

ERISA'S PREEMPTION OF ESTOPPEL CLAIMS RELATING TO EMPLOYEE BENEFIT PLANS

The Employee Retirement Income Security Act of 1974 ("ERISA" or "the Act") has limited the ability of plan participants and beneficiaries to recover under state common law estoppel claims that relate to employee pension and benefit plans.¹ Congress en-

¹ Employee Retirement Income Security Act (ERISA) of 1974, Pub. L. No. 93-406, §§ 1-4082, 88 Stat. 829, 829-1035 (codified at 29 U.S.C. §§ 1001-1461 (1982)). ERISA is comprised of four major titles. Titles I-III govern plan administration, fiduciary duties, and remedies. *See* 29 U.S.C. §§ 1001-1242, ERISA §§ 1-3043. Title IV pertains to the Pension Benefit Guaranty Corporation and ERISA plan termination insurance. *See* 29 U.S.C. §§ 1301-1461, ERISA §§ 4001-4082. ERISA also creates standards of fiduciary conduct for those who govern the administration of such plans and establishes a cause of action for breach of these fiduciary duties. *See* 29 U.S.C. §§ 1104(a)(1), 1109, ERISA §§ 404(a)(1), 409.

A number of United States administrative agencies administer ERISA. Responsibilities for enforcing the civil remedial provisions of ERISA lie with the United States Department of Labor and the United States Department of the Treasury. *See id.* §§ 1201-04, ERISA §§ 3001-04. The Internal Revenue Service regulates the tax qualification standards and sets requirements of minimum eligibility and participation percentages. *Id.* Additionally, the Pension Benefit Guaranty Corporation, a governmental corporation created by ERISA under the Department of Labor, provides termination insurance to guarantee that participants and beneficiaries receive at least partial benefits from ERISA plans. *See id.* § 1302(a), ERISA § 4002(a). The basic policy provisions of ERISA set forth by Congress in part provide:

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 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; and . . . it is desirable in the interests of employees and their beneficiaries, . . . that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; . . . [and] 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 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.

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefits plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by estab-

acted ERISA in 1974 as a comprehensive legislative remedial statute to provide reasonable assurance that benefits promised to employees under a private employee benefit plan would be available when due.² Prior to 1974, primarily state law governed employee benefit plans administered by employers and unions. Unfortunately, state law inadequately protected employee pension rights: Employees had no guarantee that their employers would actually pay pension benefits.³ Congress recognized that pension plan establishment, administration, and termination lacked adequate safeguards under state law.⁴ Congress also realized that inadequate funding and stringent eligibility provisions were causing thousands of employees to

lishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to Federal courts.

...
It is hereby further declared to be the policy of this chapter 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.

29 U.S.C. § 1001, ERISA § 2. For general summaries and discussion of ERISA, see L. LITVAK, *PENSION FUNDS & ECONOMIC RENEWAL* (1981); D. LOGUE, *LEGISLATIVE INFLUENCE ON CORPORATE PENSION PLANS* 62-77 (1979). Several cases have addressed common law estoppel claims under ERISA. See, e.g., *Cleary v. Graphic Communications Int'l Union Supplemental Retirement & Disability Fund*, 841 F.2d 444, 449 (1st Cir. 1988) (the court did not address the ERISA preemption issue, but proceeded to analyze the plan participant's claim under the federal common law estoppel doctrine); *Treadwell v. John Hancock Mut. Life Ins. Co.*, 666 F. Supp. 278, 286-87 (D. Mass. 1987) (although the court found the state common law claim of wrongful termination preempted by ERISA, it recognized the employee's estoppel claim without addressing preemption). But see *O'Grady v. Firestone Tire & Rubber Co.*, 635 F. Supp. 81, 83-84 (S.D. Ohio 1986) (state common law claim preempted by ERISA, therefore the claim must be analyzed under ERISA's "arbitrary and capricious standard").

² 29 U.S.C. § 1001, ERISA § 2. ERISA defines "employee benefit plan" as "an employee welfare benefit plan or an employee pension plan or a plan which is both an employee welfare plan and a pension benefit plan." *Id.* § 1002(3), ERISA § 3(3). Also within the scope of ERISA is an "employee welfare benefit plan," which includes any program that provides benefits for illness, accident, disability, death, or unemployment." *Id.* § 1002(1), ERISA § 3(1).

³ *Id.* § 1001, ERISA § 2; 120 CONG. REC. S29,935 (daily ed. Aug. 22, 1974) (statement of Sen. Javits). Senator Javits, one of the primary sponsors of ERISA, commented on ERISA's effect. "[P]ension reform law is now a reality because of hardship, deprivation and inequity suffered by American working people." 120 CONG. REC. S29,935 (daily ed. Aug. 22, 1974). Senator Javits stated that "[ERISA] is the greatest development in the life of the American worker since Social Security. For the first time in our history most workers will be able truly to retire at retirement age and to live decently on their Social Security and private pensions." 120 CONG. REC. S29,933 (daily ed. Aug. 22, 1974).

⁴ 29 U.S.C. § 1001, ERISA § 2.

lose their anticipated retirement benefits.⁵ In order to establish national uniformity, security, and stability of employee benefit plans, Congress enacted ERISA and created a comprehensive regulatory scheme that displaced the state regulation of employee benefit plans.⁶ As part of this scheme, ERISA provides for federal preemption of all state laws that "relate to" an employee benefit plan,⁷ unless the state law qualifies for an exemption.⁸ This preemption provision has limited all state laws, both decisional and statutory.

In addition to preempting state law, ERISA provides that federal courts may create a body of federal common law to supplement, clarify, and implement ERISA policies.⁹ A number of different

⁵ 120 CONG. REC. H29,214 (daily ed. Aug. 20, 1974) (statement of Rep. Daniels); 120 CONG. REC. H29,215 (daily ed. Aug. 20, 1974) (statement of Rep. Broyhill).

⁶ 29 U.S.C. §§ 1001, 1144, ERISA §§ 2, 514; 120 CONG. REC. S29,933 (daily ed. Aug. 22, 1974) (statement of Sen. Williams).

⁷ 29 U.S.C. § 1144, ERISA § 514. Senator Williams described the broad scope of section 514(a), ERISA's preemption clause as follows:

It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulation, thus eliminating the threat of conflict or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments

120 CONG. REC. S29,933 (daily ed. Aug. 22, 1974). The broad ERISA preemption of section 514 was similarly supported by Congressman Dent:

I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. . . . Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State . . . which would affect any employee benefit plan

120 CONG. REC. H29,197 (daily ed. Aug. 20, 1974).

⁸ ERISA provides for a number of exemptions to its broad preemptive scope. 29 U.S.C. § 1144(b), ERISA § 514(b). These exemptions arose out of a compromise between complete uniformity of employee benefit regulation and the tension to allow the states to regulate certain areas that they had traditionally governed. *See* 120 CONG. REC. S29,942 (daily ed. Aug. 20, 1974) (statement of Sen. Javits). The "savings clause" provides that "nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A), ERISA § 514(b)(2)(A) ("savings clause"). The "deemer clause" mitigates the impact of the "savings clause." *See id.* § 1144(b), ERISA § 514(b). The "deemer clause" provides "[n]either an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company . . . for purposes of any law of any State purporting to regulate insurance companies" *Id.* § 1144(b)(2)(B), ERISA § 514(b)(2)(B). For a recent Supreme Court application of the "savings" and "deemer" clauses *see* *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47-49, 50-51 (1987).

⁹ *See* 120 CONG. REC. S29,942 (daily ed. Aug. 22, 1974) (statement of Sen. Javits).

sources have guided federal courts in creating federal common law under ERISA. Courts have looked to the statutory language and underlying policies of ERISA.¹⁰ Courts also have looked to other federal labor statutes, including the Labor-Management Relations Act ("LMRA") and the National Labor Relations Act ("NLRA").¹¹ Finally, federal courts have consulted state common law principles in formulating federal common law under ERISA.¹²

In a number of decisions over the past decade, the United States Supreme Court has interpreted the scope and defined the application of ERISA's broad preemption provision.¹³ In the 1987

Regarding the creation of federal common law under ERISA, Senator Javits stated: "[I]t is also intended that a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans." *Id.* The Court of Appeals for the Ninth Circuit also described the purpose of the establishment of federal common law under ERISA:

Congress realized that the bare terms, however detailed, of these statutory provisions would not be sufficient to establish a comprehensive regulatory scheme. It accordingly empowered the courts to develop, in light of reason and experience, a body of federal common law governing employee benefit plans. That federal common law serves three related ends. First, it supplements the statutory scheme interstitially. Second and more generally, it serves to clarify and develop the standards that the statute sets out in only general terms. . . . Third, Congress viewed ERISA as a grant of authority to the courts to develop principles governing areas of the law regulating employee benefit plans that had previously been the exclusive province of state law.

Menhorn v. Firestone Tire & Rubber Co., 738 F.2d 1496, 1499 (9th Cir. 1984) (citations omitted); *accord* *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 n.26 (1983) ("ERISA's legislative history indicates that, in light of the Act's virtually unique pre-emptive provision . . . a body of Federal substantive law will be developed by the courts to deal with issues . . . under private welfare and pension plans.").

¹⁰ See, e.g., *Nachwalter v. Christie*, 805 F.2d 956, 959 (11th Cir. 1986) (courts may create federal common law only when ERISA does not expressly address case at issue); *Amato v. Western Union Int'l Inc.*, 773 F.2d 1402, 1419 (2d Cir. 1985) (courts do not lightly create additional rights under federal common law where Congress extensively regulates an area).

¹¹ See *Grossmuller v. International Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, Local 813, 715 F.2d 853, 857 (3d Cir. 1983) (in determining whether the employer's pension plan claim procedure complied with ERISA, the court looked to section 301 of the LMRA to define the parameters of the ERISA "full and fair review" standard); *Music v. Western Conference of Teamsters Pension Trust Fund*, 712 F.2d 413, 418 (9th Cir. 1983) ("ERISA essentially codified the strict fiduciary standards that a section 302(c)(5) [of the LMRA] trustee must meet"); *Amato v. Bernard*, 618 F.2d 559, 567 (9th Cir. 1980) (because ERISA did not mention the exhaustion of available administrative remedies doctrine, the court looked to § 301 of the LMRA for guidance consistent with the policies of ERISA).

¹² See, e.g., *Jenkins v. Local 705, Int'l Bhd. of Teamsters*, 713 F.2d 247, 251, 253 (7th Cir. 1983) (court analogized to the most appropriate state statute of limitations because ERISA does not contain a statute of limitations for enforcing rights under pension plans); *Amato*, 773 F.2d at 1419 (court looked to New York state law in creating federal common law under ERISA).

¹³ See, e.g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44-47 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90-92 (1983).

decision of *Pilot Life Insurance Co. v. Dedeaux*, the Supreme Court formally extended the scope of ERISA's preemption to include state common law claims.¹⁴ The Court applied the plain meaning of the "relates to" phrase to preempt state common law that had a "connection with or reference to" an employee benefit plan.¹⁵ Courts both before and after the *Pilot* decision, however, have failed to address clearly the issues regarding ERISA's preemption of state common law claims of estoppel.¹⁶

Many courts prior to the *Pilot* decision incorporated state common law claims of estoppel into federal common law under ERISA.¹⁷ Despite *Pilot's* holding that ERISA preempts state common law claims that "relate to" an ERISA plan, some courts continue to follow pre-*Pilot* precedent.¹⁸ Courts that had recognized state estoppel claims prior to *Pilot* continued to do so after *Pilot* because the federal common law under ERISA had already incorporated such claims. Other courts that held ERISA preempted state estoppel claims prior to *Pilot* continued this trend after *Pilot*. Thus, the status of federal common law claims of estoppel under ERISA is unclear.

This note discusses the tension between ERISA's preemption of state common law estoppel claims and the formulation of federal common law in light of the Supreme Court's decision in *Pilot*. Section I reviews the history and purposes behind the enactment of ERISA.¹⁹ Section II discusses the preemption of state statutory and common law under ERISA.²⁰ Section III presents pre-*Pilot* and post-*Pilot* cases analyzing estoppel claims brought under ERISA.²¹ Section IV addresses the effect of federal preemption of state common law claims of estoppel on the formulation of federal common law.²² Section IV also discusses the tension between ERISA's preemption of state common law claims and the formulation of federal common

¹⁴ 481 U.S. at 50, 57.

¹⁵ *Id.* at 47-48.

¹⁶ See, e.g., *Cleary v. Graphic Communications Int'l Union Supplemental Retirement & Disability Fund*, 841 F.2d 444, 447 (1st Cir. 1988); *Haeberle v. Board of Trustees of Buffalo Carpenters Health-Care, Dental, Pension & Supplemental Funds*, 624 F.2d 1132, 1139 (2d Cir. 1980).

¹⁷ See, e.g., *Haeberle*, 624 F.2d at 1139; *Kann v. Keystone Resources, Inc.*, 575 F. Supp. 1084, 1093-94 (W.D. Pa. 1983).

¹⁸ See, e.g., *Straub v. Western Union Tel. Co.*, 851 F.2d 1262, 1264-65 (10th Cir. 1988); *Cleary*, 841 F.2d at 447.

¹⁹ See *infra* notes 25-47 and accompanying text.

²⁰ See *infra* notes 48-115 and accompanying text.

²¹ See *infra* notes 116-185 and accompanying text.

²² See *infra* notes 186-224 and accompanying text.

law by looking to state common law.²³ Section IV then proposes to resolve this tension by suggesting a framework under which the courts should adopt a uniform estoppel standard under ERISA, but limit its application to situations consistent with ERISA's policies.²⁴ This note concludes that federal common law under ERISA can incorporate estoppel claims without compromising ERISA's policies. All the circuits, however, must adopt a uniform proposal in order to have a consistent body of federal common law under ERISA.

I. PURPOSE & HISTORY OF ERISA

In 1875, the American Express Company established the first major pension plan in the United States.²⁵ Since 1875, the number of employee pension and benefit plans has increased dramatically.²⁶ Prior to the passage of ERISA in 1974, however, no comprehensive body of federal or state law existed in the United States governing employee benefit plans. After attempting to implement several intermediate federal regulatory schemes, Congress enacted ERISA to provide comprehensive protection to participants of employee benefit plans.²⁷ One can only understand the need for ERISA's broad preemptive framework in the context of prior state and federal regulation of employee benefit plans.

Prior to ERISA, a number of various state and federal laws governed the regulation of employee benefit plans. At the state level, state trust and contract law or state insurance laws regulated pension and welfare benefit plans.²⁸ State common law doctrine and

²³ See *infra* notes 186-224 and accompanying text.

²⁴ See *infra* notes 225-230 and accompanying text.

²⁵ Hutchinson & Ilshin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 46 U. CHI. L. REV. 23, 24 n.5 (1978) (citing D. ROTHMAN, *ESTABLISHING AND ADMINISTERING PENSION AND PROFIT-SHARING PLANS AND TRUST FUNDS* 1 (1967)).

²⁶ See 120 CONG. REC. H29,214 (daily ed. Sept. 22, 1974). In 1940, private pension funds covered only 4.1 million employees with assets totalling \$2.4 billion. By 1960, the number of employees covered had increased to 21.2 million and assets totalling over \$52 billion. In 1984, there were 880,000 private pension plans covering 65 million workers with assets totalling over \$900 billion. *Id.* (Department of Labor figures).

²⁷ 29 U.S.C. § 1001 (1982), ERISA § 2. See *infra* notes 30-47 and accompanying text for a discussion of pre-ERISA regulation of employee benefit plans.

²⁸ See generally Hutchinson & Ilshin, *supra* note 25, at 25-26; Herbert, *Investment Regulation and Conflicts of Interest in Employer-Managed Pension Plans*, 17 B.C. INDUS. & COM. L. REV. 129, 143-47 (1976).

insurance regulations, however, proved ill-equipped to govern the complexities of employee pension plans.²⁹

At the federal level, Congress intervened in the regulation of benefit plans through changes in income tax laws and labor legislation.³⁰ The tax law changes provided that employer contributions to employee benefit plans were deductible as business expenses and created a special category for "qualified" plans that permitted employees to defer taxation of employer contributions.³¹ In 1947, Congress enacted the first major non-tax legislation relating to pension plans, the Taft-Hartley amendment to the Labor-Management Relations Act ("LMRA").³² Section 302 of the LMRA required unions that maintained employee benefit plans to hold the employees' contributions to these plans in a trust. Congress designed this provision to prevent what it perceived as abuses and corruption in labor unions.³³ Section 302, however, inadequately regulated employee benefit plans because it only applied to pension trusts established through collective bargaining and managed and administered by unions.³⁴ Additionally, it imposed only a few specific requirements in the governance of pension trusts.³⁵

In order to govern benefit plans established outside unionized industries and to provide greater protection to participants, Congress enacted the Welfare and Pension Plan Disclosure Act

²⁹ See *supra* note 1 and accompanying text for a discussion of ERISA's basic policy provisions set forth by Congress.

³⁰ 29 U.S.C. § 1001, ERISA § 2; 120 CONG. REC. S29,935 (daily ed. Aug. 22, 1974) (statement of Sen. Javits). For a discussion of the early income tax provisions relating to pre-ERISA pension plans, see Snyder, *Employee Retirement Income Security Act of 1974*, 11 WAKE FOREST L. REV. 219, 220-22 (1975); Note, *The Pension Dilemma: An Analysis of Discord Between IRS and the NLRB*, 39 BROOKLYN L. REV. 684, 688-93 (1973); Note, *Pension Plans and the Rights of the Retired Worker*, 70 COLUM. L. REV. 909, 924-28 (1970).

³¹ See 26 U.S.C. § 401 (1982).

³² 29 U.S.C. § 186 (1982).

³³ 29 U.S.C. § 186. Additionally, section 302 provides specific guidelines for union and management administration and governance of pension trusts. *Id.* For a general discussion of the Taft-Hartley Act, see Welch & Wilson, *Applicability of Traditional Principles of Trust Law to Union and Management Representatives Administering Taft-Hartley Trusts*, 23 LAB. L.J. 671 (1972); Goetz, *Developing Federal Labor Law of Welfare and Pension Plans*, 55 CORNELL L. REV. 911 (1970). A pension trust is a type of funded pension plan in which an employer transfers to trustees an amount sufficient to cover cost of pensions to employees who are beneficiaries of the trust. BLACK'S LAW DICTIONARY 1022 (5th ed. 1979).

³⁴ Hutchinson & Ifshin, *supra* note 25, at 27. In addition to requiring the union to hold pension funds in trust, the principal and income of the fund must be kept in a separate pension trust, jointly administered by representatives of management and labor pursuant to a written plan. 29 U.S.C. § 186(c)(5).

³⁵ Hutchinson & Ifshin, *supra* note 25, at 27.

("WPPDA") of 1958.³⁶ Although WPPDA applied to non-unionized employers, the federal role under WPPDA was limited: WPPDA only required plan administrators to meet certain reporting and disclosure requirements.³⁷ Specifically, WPPDA required administrators of plans with twenty-five or more participants to file reports with the United States Secretary of Labor.³⁸ Furthermore, WPPDA did not preempt state law regulating pensions plans.³⁹

Congress enacted ERISA in 1974 to respond to the rapid growth of employee pension and benefit plans, increases in abuses relating to employee benefit plans, and to overcome the inability of the states to develop a comprehensive and uniform body of law.⁴⁰ To further these goals, ERISA contains detailed reporting and disclosure requirements.⁴¹ In addition, ERISA establishes minimum participation, vesting, benefit accrual, benefit payment, and minimum funding requirements.⁴² ERISA also specifies standards of conduct for plan trustees and administrators, and provides for civil and criminal remedies in the event of statutory violations of the plan by trustees.⁴³ ERISA creates a benefit guaranty program that insures against loss of benefits upon termination or insolvency of an ERISA plan.⁴⁴

³⁶ Pub. L. No. 85-836, 72 Stat. 997, 997-1003 (1958) (repealed by 29 U.S.C. § 1031(a)(1) (1982), ERISA § 111(a)(1) (1974)).

³⁷ 72 Stat. 997, 999-1000 (1958).

³⁸ *Id.*

³⁹ *Malone v. White Motor Corp.*, 435 U.S. 497, 505 (1978) ("[WPPDA,] together with the legislative history of the 1958 Disclosure Act, clearly indicates that Congress at the time recognized and preserved State authority to regulate pension plans"). See generally *Hutchinson & Ifshin*, *supra* note 25, at 27-30.

⁴⁰ 29 U.S.C. §§ 1001, 1144, ERISA §§ 2, 514; 120 CONG. REC. S29,933 (daily ed. Aug. 22, 1974) (statement of Sen. Williams). Senator Humphrey hailed ERISA as the most significant piece of social legislation ever passed by Congress. 120 CONG. REC. S29,944 (daily ed. Aug. 22, 1974) (statement of Sen. Long). Congressman Daniels stated that "[d]uring the century that private pension plans have been with us, they have grown phenomenally — and without regulation. . . . But, consider that out of the 30 million employees enrolled in plans [in 1974], almost a third, 10 million, will receive no benefits what[s]soever." 120 CONG. REC. H29,214 (daily ed. Aug. 20, 1974).

⁴¹ 29 U.S.C. §§ 1021-1030, ERISA §§ 101-110.

⁴² *Id.* §§ 1051-1060, 1081-1085, ERISA §§ 201-210, 301-305.

⁴³ *Id.* §§ 1101-1113, 1131-1142, ERISA §§ 401-413, 501-512. Federal courts have exclusive jurisdiction over all actions brought under section 502, with the exception of actions to enforce the terms of a plan. States have concurrent jurisdiction over actions to enforce plan terms. 29 U.S.C. § 1132(e)(1), ERISA § 502(e)(1). See generally *Cornell & Little, Indemnification of Fiduciary and Employee Litigation Costs Under ERISA*, 25 B.C.L. REV. 1 (1983); *Dobranski, The Arbitrator as a Fiduciary Under The Employee Retirement Income Security Act of 1974: A Misguided Approach*, 32 AM. U.L. REV. 65, 67-70 (1982); *Hutchinson & Ifshin, The Federal Prudent Man Rule Under ERISA*, 22 VILL. L. REV. 15, 22-39 (1976).

⁴⁴ 29 U.S.C. §§ 1301-1453, ERISA §§ 4001-4061.

Thus, as a result of the tremendous growth and increased abuses relating to the administration of employee benefit plans, Congress enacted legislation to govern employee benefit plans.⁴⁵ Because neither this legislation nor state regulation adequately protected participants of employee benefit plans, Congress enacted ERISA in 1974.⁴⁶ Therefore, ERISA provided for the comprehensive regulation of employee benefit plans, and it also preempted state law relating to such plans.⁴⁷

II. ERISA'S PREEMPTION OF STATE LAW

To accomplish its intended uniformity of employee benefit and pension law, Congress enacted ERISA as a comprehensive regulatory scheme establishing national standards for employee benefit and welfare plans.⁴⁸ Section 514(a), setting forth ERISA's broad preemption power, expressly states that the provisions of ERISA shall supersede any state law that "relates to" any employee benefit plan covered by ERISA.⁴⁹ According to the Supreme Court, a state law "relates to" an employee benefit plan if the law has a "connection with or reference to" such an employee benefit plan.⁵⁰

Congress, however, limited the scope of ERISA's preemption by providing statutory exceptions for specific types of laws "related to" employee benefit plans.⁵¹ Thus, once a court determines that a state law "relates to" an employee benefit plan, that court must then

⁴⁵ See *supra* note 26 and accompanying text.

⁴⁶ See *supra* notes 28-39 and accompanying text.

⁴⁷ See *supra* notes 6-9, 40 and accompanying text.

⁴⁸ 29 U.S.C. § 1001 (1982), ERISA § 2 (1974).

⁴⁹ *Id.* § 1144(a), ERISA § 514(a). See *supra* note 7 and accompanying text for a discussion of the legislative history surrounding section 514(a). Also, in *Shaw v. Delta Air Lines, Inc.*, the Supreme Court, analyzing the legislative history of section 514, explained:

The bill that became ERISA originally contained a limited pre-emption clause, applicable only to state laws relating to the specific subjects covered by ERISA. The Conference Committee rejected those provisions in favor of the present language and indicated that the section's pre-emptive scope was as broad as its language.

463 U.S. 85, 98 (1983); see also *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 n.26 (1983) (describing 514(a) as a "virtually unique preemption provision").

⁵⁰ *Shaw*, 463 U.S. at 96-7. ERISA defines "state law" to include "all laws, decisions, rules, regulations, or other State action having the effect of law." 29 U.S.C. § 1144(c)(1), ERISA § 514(c)(1). Section 514(c)(2) defines the term "state" to include "a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title." 29 U.S.C. § 1144(c)(2), ERISA § 514(c)(2).

⁵¹ See *supra* note 8 for a discussion of exemptions to ERISA's broad preemption clause.

determine whether the state law is saved by one of ERISA's express exceptions to its preemption provision.⁵² Section 514(b)(4) provides that the preemption provision of ERISA shall not apply to any generally applicable state criminal laws.⁵³ Additionally, section 514(b)(2)(A), the "savings clause," provides that ERISA preemption shall not exempt any person from any state law that regulates insurance, banking or securities.⁵⁴ As a result, ERISA's exceptions preserve the role of the states in regulating traditionally state-governed areas.

Section 514(b)(2)(B), the "deemer clause," limits the breadth of ERISA's insurance savings clause.⁵⁵ The "deemer clause" provides that an employee benefit plan or trust shall not be deemed to be an insurance company, a bank, or a trust company for the purposes of any state law purporting to regulate such institutions.⁵⁶ In other words, states may not simply label regulation of benefit plans as "regulation of insurance" and thereby invoke the protection of the savings clause.⁵⁷

A number of United States Supreme Court decisions interpreting ERISA's preemptive scope and application of the savings and deemer clauses have held that ERISA preempts various state laws. In the 1981 case of *Alessi v. Raybestos-Manhattan, Inc.*, the United States Supreme Court directly addressed the scope of ERISA's preemption clause for the first time.⁵⁸ The Court held that ERISA preempted a New Jersey statute prohibiting pension offsets by amounts awarded for workers' compensation claims.⁵⁹

In *Alessi*, an employee obtained workers' compensation benefits subject to an offset against his retirement benefits under an employee pension plan.⁶⁰ When he retired the former employee sought

⁵² See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46-47 (1987).

⁵³ 29 U.S.C. § 1144(b)(4), ERISA § 514(b)(4). Section 514(b) also exempts plans under section 4(b), including governmental plans, church plans, plans maintained solely for the purpose of complying with applicable worker's compensation laws or unemployment compensation or disability insurance laws, plans maintained outside the U.S. primarily for the benefit of nonresident aliens, and unfunded excess benefit plans. *Id.* § 1003(b), ERISA § 4(b). Congress also added two other limited exceptions to § 514(a), the Hawaii Prepaid Health Care Act and certain "multiple employer welfare arrangements." *Id.* §§ 1144(b)(5), 1144(b)(6), ERISA §§ 514(b)(5), 514(b)(6).

⁵⁴ *Id.* § 1144(b)(2)(A), ERISA § 514(b)(2)(A).

⁵⁵ See *id.* § 1144(b)(2)(B), ERISA § 514(b)(2)(B).

⁵⁶ *Id.* § 1144(b)(2)(B), ERISA § 514(b)(2)(B).

⁵⁷ See *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 741-43 (1985).

⁵⁸ 451 U.S. 504, 522, 524 (1981).

⁵⁹ *Id.* at 526.

⁶⁰ *Id.* at 508.

to enjoin such offsets and recover damages for those deductions already made.⁶¹ The plaintiff claimed that ERISA preempted the provision of the New Jersey statute allowing employers to adjust for pension offsets.⁶²

The Supreme Court stated that analysis of section 514(a), ERISA's preemption clause, must be guided by respect for the separate spheres of governmental authority preserved by the separation of powers doctrine.⁶³ Applying this policy, the primary factor that persuaded the Court to rule for preemption was the fact that state law conflicted with the ERISA method for calculating pension benefits.⁶⁴ The federal interest in precluding state interference with labor-management relations, the Court noted, provided additional support for ERISA preemption because the pension plan had emerged from the collective bargaining process.⁶⁵ Therefore, the Court in *Alessi* held that the state statute "related to" an employee benefit plan, even though the Court conceded that the New Jersey statute had only an indirect bearing on private pensions.⁶⁶ While partially clarifying the scope of section 514(a) in regard to workers' compensation offsets, *Alessi* left unsettled the issue of the applicability of ERISA's preemption to other state statutory and common law.⁶⁷

Following *Alessi*, in 1983, the United States Supreme Court in *Shaw v. Delta Air Lines, Inc.*, expanded the parameters of the "relates to" clause in section 514(a) and held that ERISA preempted a state statute only indirectly associated with ERISA.⁶⁸ Shaw, an employee of Delta Air Lines, brought an action against the company for a violation of state human rights law. He claimed discrimination in the administration of Delta's employee benefit plan.⁶⁹ In *Shaw*, the issue was whether a New York Human Rights and Disability Benefits

⁶¹ *Id.* at 508 n.2.

⁶² *Id.* at 509.

⁶³ *Id.* at 522.

⁶⁴ *Id.* at 524.

⁶⁵ *Id.* at 525.

⁶⁶ *Id.* at 524-25. In support of preemption, Justice Marshall stated: "[E]ven indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern." *Id.* at 525.

⁶⁷ *Id.* at 525 n.21. Some judges interpreted *Alessi* to require a "direct clash" between state law and ERISA prior to finding preemption. See, e.g., *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust*, 679 F.2d 1307, 1311 (9th Cir. 1982) (Tang, J., dissenting), *vacated on juris. grounds*, 463 U.S. 1 (1983).

⁶⁸ 463 U.S. 85, 100 (1983).

⁶⁹ *Id.* at 92.

Law "related to" an employee benefit plan.⁷⁰ In holding that ERISA preempted a state human rights statute that was only indirectly related to ERISA, the Court gave an expansive interpretation to section 514(a).⁷¹

The Court, defining the scope of section 514(a), stated that a law "relates to" an employee benefit plan in the normal sense of the term if the law has a "connection with or reference to" such a plan.⁷² The Court in *Shaw* then examined the legislative history of section 514(a) and concluded that Congress intended courts to interpret section 514 as broadly as the plain meaning of its language.⁷³ Thus, following *Shaw* and *Alessi*, ERISA preempts all state statutory claims if such claims have a "connection with or reference to" an employee benefit plan, leaving the question of ERISA's preemption of state common law claims unanswered.⁷⁴

In the 1985 case of *Metropolitan Life Insurance Co. v. Massachusetts*, the United States Supreme Court addressed ERISA's savings and deemer clauses for the first time.⁷⁵ The issue presented in *Metropolitan Life* was whether ERISA preempted a state statute requiring employers to provide certain mental health care benefits to insured employees.⁷⁶ Metropolitan Life Insurance contended that the state-mandated benefit laws were impermissible state regulation of employee benefit plans.⁷⁷

The Court in *Metropolitan Life* began its analysis by reaffirming a broad, common-sense interpretation of section 514(a), ERISA's preemption clause.⁷⁸ This interpretation included looking at the plain meaning of the preemption clause.⁷⁹ Applying the *Shaw* stan-

⁷⁰ *Id.* at 96. The New York state law prohibited sexually discriminatory employment practices with regard to compensation or other terms of employment. *Id.* at 97.

⁷¹ *Id.* at 97-100.

⁷² *Id.* at 96-97.

⁷³ *Id.* at 98.

⁷⁴ *See id.* at 96-97. Although the Court made it clear that the "relates to" clause would be interpreted in its "normal sense" as Congress intended, the Court again failed to present a principled formula to guide lower court decisions. *See id.* To add to the uncertainty, the Court indicated that some state laws would not be preempted. *Id.* at 100 n.21. The Court stated: "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.*

⁷⁵ 471 U.S. 724, 739, 740-41 (1985). ERISA's preemption also includes state laws consistent with ERISA's substantive requirements. *See Shaw*, 463 U.S. 85, 98-99.

⁷⁶ *Metropolitan Life*, 471 U.S. at 727.

⁷⁷ *See id.* at 733, 734. The effect of these laws was to require employee health care plans to include the mandated mental health coverages. *See id.* at 727, 728.

⁷⁸ *Id.* at 732.

⁷⁹ *Id.*

dard of "connection with or reference to," the Court concluded that the state-mandated benefit law related to an ERISA plan.⁸⁰ Thus, section 514(a) preempted the state statute.⁸¹

The Court then proceeded to analyze whether section 514(b)(2), the insurance savings clause, exempted the statute from preemption.⁸² The Court in *Metropolitan Life* held that the mandated benefit laws fell within the savings clause exception to ERISA's preemption.⁸³ Thus, *Metropolitan Life*, in interpreting the scope of ERISA's savings clause, held that ERISA did not preempt the state mandated-benefit law.⁸⁴

The first United States Supreme Court decision interpreting ERISA's preemption clause in relation to state common law claims was the 1987 case of *Pilot Life Insurance Co. v. Dedeaux*.⁸⁵ In *Pilot*, the Court held that ERISA preempted a state common law claim of "bad faith" where the state law did not regulate insurance.⁸⁶ The Court ruled that the state action based on an alleged improper processing of benefit claims "related to" an employee benefit plan within the meaning of ERISA's preemptive clause.⁸⁷ ERISA's insurance savings clause, the Court continued, did not save the common law claims because the claims were not "specifically directed toward or concerned with" the insurance industry.⁸⁸

Everate Dedeaux, the plaintiff in *Pilot*, was an employee of Entex, which sponsored an ERISA-governed benefit plan.⁸⁹ *Pilot*

⁸⁰ *Id.* at 739.

⁸¹ *Id.* The court stated that, although the Massachusetts statute "is not denominated a benefit-plan law, it bears indirectly but substantially on all insured benefit plans . . . and thus is covered by ERISA's broad pre-emption provision set forth in § 514(a)." *Id.*

⁸² *Id.* at 739-40. The Supreme Court for the first time addressed ERISA's "savings" and "deemer" clauses. The Court also held that ERISA did not preempt a state statute from regulating employee benefits provided under an insured plan. *Id.* at 747. The Court also recognized the distinction between insured and uninsured plans, but declared that Congress created the distinction and Congress, therefore, would be responsible for resolving those problems. *Id.*

⁸³ *Id.* at 744.

⁸⁴ *Id.*

⁸⁵ 481 U.S. 41, 45 (1987). In *Metropolitan Life Insurance Company v. Taylor*, a companion case to *Pilot*, the United States Supreme Court held that, although ERISA preempts state common law actions, courts can recharacterize a state law complaint as an action arising under ERISA regardless of whether the preemption was obvious at the time the suit was filed. 481 U.S. 58, 66, 67 (1987). This recharacterization, however, is limited to the purpose of removal to federal court. *See id.*

⁸⁶ 481 U.S. at 57.

⁸⁷ *Id.*

⁸⁸ *Id.* at 50.

⁸⁹ *Id.* at 43.

Life Insurance provided employee benefits under the Entex plan. Dedeaux, following an injury at work, received disability benefits from Pilot Life for two years. For the next three years, Pilot Life reinstated and terminated Dedeaux's benefits on numerous occasions.⁹⁰

Dedeaux filed suit in federal court, alleging various state common law claims, including breach of contract, fraud, and breach of fiduciary duty.⁹¹ He claimed \$250,000 in compensatory damages and \$500,000 in punitive damages.⁹² Pilot Life then moved for summary judgment.⁹³

The United States District Court for the Southern District of Mississippi granted summary judgment to Pilot Life on the basis that ERISA preempted the alleged state common law claims.⁹⁴ On appeal, the United States Court of Appeals for the Fifth Circuit reversed the district court's decision.⁹⁵ The appeals court held that ERISA did not preempt Dedeaux's claims because the action involved a law regulating insurance and thus was saved under section 514(b)(4).⁹⁶ The United States Supreme Court, recognizing a split in the circuits on the issue of whether or not ERISA preempted state common law claims, granted certiorari.⁹⁷

The Supreme Court reversed the Fifth Circuit in *Pilot* and held that ERISA preempted Mississippi's law of "bad faith."⁹⁸ In reaching this conclusion, the Court ruled that Mississippi's law clearly "related to" an employee benefit plan.⁹⁹ Next, the Court analyzed whether the claim was saved by section 514(b) of ERISA.¹⁰⁰ The Court interpreted the phrase "regulated insurance" to mean that the law at issue must be specifically directed toward the insurance industry and must not just affect the industry.¹⁰¹ Applying this standard, the

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 43-44.

⁹³ *Id.* at 44.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ 770 F.2d 1311, 1316, 1317 (5th Cir. 1985), *rev'd*, 481 U.S. 41 (1987).

⁹⁷ See *Pilot Life Ins. Co. v. Dedeaux*, *cert. granted*, 478 U.S. 1004 (1986); Nelson, *Pilot Life Co. v. Dedeaux: The Supreme Court's Federalization of Employee Benefit Law*, 23 *TORT & INS. L.J.* 507, 510-11 (1988).

⁹⁸ 481 U.S. at 57.

⁹⁹ *Id.* at 47.

¹⁰⁰ *Id.* at 48.

¹⁰¹ *Id.* at 50.

Court held that Mississippi's law of bad faith was not specifically directed at the insurance industry and therefore did not qualify for an exemption from ERISA's preemption under the savings clause.¹⁰² Thus, ERISA preempted Dedeaux's claim because his claim related to an employee benefit plan and was not specifically directed at the insurance industry.¹⁰³

To support its holding in *Pilot*, the Court relied on legislative history and the structure of ERISA's civil enforcement provisions.¹⁰⁴ The legislative history, the Court noted, illustrated that Congress clearly intended that the civil enforcement provisions of ERISA, section 502(a), operate as the exclusive vehicle for action by ERISA-plan participants and beneficiaries.¹⁰⁵ As a result, the Court reasoned, varying state causes of action for claims covered within section 502(a) would frustrate the purposes and objectives of Congress and should be preempted.¹⁰⁶ After examining the legislative history of section 502(a), the Court concluded that Congress intended this section, like section 301 of the LMRA, to provide an exclusive remedy.¹⁰⁷

¹⁰² *Id.* at 57. The Court then went on to analyze the claim in terms of the McCarran-Ferguson Act, illustrating that the claim was not a law that affected the "business of insurance." *Id.* at 48-51. The "business of insurance," according to the Court, involves three factors: first, whether the practice transfers or spreads policyholders' risk; second, whether the practice is an integral part of the policy relationship between the insurer and insured; and third, whether the practice is limited to entities in the insurance industry. *Id.* at 48-49 (quoting *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129 (1982)). The Court held that the Mississippi law of bad faith may have only met the second factor. *Id.* at 511.

¹⁰³ *Id.* at 57.

¹⁰⁴ *Id.* at 51-53. Section 502(a), ERISA's civil enforcement provision, provides in pertinent part as follows:

A civil action may be brought —

(1) by a participant or beneficiary —

(A) for the relief provided in subsection (c) of this section [concerning requests to the administrator for information], or

(B) to recover benefits due to him [or her] under the terms of the plan, to enforce rights under the terms of the plan, or to clarify his [or her] 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 [breach of fiduciary duty];

(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) (1982), ERISA § 502(a) (1974).

¹⁰⁵ *Pilot*, 481 U.S. at 54.

¹⁰⁶ *See id.* at 56.

¹⁰⁷ *Id.*

The Supreme Court also recognized in *Pilot* that section 502(a) provided a comprehensive civil enforcement scheme.¹⁰⁸ The Court described section 502(a) as a careful balance between the need for prompt and fair settlement procedures and the public interest in encouraging formation of employee benefit plans.¹⁰⁹ The inclusion of certain remedies and the exclusion of others, the Court explained, illustrated this policy.¹¹⁰ The Court added that to allow ERISA-plan participants and beneficiaries to obtain state law remedies that Congress specifically rejected in ERISA would undermine section 502(a).¹¹¹ Therefore, after an examination of the legislative history and statutory language of section 502(a), the *Pilot* Court reasoned that Congress intended ERISA to preempt state claims providing additional remedies to plan participants. As a result, the Court held that ERISA preempted Mississippi's law of "bad faith."

Thus, the United States Supreme Court, in a number of holdings over the past decade, has extended the preemptive scope of ERISA to include state common law and statutory claims that "relate to" an employee benefit plan and that supply additional remedies not provided for under section 502(a).¹¹² The Supreme Court in *Shaw* gave plain meaning to the "relates to" clause and held that section 514(a) preempts a state law if the state law has a "connection with or reference to" an employee benefit plan.¹¹³ The *Pilot* Court expanded this analysis and added that, if varying state law could supplant remedies available to ERISA participants and beneficiaries under 502(a), this would frustrate Congress' intent that a uniform body of federal common law develop under ERISA.¹¹⁴ Thus, the

¹⁰⁸ *Id.* at 54.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* For additional support, see *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985) ("The six carefully integrated civil enforcement provisions found in § 502(a) . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.").

¹¹² See *Pilot*, 481 U.S. at 57; *Russell*, 473 U.S. at 145-46 ("Other equitable relief" does not include punitive damages. Section 502(a), with six integrated civil enforcement provisions, suggests the Congress did not intend to authorize other remedies.). See generally Note, *Punitive Damages and ERISA: An Anomalous Effect of ERISA's Preemption of Common Law Actions*, 65 WASH. U.L.Q. 589, 599-609 (1987).

¹¹³ 463 U.S. 85, 96-97 (1983).

¹¹⁴ 481 U.S. at 56. Also, in *Menhorn v. Firestone Tire & Rubber Co.*, the court presented three related ends that the adoption of federal common law under ERISA serves. 738 F.2d 1496, 1499 (9th Cir. 1984). First, it supplements the statutory scheme interstitially. Second, the common law serves to ramify and develop the standards that the statute sets out in only general terms. Finally, Congress viewed ERISA as a grant of authority to the courts to develop principles governing areas of the law regulating employee benefits that had previ-

Pilot Court stated that ERISA preempts state claims that "relate to" an employee benefit plan and provide additional remedies to plan participants.¹¹⁵

III. COMMON LAW CLAIMS OF ESTOPPEL AND ERISA'S PREEMPTION

Prior to the Supreme Court decision in *Pilot*, the courts were unclear whether or not ERISA preempted state common law claims.¹¹⁶ Plan participants and beneficiaries frequently raised the state common law claim of estoppel to prevent the plan administrator or trustee from denying them benefits due under the plan.¹¹⁷ Because neither the statutory language nor the legislative history of ERISA addresses the issue of ERISA's preemption of estoppel claims, the judiciary has resolved the problem by relying upon the combined guidance of ERISA's policies, legislative history, and statutory language, and by analogizing to the LMRA.¹¹⁸ As a result of a case-by-case formulation of federal common law, two major trends emerged within the federal circuit courts in addressing the problem of state common law claims of estoppel under ERISA.¹¹⁹ Although courts have uniformly held that ERISA preempts state common law claims, some courts recognize federal common law estoppel under ERISA while other courts refuse to recognize a federal claim of estoppel.

A. *Pre-Pilot Decisions*

Prior to *Pilot*, the majority of federal circuit courts — seven — concluded that ERISA preempts state common law estoppel claims as a matter of law.¹²⁰ After reaching this conclusion, these circuits either did not consider or refused to recognize estoppel as a federal

ously been under state law. *Id.*; see also *Amato v. Western Union Int'l Inc.*, 773 F.2d 1402, 1419 (2d Cir. 1985) ("In appropriate circumstances, courts may develop a federal common law under ERISA."); *Van Orman v. American Ins. Co.*, 680 F.2d 301, 313-14 (3d Cir. 1982) (the court refused to recognize an unjust enrichment claim under ERISA because no statutory policy supported its adoption into federal common law). See generally M. REDISH, *FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER*, 79-107 (1980).

¹¹⁵ 481 U.S. at 56.

¹¹⁶ See *supra* note 97.

¹¹⁷ See, e.g., *Nachwalter v. Christie*, 805 F.2d 956, 959 (11th Cir. 1986); *Amato*, 773 F.2d at 1406.

¹¹⁸ See *supra* notes 9-12 and accompanying text for a discussion of the creation of a federal common law under ERISA.

¹¹⁹ See, e.g., *Nachwalter*, 805 F.2d at 960; *Amato*, 773 F.2d at 1420.

¹²⁰ See *infra* notes 123-142 and accompanying text for cases not recognizing estoppel as a federal common law claim under ERISA.

common law claim under ERISA.¹²¹ In contrast to those circuits refusing to recognize federal estoppel, four circuits have formulated a federal common law claim of estoppel into the common law under ERISA.¹²²

Prior to *Pilot*, four of the majority of seven circuits held without further analysis that ERISA preempted state common law claims of estoppel.¹²³ Decisions of three other circuits held that ERISA preempts state common law estoppel claims and then proceeded to analyze the action of the plan administrator under the arbitrary and capricious standard of review.¹²⁴

In the 1986 case of *Nachwaller v. Christie*, the United States Court of Appeals for the Eleventh Circuit, without addressing ERISA's preemption, examined whether the federal common law under ERISA should recognize estoppel claims.¹²⁵ In *Nachwaller*, the plaintiffs, who were the plan trustees, brought a declaratory judgment action to determine the proper valuation date of a pension

¹²¹ *Id.*

¹²² See *infra* notes 145-163 and accompanying text for cases recognizing a federal common law claim of estoppel under ERISA. See, e.g., *Chambless v. Masters, Mates & Pilots Pension Plan*, 722 F.2d 1032, 1041 (2d Cir. 1985) (although the court recognized the existence of estoppel claims under ERISA, it reaffirmed its reluctance to apply the estoppel doctrine), *cert. denied*, 475 U.S. 1012 (1986); *Kann v. Keystone Resources, Inc.*, 575 F. Supp. 1084, 1093 (W.D. Pa. 1983). Although many courts do not identify a source within ERISA for the estoppel claim, some courts have traced an estoppel claim to section 502(a)(3)(B) — "other equitable relief." 29 U.S.C. § 1132(a)(3)(B) (1982), ERISA § 502(a)(3)(B). See, e.g., *Vogel v. Independence Fed. Sav. Bank*, 692 F. Supp. 587, 594 (D. Md. 1988) (estoppel is an equitable doctrine under section 502(a)(3)(B)).

¹²³ See *Nachwaller v. Christie*, 805 F.2d 956, 959 (11th Cir. 1986).

¹²⁴ See *Ellenberg v. Brockway, Inc.*, 763 F.2d 1091, 1095, 1096 (9th Cir. 1985); *Menhorn v. Firestone Tire & Rubber Co.*, 738 F.2d 1496, 1508 (9th Cir. 1984). See also 29 U.S.C. § 1104(a)(1) (1982), ERISA § 404(a)(1). Courts have uniformly applied the arbitrary and capricious standard to judge employers' actions in the operation and management of employee benefit plans under ERISA. See, e.g., *Moore v. Provident Life & Accident Ins. Co.*, 786 F.2d 922, 928 (9th Cir. 1986) (state common law estoppel claim preempted under section 514(a) of ERISA); *Holland v. Burlington Indus., Inc.*, 772 F.2d 1141, 1148, 1149 (4th Cir. 1985) (because ERISA preempted state severance pay statute, the court applied the arbitrary and capricious standard to judge the employer's actions), *cert. denied*, 447 U.S. 901 (1986); *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1353, 1354, 1356 (9th Cir. 1985) (court applied arbitrary and capricious standard and held plaintiff's estoppel claim "related to" an ERISA welfare plan and was therefore preempted by ERISA); *Phillips v. Kennedy*, 542 F.2d 52, 54, 55 n.8 (8th Cir. 1976) (court refused to recognize a federal common law estoppel claim under ERISA, and alternatively held the actions of the trustees to be arbitrary and capricious). See generally Note, *Severance Pay Claims After A Sale of Assets: ERISA Sweeps The Field*, 60 ST. JOHN'S L. REV. 300, 318-24 (1986); Comment, *The Arbitrary and Capricious Standard under ERISA: Its Origins and Application*, 23 DUQ. L. REV. 1033, 1041-56 (1985).

¹²⁵ 805 F.2d 956, 959 (11th Cir. 1986). Appellant conceded that ERISA preempted estoppel claims. *Id.*

and profit-sharing plan.¹²⁶ The trustees argued that the written terms of the plan governed the valuation of the plan.¹²⁷ The plan participant, however, alleged that an oral agreement made by the trustees promising an earlier valuation date should govern.¹²⁸

The Eleventh Circuit examined whether federal common law under ERISA should recognize the participant's claim of estoppel.¹²⁹ The court presented three principles arguing against the application of estoppel as a matter of law.¹³⁰ First, the court stated that ERISA's statutory language requires employee benefit plans to be established and maintained under an express written plan.¹³¹ The court concluded that the application of estoppel in this case would directly contradict ERISA's requirement that plans be in writing.

Second, the court noted that Congress expressly prohibited informal written amendments to ERISA plans.¹³² The court reasoned that the formal amendment procedure required by ERISA, combined with ERISA's policy requiring each plan to specify in writing its amendment procedure, indicated that Congress impliedly disapproved of informal written or oral agreements that modify ERISA plans.¹³³ The court concluded that ERISA's statutory language precluded oral modifications of ERISA plans.

Third, the court stated that in order to create a federal common law claim of estoppel under ERISA that allowed oral modifications to an employee benefit plan, the state law remedy must be consistent with both ERISA's policies and statutory scheme.¹³⁴ To illustrate how the recognition of estoppel under ERISA would thwart the employees' interests, the court explained that, by permitting oral modifications, employees would be unable to rely on the security of the pension funds if the employees' expected retirement benefits could be disbursed to other employees under oral agreements.¹³⁵ Thus, because ERISA's policies and statutory language failed to support the application of estoppel allowing oral modification of

¹²⁶ *Id.* at 958.

¹²⁷ *See id.*

¹²⁸ *Id.* The participants wanted the earlier valuation date because the plan assets plummeted due to unauthorized transactions on behalf of the funds. *Id.*

¹²⁹ *Id.* at 959.

¹³⁰ *Id.* at 960.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

ERISA plans, the Eleventh Circuit refused to recognize a common law claim of estoppel under ERISA.¹³⁶

In contrast to *Nachwalter's* rejection of estoppel without further analysis, in the 1985 case of *Ellenberg v. Brockway, Inc.*, the United States Court of Appeals for the Ninth Circuit after refusing to recognize the state estoppel claim, proceeded to analyze the employer's actions under ERISA's arbitrary and capricious standard of review.¹³⁷ In *Ellenberg*, the plaintiff sought to recover early pension benefits under Brockway's employee benefit plan on estoppel grounds.¹³⁸ The Ninth Circuit concluded that the state estoppel claim, alleging improper handling of Ellenberg's benefit plan, was "related to" the ERISA plan and thus preempted by ERISA.¹³⁹

Ellenberg, attempting to receive early retirement benefits, provided an incorrect birth date on his benefit plan application.¹⁴⁰ After Ellenberg received retirement benefits for two and a half months, Brockway informed Ellenberg that there was some question concerning his birth date and that Brockway would suspend payment of benefits until he resolved any discrepancies.¹⁴¹ Following the receipt of school records and insurance applications, Brockway denied Ellenberg early retirement benefits because Ellenberg was not yet eligible based on his true age.¹⁴²

¹³⁶ *Id.* at 961.

¹³⁷ 763 F.2d 1091, 1095, 1096 (9th Cir. 1985); see also *Menhorn v. Firestone Tire & Rubber Co.*, 738 F.2d 1496, 1508 (9th Cir. 1984) (arbitrary and capricious standard applied to an estoppel claim).

¹³⁸ 763 F.2d at 1093. The plaintiff also sought relief for breach of fiduciary duty, arbitrary and capricious conduct of fiduciaries, and breach of an implied covenant. *Id.* See also *O'Grady v. Firestone Tire & Rubber Co.*, 635 F. Supp. 81, 83-84 (S.D. Ohio 1986) (Although ERISA preempted state estoppel claim, the same facts that support a state common claim of estoppel may be analyzed under ERISA's arbitrary and capricious standard of review); *UAW v. Park-Ohio Indus., Inc.*, 661 F. Supp. 1281, 1305 (N.D. Ohio 1987) (promissory estoppel claim preempted by ERISA); *Turner v. Retirement Plan of Marathon Oil Co.*, 659 F. Supp. 534, 541 (N.D. Ohio 1987) (plaintiff's estoppel claims alleging failure of the employer to calculate properly benefits preempted by ERISA), *aff'd without opinion*, 845 F.2d 327 (6th Cir. 1988); *United Elec., Radio & Mach. Workers of Am. v. Amcast Indus. Corp.*, 634 F. Supp. 1135, 1143 (S.D. Ohio 1986) (both the promissory estoppel and emotional distress claims arose from defendant's administration of an ERISA plan; therefore, ERISA preempted these claims). But see *Cattin v. General Motors Corp.*, 612 F. Supp. 948, 950 (E.D. Mich. 1985) (state contract claims alleging employer's wrongful termination of early retirement benefits and improper modification of its offer of special recognition stock were held not preempted by ERISA).

¹³⁹ *Ellenberg*, 763 F.2d at 1095.

¹⁴⁰ *Id.* at 1094.

¹⁴¹ *Id.*

¹⁴² *Id.* at 1094-95.

After the Ninth Circuit held that ERISA preempted the state estoppel claim, the court analyzed Brockway's claim under ERISA's arbitrary and capricious standard of review.¹⁴³ The Ninth Circuit concluded that Ellenberg could not have relied upon Brockway's representations that he was eligible for early retirement when he knew his age made him ineligible for such benefits.¹⁴⁴ Therefore, the *Ellenberg* court, although preempting state common law estoppel claims, recognized estoppel principles as applicable to a claim for arbitrary and capricious administration of a plan.

In contrast to those circuits refusing to recognize a federal common law claim of estoppel, four circuits have formulated a federal common law claim of estoppel under ERISA.¹⁴⁵ In 1985, the United States Court of Appeals for the Second Circuit, in *Amato v. Western Union International, Inc.*, without directly addressing ERISA's preemption, adopted New York state's estoppel standard into federal law to resolve the employee's ERISA claim.¹⁴⁶ In *Amato*, the plaintiffs argued that Western Union had violated the employee rights under the terms of the employee pension plan, by amending the plan to reduce early retirement benefits.¹⁴⁷ The plaintiffs alleged a number of claims under ERISA, including a claim of estoppel.¹⁴⁸ Finding the allegations in support of an equitable estoppel claim under federal common law sufficient to survive a motion to dismiss, the court reversed the district court's dismissal of the plaintiffs' estoppel claim.¹⁴⁹

The Second Circuit began its analysis of the plaintiffs' common law claims in *Amato* by recognizing that, in certain circumstances, courts may develop a federal common law under ERISA.¹⁵⁰ After

¹⁴³ *Id.* at 1096-97. The court listed four elements of estoppel. First, the party to be estopped must know the facts. Second, the party to be estopped must intend that his or her conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended. Third, the latter must be ignorant of the true facts. Last, he or she must rely on the former's conduct to his injury. *Id.*

¹⁴⁴ *Id.* at 1096.

¹⁴⁵ See *supra* note 122.

¹⁴⁶ 773 F.2d 1402, 1419 (2d Cir. 1985). Whereas the plaintiffs argued in favor of equitable estoppel, the defendant argued for the application of promissory estoppel. *Id.* at 1420. One element of a promissory estoppel claim under New York State law is that "an oral promise must be made contemporaneously with or subsequent to the making of a written agreement." *Id.* See also *Kann v. Keystone Resources, Inc.*, 575 F. Supp. 1084, 1093 (W.D. Pa. 1983) (federal common law estoppel applied to require payment of benefits due under an ERISA plan).

¹⁴⁷ *Id.* at 1404.

¹⁴⁸ *Id.* at 1406.

¹⁴⁹ *Id.* at 1420.

¹⁵⁰ *Id.* at 1419.

the court recognized but avoided resolution of ERISA's preemption of state estoppel claims, the court then proceeded to analyze the contract and estoppel claims under federal common law, looking to New York state law for guidance.¹⁵¹ After considering the facts under a claim of estoppel, the court held that plaintiffs' allegations were sufficient to survive a motion to dismiss.¹⁵² Thus, the *Amato* court recognized the federal common law claim of estoppel under ERISA without directly passing on the ERISA preemption issue.

Similarly, in a case involving oral modification of an ERISA plan, the United States Court of Appeals for the Second Circuit, in the 1980 case of *Haeberle v. Board of Trustees of Buffalo Carpenters*, without directly addressing ERISA's preemption, recognized a federal claim of estoppel under ERISA.¹⁵³ In *Haeberle*, the plaintiff alleged that the plan trustees refused to award him pension benefits to which he was entitled under terms of the pension plan.¹⁵⁴ Haeberle also alleged that he relied on oral representations of the plan administrator concerning the vesting of Haeberle's benefits.¹⁵⁵

In denying the plaintiff recovery under the federal law of estoppel, the Second Circuit in *Haeberle* stated that it would only apply the estoppel doctrine against an ERISA pension fund when each element of estoppel is clearly established.¹⁵⁶ The court stated that a plaintiff must meet three elements to establish a claim for estoppel under federal law.¹⁵⁷ First, the party being estopped must have made a representation of material fact to the plaintiff.¹⁵⁸ Second, the party asserting estoppel must have rightfully relied on the representations.¹⁵⁹ Third, the party seeking estoppel must suffer injury or damages resulting from a denial of benefits.¹⁶⁰

Additionally, the court noted that it must consider the strong public policy in support of maintaining the actuarial soundness of

¹⁵¹ *Id.*

¹⁵² *Id.* at 1420.

¹⁵³ 624 F.2d 1132, 1139 (2d Cir. 1980).

¹⁵⁴ *Id.* at 1134.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 1139.

¹⁵⁷ See *id.*; accord *Cleary v. Graphic Communications Int'l Union*, 841 F.2d 444, 447 (1st Cir. 1988) (in an estoppel case under ERISA the court adopted the *Haeberle* federal common law estoppel standard). But see *Apponi v. Sunshine Biscuits, Inc.*, 809 F.2d 1210, 1217 (6th Cir.) (court adopted a five part federal estoppel standard under LMRA), *cert. denied*, 108 S. Ct. 77 (1987).

¹⁵⁸ *Haeberle*, 624 F.2d at 1139.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

pension plans in its application of the estoppel doctrine.¹⁶¹ Absent extraordinary circumstances, the court in *Haeberle* explained, ERISA's policy of insuring the actuarial soundness of pension funds is too important to permit trustees to obligate the fund to pay pensions to persons not entitled to benefits under the express terms of the ERISA plan.¹⁶² Thus, the *Haeberle* court, in denying the plaintiff's estoppel claim, held that the plaintiff failed to establish both his reliance on the representation of the fund's trustee and his injury as a result of the alleged reliance.¹⁶³

The pre-*Pilot* case law, therefore, illustrates that two distinct trends developed within the circuits with respect to resolving estoppel claims under ERISA. Although the courts have not formally recognized state common law estoppel claims, some circuits, without addressing ERISA's preemption of state common law claims, have recognized that a federal common law doctrine of estoppel exists under ERISA. The circuits that are willing to recognize federal estoppel, however, are reluctant to apply the doctrine and thus restrict its application to a very limited set of circumstances. Conversely, other circuits refuse to recognize a federal common law claim of estoppel under ERISA, and instead apply ERISA's arbitrary and capricious standard of review.

B. *Post-Pilot Decisions*

After *Pilot*, the circuits continued to recognize federal common law estoppel under ERISA without reevaluating the adoption or rejection of state common law estoppel in relation to the Supreme Court's holding in *Pilot*.¹⁶⁴ Circuits recognizing state estoppel prior to *Pilot* continued to do so after *Pilot* because the federal common law under ERISA had already incorporated state estoppel.¹⁶⁵ Courts preempting state estoppel claims prior to *Pilot* continued this trend after *Pilot*.¹⁶⁶ Thus, the courts have followed pre-*Pilot* precedent in their respective circuits in adjudicating post-*Pilot* cases.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *See id.*

¹⁶⁴ *See infra* notes 167-185 and accompanying text for post-*Pilot* decisions.

¹⁶⁵ *See, e.g.,* Cleary v. Graphic Communications Int'l Union, 841 F.2d 444, 449 (1st Cir. 1988); Vogel v. Independence Fed. Sav. Bank, 692 F. Supp. 587, 594 (D. Md. 1988) (in an action against a trustee for altering the terms of an ERISA plan, the court recognized an estoppel action under ERISA arising from section 502(a)(3)(B), which granted equitable powers to the courts).

¹⁶⁶ *See, e.g.,* Moore v. Metropolitan Life Ins. Co., 856 F.2d 488, 492 (2d Cir. 1988) (in an

In the 1988 case of *Straub v. Western Union Telegraph Co.*, a post-*Pilot* case involving the oral modification of an ERISA plan, the United States Court of Appeals for the Tenth Circuit refused to adopt the estoppel doctrine into the federal common law under ERISA.¹⁶⁷ The plaintiff, Straub, had an oral agreement with the defendant, Western Union, that after termination of employment with Western Union, he would still be eligible to participate in Western Union's pension plan.¹⁶⁸ The court held that the written terms of the ERISA plan governed and foreclosed the application of estoppel.¹⁶⁹

In *Straub*, two years after the plaintiff left employment with Western Union, Western Union orally agreed to increase the benefits under the pension plan.¹⁷⁰ The plaintiff's current employer at that time, however, a subsidiary of Western Union, refused to ratify the increase in pension benefits.¹⁷¹ Upon retirement, Western Union denied the plaintiff the increased pension benefits under the modified benefit plan. In response, the plaintiff alleged a state estoppel claim based on oral modification of an ERISA plan.¹⁷²

After holding that ERISA preempts the state claims, the court in *Straub* proceeded to analyze the estoppel claim under ERISA's federal common law.¹⁷³ The Tenth Circuit in *Straub*, following the Eleventh Circuit's pre-*Pilot* decision in *Nachwaller*, refused to apply estoppel to allow oral modifications to a written plan.¹⁷⁴ Finding additional support for its holding, the court added that ERISA's statutory language, requiring that ERISA plans be in writing, foreclosed the argument that Congress intended state common law

action concerning the alleged oral modification to an ERISA plan, the court refused to apply estoppel under ERISA unless the estoppel claim was based upon a formal written document which contradicts the rights contained in the original written plan); *Hermann Hosp. v. MEBA Medical & Benefits Plan*, 845 F.2d 1286, 1290 (5th Cir. 1988) (state common law estoppel claim "related to" the MEBA plan and therefore preempted); *Daniel v. Eaton Corp.*, 839 F.2d 263, 266 (6th Cir. 1988) (state common law estoppel claim preempted by ERISA, because the claim "arise[s] from the administration of [the Plan]"); *Hartness v. Printing & Graphic Arts Union No. 3*, No. 86-C7932 (N.D. Ill. Jan. 29, 1988) (LEXIS, Genfed library, Dist. file) (court held state common law estoppel claim "related to" an employee benefit plan and was therefore preempted by ERISA).

¹⁶⁷ 851 F.2d 1262, 1265-66 (10th Cir. 1988).

¹⁶⁸ *Id.* at 1263.

¹⁶⁹ *Id.* at 1265-66.

¹⁷⁰ *See id.* at 1263.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 1264-65.

¹⁷⁴ *Id.* at 1265.

claims of estoppel to apply to oral contracts or modifications. Therefore, because the plaintiff's claim relied on an oral modification to a written ERISA plan, the Tenth Circuit refused to apply federal common law estoppel.¹⁷⁵

Similar to *Straub*, the United States Court of Appeals for the First Circuit, without addressing *Pilot*, held in the 1988 case of *Cleary v. Graphic Communications International Union* that federal common law did not estop the defendant from denying supplemental benefits to the plaintiff.¹⁷⁶ In *Cleary*, the plaintiff, relying upon representations made by the defendant union's official, continued to work part-time for the union for three years under the assumption that part-time employment would maintain his eligibility for supplemental retirement benefits.¹⁷⁷ The court noted that, although providing supplemental benefits to part-time employees was a common practice of the union, it violated express terms of the ERISA plan.¹⁷⁸

The court in *Cleary* then considered the application of the federal common law claim of estoppel under these facts and under ERISA's basic policy of protecting the actuarial soundness of pension plans.¹⁷⁹ The First Circuit, without addressing the implications of the *Pilot* decision and ERISA's preemption of state common law claims, examined the various representations made by the union and the plaintiff's reliance on these alleged representations.¹⁸⁰ The court recognized that the union's representations of supplemental benefit coverage and disbursement of benefits to Cleary comprised a reasonable basis for reliance by the plaintiff. The court in *Cleary* stated, however, that because the plaintiff also received and read the plan rules, he was on notice that part-time employment for a local union would not save his eligibility under the plan.¹⁸¹ Furthermore, the court added that a union official made the representations, and plan rules foreclosed such statements from binding the plan.¹⁸² The court in *Cleary* explained that the representations relied upon must be made by someone with actual or apparent authority to bind the plan in order to support an estoppel claim.¹⁸³

¹⁷⁵ *Id.* at 1265-66.

¹⁷⁶ 841 F.2d 444, 449 (1st Cir. 1988).

¹⁷⁷ *Id.* at 445.

¹⁷⁸ *Id.* at 449.

¹⁷⁹ *Id.* at 447.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

Next, the First Circuit in *Cleary* considered the effect of the plan trustee's "off the record" representations made to the plaintiff.¹⁸⁴ In the interest of other plan participants and beneficiaries, the court stated, the actuarial soundness of the plan must be protected and not deflated because of the misrepresentations or misconduct of plan administrators or trustees. Thus, guided by the policies of ERISA, the court concluded that, despite representations by the union officials and plan trustees, and the reliance thereon by the plaintiff, the plan trustees were not estopped from denying supplemental benefits to the plaintiff.¹⁸⁵

In summary, post-*Pilot* case law illustrates that courts generally have not considered the effect of the United States Supreme Court decision in *Pilot* and *Pilot's* preemption of state common law estoppel claims. The post-*Pilot* decisions either continue to hold that federal estoppel claims under ERISA are still viable without addressing the implications of *Pilot*, or refuse to recognize any estoppel claim and apply ERISA's arbitrary and capricious standard of review. Thus, overall, the courts have failed to recognize the effect of the *Pilot* decision on federal common law estoppel claims under ERISA.

IV. ANALYSIS OF ERISA'S PREEMPTION OF ESTOPPEL CLAIMS AND THE DEVELOPMENT OF FEDERAL COMMON LAW UNDER ERISA

As a result of section 514(a), ERISA's sweeping preemption provision, employee benefit plans are now largely under the exclusive province of federal regulation.¹⁸⁶ With only a few exceptions, section 514(a) preempts all state laws that "relate to" employee benefit plans.¹⁸⁷ Recent United States Supreme Court decisions in *Shaw* and *Pilot* have interpreted the scope of section 514(a)'s preemption and held that ERISA preempts both state statutory and state common law that has any "connection with or reference to" an employee benefit plan.¹⁸⁸

One result of ERISA's broad preemption of state law is the emergence of a federal common law under ERISA to fill the gaps

¹⁸⁴ *Id.* at 448.

¹⁸⁵ *Id.* at 449.

¹⁸⁶ See 29 U.S.C. § 1144(a) (1982), ERISA § 514(a) (1974).

¹⁸⁷ See *id.* § 1144(b) (1982), ERISA § 514(b) (1974).

¹⁸⁸ See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 57 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 (1983).

created by state law preemption.¹⁸⁹ One of the greatest disadvantages of an inflexible preemption provision is that it leaves no room to fill the voids, or to examine the merits of each state law claim on a case-by-case basis. Congress realized that ERISA's express statutory provisions would be insufficient to establish a comprehensive and cohesive regulatory scheme.¹⁹⁰ To remedy this situation, Congress empowered the courts to develop a uniform body of federal common law governing employee benefit plans.¹⁹¹

In formulating federal common law principles, courts must have a coherent understanding of the reasons for ERISA's preemption of state law. In its analysis, a court must seek guidance from the policies upon which ERISA was founded and the evils ERISA was intended to cure. A court must also consider the statutory language and comprehensive statutory scheme that ERISA represents.¹⁹² Where federal principles are lacking or are inappropriate, a court may resort to state law concepts and rules and principles developed under other labor statutes.¹⁹³ According to Congress, however, only principles and concepts consistent with ERISA and its underlying policies may be absorbed into federal common law under ERISA.¹⁹⁴

Prior to the 1987 United States Supreme Court decision in *Pilot*, it was unclear whether ERISA preempted state common law estoppel claims that were not specifically directed towards the governance of benefit plans.¹⁹⁵ Thus, prior to *Pilot*, federal courts were faced with the task of adjudicating state common law estoppel claims, and many courts faced the difficult question of whether to create or recognize a federal estoppel claim under ERISA.

In the 1985 case of *Amato*, the United States Court of Appeals for the Second Circuit recognized estoppel under federal law without directly addressing ERISA's preemption.¹⁹⁶ In *Amato*, the trustees, by way of a formal written amendment to the employees' benefit

¹⁸⁹ See *supra* note 9 and accompanying text for a discussion of the creation of federal common law under ERISA.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² See *supra* notes 129-136 and accompanying text for a discussion of the factors a court examines in deciding whether the federal common law under ERISA should recognize estoppel.

¹⁹³ See *supra* notes 11-12, 150-151 and accompanying text for a discussion of other factors a court considers in adopting state claims into federal common law under ERISA.

¹⁹⁴ See *id.*

¹⁹⁵ See *Pilot Life Insurance v. Dedeaux*, cert. granted, 478 U.S. 1004 (1986).

¹⁹⁶ See *Amato v. Western Union Int'l, Inc.*, 773 F.2d 1402, 1419-20 (2d Cir. 1985).

plan, reduced the employees' benefits received under the terms of the original plan.¹⁹⁷ The policy of ERISA to ensure the actuarial soundness of employee benefit plans was not in jeopardy in *Amato* because the plan was not modified by an oral agreement.¹⁹⁸ In its analysis, the court failed to address the merits of ERISA's preemption and whether the adoption of estoppel under ERISA's federal common law was consistent with ERISA's broad preemption clause.¹⁹⁹ Despite the court's failure to address ERISA's preemption, based on the facts of *Amato*, the court reached a result consistent with ERISA's policies and statutory scheme because the case involved an alleged written, not oral, modification to an ERISA plan.

In contrast, seven circuits prior to *Pilot* refused to recognize federal common law estoppel under ERISA and analyzed the facts of the estoppel claims under ERISA's arbitrary and capricious standard of review.²⁰⁰ These courts reasoned that trustees should be allowed more discretion in the administration of benefit plans.²⁰¹ Under the arbitrary and capricious standard, courts defer to the trustee's judgment unless that judgment, based on the evidence, was arbitrary, capricious, or made in bad faith. The application of this standard, in many estoppel type situations, imposes an almost insurmountable burden on the plaintiff.²⁰² Thus, the arbitrary and capricious standard protects the actions of the plan administrators and trustees.

While strict application of the arbitrary and capricious standard frequently denies employees' rights, the free application of estoppel to any factual scenario would be inconsistent with the policies of ERISA and ERISA's express statutory language. For example, in *Nachwalter*, an employee relied on an oral statement made by the plan trustee that modified the terms of his written benefit plan.²⁰³ The *Nachwalter* court thoroughly analyzed the issues relating to ERISA's preemption and considered the adoption of estoppel into the federal common law under ERISA.²⁰⁴ In *Nachwalter*, unlike *Amato*, the Court of Appeals for the Eleventh Circuit refused to

¹⁹⁷ See *id.* at 1406.

¹⁹⁸ See *id.* at 1420.

¹⁹⁹ See *id.* at 1419-20.

²⁰⁰ See *supra* notes 137-144 and accompanying text for a case applying ERISA's arbitrary and capricious standard of review.

²⁰¹ See *id.*

²⁰² See, e.g., *Nachwalter v. Christie*, 805 F.2d 956, 959 (11th Cir. 1986); *Haeberle v. Board of Trustees of Buffalo Carpenters*, 624 F.2d 1132, 1139 (2d Cir. 1980).

²⁰³ See *Nachwalter*, 805 F.2d at 959.

²⁰⁴ See *id.* at 959-60.

recognize estoppel to permit an oral modification of an ERISA plan.²⁰⁵ The court reasoned that allowing oral modifications to a benefit plan would be inconsistent with ERISA's express statutory provisions that prohibit oral or informal written amendments.²⁰⁶ Also, the court added, to adopt estoppel would be contrary to ERISA's goals of protecting the actuarial soundness of employee benefit plans.²⁰⁷ After deciding not to adopt estoppel, the *Nachwalter* court implied that a different set of facts might persuade it to recognize an estoppel claim, if the application of estoppel would be consistent with ERISA's language and policies.²⁰⁸

In *Ellenberg*, a pre-*Pilot* Ninth Circuit decision, the court reached a result similar to *Nachwalter*'s without discussing the formulation of federal common law under ERISA.²⁰⁹ The court in *Ellenberg*, after holding that ERISA preempted the state common law claim of estoppel, applied the arbitrary and capricious standard of review.²¹⁰ The court reasoned that because the employee provided an incorrect birth date on his plan application, the employee's reliance on the benefits already paid was unreasonable.²¹¹ The court held, therefore, that the action of the trustee was not arbitrary and capricious in denying the plaintiff benefits after the correct birth date was discovered.²¹² Thus, the court failed to address the merits of ERISA's preemption or, like *Nachwalter*, frame the analysis in terms of potentially adopting a federal common law of estoppel under ERISA.²¹³ The court reached the correct result, however, in its application of the arbitrary and capricious standard of review because of the bad faith of the plaintiff.

The Eleventh Circuit's approach in *Nachwalter*, viewed in light of the policies of ERISA, is the better approach.²¹⁴ To uniformly hold a plan trustee to the minimal arbitrary and capricious standard in all estoppel situations contravenes ERISA's policies of holding trustees to higher fiduciary standards.²¹⁵ ERISA was intended to protect plan participants and beneficiaries from unjust deprivation

²⁰⁵ See *id.*

²⁰⁶ *Id.* at 960.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ See *Ellenberg v. Brockway*, 763 F.2d 1091, 1095 (9th Cir. 1985).

²¹⁰ *Id.* at 1095, 1096.

²¹¹ *Id.*

²¹² *Id.* at 1097.

²¹³ See *id.* at 1096-97.

²¹⁴ See *Nachwalter v. Christie*, 805 F.2d 956, 959-60 (11th Cir. 1986).

²¹⁵ See 29 U.S.C. §§ 1101-13 (1982), ERISA §§ 401-13 (1974).

of anticipated benefits by setting strict standards to govern the administration of employee benefit plans, and by providing for the plan's financial soundness.²¹⁶ If a plan trustee knows that the arbitrary and capricious standard will protect his or her actions, as in *Ellenberg*, ERISA neither adequately sets standards of conduct nor provides appropriate remedies to plan participants who suffer as a result of trustees' actions.²¹⁷ Therefore, to achieve the goals of ERISA, courts should adopt the *Nachwalter* analysis and consider the adoption of estoppel under federal law when its application is consistent with the policies and statutory language of ERISA.

After the 1987 United States Supreme Court decision in *Pilot*, the *Amato* and *Haeberle* courts, which previously recognized estoppel as a viable federal claim under ERISA, need to reconsider the adoption and application of estoppel under ERISA.²¹⁸ Because of *Pilot*'s potential preemption of state common law estoppel claims, courts need to reconsider the adoption and application of state common law estoppel and insure that its application is consistent with the policies of ERISA.²¹⁹ Reevaluation of pre-*Pilot* precedent will help provide uniformity in estoppel claim adjudication within the circuits and prevent circuits from relying on incorrect precedent in light of *Pilot*.

The recent post-*Pilot* case law illustrates that the majority of circuits have not reevaluated pre-*Pilot* adoptions of estoppel.²²⁰ In both *Straub* and *Cleary*, the courts relied on pre-*Pilot* case law in analyzing estoppel claims.²²¹ Additionally, neither court addressed the implications of *Pilot* when considering whether to adopt estoppel into federal common law under ERISA.²²²

In *Straub*, the Tenth Circuit looked to the pre-*Pilot* Eleventh Circuit decision in *Nachwalter* because both cases involved the oral modification of a written benefit plan.²²³ Similarly, the First Circuit in *Cleary*, without even citing *Pilot*, followed the reasoning of the

²¹⁶ See *supra* notes 3, 40, 43 and accompanying text for a discussion of ERISA's legislative history.

²¹⁷ See *Ellenberg*, 763 F.2d 1091, 1095, 1096 (9th Cir. 1985); see also *O'Grady v. Firestone Tire & Rubber Co.*, 635 F. Supp. 81, 83-84 (S.D. Ohio 1986).

²¹⁸ See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 57 (1987).

²¹⁹ *Id.* at 54-57.

²²⁰ See *supra* notes 164-185 and accompanying text for a discussion of post-*Pilot* case law.

²²¹ See *Straub v. Western Union Tel. Co.*, 851 F.2d 1262, 1264-66 (10th Cir. 1988); *Cleary v. Graphic Communications Int'l Union*, 841 F.2d 444, 447-49 (1st Cir. 1988).

²²² See *Straub*, 851 F.2d at 1262-66; *Cleary*, 841 F.2d at 447-49.

²²³ See *Straub*, 851 F.2d at 1265.

pre-*Pilot* case of *Haeberle*, in its analysis of an estoppel claim.²²⁴ Therefore, the case law illustrates the courts' failure to reevaluate their analysis in light of *Pilot*.

As a solution, this note proposes that courts adopt a balancing test to determine whether to apply a federal common law analysis of estoppel or an arbitrary and capricious standard of review. If estoppel is deemed to apply, the plaintiff should be required to clearly establish each of the three elements.²²⁵ First, the plaintiff must make an affirmative showing of lack of knowledge of the truth.²²⁶ The plaintiff must also rely upon the representations of the other party.²²⁷ Last, the action taken by the plaintiff as a result of the representation must cause injury to the plaintiff.²²⁸ In addition, circuits should uniformly recognize the most predominant federal estoppel standard, not the common law of the state in which the particular court resides. In order to determine the correct standard to apply, courts should examine the underlying nature of the ERISA claim. This proposed analysis should reflect an analysis similar to that in *Nachwaller* where the court reasoned why the application of federal common law estoppel is consistent with the policies and statutory language of ERISA.²²⁹ Courts should then balance the competing federal and state interests in determining which standard to apply. Courts should also weigh the policies of ERISA, the participant's rights, and the participant's need for protection in light of the facts of the particular claim.

In the court's analysis, it should focus on the particular conduct of the parties involved. For example, if the trustees are attempting to deny the participant benefits under a written plan, as in *Amato*, federal common law estoppel should apply because the actuarial soundness of the plan is not in jeopardy and statutory language of ERISA support the application of estoppel. In the situation where a participant relies on an oral modification or statement, however, as did the plaintiff in *Nachwaller* and *Haeberle*, ERISA's policies of protecting the actuarial soundness of plans demand the application of the arbitrary and capricious standard.²³⁰ In this latter situation,

²²⁴ See *Cleary*, 841 F.2d at 447.

²²⁵ See *Kann v. Keystone Resources, Inc.*, 575 F. Supp. 1084, 1093 (W.D. Pa. 1983). For a discussion of estoppel, see *supra* notes 153-163 and accompanying text.

²²⁶ See *Kann*, 575 F. Supp. at 1093.

²²⁷ See *id.*

²²⁸ See *id.*

²²⁹ See *Nachwaller*, 805 F.2d 956, 959-61 (11th Cir. 1986).

²³⁰ See *id.*; *Haeberle v. Board of Trustees of Buffalo Carpenters*, 624 F.2d 1132, 1139 (2d Cir. 1980).

the application of the arbitrary and capricious standard would offer added protection to the trustees' actions and help shield the trustees from needless litigation. Thus, the potential for the application of estoppel would have a positive effect on the actions of plan trustees and encourage more equitable and efficient administration of employee benefit plans. Another benefit of this proposed balancing test is that it would provide a guide to lower courts in adjudicating estoppel claims under ERISA. Once uniform standards for evaluating estoppel claims are established, these standards will guide the actions of lower courts, ERISA trustees, and ERISA plan participants.

V. CONCLUSION

Circuits should adopt a uniform estoppel standard. In doing so, they should utilize the most predominant federal common law standard and not the common law of the state in which each court resides. If all the circuits uniformly recognize a federal common law claim of estoppel under ERISA and adopt a uniform estoppel standard, this will better achieve ERISA's goals of providing uniform regulation for employee benefit plans. Additionally, holding the trustee or employer to a higher standard in certain limited situations encourages greater responsibility and increased awareness in the management and administration of employee benefit plans. This dual standard may also reduce the number of frivolous claims brought by participants who ordinarily rely on the estoppel doctrine. If the plaintiff fails to meet evidentiary or other requirements, the alleged estoppel claim will be adjudicated under the arbitrary and capricious standard of review. Thus, incorporating estoppel into the federal common law of ERISA, and applying it in a limited number of situations, enhances the adjudication of ERISA claims and better accomplishes the purposes of ERISA.

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