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 113, 109 S. Ct. 948, 103 L. Ed. 2d 80.](#) Where the terms of a plan leave gaps, courts must “look outside the plan's written language” to decide the agreement's meaning, [CIGNA Corp. v. Amara, 563 U.S. 421, 436, 131 S. Ct. 1866, 179 L. Ed. 2d 843,](#) and they properly take account of the doctrines that typically or traditionally have governed a given situation when [\[****5\]](#) no agreement states otherwise. [Pp. 102, 185 L. Ed. 2d, at 667.](#)

(b) US Airways' reimbursement provision precludes looking to the double-recovery rule in this manner because it provides an allocation formula that expressly contradicts the equitable rule. By contrast, the plan says nothing specific about [\[**1542\]](#) how to pay for the costs of recovery. [\[*90\]](#) Given that contractual gap, the common-fund doctrine provides the best indication of the parties' intent. This Court's cases make clear that the doctrine would govern here in the absence of a contrary agreement. See, e.g., [Boeing Co. v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676.](#) Because a party would not typically expect or intend a plan saying nothing about attorney's fees to abrogate so strong and uniform a background rule, a court should be loath to read the plan in that way. The common-fund rule's rationale reinforces this conclusion: Without the rule, the insurer can free ride on the beneficiary's efforts, and the beneficiary, as in this case, may be made worse off for having pursued a third party. A contract should not be read to produce these strange results unless it specifically provides as much. [Pp. 102-105, 185 L. Ed. 2d, at 668-669.](#)

[663 F. 3d 671,](#) vacated and remanded.

Counsel: Neal Kumar Katyal argued the cause for petitioner.

Joseph R. Palmore argued the cause for the United States, as amicus curiae, by special leave of court.

Matthew W. H. Wessler argued the cause for respondents.

Judges: Kagan, J., delivered the opinion [****6] of the Court, in which Kennedy, Ginsburg, Breyer, and Sotomayor, JJ., joined. Scalia, J., filed a dissenting opinion, in which Roberts, C. J., and Thomas and Alito, JJ., joined, *post*, p. 106.

Opinion by: KAGAN

Opinion

[*91] Justice **Kagan** delivered the opinion of the Court.

Respondent James McCutchen participated in a health benefits plan that his employer, petitioner US Airways, established under the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C. § 1001 et seq.](#) That plan obliged US Airways to pay any medical expenses McCutchen incurred as a result of a third party's actions—for example, another person's negligent driving. The plan in turn entitled US Airways to reimbursement if McCutchen later recovered money from the third party.

[HN1](#)[↑] [LEdHN1](#)[↑] [1] This Court has held that a health-plan administrator like US [***661] Airways may enforce such a reimbursement provision by filing suit under [§ 502\(a\)\(3\) of ERISA](#), 88 Stat. 891, [29 U.S.C. §1132\(a\)\(3\)](#). See [Sereboff v. Mid Atlantic Medical Services, Inc.](#), [547 U.S. 356](#), [126 S. Ct. 1869](#), [164 L. Ed. 2d 612 \(2006\)](#). That section authorizes a civil action “to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of the plan.” We here consider whether in that kind of suit, a plan participant like McCutchen may [****7] raise certain equitable defenses deriving from principles of unjust enrichment. In particular, we address one equitable doctrine limiting reimbursement [**1543] to the amount of an insured's “double recovery” and another requiring the party seeking reimbursement to pay a share of the attorney's fees incurred in securing funds from the third party. We hold that neither of those equitable rules can override the clear terms of a plan. But we explain that the latter, usually called the common-fund doctrine, plays a role in interpreting [*92] US Airways' plan because the plan is silent about allocating the costs of recovery.

I

In January 2007, McCutchen suffered serious injuries when another driver lost control of her car and collided with McCutchen's. At the time, McCutchen was an employee of US Airways and a participant in its self-funded health plan. The plan paid \$66,866 in medical expenses arising from the accident on McCutchen's behalf.

McCutchen retained attorneys, in exchange for a 40% contingency fee, to seek recovery of all his accident-related damages, estimated to exceed \$1 million. The attorneys sued the driver responsible for the crash, but settled for only \$10,000 because she had limited insurance [****8] coverage and the accident had killed or seriously injured three other people. Counsel also secured a payment from McCutchen's own automobile insurer of \$100,000, the maximum amount available under his policy. McCutchen thus received \$110,000—and after deducting \$44,000 for the lawyer's fee, \$66,000.

On learning of McCutchen's recovery, US Airways demanded reimbursement of the \$66,866 it had paid in medical expenses. In support of that claim, US Airways relied on the following statement in its summary plan description:

“If [US Airways] pays benefits for any claim you incur as the result of negligence, willful misconduct, or other actions of a third party, . . . [y]ou will be required to reimburse [US Airways] for amounts paid for claims out of

any monies recovered from [the] third party, including, but not limited to, your own insurance company as the result of judgment, settlement, or otherwise.” App. 20.¹

[*93] McCutchen denied that US Airways was entitled to any reimbursement, but his attorneys placed \$41,500 in an escrow account pending resolution of the dispute. That amount represented [***662] US Airways’ full claim minus a proportionate share of the promised attorney’s fees.

US Airways then filed this action under [§502\(a\)\(3\)](#), seeking “appropriate equitable relief” to enforce the plan’s reimbursement provision. The suit requested an equitable lien on \$66,866—the \$41,500 in the escrow account and \$25,366 more in McCutchen’s possession. McCutchen countered by raising two defenses relevant here. First, he maintained that US Airways could [****10] not receive the relief it sought because he had recovered only a small [**1544] portion of his total damages; absent over-recovery on his part, US Airways’ right to reimbursement did not kick in. Second, he contended that US Airways at least had to contribute its fair share to the costs he incurred to get his recovery; any reimbursement therefore had to be marked down by 40%, to cover the promised contingency fee. The District Court rejected both arguments, granting summary judgment to US Airways on the ground that the plan “clear[ly] and unambiguous[ly]” provided for full reimbursement of the medical expenses paid. App. to Pet. for Cert. 30a; see *id.*, at 32a.

The Court of Appeals for the Third Circuit vacated the District Court’s order. The Third Circuit reasoned that in a suit for “appropriate equitable relief” under [§502\(a\)\(3\)](#), a court must apply any “equitable doctrines and defenses” that traditionally limited the relief requested. [663 F. 3d 671, 676 \(2011\)](#). And here, the court continued, “the principle [*94] of unjust enrichment” should “serve to limit the effectiveness” of the plan’s reimbursement provision. See [id.](#), at 677 (quoting 4 G. Palmer, *Law of Restitution* §23.18, pp. 472-473 [****11] (1978)). Full reimbursement, the Third Circuit thought, would “leav[e] [McCutchen] with less than full payment” for his medical bills; at the same time, it would provide a “windfall” to US Airways given its failure to “contribute to the cost of obtaining the third-party recovery.” [663 F. 3d, at 679](#). The Third Circuit then instructed the District Court to determine what amount, shy of the entire \$66,866, would qualify as “appropriate equitable relief.” *Ibid.*

We granted certiorari, [567 U.S. 933, 133 S. Ct. 36, 183 L. Ed. 2d 674 \(2012\)](#), to resolve a Circuit split on whether equitable defenses can so override an ERISA plan’s reimbursement provision.² We now vacate the Third Circuit’s decision.

II

¹ [HN2](#) [↑] [LEdHN2](#) [↑] [2] We have made clear [****9] that the statements in a summary plan description “communicat[e] with beneficiaries *about* the plan, but . . . do not themselves constitute the *terms* of the plan.” [CIGNA Corp. v. Amara, 563 U.S. 421, 438, 131 S. Ct. 1866, 1878, 179 L. Ed. 2d 843, 856 \(2011\)](#). Nonetheless, the parties litigated this case, and both lower courts decided it, based solely on the language quoted above. See [663 F. 3d 671, 673 \(CA3 2011\)](#); App. to Pet. for Cert. 26a. Only in this Court, in response to a request from the Solicitor General, did the plan itself come to light. See Letter from Matthew W. H. Wessler to William K. Suter, Clerk of Court (Nov. 19, 2012) (available in Clerk of Court’s case file). That is too late to affect what happens here: Because everyone in this case has treated the language from the summary description as though it came from the plan, we do so as well.

² Compare [663 F. 3d 671, 673 \(CA3 2011\)](#) (case below) (holding that equitable doctrines can trump a plan’s terms); [CGI Technologies & Solutions Inc. v. Rose, 683 F. 3d 1113, 1124 \(CA9 2012\)](#) (same), with [Zurich Am. Ins. Co. v. O’Hara, 604 F. 3d 1232, 1237 \(CA11 2010\)](#) (holding that they cannot do so); [Administrative Comm. of Wal-Mart Stores, Inc. v. Shank, 500 F. 3d 834, 838 \(CA8 2007\)](#) (same); [Moore v. CapitalCare, Inc., 461 F. 3d 1, 9-10, 373 U.S. App. D.C. 188 and n. 10 \(CADC 2006\)](#) (same); [Bombardier Aerospace Employee Welfare Benefits Plan v. Ferrer, Poirot, & Wansbrough, 354 F. 3d 348, 362 \(CA5 2003\)](#) [****12] (same); [Administrative Comm. of Wal-Mart Stores, Inc. v. Varco, 338 F. 3d 680, 692 \(CA7 2003\)](#) (same).

[HN3](#) [LEdHN3](#) [3] A health-plan administrator like US Airways may bring suit under [§502\(a\)\(3\)](#) for “appropriate equitable relief . . . to enforce . . . the terms of the plan.”³ That provision, we have [\[***663\]](#) held, authorizes the kinds of relief “typically available in equity” in the days of “the divided bench,” before law and [\[*95\]](#) equity merged. [Mertens v. Hewitt Associates, 508 U.S. 248, 256, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#) (emphasis deleted).

In *Sereboff v. Mid Atlantic Medical Services*, we allowed a health-plan administrator to bring a suit just like this one under [§502\(a\)\(3\)](#). Mid Atlantic had paid medical expenses for the Sereboffs after they were injured in a car crash. When they settled a tort suit against the other driver, Mid Atlantic claimed a share of [\[****13\]](#) the proceeds, invoking the plan’s reimbursement clause. We held that Mid Atlantic’s action [\[**1545\]](#) sought “equitable relief,” as [§502\(a\)\(3\)](#) requires. See [547 U.S., at 369, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#). The “nature of the recovery” requested was equitable because Mid Atlantic claimed “specifically identifiable funds” within the Sereboffs’ control—that is, a portion of the settlement they had gotten. [Id., at 362-363, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (internal quotation marks omitted). And the “basis for [the] claim” was equitable too, because Mid Atlantic relied on “the familiar rul[e] of equity that a contract to convey a specific object” not yet acquired “create[s] a lien” on that object as soon as “the contractor . . . gets a title to the thing.” [Id., at 363-364, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (quoting [Barnes v. Alexander, 232 U.S. 117, 121, 34 S. Ct. 276, 58 L. Ed. 530 \(1914\)](#)). Mid Atlantic’s claim for reimbursement, we determined, was the modern-day equivalent of an action in equity to enforce such a contract-based lien—called an “equitable lien by agreement.” [547 U.S., at 364-365, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (internal quotation marks omitted). Accordingly, Mid Atlantic could bring an action under [§502\(a\)\(3\)](#) seeking the funds that its beneficiaries had promised to turn over. And here, as all parties agree, US Airways can do the same [\[****14\]](#) thing.

The question in this case concerns the role that equitable defenses alleging unjust enrichment can play in such a suit. As earlier noted, the Third Circuit held that “the principle of unjust enrichment” overrides US Airways’ reimbursement clause if and when they come into conflict. [663 F. 3d, at 677](#). McCutchen offers a more refined version of that view, alleging that two specific equitable doctrines meant to “prevent unjust enrichment” defeat the reimbursement provision. [\[*96\]](#) Brief for Respondents i. First, he contends that in equity, an insurer in US Airways’ position could recoup no more than an insured’s “double recovery”—the amount the insured has received from a third party to compensate for the same loss the insurance covered. That rule would limit US Airways’ reimbursement to the share of McCutchen’s settlements paying for medical expenses; McCutchen would keep the rest (e.g., damages for loss of future earnings or pain and suffering), even though the plan gives US Airways first claim on the whole third-party recovery. Second, McCutchen claims that in equity the common-fund doctrine would have operated to reduce any award to US Airways. [HN5](#) [LEdHN5](#) [5] Under that rule, “a litigant or a lawyer [\[****15\]](#) who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” [Boeing Co. \[***664\] v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 \(1980\)](#). McCutchen urges that this doctrine, which is designed to prevent freeloading, enables him to pass on a share of his lawyer’s fees to US Airways, no matter what the plan provides.⁴

³ Sans ellipses, [HN4](#) [LEdHN4](#) [4] [§502\(a\)\(3\)](#) provides that a plan administrator may bring a civil action “(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.” [29 U.S.C. §1132\(a\)\(3\)](#).

⁴ [HN6](#) [LEdHN6](#) [6] Both our prior cases and secondary sources confirm McCutchen’s characterization of the common-fund and double-recovery rules as deriving primarily from principles of unjust enrichment. See [Boeing, 444 U.S., at 478, 100 S. Ct. 745, 62 L. Ed. 2d 676](#) (“The [common-fund] doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched”); [Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392, 90 S. Ct. 616, 24 L. Ed. 2d 593 \(1970\)](#) (similar); 1 D. Dobbs, *Law of Remedies* §3.10(2), p. 395 (2d ed. 1993) (hereinafter Dobbs) (similar); 4 G. Palmer, *Law of Restitution* §23.16(b), p. 444 (1978) (“[T]he injured person is unjustly enriched” only when he has received “in excess of full compensation” from two sources “for the same loss”); 16 G. Couch, *Cyclopedia of Insurance Law* §61:18 (2d ed. 1983) (similar); 8B J. Appleman [\[****16\]](#) & J. Appleman, *Insurance Law and Practice* §4941, p. 11 (Cum. Supp. 2012) (hereinafter Appleman) (similar).

We rejected a similar claim in *Sereboff*, though without altogether foreclosing **[**1546]** McCutchen's position. The Sereboffs argued, among other things, that the lower courts erred in enforcing Mid Atlantic's reimbursement clause "without imposing **[*97]** various limitations" that would "apply to truly equitable relief grounded in principles of subrogation." ⁵ [547 U.S., at 368, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#) (internal quotation marks omitted). In particular, the Sereboffs contended that a variant of the double-recovery rule, called the make-whole doctrine, trumped the plan's terms. We rebuffed that argument, explaining that the Sereboffs were improperly mixing and matching rules from different equitable boxes. The Sereboffs asserted a "parcel of equitable defenses" available when an out-of-pocket insurer brought a "freestanding action for equitable subrogation," not founded on a contract, to succeed to an insured's judgment against a third party. *Ibid.* But Mid Atlantic's reimbursement claim was "considered equitable," we replied, because it sought to enforce a "lien based on agreement"—*not* a lien imposed independent of contract **[****17]** by virtue of equitable subrogation. ⁶ *Ibid.* (internal quotation marks omitted). In light of that fact, we viewed the Sereboffs' equitable defenses—which again, closely resemble McCutchen's—as "beside the point." *Ibid.* And yet, we left a narrow opening for future litigants in the Sereboffs' position to make a like claim. In a footnote, we observed that the Sereboffs had forfeited a "distinct assertion" that the contract-based relief Mid Atlantic requested, although **[*98]** "equitable," was not "appropriate" under [§502\(a\)\(3\)](#) because "it contravened principles like the make-whole doctrine." **[***665]** [Id., at 368-369, n. 2, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#). Enter McCutchen, to make that basic argument.

In the end, however, *Sereboff's* logic dooms McCutchen's effort. US Airways, like Mid Atlantic, is seeking to enforce [HN8](#) [LEdHN8](#) [8] the modern-day equivalent of an "equitable lien by agreement." And that kind of lien—as its name announces—both arises from and serves to carry out a contract's provisions. See [id., at 363-364, 126 S. Ct. 1869, 164 L. Ed. 2d 612](#); 4 S. Symons, Pomeroy's Equity Jurisprudence §1234, p. 695 (5th ed. 1941). So enforcing the lien means holding the parties to their mutual promises. See, e.g., [Barnes, 232 U.S., at 121, 34 S. Ct. 276, 58 L. Ed. 530](#); [Walker v. Brown, 165 U.S. 654, 664, 17 S. Ct. 453, 41 L. Ed. 865 \(1897\)](#). Conversely, it means declining to apply rules—even if they would be "equitable" in a contract's absence—at odds with the parties' expressed commitments. McCutchen therefore cannot rely on theories of unjust enrichment to defeat US Airways' appeal to the plan's clear terms. Those principles, **[****19]** as we said in *Sereboff*, are "beside the point" when parties demand what they bargained for in a valid agreement. See *Restatement (Third) of Restitution and Unjust Enrichment* §2(2), p. 15 (2010) ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into **[**1547]** unjust enrichment"). In those circumstances, hewing to the parties' exchange yields "appropriate" as well as "equitable" relief.

We have found nothing to the contrary in the historic practice of equity courts. McCutchen offers us a slew of cases in which those courts applied the double-recovery or common-fund rule to limit insurers' efforts to recoup funds from their beneficiaries' tort judgments. See Brief for Respondents 21-25. But his citations are not on point. In some of McCutchen's cases, courts apparently applied equitable doctrines in the absence of any relevant contract provision. See, e.g., [Washtenaw Mut. Fire Ins. Co. v. Budd, 208 Mich. 483, 486-487, \[*99\] 175 N. W. 231, 232 \(1919\)](#); [Fire Assn. of Philadelphia v. Wells, 84 N. J. Eq. 484, 487, 94 A. 619, 621 \(1915\)](#). In others, courts found those rules to comport with the applicable contract term. For example, **[****20]** in [Svea Assurance Co. v. Packham, 92 Md. 464, 48 A. 359 \(1901\)](#)—the case McCutchen calls his best, see Tr. of Oral Arg. 47-48—the court viewed the double-recovery rule as according with "the intention" of the contracting parties; "[b]road as [the] language is," the court explained, the agreement "cannot be construed to" give the insurer any greater recovery. [92 Md., at 478, 48 A., at 362](#); see also [Knaffl v. Knoxville Banking & Trust Co., 133 Tenn. 655, 661, 182 S. W. 232, 233 \(1916\)](#); [Camden Fire](#)

⁵ [HN7](#) [LEdHN7](#) [7] "Subrogation simply means substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights against" a third party. 1 Dobbs §4.3(4), at 604; see 8B Appleman §4941, at 11 ("Subrogation' involves the substitution of the insurer . . . to the rights of the insured").

⁶The *Sereboff* Court's analysis concerned only subrogation actions based on equitable principles independent of any agreement. A subrogation action may also be founded on a contract incorporating those principles. **[****18]** See 1 Dobbs §4.3(4), at 604. US Airways suggested at oral argument that McCutchen's case would "ge[t] a lot stronger" if the plan here spoke only of subrogation, without separately granting a right of reimbursement. Tr. of Oral Arg. 18. We need not consider that question because US Airways seeks to enforce a reimbursement provision, of the same kind we considered in *Sereboff*.

[Ins. Assn. v. Prezioso](#), 93 N. J. Eq. 318, 319-320, 116 A. 694, 694 (Ch. 1922). But in none of these cases—nor in any other we can find—did an equity court apply the double-recovery or common-fund rule to override a plain contract term. That is, in none did an equity court do what McCutchen asks of us.

Nevertheless, the United States, appearing as *amicus curiae*, claims that the common-fund rule has a special capacity to trump a conflicting contract. The Government begins its brief foursquare with our (and *Sereboff's*) analysis: In a suit like this one, to enforce an equitable lien by agreement, “the agreement, not general restitutionary principles of unjust enrichment, [***666] provides the measure [****21] of relief due.” Brief for United States 6. Because that is so, the Government (naturally enough) concludes, McCutchen cannot invoke the double-recovery rule to defeat the plan. But then the Government takes an unexpected turn. “When it comes to the costs incurred” by a beneficiary to obtain money from a third party, “the terms of the plan do not control.” *Id.*, at 21. An equity court, the Government contends, has “inherent authority” to apportion litigation costs in accord with the “longstanding equitable common-fund doctrine,” even if that conflicts with the parties’ contract. *Id.*, at 22.

But if the agreement governs, the agreement governs: The reasons we have given (and the Government mostly accepts) [*100] for looking to the contract’s terms do not permit an attorney’s-fees exception. We have no doubt that [HN9](#) [↑] [LEdHN9](#) [↑] [9] the common-fund doctrine has deep roots in equity. See [Sprague v. Ticonic Nat. Bank](#), 307 U.S. 161, 164, 59 S. Ct. 777, 83 L. Ed. 1184 (1939) (tracing equity courts’ authority over fees to the First Judiciary Act). Those roots, however, are set in the soil of unjust enrichment: To allow “others to obtain full benefit from the plaintiff’s efforts without contributing . . . to the litigation expenses,” we have often noted, [****22] “would be to enrich the others unjustly at the plaintiff’s expense.” [Mills v. Electric Auto-Lite Co.](#), 396 U.S. 375, 392, 90 S. Ct. 616, 24 L. Ed. 2d 593 (1970); see [Boeing](#), 444 U.S., at 478, 100 S. Ct. 745, 62 L. Ed. 2d 676; [Trustees v. Greenough](#), 105 U.S. 527, 532, 26 L. Ed. 1157 (1882); *supra*, at 96, and n. 4, 185 L. Ed. 2d, at 663-664. And as we have just explained, principles of unjust enrichment give way when a court enforces an equitable lien by agreement. See *supra*, [***1548] at 98, 185 L. Ed. 2d, at 665. The agreement itself becomes the measure of the parties’ equities; so if a contract abrogates the common-fund doctrine, the insurer is not unjustly enriched by claiming the benefit of its bargain. That is why the Government, like McCutchen, fails to produce a single case in which an equity court applied the common-fund rule (any more than the double-recovery rule) when a contract provided to the contrary. Even in equity, when a party sought to enforce a lien by agreement, all provisions of that agreement controlled. So too, then, in a suit like this one.

The result we reach, based on the historical analysis our prior cases prescribe, fits lock and key with ERISA’s focus on what a plan provides. [HN10](#) [↑] [LEdHN10](#) [↑] [10] The section under which this suit is brought “does not, after all, authorize ‘appropriate equitable relief’ at large,” [****23] [Mertens](#), 508 U.S., at 253, 113 S. Ct. 2063, 124 L. Ed. 2d 161 (quoting §1132(a)(3)); rather, it countenances only such relief as will enforce “the terms of the plan” or the statute, §1132(a)(3) (emphasis added). That limitation reflects ERISA’s principal function: to “protect contractually defined benefits.” [Massachusetts Mut. Life Ins. Co. v. Russell](#), 473 U.S. 134, 148, 105 S. Ct. 3085, 87 L. Ed. 2d 96 (1985). The statutory scheme, we have often noted, “is [*101] built around reliance on the face of written plan documents.” [Curtiss-Wright Corp. v. Schoonejongen](#), 514 U.S. 73, 83, 115 S. Ct. 1223, 131 L. Ed. 2d 94 (1995). “Every employee benefit plan shall be established and maintained pursuant to a written instrument,” §1102(a)(1), and an administrator must act “in accordance with the documents and instruments governing the plan” insofar as they accord with the statute, [***667] §1104(a)(1)(D). The plan, in short, is at the center of ERISA. And precluding McCutchen’s equitable defenses from overriding plain contract terms helps it to remain there.

III

Yet McCutchen’s arguments are not all for naught. If the equitable rules he describes cannot trump a reimbursement provision, they still might aid in properly construing it. And for US Airways’ plan, the common-fund doctrine (though not the double-recovery [****24] rule) serves that function. The plan is silent on the allocation of attorney’s fees, and in those circumstances, the common-fund doctrine provides the appropriate default. In other

words, if US Airways wished to depart from the well-established common-fund rule, it had to draft its contract to say so—and here it did not.⁷

[*102] Ordinary principles of contract interpretation point toward this conclusion. **[**1549]** [HN11](#)^[↑] [LEdHN11](#)^[↑] [11] Courts construe ERISA plans, as they do other contracts, by “looking to the terms of the plan” as well as to “other manifestations of the parties’ intent.” *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (1989). The words of a plan may speak clearly, but they may also leave gaps. And so a court must often “look outside the plan’s written language” to decide what an agreement means. *CIGNA Corp. v. Amara*, 563 U.S. 421, 436, 131 S. Ct. 1866, 1877, 179 L. Ed. 2d 843, 854 (2011); **[****26]** see *Curtiss-Wright*, 514 U.S., at 80-81, 115 S. Ct. 1223, 131 L. Ed. 2d 94. In undertaking that task, a court properly takes account of background legal rules—the doctrines that typically or traditionally have governed a given situation when no agreement states otherwise. See *Wal-Mart Stores, Inc. Assoc. Health & Welfare Plan v. Wells*, 213 F. 3d 398, 402 (CA7 2000) (Posner, J.) (“[C]ontracts . . . are enacted against a background of common-sense understandings and legal principles that the parties may not have bothered to incorporate expressly but that operate as default rules to govern in the absence of a clear expression of the parties’ [contrary] intent”); 11 R. Lord, *Williston on Contracts* §31:7 (4th ed. 2012); *Restatement (Second) of Contracts* §221 (1979). Indeed, ignoring those rules is likely to frustrate the parties’ intent and produce perverse consequences.

[*668]** The reimbursement provision at issue here precludes looking to the double-recovery rule in this manner. Both the contract term and the equitable principle address the same problem: how to apportion, as between an insurer and a beneficiary, a third party’s payment to recompense an injury. But the allocation formulas they prescribe differ markedly. **[*103]** According **[****27]** to the plan, US Airways has first claim on the entire recovery—as the plan description states, on “any monies recovered from [the] third party”; McCutchen receives only whatever is left over (if anything). See [supra](#), at 93, 185 L. Ed. 2d, at 661. By contrast, the double-recovery rule would give *McCutchen* first dibs on the portion of the recovery compensating for losses that the plan did not cover (e.g., future earnings or pain and suffering); US Airways’ claim would attach only to the share of the recovery for medical expenses. See [supra](#), at 96, 185 L. Ed. 2d, at 663-664. The express contract term, in short, contradicts the background equitable rule; and where that is so, for all the reasons we have given, the agreement must govern.

By contrast, the plan provision here leaves space for the common-fund rule to operate. [HN12](#)^[↑] [LEdHN12](#)^[↑] [12] That equitable doctrine, as earlier noted, addresses not how to allocate a third-party recovery, but instead how to pay for the costs of obtaining it. See [supra](#), at 96, 185 L. Ed. 2d, at 664. And the contract, for its part, says nothing specific about that issue. The District Court below thus erred when it found that the plan clearly repudiated the common-fund rule. See [supra](#), at 93, 185 L. Ed. 2d, at 662. To be sure, the plan’s allocation formula—first claim on the **[****28]** recovery goes to US Airways—*might* operate on every dollar received from a third party, even those covering the beneficiary’s litigation costs. But alternatively, that formula could apply to only the true recovery, after the costs of obtaining it are deducted. (Consider, for comparative purposes, how an income tax is levied on net, not gross, receipts.) See Dawson, *Lawyers and Involuntary Clients: Attorney Fees From Funds*, 87 Harv. L. Rev. 1597, 1606-1607 (1974) (“[T]he claim for legal services is a first charge on the fund and must be satisfied before any

⁷The dissent faults us for addressing this issue, but we think it adequately preserved and presented. The language the dissent highlights in McCutchen’s brief in opposition, indicating that the plan clearly abrogates the common-fund doctrine, comes from his description of *US Airways*’ claim in the District Court. See [post](#), at 106-107, 185 L. Ed. 2d, at 670 (opinion of Scalia, J.); Brief in Opposition 5. *McCutchen*’s argument in that court urged the very position we adopt—that the common-fund doctrine applies because the plan is silent. See App. to Pet. for Cert. 30a; Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment in No. 2:08-cv-1593 (WD Pa., Dec. 4, 2011), Doc. 33, pp. 12-13 (“If [US Airways] wanted to exclude a deduction for attorney fees, it easily could have so expressed”). To be sure, McCutchen shifted ground on appeal because the District Court ruled that Third **[****25]** Circuit precedent foreclosed his contract-based argument, see App. to Pet. for Cert. 31a; the Court of Appeals’ decision then put front-and-center his alternative contention that the common-fund rule trumps a contract. But both claims have the same basis (the nature and function of the common-fund doctrine), which the parties have disputed throughout this litigation. And similarly, the question we decide here is included in the question presented. The principal clause of that question asks whether a court may use “equitable principles to rewrite contractual language.” Pet. for Cert. i. We answer “not rewrite, but inform”—a reply well within the question’s scope.

distribution occurs”). The plan’s terms fail to select between these **[**1550]** two alternatives: whether the recovery to which US Airways has first claim is every cent the third party paid or, instead, the money the beneficiary took away.

[*104] Given that contractual gap, the common-fund doctrine provides the best indication of the parties’ intent. No one can doubt that the common-fund rule would govern here in the absence of a contrary agreement. [HN13](#)^[↑] [LEdHN13](#)^[↑] [13] This Court has “recognized consistently” that someone “who recovers a common fund for the benefit of persons other than himself” is due “a reasonable attorney’s fee from the fund as whole.” [Boeing Co., 444 U.S., at 478, 100 S. Ct. 745, 62 L. Ed. 2d 676](#). **[****29]** We have understood that rule as “reflect[ing] the traditional practice in courts of equity.” *Ibid.*; see [Sprague, 307 U.S., at 164-166, 59 S. Ct. 777, 83 L. Ed. 1184; supra, at 100, 185 L. Ed. 2d, at 666](#). And we have applied it in a wide range of circumstances as part of our inherent authority. See [Boeing Co., 444 U.S., at 474, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676](#); [Hall v. Cole, 412 U.S. 1, 6-7, 93 S. Ct. 1943, 36 L. Ed. 2d 702 and n. 7 \(1973\)](#); [Mills, 396 U.S., at 389-390, 392, 90 S. Ct. 616, 24 L. Ed. 2d 593](#); [Sprague, 307 U.S., at 166, 59 S. Ct. 777, 83 L. Ed. 1184](#); [Central **\[**669\]** Railroad & Banking Co. of Ga. v. Pettus, 113 U.S. 116, 126-127, 5 S. Ct. 387, 28 L. Ed. 915 \(1885\)](#); [Greenough, 105 U.S., at 528, 531-533, 26 L. Ed. 1157](#). State courts have done the same; the “overwhelming majority” routinely use the common-fund rule to allocate the costs of third-party recoveries between insurers and beneficiaries. 8A Appleman §4903.85, at 335 (1981); see [Annot., 2 A. L. R. 3d 1441](#), §§2-3 (1965 and Supp. 2012). A party would not typically expect or intend a plan saying nothing about attorney’s fees to abrogate so strong and uniform a background rule. And that means a court should be loath to read such a plan in that way.⁸

[*105] The rationale for the common-fund rule reinforces that conclusion. [HN15](#)^[↑] [LEdHN15](#)^[↑] [15] Third-party recoveries do not often come free: To get one, an insured must incur lawyer’s fees and expenses. Without cost sharing, the insurer free rides on its beneficiary’s efforts—taking the fruits while contributing nothing to the labor. Odder still, in some cases—indeed, in this case—the beneficiary is made worse off by pursuing a third party. Recall that McCutchen spent \$44,000 (representing a 40% contingency fee) to get \$110,000, leaving him with a real recovery of \$66,000. But US Airways claimed \$66,866 in medical expenses. That would put McCutchen \$866 in the hole; in effect, he would pay for the privilege of serving as US Airways’ collection agent. We think McCutchen would not have foreseen that result when he signed on to the plan. And we doubt if even US Airways should want it. When the next **[**1551]** McCutchen comes along, he is not likely to relieve US Airways of the costs of recovery. See [Blackburn v. Sundstrand Corp., 115 F. 3d 493, 496 \(CA7 1997\)](#) (Easterbrook, J.) (“[I]f . . . injured persons could not **[****32]** charge legal costs against recoveries, people like [McCutchen] would in the future have every reason” to make different judgments about bringing suit, “throwing on plans the burden and expense of collection”). The prospect of generating those strange results again militates against reading a general reimbursement provision—like the one here—for more than it is worth. Only if US Airways’ plan expressly addressed the costs of recovery would it alter the common-fund doctrine.

[*106] IV

⁸ For that reason, [HN14](#)^[↑] [LEdHN14](#)^[↑] [14] almost every state court that has confronted the issue has done what we do here: apply the common-fund doctrine in the face of a contract giving an insurer a general right to recoup **[****30]** funds from an insured’s third-party recovery, without specifically addressing attorney’s fees. See, e.g., [Ex parte State Farm Mut. Auto. Ins. Co., 105 So. 3d 1199, 1212, and n. 6 \(Ala. 2012\)](#); [York Ins. Group of Me. v. Van Hall, 1997 ME 230, ¶8, 704 A. 2d 366, 369](#); [Barreca v. Cobb, 19/95-1651, pp. 2-3, 5, and n. 5 \(La. 2/28/96\), 668 So. 2d 1129, 1131-1132, and n. 5](#); [Federal Kemper Ins. Co. v. Arnold, 183 W. Va. 31, 33-34, 393 S. E. 2d 669, 671-672 \(1990\)](#); [State Farm Mut. Auto. Ins. Co. v. Clinton, 267 Ore. 653, 661-662, 518 P. 2d 645, 649 \(1974\)](#); [Northern Buckeye Educ. Council Group Health Benefits Plan v. Lawson, 154 Ohio App. 3d 659, 669, 2003-Ohio-5196, 798 N. E. 2d 667, 675](#); [Lancer Corp. v. Murillo, 909 S. W. 2d 122, 126-127, and n. 2 \(Tex. App. 1995\)](#); [Breslin v. Liberty Mut. Ins. Co., 134 N. J. Super. 357, 362, 341 A. 2d 342, 344 \(App. Div. 1975\)](#); [Hospital Service Corp. of R. I. v. Pennsylvania Ins. Co., 101 R. I. 708, 710, 716, 227 A. 2d 105, 108, 111 \(1967\)](#); [National Union Fire Ins. Co. v. Grimes, 278 Minn. 45, 46-47, 51, 153 N. W. 2d 152, 153, 156 \(1967\)](#); [Foremost Life Ins. Co. v. Waters, 125 Mich. App. 799, 801, 805, 337 N. W. 2d 29, 30, 32 \(1983\)](#) (citing [Foremost Life Ins. Co. v. Waters, 88 Mich. App. 599, 602, 278 N. W. 2d 688, 689 \(1979\)](#)); **[****31]** [Lee v. State Farm Mut. Auto. Ins. Co., 57 Cal. App. 3d 458, 462, 469, 129 Cal. Rptr. 271, 273-274, 278 \(1976\)](#).

Our holding today has two parts, one favoring US Airways, the other McCutchen. First, [HN16](#)^[↑] [LEdHN/16](#)^[↑] [16] in an action brought under [§502\(a\)\(3\)](#) based on an equitable lien by agreement, the [***670] terms of the ERISA plan govern. Neither general principles of unjust enrichment nor specific doctrines reflecting those principles—such as the double-recovery or common-fund rules—can override the applicable contract. We therefore reject the Third Circuit’s decision. But second, the common-fund rule informs interpretation of US Airways’ reimbursement provision. Because that term does not advert to the costs of recovery, it is properly read to retain the common-fund doctrine. We therefore also disagree with the District Court’s decision. In light [****33] of these rulings, we vacate the judgment below and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Dissent by: SCALIA

Dissent

Justice **Scalia**, with whom The Chief Justice, Justice **Thomas**, and Justice **Alito** join, dissenting.

I agree with Parts I and II of the Court’s opinion, which conclude that equity cannot override the plain terms of the contract.

The Court goes on in Parts III and IV, however, to hold that the terms are *not* plain and to apply the “common-fund” doctrine to fill that “contractual gap,” [ante](#), at 104, 185 L. Ed. 2d, at 668. The problem with this is that we granted certiorari on a question that presumed the contract’s terms were unambiguous—namely, “where the plan’s terms give it an absolute right to full reimbursement.” Pet. for Cert. i. Respondents interpreted “full reimbursement” to mean what it plainly says—reimbursement of *all* the funds the plan had expended. In their brief in opposition to the petition they conceded that, under the contract, “a beneficiary is required to reimburse the Plan for any amounts it has paid out of any monies the beneficiary recovers from a third-party, *without any contribution [*107] to attorney’s fees and expenses.*” Brief in Opposition 5 (emphasis added). [****34] All the parties, as well as the Solicitor General, have treated that concession as valid. See Brief for Petitioner 18, and n. 6; Brief for Respondents 29; Brief for United States as *Amicus Curiae* 21. The Court thus has no business deploying against petitioner an argument that was neither preserved, see [Baldwin v. Reese](#), 541 U.S. 27, 34, 124 S. Ct. 1347, 158 L. Ed. 2d 64 (2004), nor fairly included within the question presented, see [Yee v. Escondido](#), 503 U.S. 519, 535, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992).

I would reverse the judgment of the Third Circuit.

References

[29 U.S.C.S. § 1132\(a\)\(3\)](#)

6 Labor and Employment Law § 154.04 (Matthew Bender)

L Ed Digest, Pensions and Retirement Funds § 13

L Ed Index, Pensions and Retirement

Supreme Court’s construction and application of [§ 502](#) of Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. § 1132](#)), providing for civil enforcement of ERISA. [151 L. Ed. 2d 1083](#).

Supreme Court’s views as to requisites for award of attorneys’ fees. [77 L. Ed. 2d 1540](#).



Caution

As of: January 31, 2025 4:46 PM Z

[Sereboff v. Mid Atl. Med. Servs.](#)

Supreme Court of the United States

March 28, 2006, Argued ; May 15, 2006, Decided

No. 05-260

Reporter

547 U.S. 356 *; 126 S. Ct. 1869 **; 164 L. Ed. 2d 612 ***; 2006 U.S. LEXIS 3954 ****; 74 U.S.L.W. 4240; 37 Employee Benefits Cas. (BNA) 1929

JOEL SEREBOFF, et ux., Petitioners v. MID ATLANTIC MEDICAL SERVICES, INC.

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

[Mid Atl. Med. Servs., LLC v. Sereboff, 407 F.3d 212, 2005 U.S. App. LEXIS 7699 \(4th Cir. Md., 2005\)](#)

Disposition: Affirmed in relevant part.

Core Terms

equitable, equitable lien, third party, restitution, district court, settlement, tracing, funds, medical expenses, subrogation, fiduciary, bonds, cases, equitable relief, injuries

Case Summary

Procedural Posture

Respondent fiduciary sued petitioner beneficiaries under the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1001 et seq.](#), seeking to collect the medical expenses it had paid on their behalf pursuant to a health insurance plan. The district court found in favor of the fiduciary. The United States Court of Appeals for the Fourth Circuit affirmed in relevant part. Certiorari was granted.

Overview

The beneficiaries were covered by a health insurance plan that contained an "Acts of Third Parties" provision, which required a beneficiary who received benefits under the plan for injuries caused by a third party to reimburse the fiduciary for those benefits from all recoveries from the third party. The beneficiaries were injured in an automobile accident, and the plan paid the medical expenses. The fiduciary asserted a lien on the anticipated proceeds from the beneficiaries' tort suit against third parties. When the beneficiaries settled their tort suit, the fiduciary sought reimbursement of medical expenses paid by the ERISA plan. The Court determined that ERISA § 502(a)(3), [29 U.S.C.S. § 1132\(a\)\(3\)](#), authorized recovery in these circumstances. The fiduciary's action to enforce the "Acts of Third Parties" provision qualified as an equitable remedy because it was indistinguishable from an action to enforce an equitable lien established by agreement. A "familiar rule of equity" allowed the fiduciary to "follow" a portion of the recovery into the beneficiaries' hands as soon as the settlement fund was identified, and impose on that portion a constructive trust or equitable lien.

Outcome

The Court affirmed the appellate court's judgment in relevant part.

LexisNexis® Headnotes

Pensions & Benefits Law > ERISA > Civil Litigation > General Overview

[HN1](#) ERISA, Civil Litigation

A fiduciary may bring a civil action under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan. [29 U.S.C.S. § 1132\(a\)\(3\)](#).

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN2](#) Remedies, Equitable Relief

Section 502(a)(3)(B) ([29 U.S.C.S. § 1132\(a\)\(3\)\(B\)](#)) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), authorizes only those categories of relief that were typically available in equity.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > Restitution

[HN3](#) Equitable Relief, Restitution

In the context of determining whether a claim is equitable under § 502(a)(3)(B) ([29 U.S.C.S. § 1132\(a\)\(3\)\(B\)](#)) of the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), not all relief falling under the rubric of restitution is available in equity. To decide whether the restitutionary relief sought is equitable or legal, the court examines cases and secondary legal materials to determine if the relief would have been equitable in the days of the divided bench. One feature of equitable restitution is that it sought to impose a constructive trust or equitable lien on particular funds or property in the defendant's possession.

Pensions & Benefits Law > ... > Remedies > Equitable Relief > General Overview

[HN4](#) Remedies, Equitable Relief

The Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001 et seq.](#), provides for equitable remedies to enforce plan terms, so the fact that the action involves a breach of contract can hardly be enough to prove relief is not equitable; that would make ERISA § 502(a)(3)(B)(ii), [29 U.S.C.S. § 1132\(a\)\(3\)\(B\)\(ii\)](#), an empty promise.

Civil Procedure > Preliminary Considerations > Equity > General Overview

[HN5](#) Preliminary Considerations, Equity

Whether a remedy is legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought.

Civil Procedure > ... > Equity > Maxims > General Overview

Contracts Law > Remedies > Equitable Relief > General Overview

[HN6](#) **Equity, Maxims**

In the context of equity, a contract to convey a specific object even before it is acquired will make the contractor a trustee as soon as he gets a title to the thing.

Civil Procedure > Preliminary Considerations > Equity > Relief

[HN7](#) **Equity, Relief**

An equitable lien sought as a matter of restitution and an equitable lien "by agreement" are different species of relief. No tracing requirement applies to equitable liens by agreement or assignment.

Civil Procedure > Preliminary Considerations > Equity > General Overview

[HN8](#) **Preliminary Considerations, Equity**

In contract cases, equity originally required identification at the time the contract was made of the fund to which a lien specified in the contract attached. But Barnes explicitly disapproved of this rule.

Civil Procedure > Preliminary Considerations > Equity > Relief

[HN9](#) **Equity, Relief**

The fund over which a lien is asserted need not be in existence when the contract containing the lien provision is executed. An agreement to charge, or to assign property not yet in existence, although creating no legal estate or interest in the things when they afterwards come into existence does constitute an equitable lien upon the property just as would a lien upon specific things existing and owned by the contracting party at the date of the contract.

Civil Procedure > Preliminary Considerations > Equity > Relief

[HN10](#) **Equity, Relief**

To dedicate property to a particular purpose, to provide that a specified creditor and that creditor alone shall be authorized to seek payment of his debt from the property or its value, is unmistakably to create an equitable lien.

Civil Procedure > Preliminary Considerations > Equity > Relief

Insurance Law > Claim, Contract & Practice Issues > Subrogation > General Overview

HN11  **Equity, Relief**

A subrogation lien is not an express lien based on agreement, but instead is an equitable lien impressed on moneys on the ground that they ought to go to the insurer.

Lawyers' Edition Display

Decision

Reimbursement, sought by health insurance plan administrator, of plan's medical expenses payments recovered by employee and spouse from third party held to be "equitable relief" available under § 502(a)(3)(B) of ERISA ([29 U.S.C.S. § 1132\(a\)\(3\)\(B\)](#)).

Summary

A husband and wife were beneficiaries of a health insurance plan that was sponsored by the wife's employer and was covered by the Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. §§ 1001 et seq.](#)). The plan, which provided for payment of certain medical expenses, required a beneficiary who was injured as a result of an act or omission of a third party to reimburse the plan for benefits paid for those injuries, if the beneficiary recovered for those injuries from the third party.

After the husband and wife filed a state-court tort suit against several third parties concerning an automobile accident in which the husband and wife were injured, the plan administrator asserted a lien on the anticipated proceeds from the suit, for the medical expenses that the plan paid on behalf of the husband and wife. The husband and wife settled the tort suit for \$750,000.

The administrator, in the United States District Court for the District of Maryland, filed a suit under § 502(a)(3) of ERISA ([29 U.S.C.S. § 1132\(a\)\(3\)](#))--which, in [§ 1132\(a\)\(3\)\(B\)](#), authorized a fiduciary of an ERISA plan to bring a civil action for "other appropriate equitable relief"--seeking to collect from the tort recovery the \$74,869.37 in medical expenses (which sum the husband and wife agreed to set aside until the case was ultimately decided) that the administrator had paid on behalf of the husband and wife. The District Court found in the administrator's favor ([303 F. Supp. 2d 691](#); judgment entered, motion granted, costs and fees proceeding at [316 F. Supp. 2d 265](#)), [*****613**] and the United States Court of Appeals for the Fourth Circuit affirmed in relevant part ([407 F. 3d 212](#)).

On certiorari, the United States Supreme Court affirmed in relevant part. In an opinion by Roberts, Ch. J., expressing the unanimous view of the court, it was held that under the teaching of [Barnes v. Alexander \(1914\) 232 U.S. 117, 34 S. Ct. 276, 58 L. Ed. 530](#), the administrator's suit properly sought "equitable relief" under [§ 1132\(a\)\(3\)\(B\)](#), as:

- (1) The administrator sought specifically identifiable funds--the \$74,869.37 set aside--that were in the possession and control of the husband and wife.
- (2) The Supreme Court's case law from the days of the divided bench confirmed that the administrator's claim was equitable, for much like in *Barnes*, (a) the plan's acts-of-third-parties provision specifically identified a particular fund and a particular share of that fund to which the plan allegedly was entitled, and (b) therefore, the administrator could rely on a familiar rule of equity that allowed the administrator to impose on an amount equal to the plan's payments a constructive trust or equitable lien.
- (3) *Barnes* confirmed that no requirement to trace an asset into its products or substitutes applied to equitable liens by agreement or assignment.

(4) Apart from those cases discredited by Barnes, the husband and wife offered little to undermine the plain indication in Barnes that the fund over which a lien was asserted was not required to be in existence when the contract containing the lien provision was executed.

(5) Barnes did not attach any particular significance to the identity of the parties seeking recovery.

Headnotes

PENSIONS AND RETIREMENT FUNDS §13 > -- medical expenses -- payment by ERISA plan -- suit by fiduciary for reimbursement > Headnote:

[LEdHN\[1A\]](#) [1A] [LEdHN\[1B\]](#) [1B] [LEdHN\[1C\]](#) [1C]

Under the teaching of [Barnes v. Alexander \(1914\) 232 U.S. 117, 34 S. Ct. 276, 58 L. Ed. 530](#), an action in a Federal District Court by the administrator of an employer's health insurance plan that was covered by the Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. §§ 1001 et seq.](#)), seeking--from the \$750,000 settlement agreed to by one of the employer's employees and the employee's husband in their state-court tort suit against some third parties concerning an automobile accident in which the husband and wife were injured--reimbursement of the \$74,869.37 in medical expenses (which sum the husband and wife agreed to set aside until the case at hand was ultimately decided) paid by the plan on behalf of the husband and wife, properly sought "equitable relief" under § 502(a)(3)(B) of ERISA ([29 U.S.C.S. § 1132\(a\)\(3\)\(B\)](#)), which authorized a fiduciary of an ERISA plan to bring a civil action for "other appropriate equitable relief," as:

(1) The plan required a beneficiary who was injured as a result of an act or omission of a third party to reimburse the plan for benefits paid for those injuries, if the beneficiary recovered for those injuries from the third party.

[*614]** (2) The administrator sought specifically identifiable funds--the \$74,869.37 set aside--that were in the possession and control of the husband and wife, rather than simply seeking to impose personal liability for a contractual obligation to pay money.

(3) The United States Supreme Court's case law from the days of the divided bench confirmed that the administrator's claim was equitable, for much like in Barnes, (a) the acts-of-third-parties provision in the plan in question specifically identified (i) a particular fund, distinct from the general assets of the husband and wife, and (ii) a particular share of that fund to which the plan allegedly was entitled; and (b) therefore, the administrator could rely on a familiar rule of equity that allowed the administrator to impose on that share a constructive trust or equitable lien.

(4) Barnes confirmed that no requirement to trace an asset into its products or substitutes applied to equitable liens that were by agreement or assignment, rather than being sought as a matter of restitution.

(5) Apart from those cases discredited by Barnes, the husband and wife offered little to undermine the plain indication in Barnes that the fund over which a lien was asserted was not required to be in existence when the contract containing the lien provision was executed.

(6) Barnes did not attach any particular significance to the identity of the parties seeking recovery.

PENSIONS AND RETIREMENT FUNDS §13 > -- medical expenses -- payment by ERISA plan -- suit by fiduciary for reimbursement > Headnote:

[LEdHN\[2\]](#) [2]

For purposes of determining whether an action in a Federal District Court by the administrator of an employer's health insurance plan that was covered by the Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. §§ 1001 et seq.](#)), seeking--from the \$750,000 settlement agreed to by one of the employer's employees and the employee's husband in their state-court tort suit against some third parties concerning an automobile accident in which the husband and wife were injured--reimbursement of the \$74,869.37 in medical expenses (which sum the husband and wife agreed to set aside until the case at hand was ultimately decided) paid by the plan on behalf of the husband and wife, properly sought "equitable relief" under § 502(a)(3)(B) of ERISA ([29 U.S.C.S. § 1132\(a\)\(3\)\(B\)](#)), the administrator was not required to characterize its claim as a freestanding action for equitable subrogation. Accordingly, the parcel of equitable defenses that the husband and wife asserted accompanied any such action were beside the point, as (1) the husband and wife contended that they would in an equitable subrogation action be able to assert certain equitable defenses, such as the defense that subrogation might be pursued only after a victim had been made whole for the victim's injuries; and (2) the administrator's claim was not considered equitable because it was a subrogation claim, but, rather, because it was indistinguishable from an action to enforce an equitable lien established by agreement.

Syllabus

[***615] Petitioner Sereboffs are beneficiaries under a health insurance plan administered by respondent Mid Atlantic and covered by the Employee Retirement Income Security Act of 1974 (ERISA). The plan provides for payment of covered medical expenses and has an "Acts of Third Parties" provision. This provision requires a beneficiary who is injured as a result of an act or omission of a third party to reimburse Mid Atlantic for benefits it pays on account of those injuries, if the beneficiary recovers for those injuries from the third party. The Sereboffs were involved in an automobile accident and suffered injuries. The plan [****2] paid the [***616] couple's medical expenses. The Sereboffs sought compensatory damages for the accident from third parties in state court. After the Sereboffs settled their tort suit, Mid Atlantic filed suit in District Court under [§ 502\(a\)\(3\) of ERISA](#), seeking to collect from the Sereboffs' tort recovery the medical expenses it had paid on the Sereboffs' behalf. The Sereboffs agreed to set aside from their tort recovery a sum equal to the amount Mid Atlantic claimed, and preserve this sum in an investment account pending the outcome of the suit. The court found in Mid Atlantic's favor and ordered the Sereboffs to turn over the amount set aside. The Fourth Circuit affirmed in relevant part, and observed that the Courts of Appeals are divided on the question whether [§ 502\(a\)\(3\)](#) authorizes recovery in these circumstances. This Court granted review to resolve this disagreement.

Held:

Mid Atlantic's action properly sought "equitable relief" under [§ 502\(a\)\(3\)](#).

(a) A fiduciary may bring a civil action under [§ 502\(a\)\(3\)\(B\)](#) "to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of the plan." The only question here is whether the relief requested was [****3] "equitable." In [Mertens v. Hewitt Associates](#), [508 U.S. 248](#), [113 S. Ct. 2063](#), [124 L. Ed. 2d 161](#), this Court construed [§ 502\(a\)\(3\)\(B\)](#) to authorize only "those categories of relief that were typically available in equity," and thus rejected a claim that this Court found sought "nothing other than compensatory damages." *Id.*, at 255-256, [113 S. Ct. 2063](#), [124 L. Ed. 2d 161](#). This Court elaborated on this construction of [§ 502\(a\)\(3\)](#) in [Great-West Life & Annuity Ins. Co. v. Knudson](#), [534 U.S. 204](#), [122 S. Ct. 708](#), [151 L. Ed. 2d 635](#), which involved a provision in an ERISA plan similar to the "Acts of Third Parties" provision in the Sereboffs' plan. Relying on such a provision, Great-West sought equitable restitution of benefits it had paid when Knudson recovered in tort from a third party. In considering whether [§ 502\(a\)\(3\)\(B\)](#) authorized such relief, this Court asked whether the restitutionary remedy Great-West sought would have been equitable in "the days of the divided bench," *id.*, at 212, [122 S. Ct. 708](#), [151 L. Ed. 2d 635](#). This Court found that it would not have been equitable, because the funds Great-West sought were not in Knudson's possession but had

been placed in a trust under California law. That impediment is not present here. Mid Atlantic sought identifiable [****4] funds within the Sereboffs' possession and control--that part of the tort settlement due Mid Atlantic under the ERISA plan and set aside in the investment account.

(b) This Court's case law from the days of the divided bench confirms that Mid Atlantic's claim is equitable. In [Barnes v. Alexander, 232 U.S. 117, 34 S. Ct. 276, 58 L. Ed. 530](#), attorney Barnes promised two other attorneys "one-third of the contingent fee" he expected in a case, [id., at 119, 34 S. Ct. 276, 58 L. Ed. 530](#). Based on "the familiar rul[e] of equity that a contract to convey a specific object even before it is acquired will make the contractor a trustee as soon as he gets a title to the thing," [id., at 121, 34 S. Ct. 276, 58 L. Ed. 530](#), the Court found that Barnes' undertaking "create[d] a lien" upon the portion of the recovery due him from the client, *ibid.*, which the other attorneys could "follow . . . into [Barnes'] hands" "as soon as [the [***617] fund] was identified," [id., at 123, 34 S. Ct. 276, 58 L. Ed. 530](#). The "Acts of Third Parties" provision in the Sereboffs' plan, like Barnes' promise, specifically identified a particular fund distinct from the Sereboffs' general assets, and a particular share of that fund to which Mid Atlantic was entitled. [****5] Thus, Mid Atlantic could rely on a "familiar rul[e] of equity" to collect for the medical bills it had paid by following a portion of the recovery "into the [Sereboffs'] hands" "as soon as [the settlement fund] was identified," and imposing on that portion a constructive trust or equitable lien. *Ibid.*

The Sereboffs object that Mid Atlantic's suit would not have satisfied the strict tracing rules that they say accompanied equitable restitution at common law. But *Barnes* confirms that no such tracing requirement applies to equitable liens imposed by agreement or assignment, like that in *Barnes* itself. And *Knudson* did not endorse application of all restitutionary conditions, like the tracing rules the Sereboffs identify, to every action for an equitable lien under [§ 502\(a\)\(3\)](#). *Knudson* simply held that equitable restitution was unavailable because the funds Great-West sought were not in Knudson's possession.

The Sereboffs also argue that equitable relief is inappropriate, even under *Barnes*, because at the time they agreed to the plan terms, no fund existed in which they could grant Mid Atlantic an equitable interest. But *Barnes* explicitly disapproved [****6] of a rule requiring identification at the time a contract is made of the fund to which a lien specified in the contract attached.

The Sereboffs also claim that the rule announced in *Barnes* applies only to equitable liens claimed under an attorney's contingency fee arrangement. But *Barnes* did not attach any particular significance to the identity of the parties seeking recovery, and other cases of this Court, not involving attorney's contingency fees, have applied the same "familiar rul[e] of equity" that *Barnes* did. See, e.g., [Walker v. Brown, 165 U.S. 654, 17 S. Ct. 453, 41 L. Ed. 865](#).

(c) The Sereboffs' contention that the lower courts erred in allowing enforcement of the "Acts of Third Parties" provision, without imposing limitations that would apply to an equitable subrogation action, is rejected. Mid Atlantic's claim is not considered equitable because it is a subrogation claim. Rather, it is considered equitable because it is indistinguishable from an action to enforce an equitable lien established by agreement, of the sort epitomized by *Barnes*.

[407 F.3d 212](#), affirmed in relevant part.

Counsel: Peter K. Stris argued the cause for petitioners.

Gregory S. Coleman argued the cause for respondent.

James A. Feldman argued the cause for the United States, as amicus curiae, by special leave of court.

Judges: Roberts, C. J., delivered the opinion [****7] for a unanimous Court.

Opinion by: ROBERTS

Opinion

[*359] [**1872] Chief Justice **Roberts** delivered the opinion of the Court.

[LEdHN\[1A\]](#)^[↑] [1A] In this case we consider again the circumstances in which a fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA) may sue a beneficiary for reimbursement of medical expenses paid by the ERISA plan, when the beneficiary has recovered for its injuries from a third party.

I

Marlene Sereboff's employer sponsors [***618] a health insurance plan administered by respondent Mid Atlantic Medical Services, Inc., and covered by ERISA, 88 Stat. 829, as amended, [29 U.S.C. § 1001 et seq. \(2000 ed. and Supp. III\)](#). Marlene Sereboff and her husband Joel are beneficiaries under the plan. The plan provides for payment of certain covered medical expenses and contains an "Acts of Third Parties" provision. This provision "applies when [a beneficiary is] sick or injured as a result of the act or omission of another person or party," and requires a beneficiary who "receives benefits" under the plan for such injuries to "reimburse [Mid Atlantic]" for those benefits from "[a]ll recoveries from a third party (whether by lawsuit, settlement, or otherwise)." App. to [****8] Pet. for Cert. 38a. The provision states that "[Mid Atlantic's] share of the recovery will not be reduced because [the beneficiary] has not received the full damages claimed, unless [Mid Atlantic] agrees in writing to a reduction." *Ibid*.

[*360] The Sereboffs were involved in an automobile accident in California and suffered injuries. Pursuant to the plan's coverage provisions, the plan paid the couple's medical expenses. The Sereboffs filed a tort action in state court against several third parties, seeking compensatory damages for injuries suffered as a result of the accident. Soon after the suit was commenced, Mid Atlantic sent the Sereboffs' attorney a letter asserting a lien on the anticipated proceeds from the suit, for the medical expenses Mid Atlantic paid on the Sereboffs' behalf. App. 87-90. On several occasions over the next two years, Mid Atlantic sent similar correspondence to the attorney and to the Sereboffs, repeating its claim to a lien on a portion of the Sereboffs' recovery, and detailing the medical [**1873] expenses as they accrued and were paid by the plan.

The Sereboffs' tort suit eventually settled for \$750,000. Neither the Sereboffs nor their attorney sent any [****9] money to Mid Atlantic in satisfaction of its claimed lien which, after Mid Atlantic completed its payments on the Sereboffs' behalf, totaled \$74,869.37.

Mid Atlantic filed suit in District Court under § 502(a)(3) of ERISA, [29 U.S.C. § 1132\(a\)\(3\)](#), seeking to collect from the Sereboffs the medical expenses it had paid on their behalf. Since the Sereboffs' attorney had already distributed the settlement proceeds to them, Mid Atlantic sought a temporary restraining order and preliminary injunction requiring the couple to retain and set aside at least \$74,869.37 from the proceeds. The District Court approved a stipulation by the parties, under which the Sereboffs agreed to "preserve \$74,869.37 of the settlement funds" in an investment account, "until the [District] Court rules on the merits of this case and all appeals, if any, are exhausted." App. 69.

On the merits, the District Court found in Mid Atlantic's favor and ordered the Sereboffs to pay Mid Atlantic the \$74,869.37, plus interest, with a deduction for Mid Atlantic's share of the attorney's fees and court costs the Sereboffs had incurred in state court. See [303 F. Supp. 2d 691](#), [316 F. Supp. 2d 265](#) [*361] (Md. 2004). [****10] The Sereboffs appealed and the Fourth Circuit affirmed in relevant part. [407 F.3d 212 \(2005\)](#). The Fourth Circuit observed that the Courts of Appeals are divided on the question whether [§ 502\(a\)\(3\)](#) authorizes [***619] recovery in these circumstances. See [id., at 219-220, n. 7](#).¹ We granted certiorari to resolve the disagreement. [546 U.S. 1030](#), [126 S. Ct. 735](#), [163 L. Ed. 2d 567 \(2005\)](#).

¹ Compare [Administrative Comm. of Wal-Mart Assoc. Health & Welfare Plan v. Willard](#), [393 F.3d 1119 \(CA10 2004\)](#), [Bombardier Aerospace Employee Welfare Benefits Plan v. Ferrer, Poirot & Wansbrough](#), [354 F.3d 348 \(CA5 2003\)](#), and

II

A

[HN1](#) [LEdHN1B](#) [1B] A fiduciary may bring a civil action under [§ 502\(a\)\(3\)](#) of ERISA "(A) to enjoin any act or practice which violates [****11] any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." [29 U.S.C. § 1132\(a\)\(3\)](#). There is no dispute that Mid Atlantic is a fiduciary under ERISA and that its suit in District Court was to "enforce . . . the terms of" the "Acts of Third Parties" provision in the Sereboffs' plan. The only question is whether the relief Mid Atlantic requested from the District Court was "equitable" under [§ 502\(a\)\(3\)\(B\)](#).

This is not the first time we have had occasion to clarify the scope of the remedial power conferred on district courts by [§ 502\(a\)\(3\)\(B\)](#). In [Mertens v. Hewitt Associates, 508 U.S. 248, 113 S. Ct. 2063, 124 L. Ed. 2d 161 \(1993\)](#), we construed [HN2](#) the provision to authorize only "those categories of relief that were typically available in equity," and thus rejected a claim that we found sought "nothing other than compensatory damages." [Id., at 256, 255, 113 S. Ct. 2063, 124 L. Ed. 2d 161](#). We elaborated on this construction of [§ 502\(a\)\(3\)\(B\)](#) in [*362] [Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635 \[**1874\] \(2002\)](#), [****12] which involved facts similar to those in this case. Much like the "Acts of Third Parties" provision in the Sereboffs' plan, the plan in *Knudson* reserved "'a first lien upon any recovery, whether by settlement, judgment or otherwise,' that the beneficiary receives from [a] third party." [Id., at 207, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). After *Knudson* was involved in a car accident, Great-West paid medical bills on her behalf and, when she recovered in tort from a third party for her injuries, Great-West sought to collect from her for the medical bills it had paid. [Id., at 207-209, 122 S. Ct. 708, 151 L. Ed. 2d 635](#).

In response to the argument that Great-West's claim in *Knudson* was for "restitution" and thus [HN3](#) equitable under [§ 502\(a\)\(3\)\(B\)](#) and *Mertens*, we noted that "not all relief falling under the rubric of restitution [was] available in equity." [534 U.S. at 212, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). To decide whether the restitutionary relief sought by Great-West was equitable or legal, we examined cases and secondary legal materials to determine if the relief would have been equitable "[i]n the days of the divided bench." *Ibid.* We explained that one feature of equitable restitution was that it sought to impose a constructive [****13] trust or equitable lien on "particular funds or property in the defendant's possession." [Id., at 213, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). That requirement was not met in *Knudson*, because "the funds to [**620] which petitioners claim[ed] an entitlement" were not in *Knudson*'s possession, but had instead been placed in a "Special Needs Trust" under California law. [Id., at 214, 207, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). The kind of relief Great-West sought, therefore, was "not equitable--the imposition of a constructive trust or equitable lien on particular property--but legal--the imposition of personal liability for the benefits that [Great-West] conferred upon [Knudson]." [Id., at 214, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). We accordingly determined that the suit could not proceed under [§ 502\(a\)\(3\)](#). *Ibid.*

That impediment to characterizing the relief in *Knudson* as equitable is not present here. As the Fourth Circuit explained below, in this case Mid Atlantic sought "specifically [*363] identifiable" funds that were "within the possession and control of the Sereboffs"--that portion of the tort settlement due Mid Atlantic under the terms of the ERISA plan, set aside and "preserved [in the Sereboffs'] investment accounts." [407 F.3d, at 218](#). [****14] Unlike Great-West, Mid Atlantic did not simply seek "to impose personal liability . . . for a contractual obligation to pay money." [Knudson, 534 U.S., at 210, 122 S. Ct. 708, 151 L. Ed. 2d 635](#). It alleged breach of contract and sought money, to be sure, but it sought its recovery through a constructive trust or equitable lien on a specifically identified fund, not from the Sereboffs' assets generally, as would be the case with a contract action at law. [HN4](#) ERISA provides for equitable remedies to enforce plan terms, so the fact that the action involves a breach of contract can hardly be enough to prove relief is not equitable; that would make [§ 502\(a\)\(3\)\(B\)\(ii\)](#) an empty promise. This Court in *Knudson* did not reject Great-West's suit out of hand because it alleged a breach of contract and sought money, but because Great-West did not seek to recover a particular fund from the defendant. Mid Atlantic does.

B

While Mid Atlantic's case for characterizing its relief as equitable thus does not falter because of the nature of the recovery it seeks, Mid Atlantic must still establish that the basis for its claim is equitable. See [id., at 213, 122 S. Ct. 708, 151 L. Ed. 2d 635 HNS5](#) (whether remedy "is legal or equitable depends [****15] on 'the basis for [the plaintiff's] claim' and the nature of the underlying remedies sought"). Our case law from the days of [**1875] the divided bench confirms that Mid Atlantic's claim is equitable. In [Barnes v. Alexander, 232 U.S. 117, 34 S. Ct. 276, 58 L. Ed. 530 \(1914\)](#), for instance, attorneys Street and Alexander performed work for Barnes, another attorney, who promised them "one-third of the contingent fee" he expected in the case. [Id., at 119, 34 S. Ct. 276, 58 L. Ed. 530](#). In upholding their equitable claim to this portion of the fee, Justice Holmes recited "the familiar rul[e] of equity that [HN6](#) a contract to convey a specific object even before it is acquired will make the contractor [*364] a trustee as soon as he gets a title to the thing." [Id., at 121, 34 S. Ct. 276, 58 L. Ed. 530](#). On the basis of this rule, he concluded that Barnes' undertaking "create[d] a lien" upon the portion of the monetary recovery due Barnes from the client, *ibid.*, which Street and Alexander could "follow . . . into the hands of . . . Barnes," "as soon as [the fund] was identified," [***621] [id., at 123, 34 S. Ct. 276, 58 L. Ed. 530](#).

Much like Barnes' promise to Street and Alexander, the "Acts of Third Parties" provision in the Sereboffs' plan specifically identified [****16] a particular fund, distinct from the Sereboffs' general assets--"[a]ll recoveries from a third party (whether by lawsuit, settlement, or otherwise)"--and a particular share of that fund to which Mid Atlantic was entitled--"that portion of the total recovery which is due [Mid Atlantic] for benefits paid." App. to Pet. for Cert. 38a. Like Street and Alexander in *Barnes*, therefore, Mid Atlantic could rely on a "familiar rul[e] of equity" to collect for the medical bills it had paid on the Sereboffs' behalf. [Barnes, supra, at 121, 34 S. Ct. 276, 58 L. Ed. 530](#). This rule allowed them to "follow" a portion of the recovery "into the [Sereboffs'] hands" "as soon as [the settlement fund] was identified," and impose on that portion a constructive trust or equitable lien. [232 U.S. at 123, 34 S. Ct. 276, 58 L. Ed. 530](#).

The Sereboffs object that Mid Atlantic's suit would not have satisfied the conditions for "equitable restitution" at common law, particularly the "strict tracing rules" that allegedly accompanied this form of relief. Reply Brief for Petitioners 8. When an equitable lien was imposed as restitutionary relief, it was often the case that an asset belonging to the plaintiff had been improperly acquired [****17] by the defendant and exchanged by him for other property. A central requirement of equitable relief in these circumstances, the Sereboffs argue, was the plaintiff's ability to "trac[e] the asset into its products or substitutes," or "trace his money or property to some particular funds or assets." 1 D. Dobbs, *Law of Remedies* § 4.3(2), pp 591, n 10, 592 (2d ed. 1993).

But as the Sereboffs themselves recognize, [HNT](#) an equitable lien sought as a matter of restitution, and an equitable lien [*365] "by agreement," of the sort at issue in *Barnes*, were different species of relief. See Brief for Petitioners 24-25; Reply Brief for Petitioners 11; see also 1 Dobbs, *supra*, § 4.3(3), at 601; 1 G. Palmer, *Law of Restitution* § 1.5, p 20 (1978). [Barnes](#) confirms that no tracing requirement of the sort asserted by the Sereboffs applies to equitable liens by agreement or assignment: The plaintiffs in *Barnes* could not identify an asset they originally possessed, which was improperly acquired and converted into property the defendant held, yet that did not preclude them from securing an equitable lien. To the extent Mid Atlantic's action is proper under *Barnes*, therefore, its asserted [****18] inability to satisfy the "strict tracing rules" for "equitable restitution" is of no consequence. Reply Brief for Petitioners 8.

The Sereboffs concede as much, stating that they "do not contend--and have never suggested--that any tracing was historically required when an equitable lien was [**1876] imposed *by agreement*." *Id.*, at 11. Their argument is that such tracing was required when an equitable lien was "predicated on a theory of *equitable restitution*." *Ibid.* The Sereboffs appear to assume that *Knudson* endorsed application of all the restitutionary conditions--including restitutionary tracing rules--to every action for an equitable lien under [§ 502\(a\)\(3\)](#). This assumption is inaccurate. *Knudson* simply described in general terms the conditions under which a fiduciary might recover [***622] when it was seeking equitable restitution under a provision like that at issue in this case. There was no need in *Knudson* to catalog all the circumstances in which equitable liens were available in equity; Great-West claimed a right to

recover in restitution, and the Court concluded only that equitable restitution was unavailable because the funds sought were not in Knudson's [****19] possession. [534 U.S. at 214, 122 S. Ct. 708, 151 L. Ed. 2d 635.](#)

The Sereboffs argue that, even under *Barnes*, equitable relief would not have been available to fiduciaries relying on plan provisions like the one at issue here, because when the [*366] beneficiary agrees to such a provision "no third-party recovery" exists which the beneficiary can "place . . . beyond his control and grant [the fiduciary] a complete and present right therein." Brief for Petitioners 26, 25 (internal quotation marks omitted). It may be true that, [HN8](#) in contract cases, equity originally required identification at the time the contract was made of the fund to which a lien specified in the contract attached. See, e.g., [Trist v. Child, 88 U.S. 441, 21 Wall. 441, 447, 22 L. Ed. 623 \(1875\)](#) ("[A] mere agreement to pay out of such fund is not sufficient. Something more is necessary. There must be an appropriation of the fund *pro tanto*"). But *Barnes* explicitly disapproved of this rule, observing that *Trist* addressed the issue only in dicta (since the contract containing the lien provision in *Trist* was illegal), and treating the "question as at large," even in light of earlier opinions that had dealt with it head on. [Barnes, supra, at 120, 34 S. Ct. 276, 58 L. Ed. 530 \[****20\]](#) (citing [Trist, supra](#); [Christmas v. Russell, 81 U.S. 69, 14 Wall. 69, 20 L. Ed. 762 \(1872\)](#); [Wright v. Ellison, 68 U.S. 16, 1 Wall. 16, 17 L. Ed. 555 \(1864\)](#)).

Apart from those cases, which *Barnes* discredited, the Sereboffs offer little to undermine the plain indication in *Barnes* that [HN9](#) the fund over which a lien is asserted need not be in existence when the contract containing the lien provision is executed. See 4 S. Symons, Pomeroy's Equity Jurisprudence § 1236, pp 699-700 (5th ed. 1941) ("[A]n agreement to charge, or to assign . . . property not yet in existence," although "creat[ing] no legal estate or interest in the things when they afterwards come into existence . . . does constitute an equitable lien upon the property" just as would "a lien upon specific things existing and owned by the contracting party at the date of the contract"); [Peugh v. Porter, 112 U.S. 737, 742, 5 S. Ct. 361, 28 L. Ed. 859 \(1885\)](#) ("[I]n contemplation of equity, [it] is not material" that the "very fund now in dispute" was "not . . . in existence" when an equitable lien over that fund was created). Indeed, the most they can muster in this regard are several state cases predating *Barnes* and a single [****21] decision that rests, contrary to the Sereboffs' characterization, [*367] on the simple conclusion that a contractual provision purporting to secure an equitable lien did not properly do so. See Brief for Petitioners 26; Reply Brief for Petitioners 12; [Taylor v. Wharton, 43 App. D.C. 104, 1915 U.S. App. LEXIS 2577 \(1915\)](#).

The Sereboffs finally fall back on the argument that *Barnes* announced a special rule for attorneys claiming an equitable lien over funds promised under a contingency fee arrangement. Outside of this context, they say, the "typical rules regarding equitable liens by assignment" [**1877] persisted and would have prevented [***623] recovery here. Reply Brief for Petitioners 13.

But *Barnes* did not attach any particular significance to the identity of the parties seeking recovery. See [232 U.S., at 119, 34 S. Ct. 276, 58 L. Ed. 530](#). And as *Barnes* itself makes clear, other cases of this Court--not involving attorney's contingency fees--apply the same "familiar rul[e] of equity that a contract to convey a specific object even before it is acquired will make the contractor a trustee as soon as he gets a title to the thing." [Id., at 121, 34 S. Ct. 276, 58 L. Ed. 530](#) In [Walker v. Brown, 165 U.S. 654, 17 S. Ct. 453, 41 L. Ed. 865 \(1897\)](#), [****22] for instance, the Court approved an equitable lien over municipal bonds transferred to a company to facilitate its business. When a supplier of the company suspended shipments because of delinquent debts, the individual who had transferred the bonds assured the supplier that "any indebtedness that they may be owing you at any time, shall be paid before the return to me of these bonds . . . and that these bonds . . . are at the risk of the business of [the company], so far as any claim you may have against [it]." [Id., at 663, 17 S. Ct. 453, 41 L. Ed. 865](#). The Court found that this undertaking created an equitable lien on the bonds, which the supplier could enforce against the individual after the bonds had been returned to him when the company became insolvent. [Id., at 666, 17 S. Ct. 453, 41 L. Ed. 865](#). As in *Barnes*, the Court resolved the case by applying general equitable principles, stating that [HN10](#) "[t]o dedicate property to a particular purpose, to provide that a specified creditor and that creditor alone shall be authorized to seek payment of his debt from [*368] the property or its value, is unmistakably to create an equitable lien." [165 U.S. at 666, 17 S. Ct. 453, 41 L. Ed. 865](#).

[LEdHN\[2\]](#)^[↑] [2] Shifting gears, the Sereboffs contend [****23] that the lower courts erred in allowing enforcement of the "Acts of Third Parties" provision, without imposing various limitations that they say would apply to "truly equitable relief grounded in principles of subrogation." Reply Brief for Petitioners 5. According to the Sereboffs, they would in an equitable *subrogation* action be able to assert certain equitable defenses, such as the defense that subrogation may be pursued only after a victim had been made whole for his injuries. *Id.*, at 5-6. Such defenses should be available against Mid Atlantic's action, the Sereboffs claim, despite the plan provision that "[Mid Atlantic's] share of the recovery will not be reduced because [the beneficiary] has not received the full damages claimed, unless [Mid Atlantic] agrees in writing to a reduction." App. to Pet. for Cert. 38a.

But Mid Atlantic's claim is not considered equitable because it is a subrogation claim. As explained, Mid Atlantic's action to enforce the "Acts of Third Parties" provision qualifies as an equitable remedy because it is indistinguishable from an action to enforce an equitable lien established by agreement, of the sort epitomized by our decision in *Barnes*. [****24] See 4 Palmer, Law of Restitution § 23.18(d), at 470 [HN11](#)^[↑] (A subrogation lien "is not an express lien based on agreement, but instead is an equitable lien impressed on moneys on the ground that they ought to go to the insurer"). Mid Atlantic need not characterize its claim as a freestanding action for equitable subrogation. [***624] Accordingly, the parcel of equitable defenses the Sereboffs claim accompany any such action are beside the point.²

[****25]

[*369] [**1878] * * *

[LEdHN\[1C\]](#)^[↑] [1C] Under the teaching of [Barnes](#) and similar cases, Mid Atlantic's action in the District Court properly sought "equitable relief" under [§ 502\(a\)\(3\)](#); the judgment of the Fourth Circuit is affirmed in relevant part.

It is so ordered.

References

60A Am Jur 2d, Pensions and Retirement Funds § 856

[29 U.S.C.S. § 1132\(a\)\(3\)\(B\)](#)

Employee Benefits Guide § 8.04 (Matthew Bender)

L Ed Digest, Pensions and Retirement Funds § 13

L Ed Index, Pensions and Retirement

Annotation References

Supreme Court's construction and application of [§ 502](#) of Employee Retirement Income Security Act of 1974 (ERISA), as amended ([29 U.S.C.S. § 1132](#)), providing for civil enforcement of ERISA. [151 L. Ed. 2d 1083](#).

² The Sereboffs argue that, even if the relief Mid Atlantic sought was "equitable" under [§ 502\(a\)\(3\)](#), it was not "appropriate" under that provision in that it contravened principles like the make-whole doctrine. Neither the District Court nor the Court of Appeals considered the argument that Mid Atlantic's claim was not "appropriate" apart from the contention that it was not "equitable," and from our examination of the record it does not appear that the Sereboffs raised this distinct assertion below. We decline to consider it for the first time here. See [National Collegiate Athletic Assn v. Smith, 525 U.S. 459, 470, 119 S. Ct. 924, 142 L. Ed. 2d 929 \(1999\)](#).

547 U.S. 356, *369; 126 S. Ct. 1869, **1878; 164 L. Ed. 2d 612, ***624; 2006 U.S. LEXIS 3954, ****25

When do individuals or entities act as covered fiduciaries, for [****26] purposes of Employee Retirement Income Security Act of 1974, as amended (ERISA) ([29 U.S.C.S. §§ 1001 et seq.](#))--Supreme Court cases. 142 L. Ed. 2d 1043.

When is insurer fiduciary under § 3(21)(A)(i) or (iii) of ERISA ([29 U.S.C.A. § 1002\(21\)\(A\)\(i\)](#) or [\(iii\)](#) [[29 U.S.C.S. § 1002\(21\)\(A\)\(i\)](#) or [\(iii\)](#)]). 181 A.L.R. Fed. 269.

Right of provider of health or medical services, as assignee of claim under ERISA (Employment Retirement Income Security Act of 1974), to maintain action against plan payor. 133 A.L.R. Fed. 109.

Standing of employer to bring civil action under § 502 of ERISA ([29 U.S.C.S. § 1132](#)). 104 A.L.R. Fed. 611.

Right of pension plan, as entity, to bring civil enforcement action under [§ 502](#) of Employee Retirement Income Security Act of 1974 ([29 U.S.C.S. § 1132](#)). 67 A.L.R. Fed. 947.

End of Document

Technical Requirement



Caution

As of: January 31, 2025 6:07 PM Z

[Hughes v. Northwestern Univ.](#)

Supreme Court of the United States

December 6, 2021, Argued; January 24, 2022, Decided

No. 19-1401.

Reporter

595 U.S. 170 *; 142 S. Ct. 737 **; 211 L. Ed. 2d 558 ***; 2022 U.S. LEXIS 622 ****; 29 Fla. L. Weekly Fed. S 83; 2022 WL 199351

APRIL HUGHES, ET AL., PETITIONERS v. NORTHWESTERN UNIVERSITY, ET AL.

Notice: The pagination of this document is subject to change pending release of the final published version.

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Divane v. Northwestern Univ., 953 F.3d 980, 2020 U.S. App. LEXIS 9277, 2020 WL 1444966 \(7th Cir. Ill., Mar. 25, 2020\)](#)

Disposition: [953 F. 3d 980](#), vacated and remanded.

Core Terms

funds, fiduciary, options, recordkeeping, allegations, imprudent, Plans, retirement plan, offerings, monitor

Case Summary

Overview

HOLDINGS: [1]-ERISA plan participants' suit alleging that plan administrators and others violated their duty of prudence by failing to monitor and control recordkeeping fees, offering investments that carried high fees, and by offering too many investment options, causing confusion and poor investment decisions, was erroneously dismissed for failure to state a claim because the appellate court did not properly apply the U.S. Supreme Court's guidance in *Tibble*; [2]-Specifically, the appellate court's exclusive focus on the participants' ultimate investment choices failed to consider that plan fiduciaries were required to conduct an independent evaluation to determine which investments might be prudently excluded from a plan's options and that the timely failure to remove an imprudent investment from the plan could have breached the fiduciaries' duties.

Outcome

Decision vacated; case remanded. Unanimous decision. Justice Barrett did not participate.

LexisNexis® Headnotes

595 U.S. 170, *170; 142 S. Ct. 737, **737; 211 L. Ed. 2d 558, ***558; 2022 U.S. LEXIS 622, ****1

Business & Corporate Compliance > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence
Pensions & Benefits Law > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence

Pensions & Benefits Law > ERISA > Fiduciaries > Delegation of Duties

Pensions & Benefits Law > ... > Fiduciary Responsibilities > Plan Administration > Diversification Rule

[HN1](#) **Fiduciary Responsibilities, Duty of Prudence**

Under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.S. § 1001 et seq., ERISA plan fiduciaries must discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. 29 U.S.C.S. § 1104(a)(1)(B).

Business & Corporate Compliance > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence
Pensions & Benefits Law > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence

[HN2](#) **Fiduciary Responsibilities, Duty of Prudence**

In *Tibble*, the U.S. Supreme Court interpreted ERISA's duty of prudence in light of the common law of trusts and determined that a fiduciary normally has a continuing duty of some kind to monitor investments and remove imprudent ones. A plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones.

Business & Corporate Compliance > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence
Pensions & Benefits Law > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence

[HN3](#) **Fiduciary Responsibilities, Duty of Prudence**

In *Tibble*, the U.S. Supreme Court explained that, even in a defined-contribution plan where participants choose their investments, ERISA plan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plan's menu of options. If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time, they breach their duty.

Business & Corporate Compliance > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence
Pensions & Benefits Law > ... > Fiduciaries > Fiduciary Responsibilities > Duty of Prudence

[HN4](#) **Fiduciary Responsibilities, Duty of Prudence**

Because the content of the ERISA duty of prudence turns on the circumstances prevailing at the time the fiduciary acts, 29 U.S.C.S. § 1104(a)(1)(B), the appropriate inquiry will necessarily be context specific.

Syllabus

[*170] [**738] [***560] Respondents administer retirement plans on behalf of current and former Northwestern University employees, including petitioners here. The plans are defined-contribution plans governed by the [Employee Retirement Income Security Act of 1974 \(ERISA\)](#), under which each participant chooses an individual

investment mix from a menu of options selected by the plan administrators. Petitioners sued respondents claiming that respondents violated ERISA's duty of prudence required of all plan fiduciaries by: (1) failing to monitor and control recordkeeping fees, resulting in unreasonably high costs to plan participants; (2) offering mutual funds and annuities in the form of "retail" share classes that carried higher fees than those charged by otherwise identical share classes of the same investments; and (3) offering options that were likely to confuse investors. The District Court granted respondents' motion to dismiss, and the Seventh Circuit affirmed, concluding that petitioners' allegations fail as a matter of law.

Held: The Seventh Circuit erred in relying on the participants' ultimate choice over their investments to excuse allegedly imprudent [****2] decisions by respondents. Determining whether petitioners state plausible claims against plan fiduciaries for violations of ERISA's duty of prudence requires a context-specific inquiry of the fiduciaries' continuing duty to monitor investments and to remove imprudent ones as articulated in [Tibble v. Edison Int'l](#), 575 U.S. 523, 135 S. Ct. 1823, 191 L. Ed. 2d 795. *Tibble* concerned allegations that plan fiduciaries had offered "higher priced retail-class mutual funds as Plan investments when materially identical lower priced institutional-class mutual funds were available." *Id.*, at 525-526, 135 S. Ct. 1823, 191 L. Ed. 2d 795. The *Tibble* Court concluded that the plaintiffs had identified a potential violation with respect to certain funds because "a fiduciary is required to conduct a regular review of its investment." *Id.*, at 528, 135 S. Ct. 1823, 191 L. Ed. 2d 795. *Tibble's* discussion of the continuing duty to [***561] monitor plan investments applies here. Petitioners allege that respondents' failure to monitor investments prudently—by retaining recordkeepers that charged excessive fees, offering options likely to confuse investors, and neglecting to provide cheaper and otherwise-identical alternative investments—resulted in respondents failing to remove imprudent investments from the menu of [*171] investment offerings. In rejecting petitioners' allegations, the Seventh Circuit [****3] did not apply *Tibble's* guidance but instead erroneously focused on another component of the duty of prudence: a fiduciary's obligation to assemble a diverse menu of options. But respondents' provision of an adequate array of investment choices, including the lower cost investments plaintiffs wanted, does not excuse their allegedly imprudent decisions. Even in a defined-contribution plan where participants choose their investments, *Tibble* [**739] instructs that plan fiduciaries must conduct their own independent evaluation to determine which investments may be prudently included in the plan's menu of options. See *id.*, at 529-530, 135 S. Ct. 1823, 191 L. Ed. 2d 795. If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time, they breach their duty. The Seventh Circuit's exclusive focus on investor choice elided this aspect of the duty of prudence. The court maintained the same mistaken focus in rejecting petitioners' claims with respect to recordkeeping fees on the grounds that plan participants could have chosen investment options with lower expenses. The Court vacates the judgment below so that the Seventh Circuit may reevaluate the allegations as a whole, considering whether petitioners have plausibly alleged [****4] a violation of the duty of prudence as articulated in *Tibble* under applicable pleading standards. The content of the duty of prudence turns on "the circumstances . . . prevailing" at the time the fiduciary acts, [29 U. S. C. §1104\(a\)\(1\)\(B\)](#), so the appropriate inquiry will be context specific. [Fifth Third Bancorp v. Dudenhoeffer](#), 573 U. S. 409, 425, 134 S. Ct. 2459, 189 L. Ed. 2d 457.

[953 F. 3d 980](#), vacated and remanded.

Sotomayor, J., delivered the opinion for a unanimous Court. Barrett, J., took no part in the consideration or decision of this case.

Counsel: David C. Frederick, Washington, D. C. argued the cause for petitioners.

Michael R. Huston, Assistant to the Solicitor General, Department of Justice, Washington, D. C. argued the cause petitioners for United States, as amicus curiae.

Gregory G. Garre, Washington, D. C. argued the cause for respondents.

Judges: Roberts, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett.

Opinion by: SOTOMAYOR

Opinion

[*172] Justice Sotomayor delivered the opinion of the Court.

[HN1](#)^[↑] Under the [Employee Retirement Income Security Act of 1974 \(ERISA\)](#), [88 Stat. 829](#), as amended, [29 U. S. C. §1001 et seq.](#), ERISA plan fiduciaries must discharge their duties “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” [§1104\(a\)\(1\)\(B\)](#). This fiduciary duty of prudence governs the conduct of respondents, who administer several retirement plans on behalf of current and former employees of Northwestern University, including petitioners.

In this case, petitioners claim that respondents violated their duty of [***562](#) prudence [**740](#) by, among other things, offering [****5](#) needlessly expensive investment options and paying excessive recordkeeping fees. The Court of Appeals for the Seventh Circuit held that petitioners’ allegations fail as a matter of [*173](#) law, in part based on the court’s determination that petitioners’ preferred type of low-cost investments were available as plan options. In the court’s view, this eliminated any concerns that other plan options were imprudent.

That reasoning was flawed. Such a categorical rule is inconsistent with the context-specific inquiry that ERISA requires and fails to take into account respondents’ duty to monitor all plan investments and remove any imprudent ones. See [Tibble v. Edison Int’l](#), [575 U. S. 523, 530, 135 S. Ct. 1823, 191 L. Ed. 2d 795 \(2015\)](#). Accordingly, we vacate the judgment below and remand the case for reconsideration of petitioners’ allegations.

I

This case comes to the Court on review of respondents’ motion to dismiss the operative amended complaint. Accepting the allegations in that complaint as true, see [Rotkiske v. Klemm](#), [589 U. S. _____, n. 1, 140 S. Ct. 355, 358-59, 205 L. Ed. 2d 291 \(2019\)](#), the relevant facts are as follows.

Northwestern University offers two retirement plans to eligible employees: the Northwestern University Retirement Plan (Retirement Plan) and the Northwestern University Voluntary Savings Plan (Savings Plan). Both Plans are [****6](#) defined-contribution plans. In such plans, participating employees maintain individual investment accounts, which are funded by pretax contributions from the employees’ salaries and, where applicable, matching contributions from the employer. Each participant chooses how to invest her funds, subject to an important limitation: She may choose only from the menu of options selected by the plan administrators, *i.e.*, respondents. The performance of her chosen investments, as well as the deduction of any associated fees, determines the amount of money the participant will have saved for retirement.

Two types of fees are relevant in this case. First, the investment options typically offered in retirement plans, such as mutual funds and index funds, often charge a fee for investment management services. Such fees compensate a [*174](#) fund for designing and maintaining the fund’s investment portfolio. These fees are usually calculated as a percentage of the assets the plan participant chooses to invest in the fund, which is known as the expense ratio. Expense ratios tend to be higher for funds that are actively managed according to the funds’ investment strategies, and lower for funds that passively [****7](#) track the makeup of a standardized index, such as the S&P 500.

In addition to investment management fees, retirement plans also pay fees for recordkeeping services. Recordkeepers help plans track the balances of individual accounts, provide regular account statements, and offer informational and accessibility services to participants. Like investment management fees, recordkeeping fees may be calculated as a percentage of the assets for which the recordkeeper is responsible; alternatively, these fees may be charged at a flat rate per participant account.

Petitioners are three current or former [***563](#) employees of Northwestern University. Each participates in both the Retirement and Savings Plans. In 2016, they sued: Northwestern University; its Retirement Investment Committee, which exercises discretionary authority to control and manage the Plans; and the individual officials

who administer the Plans (collectively, respondents). **[**741]** Petitioners allege that respondents violated their statutory duty of prudence in a number of ways, three of which are at issue here. First, respondents allegedly failed to monitor and control the fees they paid for recordkeeping, resulting in unreasonably high costs **[****8]** to plan participants. Second, respondents allegedly offered a number of mutual funds and annuities in the form of “retail” share classes that carried higher fees than those charged by otherwise identical “institutional” share classes of the same investments, which are available to certain large investors. App. 83-84, 171. Finally, respondents allegedly offered too many investment options—over 400 in total for much of the relevant period—and thereby caused participant confusion and poor investment decisions.

[*175] In 2017, respondents moved to dismiss the amended complaint. The District Court granted the motion and denied leave to amend. [Divane v. Northwestern Univ., No. 16-C-8157, 2018 U.S. Dist. LEXIS 87645, 2018 WL 2388118, *14 \(ND Ill., May 25, 2018\)](#). The Seventh Circuit affirmed. [Divane v. Northwestern Univ., 953 F. 3d 980, 983 \(2020\)](#). This Court granted certiorari. *594 U. S. ____*, 141 S. Ct. 2882, 210 L. Ed. 2d 989 (2021). *

II

HN2[↑] In *Tibble*, this Court interpreted ERISA’s duty of prudence in light of the common law of trusts and determined that “a fiduciary normally has a continuing duty of some kind to monitor investments and remove imprudent ones.” *575 U. S., at 530, 135 S. Ct. 1823, 191 L. Ed. 2d 795*. Like petitioners, the plaintiffs in *Tibble* alleged that their plan fiduciaries had offered “higher priced retail-class mutual funds as Plan investments when materially identical lower priced institutional-class mutual funds were available.” *Id., at 525-526, 135 S. Ct. 1823, 191 L. Ed. 2d 795*. Three of the higher priced investments, **[****9]** however, had been added to the plan outside of the 6-year statute of limitations. *Id., at 526, 135 S. Ct. 1823, 191 L. Ed. 2d 795*. This Court addressed whether the plaintiffs nevertheless had identified a potential violation with respect to these funds. The Court concluded that they had because “a fiduciary is required to conduct a regular review of its investment.” *Id., at 528, 135 S. Ct. 1823, 191 L. Ed. 2d 795*. Thus, “[a] plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones.” *Id., at 530, 135 S. Ct. 1823, 191 L. Ed. 2d 795*. This Court then remanded the case for the court below to consider whether the plaintiffs had plausibly alleged such a violation. *Id., at 531, 135 S. Ct. 1823, 191 L. Ed. 2d 795*.

Tibble’s discussion of the duty to monitor plan investments applies **[***564]** here. Petitioners allege that respondents failed to monitor the Plans’ investments in a number of ways, including **[*176]** by retaining recordkeepers that charged excessive fees, offering options likely to confuse investors, and neglecting to provide cheaper and otherwise-identical alternative investments. As a result, respondents allegedly failed to remove imprudent investments from the Plans’ offerings. These allegations must be considered in light of the principles set forth in *Tibble* to determine whether petitioners have stated a plausible **[****10]** claim for relief.

In rejecting petitioners’ allegations, the Seventh Circuit did not apply *Tibble*’s guidance. Instead, the Seventh Circuit focused on another component of the duty of prudence: a fiduciary’s obligation to assemble **[**742]** a diverse menu of options. The court determined that respondents had provided an adequate array of choices, including “the types of funds plaintiffs wanted (low-cost index funds).” *953 F. 3d, at 991*. In the court’s view, these offerings “eliminat[ed] any claim that plan participants were forced to stomach an unappetizing menu.” *Ibid*.

The Seventh Circuit erred in relying on the participants’ ultimate choice over their investments to excuse allegedly imprudent decisions by respondents. **HN3**[↑] In *Tibble*, this Court explained that, even in a defined-contribution plan where participants choose their investments, plan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plan’s menu of options. See *575 U. S., at 529-530, 135 S. Ct. 1823, 191 L. Ed. 2d 795*. If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time, they breach their duty. See *ibid*.

* This Court granted certiorari only to review the ruling below on the motion to dismiss. See Pet. for Cert. i. Accordingly, this Court expresses no view on the propriety of the District Court’s denial of leave to amend.

The Seventh Circuit's exclusive focus on investor choice elided this aspect of the duty of prudence. [****11] For instance, the court rejected petitioners' allegations that respondents offered "investment options that were too numerous, too expensive, or underperforming" on the same ground: that petitioners "failed to allege . . . that Northwestern did not make their preferred offerings available to them," and simply "object[ed] [*177] that numerous additional funds were offered as well." [953 F. 3d, at 991](#). In the court's view, because petitioners' preferred type of investments were available, they could not complain about the flaws in other options. See *ibid*. The same was true for recordkeeping fees: The court noted that "plan participants had options to keep the expense ratios (and, therefore, recordkeeping expenses) low." [Id., at 991, n. 10](#). Thus, "[t]he amount of fees paid were within the participants' control." *Ibid*.

Given the Seventh Circuit's repeated reliance on this reasoning, we vacate the judgment below so that the court may reevaluate the allegations as a whole. On remand, the Seventh Circuit should consider whether petitioners have plausibly alleged a violation of the duty of prudence as articulated in [Tibble](#), applying the pleading standard discussed in [Ashcroft v. Iqbal, 556 U. S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 \(2009\)](#), and [Bell Atlantic Corp. v. Twombly, 550 U. S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 \(2007\)](#). "HN4[↑] Because the content of the duty of prudence turns on 'the circumstances [****12] . . . prevailing' at the time the fiduciary acts, [§1104\(a\)\(1\)\(B\)](#), the appropriate inquiry will necessarily be [***565] context specific." [Fifth Third Bancorp v. Dudenhoeffer, 573 U. S. 409, 425, 134 S. Ct. 2459, 189 L. Ed. 2d 457 \(2014\)](#). At times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise.

The judgment of the Seventh Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Barrett took no part in the consideration or decision of this case.

CERTIFIED FINANCIAL PLANNER® certification

is *the standard* for financial planning. CFP® professionals have met the Four **E**s - rigorous **E**ducation, **E**xam, and **E**xperience requirements and commit to CFP Board's **E**thical standards that require them to put their clients' interests first.

CFP Board consists of two affiliated organizations, both of which are focused on achieving strategic priorities that advance the financial planning profession for the public's benefit:

- Certified Financial Planner Board of Standards Center for Financial Planning, a 501(c)(3)
- Certified Financial Planner Board of Standards, a 501(c)(6)

CFP BOARD CENTER FOR FINANCIAL PLANNING

Advances competent and ethical financial planning and expands CFP® professional diversity for the benefit of the public

CFP BOARD OF STANDARDS

Credentials competent and ethical financial planners, upholds CFP® certification as the recognized standard, and advances the financial planning profession

There are over 103,000 CFP® professionals,
accounting for 1 in 3 retail financial professionals

OUR STRATEGIC PRIORITIES

STANDARDS & CERTIFICATION:

CFP Board sets, administers, and enforces certification standards that warrant public trust

ACCESS:

CFP Board expands access to competent and ethical financial planners by increasing the number and diversity of CFP® professionals

AWARENESS:

CFP Board increases awareness of CFP® certification as the must-have financial planner credential for consumers and advisors

COMMUNITY & REGULATORY ENGAGEMENT:

CFP Board engages the financial advice ecosystem and influences policy to benefit the public and advance the profession

WORKFORCE:

CFP Board develops a sustainable and diverse financial planner workforce



CFP® certification established **Over 50 Years Ago**



\$1.6M+ in scholarships awarded to cultivate the next generation of financial planners

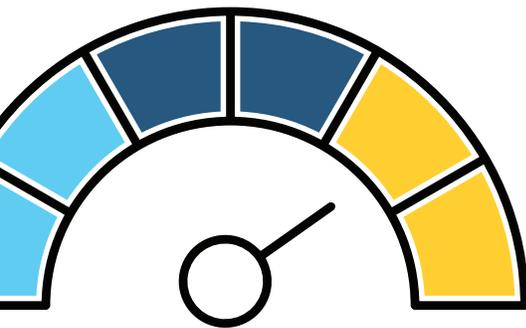


More than 10,000 firms, including broker-dealers, investment advisers, and insurance companies are employers of CFP® professionals

CFP® professionals are trained in **72 areas of financial expertise** through one of more than **300 CFP Board Registered Programs** at educational institutions across the country

CFP® professionals generally believe they have a **competitive edge over financial professionals who do not hold the credential**

CFP Board is accredited by the rigorous **National Commission for Certifying Agencies**



89% of CFP® professionals are satisfied with their decision to pursue CFP® certification

CFP® professionals have an 87% client satisfaction rate compared to 72% for financial professionals without the certification

330,192 pro bono hours by CFP® professionals in 2023



2 in 3 CFP® professionals give back to their communities

CFP Board's **Code of Ethics and Standards of Conduct** reflects the commitment that all CFP® professionals make to high standards of competency and ethics. CFP Board's *Code and Standards* benefits and protects the public, provides standards for delivering financial planning, and advances financial planning as a distinct and valuable profession. The cornerstone of the *Code and Standards* is a CFP® professional's commitment to CFP Board to act as a fiduciary and, therefore, act in their client's best interests at all times.

CFP® PROFESSIONALS' FIDUCIARY DUTY WHEN PROVIDING FINANCIAL ADVICE

The "Focus on Ethics" article series takes a close look at topics important to understanding CFP Board's new *Code of Ethics and Standards of Conduct*.

May 24, 2018

The fiduciary duty is the crown jewel that animates a CFP® professional's commitment to high standards. CFP Board first adopted a fiduciary duty in 2007, when it issued revised *Standards* providing that a CFP® professional owes to the client a fiduciary duty when providing financial planning or material elements of financial planning. Consistent with CFP Board's vision and mission, and in furtherance of a strategic plan that is committed to a fiduciary standard. CFP Board's new *Code of Ethics and Standards of*

WE VALUE YOUR PRIVACY



We use cookies, advertising pixels, and other tracking technologies, including those operated by third parties, that collect and transmit information about your use of the Sites. These technologies allow us to enhance your browsing experience, conduct marketing, including to serve personalized ads or content, and analyze our traffic. The third parties operating these technologies may use your information for their own purposes, as described in our Privacy Policy.

duciary

s broad,

S:

presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with

respect to:

The development or implementation of a financial plan;

The value of or the advisability of investing in, purchasing, holding, or selling Financial Assets;

Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters;

The selection and retention of other persons to provide financial or Professional Services to the Client; or

B. The exercise of discretionary authority over the Financial Assets of a Client.

The new *Code and Standards* defines Financial Planning as follows:

Financial Planning is a collaborative process that helps maximize a Client's potential for meeting life goals through Financial Advice that integrates relevant elements of a Client's personal and financial circumstances.

As set forth in the definition, Financial Planning is provided “through Financial Advice.” Financial Planning, therefore, requires Financial Advice, and must be delivered with the duty of a fiduciary.

READ MORE FOCUS ON ETHICS ARTICLES ABOUT THE NEW CODE AND STANDARDS.

SEE THE FULL FOCUS ON ETHICS SERIES

The new *Code and Standards* provides that a CFP® professional must act as a fiduciary, and therefore, in the best interest of the client, at all times when providing Financial Advice. The new Fiduciary Duty is more detailed, and requires a CFP® professional to fulfill a duty of loyalty, a duty of care, and a duty to follow client instructions. The new *Code and Standards* provides explanations of each of these duties drawn from the common law of fiduciaries.

The **duty of loyalty** requires a CFP® professional to:

(1) Place the interests of the Client above the interests of the CFP® professional and the CFP® Professional's Firm;

(2) Avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent, and properly manage the conflict; and

(3) Act without regard to the financial or other interests of the CFP® professional, the CFP® Professional's Firm, or any other individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client's interest above the CFP® professional's.

The **duty of care** requires a CFP® professional to act with the care, skill, prudence and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.

The **duty to follow client instructions** requires a CFP® professional to comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

CFP® professionals support the expanded fiduciary standard. More than 99% of CFP® professionals who responded to a survey agreed that a CFP® professional should be required to act in the Client's best interest when providing Financial Advice.

The two leading Financial Planning membership organizations also support the standard. FPA applauded CFP Board "for taking the bold and necessary step in expanding the fiduciary standard for CFP® professionals." NAPFA also commented that the proposal "supports CFP Board's efforts to [broaden] fiduciary requirements for CFP® professionals. Working under fiduciary principles is the most transparent - and we believe the most objective - way of serving the public. Consumers have come to expect advice delivered in their best interest and will now be able to count on a CFP® professional to provide it at all times when giving financial advice."

Investor and consumer organizations, including AARP, Americans for Financial Reform, Better Markets, Center for American Progress, Consumer Action, Consumer Federation of America, Institute for the Fiduciary Standard, National Consumers League, and the National Employment Law Project, offered the same view. According to Consumer Action: "By extending the fiduciary duty to all financial advice, clients will receive fiduciary-level advice whenever CFP® professionals offer any kind of financial advice, no matter the services being provided. This is a crucial distinction and one that provides a model for advice standards throughout the financial industry, regardless of the business model and pricing used by the CFP® professional."

The new *Code and Standards* provides that a CFP® professional must at all times act as a fiduciary when providing Financial Advice to a Client. As noted above, since Financial Planning requires Financial Advice, a CFP® professional also must at all times act as a fiduciary when providing Financial Planning to a Client.



The 2024 Department of Labor Retirement Security Rule is Very Different From the 2016 DOL Conflict of Interest Rule: A DOL Fiduciary Rule Comparison

The 2024 Department of Labor (DOL) Retirement Security Rule (2024 rule) is very different from the 2016 DOL Conflict of Interest Rule (2016 rule), despite claims by rule opponents—particularly those in or affiliated with the insurance industry—that the 2024 rule is a “Fiduciary Rule 2.0.” In addition, a close reading of the 2024 rule shows that the 2024 rule is wholly consistent with the Chamber decision,¹ the broad language of the Employee Retirement Income Security Act of 1974 (ERISA), and ERISA’s protective purposes, despite claims by rule opponents that the rule conflicts with the Fifth Circuit Court of Appeals’ Chamber decision vacating the 2016 rule.

In brief, the 2024 rule’s definition of fiduciary investment advice is much narrower than the 2016 rule’s definition. Rather than consider all investment recommendations provided to a retirement saver as fiduciary advice, subject to a few narrow carveouts, as the 2016 rule did, the 2024 rule focuses on the nature of the relationship between the advice provider and the advice recipient and the circumstances under which the advice was provided. Under the 2024 rule, only those investment recommendations that are made to a retirement saver under circumstances in which the saver reasonably should expect fiduciary advice are treated as fiduciary advice. On the other hand, mere sales pitches that are made under circumstances in which the saver should not reasonably expect fiduciary advice, and education are explicitly not treated as fiduciary advice.

[1] See *Chamber v. DOL*, 885 F.3d 360 (5th Cir. 2018).

In addition, the 2024 rule's Prohibited Transaction Exemptions (PTEs), which allow fiduciaries to receive compensation despite their conflicts of interest, do not include a number of conditions that the 2016 rule imposed; rather, the 2024 PTEs provide much more flexibility to firms to determine how best to comply with the rule.

The following comparison details the material differences between the 2016 and the 2024 DOL rules.

	2016 Rule	2024 Rule
<p>Definition of Fiduciary Investment Advice:</p>	<p>The 2016 rule's definition of fiduciary investment advice was much broader than the 2024 rule's definition. As a result, the 2016 rule applied to many more interactions between financial professionals and retirement savers than the 2024 rule does.</p> <p>Specifically, the expansive 2016 rule treated all investment recommendations directed to a specific retirement investor or investors regarding the advisability of a particular investment or management decision as fiduciary investment advice, subject to a few narrow carve-outs. This definition applied even to recommendations to retail investors that would be viewed as sales pitches.</p>	<p>In contrast, the 2024 rule's definition of fiduciary investment advice is much narrower than the 2016 rule's definition. As a result, the 2024 rule applies to fewer interactions between financial professionals and retirement savers than the 2016 rule did.</p> <p>In contrast, the far narrower 2024 rule specifically focuses on whether the investment recommendation can be appropriately treated as advice in a relationship of trust and confidence. Specifically, the far narrower 2024 rule applies if a financial professional makes a recommendation under circumstances that would indicate to a reasonable investor in like circumstances that the recommendation:</p> <ul style="list-style-type: none"> • is based on a review of the retirement investor's particular needs or individual circumstances; • reflects the application of professional or expert judgment to the retirement investor's particular needs or individual circumstances; and • may be relied upon by the retirement investor as intended to advance the retirement investor's best interest.

		<p>In other words, the definition of fiduciary investment advice is limited to those circumstances in which the investor reasonably should expect fiduciary advice.</p> <p>If these kinds of recommendations were not treated as fiduciary advice, it would dishonor the investor's reasonable expectations. The final rule avoids such inequitable results. In addition, the failure to treat these kinds of recommendations as fiduciary advice would defeat ERISA's protective purposes.</p> <p>Importantly, the rule does not treat mere sales pitches that do not meet the requirements above as fiduciary advice. Similarly, the rule does not treat mere investment information or education, without an investment recommendation, as fiduciary advice.</p>
<p>Prohibited Transaction Exemptions (PTEs):</p>	<p>In the case of fiduciary recommendations to Individual Retirement Accounts (IRAs), the 2016 rule's main PTE required the protective conditions of the PTE to be set forth in an enforceable contract with the retirement saver. Specifically, the contract required those protective conditions to be included as warranties in the contract. This created contract liability for firms and financial professionals.</p> <p>The 2016 rule's PTEs included strict conflict mitigation requirements, including a condition that differences in compensation for different products and services could be paid to firms and financial professionals only if those differences were justified based on "neutral factors."</p>	<p>In contrast, the 2024 rule's PTEs do not include a contract or warranty requirement. As a result, the 2024 rule does not create contract liability for firms or financial professionals. The only remedies for non-compliance with regard to IRAs are those set forth in ERISA and the Internal Revenue Code, which include only the imposition of excise taxes in the context of advice to IRAs.</p> <p>In contrast, the 2024 rule's PTEs provides firms flexibility in determining how best to mitigate conflicts of interest. There is no requirement to base any differences in compensation on "neutral factors."</p>

The 2016 rule's PTEs required firms to provide **extensive disclosures** to retirement savers, including contract disclosures, pre-transaction disclosures, and web-based disclosures.

The 2016 rule's main PTE **prohibited** firms and financial professionals from including provisions in **contracts that disclaimed liability or required retirement savers to waive their right to pursue a class action in court.**

The 2016 rule's PTE 84-24 **required insurance companies to assume fiduciary status with respect to independent insurance agents.**

In contrast, the 2024 rule's PTEs require firms to provide **less extensive disclosures**, modeled on the Securities and Exchange Commission's (SEC's) Regulation Best Interest disclosures.

In contrast, the 2024 rule's PTEs **do not prohibit** firms and financial professionals from entering into **class-wide binding arbitration agreements** with retirement savers.

In contrast, the 2024 rule's PTE 84-24 **does not require insurance companies to assume fiduciary status with respect to independent insurance agents.**



January 2, 2024

Via Electronic Submission

Lisa M. Gomez
Assistant Secretary for Employee Benefits Security
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave. NW, Room N-5655
Washington, DC, 20210

Re: Definition of Fiduciary – RIN 1210-AC02 Retirement Security and related exemptions

Assistant Secretary Gomez:

CFP Board supports the U.S. Department of Labor’s proposed Retirement Security Rule and related Prohibited Transaction Exemptions (together, the “proposed rule”). Thank you for considering CFP Board’s comments.

CFP Board Supports Fiduciary Standards That Apply to All Financial Advice

CFP Board operates the CFP® certification program, which sets high standards of competency and ethics for financial planning and is accredited by the National Commission for Certifying Agencies. Today, more than 98,000 CFP® professionals (or approximately one-third of retail financial advisors) voluntarily commit as a part of their certification to act as a fiduciary, and therefore, act in the best interests of the client at all times when providing financial advice.¹ The CFP® professionals who make this commitment to CFP Board operate under different business and compensation models and provide professional services on behalf of investment advisers, broker-dealers, insurance companies, banks, and trust companies.

The Proposed Rule Adapts to the Changing Retirement Landscape and Protects the Retirement Security of Hardworking Americans Who Deserve Fiduciary Advice

Congress enacted ERISA to protect assets held in tax-preferred retirement savings vehicles from market abuses. Congress recognized that retirement assets are important to workers and the U.S. economy, and intentionally established high standards for retirement investment advice under ERISA and conditional prohibitions of conflicts of interest under ERISA and the Internal Revenue Code.²

¹ There are two financial planning membership organizations: The Financial Planning Association (FPA) and the National Association of Personal Financial Advisors (NAPFA). Approximately 14,800 CFP® professionals were FPA members as of November 2022, and approximately 3,600 were NAPFA members as of December 2023.

² See, e.g., ERISA §§404(a)(1) and 406(b) and Internal Revenue Code §4975(c)(1)(E) and (F).

Americans Reasonably Expect Best Interest (Fiduciary) Retirement Investment Advice Because the Stakes are High, Many Investment Products Are Complex, and Retirees Typically Do Not Have Experience with Retirement Investment Issues

The investment landscape has changed dramatically since Congress enacted ERISA in 1974 and the Department promulgated the regulation defining fiduciary advice. Due to the advent of 401(k) plans, the popularity of IRAs (*i.e.*, individual retirement accounts and individual retirement annuities), and the shift away from defined benefit pension plans, most workers today are personally responsible for managing their own retirement savings.³ With so much at stake, investors now overwhelmingly expect that financial professionals will provide them with financial advice in their best interests:

- A 2018 Center for Capital Markets Competitiveness survey revealed that 97% of U.S. investors *already believed* that their financial professionals had their best interest in mind.⁴
- A 2022 CFA Institute study showed that retail investors value financial professionals who will be “trusted to act in my best interest” more than any other attribute when looking to hire a financial professional.⁵
- A December 2023 AARP survey revealed that 89% of investors age 50 and older who have used a financial professional expect them to provide advice in their best interest.⁶

The complexity of product options today (as compared to when Congress passed ERISA) makes it even more challenging for investors to manage their retirement savings.⁷ While complex products can provide benefits,⁸ most retirement investors don’t understand them.

The asymmetry of information and knowledge increases a financial professional’s opportunity to maximize their own compensation at the expense of the retirement investor.⁹ Mere disclosure of this conflict of interest is insufficient. The Securities and Exchange Commission’s (SEC or Commission) Office of the Investor Advocate tested disclosures for Registered Index-Linked Annuities (RILAs) and found that retail investors have trouble comprehending these complex products even when they have experience with financial products generally and are provided

³ This shift has been well-documented, See, e.g., Government Accountability Office (GAO), *Older Workers, Retirement Account Disparities Have Increased by Income and Persisted by Race Over Time*, GAO-23-105342 (July 2023) (2023 GAO Report); and GAO, *The Nation’s Retirement System: A Comprehensive Re-evaluation Needed to Better Promote Future Retirement Security*, Testimony before the Special Committee on Aging, U.S. Senate, GAO-19-342T (February 6, 2019)

⁴ Working with Financial Professionals: Opinions of American Investors, Center for Capital Markets Competitiveness (2018), *avail. at* https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/04/CCMC_InvestorPolling_v5-1.pdf.

⁵ CFA Institute, *Investor Trust Study, Enhancing Investors’ Trust* (2022), *avail. at* https://www.cfainstitute.org/-/media/documents/article/Enhancing-Investors-Trust-Report_2022_Online.pdf (reporting that 34% of retail investors chose “trusted to act in my best interest” as the most important attribute when deciding to hire a financial adviser).

⁶ AARP Research, “Unbiased Financial Advice about Retirement: Importance to Adults 50+,” January 2024, <https://www.aarp.org/pri/topics/work-finances-retirement/financial-security-retirement/fiduciary-duty-retirement/>.

⁷ FINRA describes complex products as any product with features that may make it difficult for a retail investor to understand the essential characteristics of the product and its risks. This includes, for example, leveraged ETFs, cryptocurrencies, asset-backed securities, annuities, and structured notes. FINRA Regulatory Notice 22-08, published March 8, 2022, *avail. at* <https://www.finra.org/rules-guidance/notices/22-08#notice>; see also FINRA Notice 12-03, published January 17, 2012, *avail. at* <https://www.finra.org/rules-guidance/notices/12-03>.

⁸ FINRA Regulatory Notice 22-08 (noting that complex products, properly understood, can enhance returns, limit losses, or improve diversification).

⁹ For a discussion of information asymmetry and how it affects conflicts of interest, see Regulation Best Interest: The Broker-Dealer Standard of Conduct (Regulation Best Interest), 84 FR 33318 at 33427 (July 12, 2019).

with a Key Information Table explaining the RILA's features. As the Commission stated: "Overall investor testing successfully identified a range of barriers to investor understanding of RILAs and associated disclosures. However, [with few exceptions,] variations in disclosures did not result in significant improvements in investor comprehension in the investor testing."¹⁰

Retirees also must consider retirement plan benefit options without knowing how their future will unfold. For example, retirees do not know how long they will live, how long their spouse or other family members will live, what cost of living increases (including with respect to health care) will occur, what the return on their retirement investments will be, or how much they may withdraw from retirement accounts each year without running out of money before they die. Most retirees have little, if any, experience in dealing with those issues, and need best interest advice from knowledgeable professionals.

With increased product complexity, poorly presented disclosures, and greater numbers of workers reaching retirement age each year (without the education or experience to address retirement investment issues), the Department must require financial professionals to adhere to a higher standard of care and loyalty (i.e., a fiduciary standard) when providing retirement advice.

Other Regulators and CFP Board Have Adapted to the Changed Investment Landscape

Today, securities and insurance regulators require financial professionals to act in an investor's best interest when providing financial advice, regardless of how the financial professional is paid. In 2019, in recognition of the expansion of the number of retail investors and the complexity of many products, the SEC reaffirmed the fiduciary standard for investment advisers (the SEC Fiduciary Interpretation) and adopted Regulation Best Interest for broker-dealers, which is drawn from "key fiduciary principles."¹¹ Similarly, the National Association of Insurance Commissioners (NAIC) adopted a Model Regulation (which most states have adopted) that claims to require a "best interest" standard in the sale of annuities.

CFP Board is a professional body that also adopted a fiduciary obligation in response to changes in investor needs and expectations.

- In 2007, CFP Board adopted *Standards of Professional Conduct* that required a CFP® professional to make a commitment to CFP Board, as part of their certification, to act as a fiduciary when providing *financial planning* or material elements of financial planning to a client.
- In 2018, CFP Board adopted the [*Code of Ethics and Standards of Conduct*](#) (the "*Code and Standards*"), which expanded the fiduciary obligation to *all financial advice*. CFP Board recognized that clients reasonably expect financial advice provided in their best interests, regardless of the CFP® professional's business model.¹²

CFP Board agrees with the Department that regulations governing retirement investment advice must likewise evolve to fulfill ERISA's statutory mandate to protect retirement assets. The

¹⁰ Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, 88 FR 71088 at 71094-71095 (October 13, 2023); see also SEC Office of Investor Advocate, Investor Testing Report on Registered Index-Linked Annuities, *avail. at* <https://www.sec.gov/files/rila-report-092023.pdf>.

¹¹ Regulation Best Interest at 33331.

¹² See Commentary on New Code of Ethics and Standards of Conduct at 5 (November 27, 2018). <https://www.cfp.net/ethics/compliance-resources/2018/11/commentary-on-new-code-of-ethics-and-standards-of-conduct>.

proposed Retirement Security Rule updates “the laws governing retirement investment advice to be more consistent with the landscape today, to be more consistent with a retirement landscape where people must make their own individual decisions and are turning to advisors for advice. This is something that people didn’t have to do 50 years ago when ERISA was passed ... and its literally a lifetime of savings on the line here.”¹³ Just as most retirement savings are protected from creditors, they must also be protected from the dangers of conflicted retirement investment advice.

Retirement Investment Advice That is Not in the Client’s Best Interests Significantly Decreases the Length and Quality of Americans’ Retirement

The Department’s proposed rule properly closes regulatory gaps that allow financial professionals to provide retirement investors with advice that is not in their best interests. The Department should not permit financial professionals and their firms to recommend products, services, or account types that maximize their own revenues but come with excessively high costs, unnecessary risks, or illiquidity to the disadvantage of the investor. Workers and retirees seek a financially secure and dignified retirement and deserve to have financial professionals delivering financial advice in their best interests.

The collective amount of retirement assets at stake – particularly assets subject to rollovers – is significant. In 2019, investors rolled over \$536 billion from employer-sponsored defined benefit plans or defined contribution plans to traditional IRAs.¹⁴ In mid-2022, the value of IRAs was \$11.7 trillion, which represented 34 percent of total U.S. retirement market assets.¹⁵

The impact on retirement assets of financial advice that is not delivered in the client’s best interests can be significant. Investors might experience small differences in fees each year. Over time, however, these small differences can lead to enormous losses of retirement balances, with significant consequence for an investor’s retirement security. For example, increased mutual fund fees resulting from a single year of rollovers of 401(k) assets into IRAs could reduce retirement savings by \$45.5 billion over a hypothetical 25-year period.¹⁶

These numbers are stark. Even more stark is the negative effect on the length and quality of retirement that results from financial advice that is not in best interests of retired workers. For some, a decrease in financial assets resulting from financial advice that is not in an investor’s best interest may mean having to retire much later than they desire. For others, this may mean not having much money to spend in retirement, including on discretionary expenses. As this graphic shows, retirement investors who start in the same situation may have very different retirements, depending on whether they received best interest retirement investment advice:

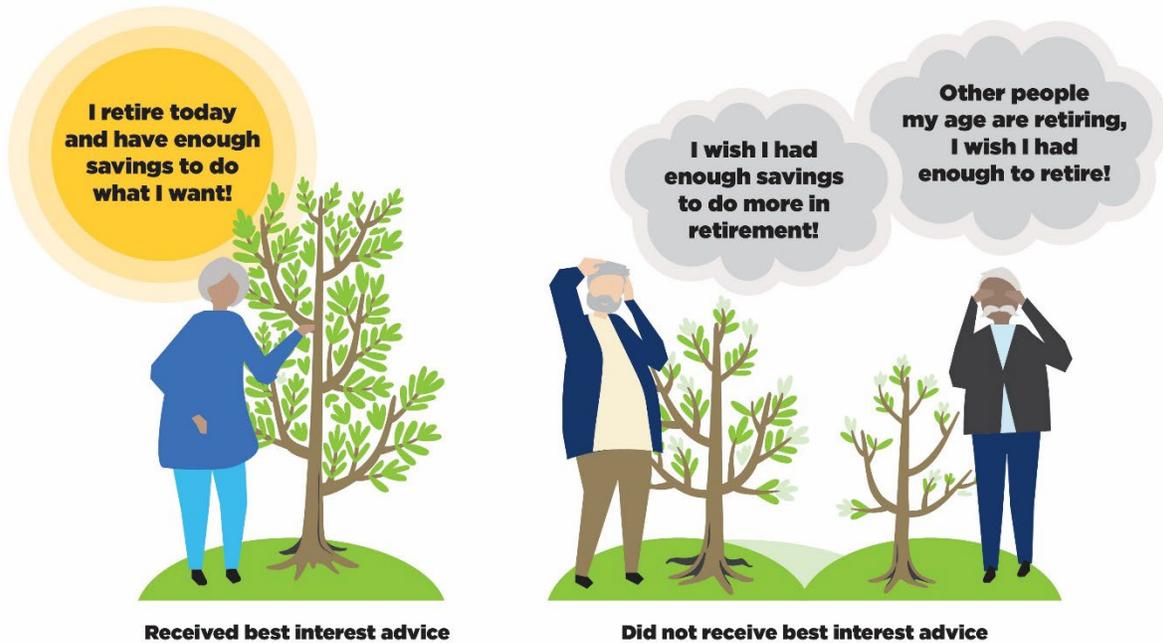
¹³ Ben Harris and Adrianna Pita, “What Does a New Rule on Financial Advice Mean for Retirement Security?” *The Current Podcast*, Brookings, November 2, 2023, *transcript avail. at* <https://www.brookings.edu/articles/what-does-new-rule-on-investment-advice-mean-for-retirement-security/>.

¹⁴ *The Role of IRAs in US Households’ Saving for Retirement 2022*, Investment Company Institute Research Perspectives, (February 2023), p. 6.

¹⁵ *Id.* at 3.

¹⁶ See Pew Research Issue Brief: [Small Differences in Mutual Fund Fees Can Cut Billions From Americans’ Retirement Savings | The Pew Charitable Trusts \(pewtrusts.org\)](https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/06/small-differences-in-mutual-fund-fees-can-cut-billions-from-americans-retirement-savings), June 30, 2022.

The Cumulative Negative Effect of Retirement Advice That Is Not in the Investor's Best Interests



They started in the same situation. The length and quality of their retirement is not the same.

In contrast, financial professionals and their firms stand to prosper from financial advice that is not in the investor's best interests. For example, if a financial professional recommends a rollover of 401(k) plan account assets to 10 clients who collectively have \$2 million in account value, *in circumstances where the rollover is not in their best interests*, and the financial professional earns a 7% commission on the sales, then the financial professional (or their firm) will receive a sales commission of \$140,000. If the financial professional recommends that the investor keep their money in the plan *because it is in the client's best interests to do so*, then the financial professional will receive no compensation. Depending on the facts and circumstances, the benefit to the financial professional from financial advice that is not in the investor's best interests may be substantial.

All Financial Professionals Can Provide Fiduciary Advice, Regardless of Business Model

CFP® professionals have shown that any financial professional who wants to act in their client's best interest is able to do so, regardless of what products they offer or how they are compensated. CFP Board's fiduciary duty applies to a wide variety of financial assets, including mutual funds, insurance products, and real estate investments. CFP® professionals also work in a variety of business models:

- 67% are registered representatives of broker-dealers;
- 88% are investment adviser representatives of registered investment advisers; and
- 64% hold insurance licenses.

The compensation models that financial professionals offer are diverse and continue to evolve, with choices that extend beyond commissions and assets under management fees.¹⁷ For example, some financial professionals charge hourly rates, subscription fees, or point in time advice for a set fee. The Department properly recognizes these new and different forms of compensation in the proposed rule.

Best Interest Advice Can Increase Access to Financial Advice for Retirement Investors

Some moderate-income Americans do not access retirement financial advice because they do not believe that a financial professional will work in their best interests. *Who can blame them?* The existing five-part regulatory test has enormous gaps that permit financial professionals to provide retirement financial advice that is NOT in investors' best interests. In other words, the *status quo decreases* access to retirement financial advice by moderate income Americans.

According to the GAO, in 2016, almost a third of American households aged 55 and over had neither retirement account balances nor defined benefit pension plans.¹⁸ Even more concerning, the retirement savings gap between low-income and high-income Americans is growing, with the percentage of low-income older households with a retirement account balance dropping from 21% in 2007 to 10% in 2019, while the percentage for high-income households remained largely unchanged.¹⁹ High-income households had greater growth of income balances than low-income households, which the GAO noted might be due to, among other things, better financial advice.²⁰

Studies show that increasing trust in financial professionals is key to improving access to advice. According to a 2018 SEI study, the most important expectations for retail investors were disclosing fees and costs (84%) and forthrightly disclosing and managing conflicts of interest (80%).²¹ Likewise, as noted above, a 2022 CFA Institute study found that the most important factor to retail investors in working with a financial professional is whether the retail investor trusts the financial professional to act in their best interest.²²

After CFP Board adopted a broad fiduciary standard, CFP Board saw no evidence that CFP® professionals stopped providing advice to moderate-income clients. CFP Board also has seen no evidence to suggest that the proposed rule would restrict access to advice, particularly for moderate-income Americans.²³ To the extent opponents to the proposed rule make such arguments, the Department should require specific and detailed evidence that this is likely to occur, because the existing evidence – or lack of evidence – is precisely to the contrary:

¹⁷ See generally Matthew Jackson, Wei Ke, PhD, *The Future of Fees, Real Life Pricing Innovations in Wealth Management* (Simon-Kucher 2018).

¹⁸ 2023 GAO Report, *supra* note 3, p. 5.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 24.

²¹ SEI, *Fees at a Crossroads Revisited, Closing the Gap Between Price and Value*, p. 11, *avail. at* <https://www.modelwealth.com/wp-content/uploads/2022/08/SEI-ADV-Fees-at-a-Crossroads-Revisited-1.pdf>.

²² CFA Institute Investor Trust Study, *supra* note 5.

²³ The Securities Industry and Financial Markets Association (SIFMA) examined the response of broker-dealers to the Department's 2016 rule (the "SIFMA Report") and concluded that retirement savers would lose access to advice because of the rule. However, several factors cast doubt on the relevance of the SIFMA Report findings to the 2023 proposed rule. First, the Department could not evaluate the SIFMA Report that Deloitte published because the SIFMA Report did not provide the methodology that SIFMA used or the assumptions that SIFMA made. Second, the SIFMA Report does not account for changes in the marketplace since the Department's 2016 rule, notably the resources many firms already invested in complying with Regulation Best Interest. Third, the SIFMA Report (at page 10) stated that "almost all study participants indicated that *litigation risk* has been a primary concern throughout their process to prepare for the Rule." Unlike the 2016 rule, however, the proposed rule does not include a Best Interest Contract Exemption, which was a key source of that prior assumed litigation risk.

- There is no evidence that Regulation Best Interest, which is based upon fiduciary principles, has reduced moderate-income investors' access to investment recommendations. The Department has aligned the proposed rule with the requirements of Regulation Best Interest.
- There is no evidence that broker-dealers have not provided financial advice to moderate-income investors in those states where they are subject to a state law fiduciary duty.
- There is no evidence that annuity sales declined in states that adopted the NAIC Model Regulation. To the contrary, annuity sales appear to have increased significantly.²⁴
- In March 2018, CFP Board adopted a fiduciary duty that applies to all financial advice. This did not decrease the number of CFP® professionals. Quite the opposite. The number of CFP® professionals grew from 79,878 in March 2018 to 98,873 in December 2023, a 23.8% increase.²⁵ The demand for CFP® professionals from firms across business models continues to be strong, notwithstanding this heightened standard.
- Even if there were some financial professionals who would not provide financial advice to moderate-income clients because of the proposed rule (and CFP Board has seen no evidence of this), there is every reason to believe that other financial professionals would step in to meet the financial advice needs of this population.

There is an even more salient reason for the Department to reject the suggestion that the proposed rule will decrease access to retirement investment advice: a consumer who loses access to a financial professional who is merely engaged in an arms-length commercial sales transaction *cannot be deemed to have lost access to investment advice*. On the other hand, requiring financial professionals to provide retirement sales recommendations under a fiduciary standard will result in millions of Americans gaining access to retirement investment advice that is in their best interests.

CFP Board is not aware of any evidence that a fiduciary standard has increased costs to investors. Instead, heightened standards of conduct appear to have stabilized or reduced costs. Indeed, while the implementation of the proposed rule may require some additional initial training costs, there is no reason to believe that the expanded fiduciary definition otherwise will materially increase costs. Further, although the proposed prohibited transaction exemptions likely would add one-time transition costs for the development of compliance policies, procedures, and disclosures, the transition costs will be insignificant for those who already comply with existing fiduciary standards and PTE 2020-02. On the other hand, the benefits to retirement investors will significantly offset these costs because higher quality recommendations will lower costs and the disclosure requirements' increased transparency will increase competition and reduce costs.

Limiting access to "sales recommendations" that are not in the retirement investor's best interest is a good outcome for retirement savers. This is particularly true for less wealthy investors, who have much to lose from retirement investment recommendations that are not in an investor's best interests.

²⁴ LIMRA Annual Annuity Sales Estimates 2013-2022, *avail. at* <https://www.limra.com/siteassets/newsroom/fact-tank/sales-data/2023/q1/2013-2022-annuity-sales-final.pdf>.

²⁵ The number of CFP® professionals increased by 32% during the seven years after CFP Board announced in December 2015 that it would form a Commission on Standards to explore expanding the fiduciary obligation.

CFP Board Supports the Department’s Proposed Definition of Investment Advice Fiduciary

CFP Board supports the Department’s proposed updated definition of “investment advice” for purposes of identifying investment advice fiduciaries. While CFP Board supports all three prongs of the definition in the proposed rule, this comment letter focuses on prong (ii).

The Proposed Definition Aligns with Congress’s Intent to Protect All Retirement Savings

Congress enacted ERISA as a retirement asset protection law.²⁶ Congress gave the Department a mandate to protect retirement assets through effective regulation, including broad authority to define the term fiduciary. The regulatory definition of investment advice fiduciary that the Department promulgated in 1975, however, was narrower than the statutory definition of investment advice fiduciary, which provides that an investment professional is a fiduciary if the investment professional “renders investment advice for a fee or other compensation, direct or indirect.” Specifically, the regulatory definition added requirements that investment advice be provided to the plan on a *regular basis*, pursuant to a mutual agreement, arrangement or understanding between the plan and the fiduciary that the advice would form a primary basis for the investment decision. Even if the 1975 regulatory definition encompassed most retirement investment advice in 1975, the regulatory definition now obstructs Congressional intent to protect retirement investments today by unduly excluding a sizable portion of modern retirement investment advice.

In the proposed rule, the Department accurately analyzed the changed financial and retirement landscape, including the shift from defined benefit to defined contribution plans and the growth of participant-directed plans and IRAs, which, as noted above, has made millions of Americans responsible for their own retirement savings. These changed circumstances have rendered the existing regulatory definition incompatible with the statute. The proposed rule comports with the ERISA statutory text, is necessary to achieve Congress’s original intent, and is consistent with other investment advice regulations.

The Department Tailored the Proposed Definition to Relationships of Trust and Confidence

The Department narrowly tailored the scope of the definition in the proposed rule to relationships of trust and confidence by limiting the definition’s application only to those recommendations that (1) are based on the particular needs or individual circumstances of the retirement investor and (2) may be relied upon by the retirement investor as a basis for investment decisions that are in the retirement investor’s best interest.²⁷ CFP Board supports this objective standard.

The Department should not exclude “sales recommendations” from retirement investment recommendations that are subject to investment advice fiduciary requirements. How a financial

²⁶ Senate Report No. 93-127, April 18, 1974.

²⁷ The Department thus addressed the main concern that Judges Jones and Clement raised in the 2-1 decision of the Fifth Circuit Court of Appeals, namely, that the 2016 fiduciary rule was overbroad because it applied where an investor might not have placed their trust and confidence in the investment professional. The proposed rule also does not require firms to execute contracts warranting compliance. This responds to Judge Jones’ and Clement’s concern that the 2016 fiduciary rule required firms to execute best interest contracts with warranties guaranteeing that they and their investment professionals would comply with certain protective conditions, and thereby created an enforcement mechanism for harmed IRA investors, allowing them to sue for a firm’s breach of the warranties.

professional is paid should not determine whether they must act in their client's best interests when providing retirement investment advice. CFP Board does not agree that compensation that results from one-time retirement investment advice provided in connection with a sale of a product should be treated any differently than compensation that results from ongoing retirement investment advice provided in connection with the sale of a service. In either circumstance, it is the delivery of retirement investment advice, and not the method of compensation or term of the advice, that is relevant in determining the standard of conduct that should apply. Those providing retirement investment advice invite the recipient to trust the giver of the advice.

As CFP Board's 2023 Board Chair Dan Moisand, CFP® testified before the Department on December 13, 2023, the American public should not need a glossary to know whether they should have trust and confidence in recommendations that their financial professional makes about their retirement savings. CFP Board is not aware of any financial professional who, in making a sales recommendation, has communicated clearly to a retirement investor that there is no relationship of trust and confidence by using language similar to that which opponents of the 2016 DOL rule used in challenging that regulation before the Fifth Circuit or opponents of this proposed rule used during the public hearing:

- I am acting as a salesperson in describing the benefits of this investment to you.²⁸
- We do not have a relationship of trust.²⁹ This means you should make your own determination and not place trust in me.
- You are not paying me to provide my expertise or independent judgment.³⁰
- This is an arm's length sales transaction, which means I am acting in my own self-interest.³¹
- Working with me is like buying a car. I am inviting you to buy an investment product in the same way that a car dealer invites you to buy a car.³²
- The fact that I am urging you to buy a product does not mean that the product is in your best interests.³³

²⁸ See Brief for Chamber of Commerce Plaintiffs-Appellants, *Chamber of Commerce et al v. Department of Labor*, 885 F.3d 360 (5th Cir. 2018) ("Chamber Brief"), p. 34 ("To conclude that someone is a salesperson is to conclude that she *is not* a fiduciary") (emphasis in original).

²⁹ Chamber Brief, p. 22 ("a 'fiduciary' relationship arises only where there is a special relationship of trust"). See also Brief for Indexed Annuity Leadership Council Plaintiffs-Appellants, *Chamber v. Department of Labor* ("IALC Brief"), p. 32 ("DOL had no basis for concluding that one-time annuity sales involve 'relationships of trust.'")

³⁰ Chamber Brief, p. 31 ("The essence [of the definition of fiduciary] is that a fee is being paid to procure the 'advice' of someone with expertise and independent judgement about the best course to pursue, as opposed to a commission being paid for consummating a transaction....")

³¹ Chamber Brief, p. 32 ("At the time ERISA was enacted, it was well recognized that an arms-length sales transaction did not give rise to a fiduciary relationship of trust and confidence."); IALC Brief, p. 1 ("insurance products are sold in arm's-length transactions"); see also Arm's Length Transaction Definition, Legal Information Institute Wex definitions Team, *avail. at*

https://www.law.cornell.edu/wex/arm%27s_length#:~:text=%E2%80%9CArm's%20length%E2%80%9D%20is%20an%20expression.and%20in%20their%20self%2Dinterest. (last updated May 2022).

³² Chamber Brief, p. 41, citing *Farm King Supply, Inc. Integrated Profit Sharing Plan & Trust v. Edward D. Jones & Co.*, 884 F.2d 288, 294 (7th Cir. 1989) ("A broker, insurance agent, or other financial-sales professional may make 'individualized solicitations much the same way a car dealer solicits particularized interest in its inventory'").

³³ Chamber Brief, p. 33, citing *Am. Fed'n of Unions Local 102 Health & Welfare Fund v. Equitable Life Assurance Soc'y of the U.S.*, 841 F.2d 658, 664 (5th Cir. 1988) ("Simply urging the purchase of [the company's] products does not make an insurance company an ERISA fiduciary with respect to those products").

In fact, the marketing materials that accompany sales recommendations often imply a relationship of trust and confidence,³⁴ and financial professionals often portray themselves as knowledgeable experts. Most importantly, financial professionals providing individualized retirement advice have a relationship of trust and confidence with the retirement investor *because that is what a retirement investor reasonably expects.*³⁵

Investors Place Trust and Confidence in One-Time Advice

CFP Board supports the Department removing the improperly and overly restrictive ERISA regulatory requirement that a person provide advice to the plan (or retirement investor) “on a regular basis.” Regulation Best Interest, the SEC Fiduciary Interpretation, and the amended NAIC Model Regulation all encompass one-time recommendations. CFP Board’s *Code and Standards* also applies the fiduciary duty to one-time financial advice.

The complete exclusion of one-time advice from the current regulatory definition of fiduciary is a flawed standard because it excludes a significant portion of retirement investment advice that financial professionals provide for a fee or other compensation, direct or indirect. The exclusion also downplays the significant and often irreversible consequences of one-time advice. CFP Board’s most recent public awareness campaign advertisements demonstrate the significance of one-time advice. The advertisements present an inexperienced bungee jumper who is about to take their first leap:



In the advertisement, a bungee jumper contemplates the irreversible decision to jump from the ledge, and the importance of having trust and confidence in the person assisting them. The bungee jumper didn’t jump because he could see the frayed rope. It is not so obvious to a retirement investor that the one-time advice the financial professional is providing is not in their best interest. Watch the video here: <https://www.cfp.net/initiatives/increasing-awareness/public-awareness-campaign-and-toolkit>.

A one-time and irrevocable decision as to whether and how to roll over employer-sponsored retirement assets may be the single most important financial decision a retirement investor ever

³⁴ See PIABA, Major Investor Losses due to Conflicted Advice: Brokerage Industry Advertising Creates the Illusion of a Fiduciary Duty; Misleading Ads Fuel Confusion, Underscore Need for Fiduciary Standard (Mar. 25, 2015), *avail. at* <https://piaba.org/sites/default/files/newsroom/2015-03/PIABA%20Conflicted%20Advice%20Report.pdf> (showing marketing campaigns of financial firms implying a relationship of trust and confidence even when disclaiming that relationship in arbitration). See also Consumer Federation of America, Financial Advisor or Investment Salesperson, *avail. at* https://consumerfed.org/wp-content/uploads/2017/01/1-18-17-Advisor-or-Salesperson_Report.pdf.

³⁵ See CFA Investor Trust Study, *supra* note 5 and accompanying text.

will make, with the potential to have a significant negative effect on the length or quality of the investor's retirement. The proposed rule properly closes the existing ERISA regulatory "regular basis" loophole.

No Other Regulation Comprehensively Protects Retirement Investors

There should be one standard of conduct for advice on retirement savings that benefit from the Internal Revenue Code's tax advantages for qualified retirement plans and IRAs. Regulatory requirements should not vary by advice market or investment product. Financial professionals making recommendations to private sector retirement plans, participants, and IRA owners should have to do so in their clients' best interest, subject to a duty of care and duty of loyalty, regardless of whether the recommendations are about securities, insurance, real estate, commodities, cryptocurrencies, or other investment property.

Existing best interest advice regulations do not cover other significant retirement investment recommendations. More specifically, the SEC's Regulation Best Interest and the NAIC's Model Regulation have serious limitations:

- The scope of both Regulation Best Interest and the NAIC Model Regulation is limited to recommendations to retail customers, and thus they do not apply to recommendations to employers who sponsor 401(k) plans. Thus, retirement investors need the Department's proposed rule for a best interest requirement to extend to advice from broker-dealers and insurance producers to retirement plan fiduciaries.³⁶
- There are jurisdictional limitations to both Regulation Best Interest and the NAIC Model Regulation. Specifically, neither cover real estate, many insurance products, commodities, certificates of deposit, other bank products, and certain cryptocurrencies.³⁷

The proposed rule would apply to each of these categories of retirement investment advice.

Advice to Retirement Investors About Annuity Products Must Be Subject to Consistent, Strong Standards of Conduct

Retiring investors need access to investment products that protect against longevity risk, including annuity products. The significant increase in annuity product investment sales demonstrates the increased importance of this market. Total annuity sales have grown from \$230 billion in 2013 to \$313 billion in 2022.³⁸ Additionally, fixed annuities have become increasingly popular, with sales in 2022 totaling \$210 billion, well surpassing sales of variable annuities.³⁹ Given the increased importance of annuities, and the complexity of these products (as discussed above), advice about annuities should be subject to a consistent and protective standard of conduct.

Unfortunately, the current regulatory patchwork applies a much lower standard of conduct to advice about fixed annuities. While variable annuities are securities and thus advice relating to

³⁶ See Regulation Best Interest n. 253 and accompanying text for its discussion of the SEC's decision not to extend Regulation Best Interest to recommendations to plan fiduciaries.

³⁷ The Advisers Act fiduciary duty applies to advice to all clients, including plans, as well as to the entire advice relationship, not just securities transactions. Commission Interpretation Regarding Standards of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248, 84 Fed. Reg. 33669 (July 12, 2019).

³⁸ LIMRA Annual Annuity Sales Estimates 2013, *avail. at* <https://www.limra.com/siteassets/newsroom/fact-tank/sales-data/2023/q1/2013-2022-annuity-sales-final.pdf>.

³⁹ *Id.*

them is subject to the SEC's Regulation Best Interest, fixed annuities generally are not securities and are subject to state insurance regulation. Most states have adopted an NAIC Model Regulation that has significant shortcomings.⁴⁰ For example, unlike Regulation Best Interest, which would apply to variable annuities (as securities), the NAIC Model Regulation excludes both cash and non-cash compensation from its definition of "material conflict of interest."⁴¹ As a result, there is no NAIC Model Regulation requirement to identify or reasonably manage material conflicts of interest arising from fixed annuity sales compensation. The proposed rule would eliminate this disparity by requiring mitigation of fixed annuity conflicts of interest, including by managing conflicts arising from differences in the total commission a professional would receive for different annuities, which can incentivize a professional to recommend annuities with more features than an investor needs to earn a higher commission.

CFP Board Supports the Application of PTE 2020-02 to a Broader Scope of Fiduciary Advice

The consequence of a properly structured ERISA fiduciary definition is that a broader scope of financial advice to retirement investors will be required to comply with a prohibited transaction exemption, most commonly PTE 2020-02, including the Impartial Conduct Standards, compliance policies and procedures, required documentation of any rollover recommendation, and a retrospective review. CFP Board supports this result. PTE 2020-02 provides an appropriate path to provide fiduciary advice under a variety of business models and compensation methods – including commissions – so long as the fiduciaries provide prudent and loyal advice at a reasonable fee and their firms take meaningful steps to mitigate conflicts arising from the compensation through policies, procedures, and periodic review.

CFP Board also agrees that PTE 2020-02 is consistent with the requirements of Regulation Best Interest and the fiduciary obligations of investment advisers under the Advisers Act. The Department determined that broker-dealers and investment advisers that have adopted meaningful compliance mechanisms for Regulation Best Interest and the SEC Fiduciary Interpretation, respectively, should be able to adapt "relatively easily" to comply with the PTE, although there remain gaps the proposed rule appropriately would fill. For certain insurance products not registered as securities and, in turn, not covered by Regulation Best Interest or the SEC's Fiduciary Interpretation, particularly fixed annuities, the gap is larger. The ERISA protections set forth in PTE 2020-02 should apply to these assets when used in retirement plans.

⁴⁰ CFP Board's first comment letter to the Department, filed on November 14, 2023, attaches a guide that addresses the shortcomings of the NAIC Model Regulation, which also is available here: <https://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/compliance-resources/naic-comparison-guide.pdf?la=en&hash=6BB8B19F88D0BA582E55DAB195F9BED1>.

⁴¹ NAIC Model Regulation #275 FAQ.10 ("in light of these robust disclosures [required about cash and non-cash compensation], and the fact most consumers recognize producers will be compensated for their work, the NAIC determined that compensation is not a material conflict of interest."). However, a consumer's awareness that a financial professional has a compensation interest does not eliminate that conflict, or even mean that the nature of the conflict has been completely disclosed. The retirement investor might not know that they will pay a higher commission on certain annuities than others (differential compensation), with the result that the person recommending the annuity has an incentive to recommend and sell a product that is *suboptimal* for the investor but will result in more compensation to the professional. Indeed, a representative of the National Association for Fixed Annuities (NAFA) testified that the NAIC Model Regulation's best interest standard does not contain a duty of loyalty. See Transcript of December 13, 2023 Public Comment Hearing, p. 36. Another NAFA representative testified that a producer who is compensated on a transaction basis does not seek to set aside his or her compensation interests. *Id.* at 45.

Other Comments and Suggestions for Improvement

CFP Board supports the following:

- The Department’s conclusion that information (even when individualized to a participant or IRA owner) to increase contributions or deferrals to reach reasonable benchmark levels for retirement adequacy should be considered education and not investment advice.
- DOL Interpretive Bulletin 96-1’s exception for investment education and guidance regarding when an investor communication is considered educational and when it is considered a recommendation.
- Each prong of the proposed definition of “recommendation of any securities transaction or other investment transaction or any investment strategy involving securities or other investment property.” Consistent with CFP Board’s *Code and Standards*, the definition should encompass all financial assets such as securities, fixed income annuities, commodities, and others.⁴² Retirement assets represent retirees’ hard-earned savings. All retirement investors should be secure in knowing that they always are receiving advice in their best interests.
- The Department’s recognition that there are many ways to compensate a financial professional (including hourly engagement and subscriptions, which sometimes are referred to as retainers) and for using language that does not limit future, innovative ways of paying for financial advice that facilitates greater access to financial advice for the American public. As noted above, CFP® professionals have many business models and compensation methods.
- The Department’s determination that firms should be obligated to mitigate firm-level conflicts, including limited menus of investment options that generate third-party payments and creating a model for firm conflict mitigation, which would provide a strong threshold foundation for the formulation of best interest retirement investment recommendations. Neither Regulation Best Interest nor the NAIC Model Regulation requires firms to mitigate or manage all material conflicts of interest. Regulation Best Interest requires mitigation of conflicts that create incentives for professionals, such as compensation arrangements, but, with some exceptions, not conflicts of the firm. The NAIC Model Regulation states that producers must mitigate conflicts but does not require the insurance company to do so and, more importantly, excludes compensation from the definition of conflict of interest altogether. The proposed rule would fill this gap and provide appropriate protection to retirement assets.

⁴² “Financial Advice” under CFP Board’s *Code and Standards* includes communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets ... Financial Assets include securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products. (*Code and Standards*, Glossary.)

CFP Board respectfully requests that the Department consider the following:

- Clarify that the term “recommendation” is consistent with how the term is interpreted in guidance from the SEC or FINRA.⁴³
- More specifically define the “documentation” that PTE 2020-02 requires for rollover recommendations. The current version of PTE 2020-02 states that, with respect to rollovers, advisors must provide retirement investors in writing the specific reasons why the rollover recommendation is in their best interest. The new language requiring that the “Financial Institution and Investment Professional must consider and document the basis for their conclusions as to whether a rollover is in the Retirement Investor’s Best Interest and must provide that documentation to the Retirement Investor” is even less clear.
- Require plans to provide a 404a-5 participant fee disclosure with cost details, as with their annual reports on Form 5500. CFP Board supports the requirement that financial professionals and insurance producers analyze the retirement investor’s plan options to determine if their recommendation, whether a rollover, transfer, or distribution, is superior to those provided by the investor’s present options. Access to this disclosure will better enable financial professionals to analyze the retirement investor’s plan options to determine if their recommendation (a rollover, transfer, or distribution) is better than what they already have.
- Exempt firms that make a limited number of covered recommendations from the annual review and reporting requirement, so long as the firm otherwise complies with the proposed rule’s requirements and a qualified person reviews each covered recommendation. This would reduce compliance burdens for advisors in small firms.
- Clarify that a person who advertises that they hold a particular certification or designation does not claim fiduciary status in a specific engagement under prong (c)(iii) of the investment advice fiduciary definition simply by virtue of the general advertisement.
- Confirm that a firm offering robo-advice (or other similar kinds of advice) is a fiduciary and is subject to both the adviser and firm Impartial Conduct obligations set forth in PTE 2020-02.
- Refine the language that states: “*for investment decisions that are in the retirement investor’s best interest.*” This language may be confusing as the investment decisions may not be in the retirement investor’s best interest. Consider language that states: “for investment decisions that are intended to advance the retirement investor’s best interests,” or some other similar language.

⁴³ See Regulation Best Interest; NASD Notice to Members 01-23, Online Suitability – Suitability Rules and Online Communications (Apr. 2001).

Conclusion

CFP Board commends the Department for taking steps to modernize the regulatory framework to account for changes in the retirement investment landscape and the reasonable expectations of retirement investors. A strengthened standard, meeting a retirement investor's reasonable expectation of a relationship of trust and confidence, is necessary and appropriate under ERISA. CFP Board urges the Department to move forward expeditiously with a final rule that is designed to protect retirement investors.

Thank you for the opportunity to comment on the proposed rule. If you have any questions or would like to discuss this issue, please contact me by phone at 202-379-2230 or by email at lrydzewski@cfpboard.org.

Sincerely,

A handwritten signature in blue ink that reads "Leo G. Rydzewski". The signature is written in a cursive style with a small flourish at the end.

Leo G. Rydzewski
General Counsel
Certified Financial Planner Board of Standards, Inc.
Certified Financial Planner Board of Standards Center for Financial Planning, Inc.

Employee Benefits Security Administration

Understanding the Retirement Security Rule: For Investors

The effective date of the Retirement Security Rule and amendments to the associated prohibited transaction class exemptions has been stayed by court order pursuant to the following matters: *Federation of Americans for Consumer Choice v. U.S. Department of Labor*, No. 6:24-CV-163-JDK (E.D. Tex.) and *American Council of Life Insurers v. U.S. Department of Labor*, No. 4:24-CV-00482-O (N.D. Tex.). The Department of Justice has filed a notice of appeal in these matters.

You've worked hard to build up your retirement savings, and you might work with a trusted investment advice professional to help you invest it. The new [Retirement Security Rule](#) from the Employee Benefits Security Administration makes sure that the investment advice you get is in your best interest.



Who does this rule apply to?

Persons and financial institutions who give you professional advice on how to invest your retirement savings.



When does this take effect?

These new protections will start to take effect on September 23, 2024, though additional requirements will kick in 1 year after that.



Does this rule cover my retirement plan?

The rule covers investment advice on many kinds of job-based plans, including traditional pension plans, 401(k)s, and IRAs.



What does this rule do?

Requires these trusted advice providers to act as fiduciaries, which means they must work in your best interests.



Why did EBSA issue this rule?

To update a 1975 regulation and protect you from harmful conflicts of interest in today's marketplace.



How can I be sure the rule protects my advice?

Ask your investment advice provider if they are an ERISA fiduciary—and get it in writing.

Common questions

Does my investment advice provider have to follow this rule?

If your investment professional holds themselves out as someone who will provide you with advice based on your individual circumstances and in your best interest, and you pay them for that advice or they otherwise get compensated for giving you that advice, they are a fiduciary. That means they generally must follow this rule's requirements to provide you prudent, loyal, and

honest advice.

This includes advice on recommendations to purchase, sell, or hold investments in your retirement account, as well as advice on rolling over assets from your workplace retirement plan to an IRA.

Investor tip: When you are getting investment recommendations, ask if the person making the recommendation is acting as an ERISA fiduciary. And even if they say yes, ask for that representation in writing.

My advice provider is a fiduciary. What do they have to do?

Generally, they have to make sure that the investment advice they give you is prudent (it meets a professional standard of care), loyal (it puts your interests first), honest (it is free from misrepresentations), and free from overcharges (unreasonable or excessive compensation).

This means they must provide advice that carefully considers **your** personal goals and circumstances. They have to recommend what’s best for **you**, not what would make **them** the most money.

In late 2025, more specific requirements will kick in. Your advice provider will have to give you more disclosures and follow policies and procedures designed to make sure the advice really is in your best interest.

Why is it important to get the ERISA fiduciary statement in writing?

It is important that both you and your advice provider understand the nature of your relationship. You’ll have documentation that your advice provider promised to act in your best interests.

What should I do if I think my advice provider isn’t following this rule?

Contact us at [1-866-444-3272](tel:1-866-444-3272) or dol.gov/AskEBSA.

Learn more about [the Retirement Security Rule](#).

Topics	Workers	Employers and Advisers	Resources	Laws and Regulations	About	Contact Us	Español
------------------------	-------------------------	--	---------------------------	--------------------------------------	-----------------------	----------------------------	-------------------------



Employee Benefits Security Administration

An agency within the U.S. Department of Labor

200 Constitution Ave NW
Washington, DC 20210
[1-866-444-3272](tel:1-866-444-3272)
www.dol.gov/agencies/ebsa

<p>FEDERAL GOVERNMENT +</p> <p>White House</p> <p>Disaster Recovery Assistance Guidance Search</p> <p>DisasterAssistance.gov</p> <p>USA.gov</p> <p>No Fear Act Data</p> <p>U.S. Office of Special Counsel</p>	<p>LABOR DEPARTMENT +</p> <p>About DOL</p> <p>Español</p> <p>Office of Inspector General</p> <p>Subscribe to the DOL Newsletter</p> <p>Read the DOL Newsletter</p> <p>Emergency Accountability Status Link</p> <p>A to Z Index</p>
---	--

ABOUT THE SITE +

Freedom of Information Act

Privacy & Security Statement

Disclaimers

Important Website Notices

Plug-Ins Used on DOL.gov

Accessibility Statement

Connect With DOL








[Site Map](#) | [Important Website Notices](#) | [Privacy & Security Statement](#)

[Submit Feedback](#)