In the

Supreme Court of the United States

JOSEPH ALESSI ET AL., APPELLANTS, V. RAYBESTOS-MANHATTAN, INC., ET AL.; and	)	No. 79-1943
HENRY BUCZYNSKI ET AL., PETITIONERS, V. THE GENERAL MOTORS CORPORATION ET AL.	)	No. 80-193

Washington, D.C.
March 4, 1981

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JOSEPH ALESSI ET AL., Appellants, v. RAYBESTOS-MANHATTAN, INC., ET AL.; and HENRY BUCZYNSKI ET AL., Petitioners, v. THE GENERAL MOTORS CORPORATION ET AL.	:	No. 79-1943 No. 80-193

Washington, D. C.

Wednesday, March 4, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:16 o'clock a.m.

APPEARANCES:

THEODORE SACHS, ESQ., Marston, Sachs, Nunn, Kates, Kadushin & O'Hare, 1000 Farmer, Detroit, Michigan 48226; on behalf of Appellants in 79-1943.

MARC C. GETTIS, ESQ., 325 Westfield Ave. E., Roselle Park, New Jersey 07204; on behalf of Petitioners in 80-193.

LAURENCE REICH, ESQ., 744 Broad St., Newark, New Jersey 07102; on behalf of Respondent in 80-193.

WARREN J. CASEY, ESQ., 163 Madison Ave., Morristown, New Jersey 07960; on behalf of Appellees in 79-1943.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Alessi v. Raybestos and the consolidated case.

Mr. Sachs, I think you may proceed when you are ready.

ORAL ARGUMENT OF THEODORE SACHS, ESQ.,

ON BEHALF OF THE APPELLANTS IN NO. 79-1943

MR. SACHS: Thank you, Mr. Chief Justice, and may it please the Court:

This matter involves consolidated matters arising from the 3rd Circuit on appeal from and certiorari to the 3rd Circuit. I'm of counsel in the Alessi v. Raybestos matter, and with the Court's permission I'll address the 203(a) issue of ERISA and Mr. Gettis will then address the preemption question.

The 3rd Circuit decided in this matter that notwithstanding the very broad nonforfeitability guarantees in Section 203(a) of the Pension Reform Act with respect to normal retirement benefits, that a workmen's compensation offset provision in a retirement plan did not violate that statute.

The decision and analysis of the 3rd Circuit has been disagreed with by at least one other circuit, the 6th, and by at least seven district courts. And I will respectfully suggest that the 3rd Circuit paid excessive attention to form and indeed to the form of a regulation whose nature

the intended beneficiary, the IRS, does not agree with.

The fact of the matter in this situation is that normal retirement benefits earned over the life careers, working careers of the affected individuals, have indeed been forfeited, and that is seen very directly by looking at the facts.

QUESTION: Let me ask you a question, if I may. This ERISA statute does give authority to the Treasury Department to issue regulations, does it not?

MR. SACHS: Yes, Your Honor, it does.

QUESTION: It is not just a question of administering an act?

MR. SACHS: No, that is correct. There is certain administrative authority with respect to Treasury; there is certain administrative authority with respect to the Department of Labor. But there is none of the kind of administrative or rule-making authority which the 3rd Circuit conceived to be applicable and which the Internal Revenue Service renounces. The Internal Revenue Service does not claim legislative rule-making authority which the 3rd Circuit found. Treasury purports to find that authority in an interpretive basis. But the interpretive basis, we submit, is contrary to the statute in question and indeed the argument made by the Government brief here is contrary to the argument which it made below. There is a diametrical change in position.

If I may, the specific facts will highlight how the statutory provision directly works. Each of these employees had put in, in the case of Raybestos, more than 30 years when they retired in '72 and '73. They earned normal retirement benefits. I emphasize there was no disability pension question here; they earned normal retirement benefits. Each had reached age 65.

Similarly, in the case of the General Motors plan. Each had reached normal retirement age of 65 and had rendered a number of years of service almost as much. They in fact began to receive 100 percent of the normal retirement benefits under the plan. They did so for several years, and then a funny thing happened. They made an application for partial permanent disability under the New Jersey Workers Compensation Statute and they were awarded that. This was for a variety of permanent occupational diseases and injuries, including pulmonary conditions, asbestosis, other serious disabling conditions, and at that point invoking the respective plans, General Motors and Raybestos-Manhattan cut off the pensions.

The pensions ceased at that point in an effort at recoupment by both companies of an amount equivalent to the workers' compensation awards. They did so in the case of GM under a plan which is plainly conditioning the benefits upon forbearance from filing that workers comp. claim.

If the individuals in the GM plan had not filed for workers' compensation, they would have continued to receive their pension, and indeed had they filed their application for workers' compensation within two years after they had retired, under the plan itself GM could not have claimed an offset. So there was a double condition here: one, in the first place, filing for workers' comp. cut off the pension; in the second place, if that claim were not filed within two years, the pension was cut off.

In the Raybestos plan the specific language begins, "Notwithstanding the other provisions of this Article 6, the following condition shall apply to the payment of retirement income." And then under this extraordinary clause in the Raybestos plan, a whole array of benefits, collateral benefits, which the employee might receive are then used to invoke a forfeiture to cut off his pension. Not merely workers' compensation or occupational disease, but unemployment compensation, a factor, Mr. Justice Rehnquist, which the Internal Revenue Service itself doesn't recognize; cash sickness benefits, which Internal Revenue has not recognized.

QUESTION: Counsel, the Internal Revenue Service I had always supposed to be part of the Treasury Department.

MR. SACHS: Yes, Your Honor.

QUESTION: So that, isn't it rather unlikely that the Administrator of ERISA for Treasury would be at odds with

the Administrator of the IRS?

MR. SACHS: I'm not suggesting a disparity of views as between Treasury and IRS. I did not mean to suggest that, Your Honor.

QUESTION: I thought you had said that the IRS took a different view?

MR. SACHS: Oh, I am saying that, sir, with respect to the specific elements that are part of the offset in the Raybestos plan. The Treasury rulings, pre-ERISA, which had been invoked by the various defendants here and the various amici supporting their position don't go so far as to permit what Raybestos has done and claimed here, as part of this plan.

IRS, we sought to suggest in the briefs and other courts have recognized, has drawn absolutely irrational lines as to what kind of offset is permitted or what kind of offset is not permitted, and all I was meaning to suggest, Your Honor, in my last comment, is that there are elements within the Raybestos plan which don't satisfy even the irrational standards of Treasury, as those had been enunciated in a variety of Treasury rulings.

The point I seek to make here is that the reality which is confronted here is that each of these individuals who received a normal retirement benefit on account of age and service suddenly had that benefit divested. I should

also point out that the workmens' --

QUESTION: Mr. Sachs, let me just -- this suddenness of it, it's been a part of the plan for quite some time?

MR. SACHS: It has not, Your Honor, with all respect. The GM offset came in in 1970, two years before the petitioners retired.

QUESTION: Were these plans the product of collective bargaining?

MR. SACHS: It's difficult to answer that yes or no, Your Honor. They were the --

QUESTION: Well, usually they are, where you've got a union involved, and the terms of the plan are usually a key thing in negotiation.

MR. SACHS: There are aspects, Your Honor, there are aspects of the present plan of General Motors which are of the power of collective bargaining, the product of collective bargaining. There are aspects of --

QUESTION: Isn't it fair to assume the union knew about this offset provision? It's not something like fine print at the bottom of the contract or anything like this.

MR. SACHS: Your Honor, there is no question that the union was aware of that, but Your Honor's question was related to the length and duration of these clauses, and my response is that they came into the contracts in 1970 virtually at the end of the working career of these employees.

The employees had worked 28, 29 years. They came in at the tail end of that.

QUESTION: Well, I understand. It seems to me you're making sort of an equitable argument when we really have a rather dry statutory question.

MR. SACHS: Well, the equitable argument is relevant, Your Honor, because of the congressional purpose, and that is the key, I would respectfully submit. Congress said this is not --

QUESTION: You'd make the same argument, even if this had been in the plan for 40 years and everybody knew about it, it seems to me.

MR. SACHS: Absolutely no question, Your Honor. I would certainly be making that argument. But I make the point because there is a claim of reliance, there is a claim on contractual provisions, as though that could somehow overcome the statute. But there is no reliance, in fact. The point, additionally, that I wanted to make is that the workmen's compensation benefits which was awarded under New Jersey law had no relationship to wage loss, was not dependent on wage loss, and in fact it would have been paid and could have been paid had the claim been made while these men were still working and had not retired.

So that we ought to dismiss from the picture any suggestion here that they are somehow receiving workmen's

comp., something beyond what they otherwise could have received. These are different benefits. The retirement benefit was earned. But, directly responsive to your question, Mr. Justice Stevens, Congress said in enacting this statute that we are deaing here with reform. That's why this is called a pension reform act; this is a broad remedial statute. And what Congress wanted to do, and the debates make absolutely clear it wanted to do, was inject notions of equity, so that workers' legitimate expectations could be realized.

And there were two particular areas in the matter of vesting that we're talking about, in addition to the other remedies this statute was designed to achieve which are pertinent here.

When we're talking about vesting, what Congress wanted to assure is, one, that when the time for retirement came, there would be money in the coffers to pay the pension. And that's what this Court dealt with in Nachman. And the other thing Congress wanted to do was to make sure that the small print would not take away what the employee anticipated over his working career he was in fact going to receive. And that is why, based upon the findings of Congress, that workers with long years of service and significant periods of service were losing the retirement benefits on which they had planned for a working career lifetime.

Congress enunciated an extraordinarily broad rule

in Section 203(a). It's stated that all is forbidden except which we permit with respect to normal retirement benefits. 203(a) says that a worker is entitled, and coupling this with definitions in (3), part 19, of the Act, "a worker is entitled to an unconditional right to fulfillment of his normal retirement benefit when he reaches normal retirement age and when he attains any of the alternative minimum mandatory vesting schedules of the Act."

Now, when Congress intended exceptions it said what it wanted to do. And in 203(a)(3) it stated the exceptions which it was willing to recognize, and this is not one of them. Congress did not permit any exception for workers' compensation, never; never in this Act, never before this Act, never in any pre-ERISA history has Congress ever acknowledged the euphemism which is used by the defendants that this has something to do with integration, the euphemism with which the 3rd Circuit was, unfortunately, taken.

QUESTION: Your contention, then, is that the regulation is invalid?

MR. SACHS: Yes, Your Honor. The regulation is invalid for numerous reasons.

QUESTION: And it's invalid across the board?

MR. SACHS: Absolutely, Your Honor, and certainly it is invalid in application here. The regulation to which the 3rd Circuit gave dispositive deference for all practical

purposes says that you can set off benefits -- unqualified word: benefits -- created under state or federal law and social security benefits, as an offset against normal retirement benefits. There isn't a shred of a support for that in the statute, it flies in the face of the broad and unqualified provision of 203(a), unqualified except of course for the specific exceptions to 203(a), which are enumerated, and which have nothing to do with this. The 6th Circuit --

QUESTION: Mr. Sachs, would you address this very narrow argument that the Court of Appeals made? You say that this is forfeiture and it's not permitted forfeiture under subparagraph (3). Well, they say, well, if that argument follows, then also an offset for social security benefits would be a forfeiture --

MR. SACHS: Yes.

QUESTION: And it is clear that that's permitted. How would you get out of that -- ?

MR. SACHS: Your Honor, there is abosolutely no question that social security offsets are permitted.

QUESTION: Are they a forfeiture or not?

MR. SACHS: They are not a forfeiture because --

QUESTION: If they're not a forfeiture, how can you be so sure this is a forfeiture? That's the --

MR. SACHS: They are not a forfeiture because Congress independently addressed in ERISA social security

integration. We have had social security integration since 1942. Ironically, social security came first; pensions, as we know them now, were treated by Congress in 1942 as a supplement to social security and the integration, were that --

QUESTION: So your argument is that it's not a forfeiture because there's evidence Congress specifically intended to permit this kind of offset. They argue there's comparable evidence with respect to workmen's compensation because of the history of the Treasury regulation. What's wrong with that argument?

MR. SACHS: Your Honor, if I may, not merely evidence; the statute does speak explicitly to social security in 206(b) of ERISA and in 401(a)(15) of the Tax Code, which was added by ERISA, Congress agonized about integration of social security benefits. Congress didn't see this as a solution, it saw it as a problem, that of social security benefits. And the compromise which Congress reached in enacting ERISA was to say for the moment, we'll freeze social security levels of integration so that if they go up, you can't cut down the amount of pension which is otherwise going to be payable.

But the point, Your Honor, is they addressed social security as such, explicitly legislated on social security as such. The 3rd Circuit somehow had the notion that we were claiming that if you can't fix social security under one of the sections to 203(a), it can't stand.

Social security integration doesn't relate to 203(a) and isn't dependent on it. It is independently dealt with. Social security came into the picture again in 1942, and has been carried forward in the Tax Code for totally unrelated reasons. Treasury was never in the business of evaluating the fairness of workers' benefits or assuring that they would not be lost except only in the context, very peripherally, of making sure under 401(a), which is the section on tax preference for pension plans, of making sure that there would not be discrimination in favor of higher compensated persons and officers.

As part of that analysis, Congress in permitting the supplementing of social security benefits said, okay, we recognize that if we permit the so-called integration, lower-compensated employees might lose out; we'll make an exception in that. They did it in '42 and they continued it ever after. In 1974 and in preceding years, when Congress considered adoption of this statute, they were very much concerned about that, and they thought there was a social problem. But they also recognized that there were cost factors as to social security, and the compromise is what I have indicated.

But that whole discrete history has absolutely nothing to do with this entire new set of regulations which Congress imposed under 203(a). It recognized it was dealing with new standards. Indeed, in the 3rd Circuit analysis, it

carried the social security comparison so far as to say, well, you can have social security disability offsets against normal retirement benefits. And again, it unfortunately was persuaded of something that can't be a fact, because social security disability benefits end at age 65 and retirement benefits begin, your normal retirement, at 65. And the 3rd Circuit was dealing with an illusory problem.

The situation -- seeing that my time is up, Your Honors, and I want to reserve time, I might just --

MR. CHIEF JUSTICE BURGER: Just your warning sign. You're into your rebuttal time now.

MR. SACHS: Yes. I want to reserve some rebuttal time. The point I simply want to conclude with is that Congress intended here to comprehensively protect normal retirement benefits on the theory that these are the workers' own wages, but deferred. And consequently, when he loses those deferred wages at time of retirement through any device whether it is sophisticated or simple-minded, as this Court has said in other contexts, that is prohibited.

The 3rd Circuit turned the rule around, since the statute says all which is not permitted is prohibited, that should be the in jure and the forfeiture should be reversed.

I'll reserve my time, with the Court's permission. Thank you.

MR. CHIEF JUSTICE BURGER: Very well. Mr. Gettis.

ORAL ARGUMENT OF MARC C. GETTIS, ESQ.,

ON BEHALF OF THE PETITIONERS IN NO. 80-193

MR. GETTIS: Mr. Chief Justice, and may it please the Court:

This Court is now in possession of a handful of briefs from respondent, appellant, and various amici, all of which briefs cite the same legislative history and quote the same statements from Senators Williams and Javits and Representative Dent regarding the broad nature of preemption under Section 514 of ERISA.

Petitioners herein have never contended otherwise. We've agreed all along that Section 514 does provide for broad preemption. However, we find it remarkable that all but one of these briefs virtually ignore the existence of Section 4(b)(3) of ERISA. That section provides an express exception to preemption. Among other things, it exempts pension plans maintained solely to comply with state workers' compensation laws. It exempts these plans from Title I, and Section 514 is a provision of Title I of ERISA. Therefore, in Section 4(b)(3) Congress has recognized explicitly that certain areas of traditional state interest are exempt from preemption under ERISA. ERISA has an internal provision right within the statute allowing state regulation of workers' compensation, even if that regulation may relate to pension plans.

QUESTION: Well, do you contend that the regulation

previously discussed is unauthorized by the statute?

MR. GETTIS: Mr. Justice Rehnquist, are you referring to the Treasury regulation?

QUESTION: Yes.

MR. GETTIS: We do contend that this is unauthorized and contrary to the statute. What I was just --

QUESTION: You're addressing the preemption act?

MR. GETTIS: Yes, but I do concur that that regulation is invalid and unauthorized. I'm suggesting that the statute itself permits state regulation of workers' compensation, and this Court has recognized that the employment relationship, including workers' compensation, which protects against injury suffered in the course of employment, is a traditional area of state interest.

A number of cases have been cited standing for the proposition of broad preemption. But other than the decision of the 3rd Circuit below, no case has held a state workers' compensation statute preempted. In fact, one district court and one court of appeals, the 9th Circuit, has recognized workers' compensation laws of states as an exception to the preemption doctrine of ERISA.

The focus of the inquiry under 4(b)(3) should not be, as our adversaries suggest, whether a plan is exempt under 4(b)(3). Rather it must be to the statute. If a plan maintained to comply with a state workers' compensation law is

exempt from ERISA preemption, a fortiori the underlying workers' compensation statute must be preempted.

The fact that the State of New Jersey has had a workers' compensation statute in effect since 1911 and has continuously regulated the area for over 70 years shows that this is a strong area of state interest and has been traditionally regulated by the state. In enacting Chapter 156 as an amendment to the New Jersey Workers' Compensation Act, the State of New Jersey has expressed its policy to protect workers' compensation benefits to insure that a compensation award adjudged by a tribunal must be paid.

There is another area of traditional state interest which has been ruled an exception to ERISA preemption. That is the area of domestic relations and support.

QUESTION: Mr. Gettis, can I interrupt you again, because I want to be sure I've caught it? I'm not -- you said 4(b)(3) is the section you read before?

MR. GETTIS: That's correct, Your Honor.

QUESTION: Is that quoted in your brief?

MR. GETTIS: Yes, it is, Your Honor.

QUESTION: Do you happen to know the page?

QUESTION: Do you have it under a different number, Mr. Gettis?

MR. GETTIS: 4(b)(3) of ERISA perhaps was cited as 29 U.S.C. 1003(b).

QUESTION: 1003(b).

MR. GETTIS: Your Honor, that's quoted at page 19 of the reply brief, and I believe it also appears in the main brief at page 44 -- of the petitioners' brief, that is.

In the area of domestic relations and support, preemption challenges have been litigated under ERISA where a state court has ordered a pensioner's pension benefits to be garnished or severed to satisfy that worker's obligations under state laws, either support obligations or community property laws. Two courts of appeals, both the 2nd Circuit and the 9th Circuit, have held that such state laws are not preempted under ERISA, that these laws only marginally affect pension plans and are within an area of strong state interest.

One court of appeals which has not permitted a state court to garnish a pension has done so under Section 206 of ERISA, and did not engage in any preemption analysis of the state law.

We agree with our adversaries' contention that ERISA preemption is intended to assist in the congressional goal of providing for uniform regulation of pension plans, but our adversaries incorrectly assert that the New Jersey law in question frustrates this purpose. In fact, it is the use of the pension offset by General Motors and Raybestos-Manhattan which frustrates this purpose. Due to the offset of workers' compensation benefits, the pension benefits may vary from

state to state, depending on the particular workers' compensation statutory scheme in the state.

A finding that Chapter 156 of the New Jersey Laws of 1977 is valid, if anything would assist in achieving the congressional goal of uniformity of pension plan regulation.

Our adversaries have tailored their arguments depending upon which issue in this case they're addressing. When arguing that Chapter 156 of the New Jersey statutes is preempted, our adversaries claim that New Jersey is attempting to regulate pension plans and such regulation is not permitted by ERISA. When arguing against nonforfeitability under ERISA, our adversaries suggest that ERISA does not protect state workers' compensation awards. It is clear that the New Jersey statute in question protects workers' compensation awards whereas ERISA protects pension benefits. These are separate benefits.

Even if this Court should find that Section 203 does not prohibit the offset in question, which of course petitioners strongly suggest it does, Chapter 156 of the New Jersey Laws would still stand as a valid exercise of the state police power. Even if this Court were to hold Section 203 not prohibiting the offset, it still cannot in any way be said that the permitting of such offset was a congressional purpose in enacting ERISA.

Congress clearly set forth its purposes in

Section 2 of ERISA to prohibit certain abuses which had taken place. They set forth vesting standards, minimum funding standards, disclosure requirements, and fiduciary requirements. In no way did Congress show any intent to permit offsets of workers' compensation. Therefore, the state law in its attempt to protect workers' compensation benefits does not in any way stand as an obstacle to the attainment of congressional objectives and goals which Congress had in mind when enacting ERISA.

QUESTION: Mr. Gettis, let me just -- because I frankly had missed the point. I want to be sure I understand your argument. I'm reading from your blue brief at page 44, and I don't have the full text of the statute before me, but the section on which you rely, the 4(b)(3), is described as providing a plan "maintained solely for the purpose of complying with applicable workmen's compensation laws," is not subject to Title I.

MR. GETTIS: That's correct, Mr. Justice Stevens.

QUESTION: But that's not quite like an exception from the preemption section, is it?

MR. GETTIS: Your preemption is --

QUESTION: And furthermore, this is not a plan maintained solely to comply with the state workmen's compensation law.

MR. GETTIS: That's correct, Your Honor, and we have

never contended otherwise.

QUESTION: I see.

MR. GETTIS: However, the preemption provision, Section 514, is a part of Title I. What petitioners are contending --

QUESTION: Well, the preemption does not apply to plans maintained solely for the purpose of complying with state -- which is not this plan.

MR. GETTIS: That is not this plan. What we suggest is that the inquiry is not whether the plan is a 4(b)(3) plan, but rather to the underlying workers' compensation law. In other words, if a plan is maintained to comply for workers' compensation purposes and that plan is exempt under ERISA, it must follow that the underlying workers' compensation law enacted by the state with which that plan, for which it was created, must not be preempted. If a plan is exempt, it's not possible that the underlying state statute is not exempt.

QUESTION: I don't follow the argument. What it seems to me that the statute says is that a workmen's comp. plan does not have to comply with the federal statute.

MR. GETTIS: That is true, Mr. Justice Stevens.

QUESTION: That's all it really says.

MR. GETTIS: Well, we suggest that in 4(b)(3) Congress has shown an intent to allow states to regulate certain areas, traditionally within state regulation, not to

regulate pensions but to regulate these particular areas, and should that regulation "relate to pension plans," that will not invalidate the state statute.

QUESTION: I see.

MR. GETTIS: Thank you.

MR. CHIEF JUSTICE BURGER: Very well. Mr. Reich.

ORAL ARGUMENT OF LAURENCE REICH, ESQ.,

ON BEHALF OF THE RESPONDENT IN NO. 80-193

MR. REICH: Mr. Chief Justice and may it please the Court:

The issue before the court: is the right of a defined pension plan such as the General Motors and Raybestos-Manhattan plans to continue since ERISA as before, to integrate workers' compensation benefits with pension plan benefits?

Integration describes a benefit structure by which a pension plan takes into account employer-financed benefits under a governmental benefit plan. In determining employer-financed pension plan benefits, whether by way of reduction or offset, the right of integration of benefits proceeds from the basic structure of pension plans in the United States, the fundamental proposition that whether an employer furnishes post-retirement income to its employees and how much that employer furnishes to its employees is a matter of determination in the first instance by the employer and in the case of

a collectively bargained plan, such as the two plans involved in these cases, a matter of contract between the employer and the union representing the employees.

Integration has been an integral part of pension plan benefit structure in the United States since at least 1942 when it was expressly approved by what is now Section 401(a)(5) of the Internal Revenue Code of 1954.

Social security is indeed the most universal and ubiquitous of these benefits that is integrated. However, it is by no means the only benefit. Another is railroad retirement benefits, and third is workers' compensation benefits. In 1968 workers' compensation benefits were held subject to integration by the Internal Revenue Service in a ruling, Revenue Ruling 68-243. That ruling has been twice republished in the Internal Revenue Service's Guide to Qualification of Pension, Profit-Sharing, and Stock Bonus Plans, the bible of the Internal Revenue Service up to the time that ERISA was enacted. The last republication was in IRS Publication 778. We know that publication 778 was before the committees that wrote ERISA.

Further, workers' compensation integration is an integral part of the pension plan structure in the steel, automotive, and telephone industries. It surely could not have escaped the attention of Congress. Section 203(a) refers indeed to forfeitures. It simply states that each

pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age.

Now, the concept of nonforfeitability did not spring out of ERISA. Indeed, it existed at the time ERISA was enacted. It dates back at least to Section 401(a)(7) which was introduced into the Internal Revenue Code in 1962. Section 401(a)(7) at that time provided merely for nonforfeitability upon plan termination or discontinuance of contributions, saying essentially the same thing.

ERISA, indeed, expanded the application of the concept of nonforfeitability contained in Section 401(a)(7).

Now, as Mr. Justice Stevens' question, I think, observed, the 3rd Circuit's argument in its opinion was that Section 203(a) if it is deemed to include workers' compensation integration as a forfeiture must include every integrated offset as a forfeiture. To do that requires ignoring the plain evidence in ERISA that Congress did not intend to disturb social security integration, which is merely one of the integrating offsets available.

That evidence exists in Section 401(a)(15) of the Code and Section 206(b) of ERISA. Contrary to the petitioners' and appellants' argument, those sections do not authorize social security or railroad retirement benefit integration. They merely describe a limitation upon that integration,

a limitation, moreover, which was neither new to ERISA -- on the contrary, the legislative history makes clear that the two sections merely codified with a slight extension the pre-existing IRS administrative practice on limiting social security integration.

Now, Section 203(a) requires that the employee's right to his normal retirement benefit be nonforfeitable. It does not say what that normal retirement benefit is to be. Neither does the Section 3(19) definition of nonforfeitable. It merely refers to the benefit under the plan, as does the Section 3(22) definition of normal retirement benefit. Therefore what is nonforfeitable is the benefit which the plan provides; in this case that benefit has never been anything other than a benefit integrated with workers' compensation benefits. And, indeed, since Mr. Sachs has referred to the time span within which this particular provision has been in the General Motors pension plan, I should call to the Court's attention that it was in the General Motors hourly rate pension plan, the plan before the Court, from 1950 to 1961. It was absent from 1961 to 1970. It has been in the plan from 1970 to and including the present date. It is not something which was sprung upon these employees, aside from the fact that, of course, it was negotiated by their union shortly before they retired. It was a fixture of the plan. It's absent --

QUESTION: That rather circular statutory argument doesn't depend at all on the Treasury regulation, is that correct?

MR. REICH: No, sir. If the Treasury regulation didn't exist, I submit that this Court would have to invent it, as it were. The Treasury regulation merely stands as very strong, persuasive proof that what the statutory analysis shows is indeed the way the Treasury Department views it, and the Treasury Department has, of course, been expressly authorized, whether the regulation be considered legislative or interpretative, the Treasury Department has been given the right, power, of rulemaking by Section 3002(c) of ERISA.

QUESTION: But your argument didn't depend at all upon that regulation?

MR. REICH: Yes. My argument does not depend at all upon it. My argument --

QUESTION: And in other words, your argument would allow a plan to offset by the amount of recovery in a common law court, wouldn't it?

MR. REICH: No, sir, it would not, because --

QUESTION: It hasn't always been a fixture of the plan, and --

MR. REICH: No, sir, because it's a fixture of the plan, a fixture of the plan permitted by Section 401(a)(5). The concept of integration, as I started with, is limited to

a situation in which the benefit being offset is a benefit under a governmental plan, and I refer to the statute. 401(a)(5) provides for -- integration --

QUESTION: Where does this appear?

MR. REICH: This appears in the petitioners' and appellants' briefs in the Appendix, I know.

QUESTION: Could you give me the Code cite to 401(a)(5)?

MR. REICH: That is Section 401(a)(5) of the Code, 26 U.S.C.

QUESTION: 401(a)(5). It's on page 1a of the appellants' brief in the -- ?

MR. REICH: Yes. It provides that a plan shall not be considered discriminatory in the meaning of 401(a)(4) merely because contributions or benefits differ because of any retirement benefits created under state or federal law, and the entire principle of integration permitted by the Internal Revenue Service under 401(a)(5) since its inception in 1942 has been that the, only the statutory benefits, may be offset.

QUESTION: Of course -- well, workmen's compensation is not the same as retirement benefits.

MR. REICH: I submit that when it is income provided as post-retirement income to a retiree, it replaces --

QUESTION: Workmen's compensation is compensation

for illness or accident, employment-connected, is it not?

MR. REICH: Yes.

QUESTION: It's not a retirement plan.

MR. REICH: But social security disability benefits are also benefits for disability, although it need not be work-connected. The work-connected aspect is not material, I should say.

QUESTION: Well, in any event, compensation, workmens' compensation, is compensation for injury or accident. It is not a pension benefit.

MR. REICH: It is compensation for a disability, it is compensation for a disability whether it is injury, accident, or occupational disease. It is compensation for a disability which is --

QUESTION: And it's not generally -- I doubt that it would be generally considered as a retirement benefit, if you're relying on that language of the statute.

MR. REICH: Well, indeed, when the period for which it is, or the disability covers a period of retirement, I suggest that it should so be considered for the simple reason that the retirement is, the concept of retirement is not limited to retirement for age.

QUESTION: Well, I suppose a judgment in a state court would be the same argument, a retirement benefit created under state law.

MR. REICH: No, it's been -- there has been a distinction drawn by the Internal Revenue Service in holding that state law common law actions may not, the common law damages may not be offset.

QUESTION: Well, that's a Treasury regulation.

MR. REICH: That is a Treasury --

QUESTION: It has no -- it plays no part in your present statutory -- ?

MR. REICH: Oh, yes, sir. I'm saying, I'm distinguishing between -- I'm saying that the Regulation 411(a)(4)(a) if it didn't exist would nevertheless have to exist, the rule would be the same. It has been declared by the Treasury that the Treasury declaration is correct. It is I believe manifest from the legislative history. Section 401(a)(5) was reenacted by ERISA without material change. It was reenacted by ERISA with the administrative interpretation that it is applicable to workers' compensation integration as well as the social security integration as well as to railroad retirement integration.

If the Court is to say that Section 203 was intended to preclude integration of any kind of benefits, then the Court must in fact suggest that Congress intended in Section 203(a) which did not speak of integration, to overrule and implicitly repeal Section 401(a)(5) under which integration exists and has existed for 40 years under which workers'

compensation benefit integration specifically had existed for at least six years prior to the enactment.

QUESTION: Mr. Reich, I confess I had misunderstood part of your argument. 401(a)(5) is not part of ERISA?

MR. REICH: 401(a)(5) --

QUESTION: Did you say it was reenacted in ERISA, and in what section of ERISA is 401(a)(5)?

MR. REICH: 1021, I believe it is, in Title II.

QUESTION: Is there a 1016? Is that right?

MR. REICH: 1016. It's in Section 1016, which merely --

QUESTION: Where is that?

MR. REICH: That was part of ERISA.

QUESTION: I know, but where in -- ?

MR. REICH: Oh, the 1016 is merely a --

QUESTION: Is it printed here somewhere?

MR. REICH: No, it is not, sir, the text of 401(a)(5) as it was amended. What Title II did, Section 1016 is a part of Title II of ERISA. What Title II of ERISA did --

QUESTION: Could you give me the code citation of 1016?

MR. REICH: The code citation is Section 401(a)(5).

QUESTION: No, I want the Code citation of the statute, the part of ERISA that reenacts 401(a)(5).

MR. REICH: It is not in the Code, as far as

I understand.

QUESTION: Oh, I see.

MR. REICH: It is merely a part of the public law. What it did was simply say, Section 401(a)(5) is hereby amended to provide as follows. The codification of the amendment appears within the Code. It is in the Code but merely the enacting section is not in the Code. It was under --

QUESTION: Well, after lunch, will you tell me where I can find 401(a)(5) in ERISA, if I can? In Title 29 of the United States Code?

MR. REICH: Not in Title 29. It is in Title 26, because it was an amendment --

QUESTION: Well, you said it was reenacted as part of ERISA. You tell me after lunch where to look for it.

MR. REICH: Yes, sir, I'll be happy to do so.

MR. CHIEF JUSTICE BURGER: We'll resume there at 1 o'clock.

(Recess)

MR. CHIEF JUSTICE BURGER: You may continue, counsel.

MR. REICH: In response to Mr. Justice Stevens' question before recess, the text of Section 401(a)(5) of the Code as it was amended by ERISA is to be found in 26 U.S.C., Section 401(a)(5). The amendment to it was accomplished by

Section 1012(b) of Public Law 93-406. I call the Court's attention in this regard to page 18, Footnote 18, of the brief of appellees in the Alessi case which describes the manner in which Title I was incorporated into -- and also Footnote 6 of the same brief, which describe the manner in which Title I was incorporated into Title 29, and Title I of ERISA incorporated into Title 29 of the U.S. Code; Title II, Amendments, were incorporated into Title 26 of the U.S. Code.

In response to Mr. Justice Stewart's question shortly before recess, we suggest that retirement has always covered termination of employment for age, service, disability, or any of those three, just as the Social Security Act benefits covered benefits for age and disability, just as the Railroad Retirement Act covers benefits for age and disability.

QUESTION: But you can get workmen's compensation without retiring.

MR. REICH: Yes, but when -- you can, but you can also get workmen's compensation when you are retired. When you are retired the workmen's compensation is providing an income relating to disability, and the normal retirement benefit as defined in Section 3(22) of ERISA does include a retirement benefit for disability within the normal retirement benefit, so the normal retirement benefit subsumes within it --

QUESTION: You're talking about a retired person

getting workmen's compensation. Presumably he would have retired and then taken another job?

MR. REICH: It is not necessarily to presume that he would have. The concept of Section 401(a)(5) is that the employer has funded two sets of benefits to provide income; he's funded the plan benefit; he has funded the disability benefit under the workmen's compensation law. They both are providing income during his retirement, whether the retirement is occasioned by the disability or whether the retirement was occasioned by age and --

QUESTION: If a man retires by age, he gets workmen's compensation?

MR. REICH: He can under the laws of many states and New Jersey is one of those.

QUESTION: How? If it's not arising in the course of employment, if he had retired and wasn't working, that is?

MR. REICH: If he's retired and wasn't working he can, and in fact as was pointed out, the General Motors plan provision covers only cases in which he has applied after, more than two years after he retired. He can under state law, get benefits under workmen's compensation law for disability, even after he has retired.

QUESTION: Well, how much does he get?

MR. REICH: That would depend upon the award and the particular state.

QUESTION: Well, I mean, if he retires at 65, he gets a certain amount of money?

MR. REICH: Yes. Yes, Justice Marshall, he does.

QUESTION: Regardless of his condition?

MR. REICH: Well, regardless of his physical -- ? It would relate to his physical condition, I would suggest.

QUESTION: Well, that's what I would think so, but you say that automatically if he retired he gets workmen's compensation?

MR. REICH: No, sir, no I did not. I did not mean to say that.

QUESTION: That's what I understood you to say.

MR. REICH: I said he may get disability retirement benefits -- disability benefits or workers' compensation after he retires.

QUESTION: But the workmen's compensation is based on the disability, not his age?

MR. REICH: That is correct.

QUESTION: Well, that's what I thought.

MR. REICH: No, I did not mean to say otherwise, Justice Marshall. If I did, I --

QUESTION: May I ask you a question, though, that's related to one I know that Justice Rehnquist asked? In this case the reason the man gets workmen's compensation as well as the retirement benefits is because his right to

workmen's compensation depends on an injury he suffered while he was employed by the employer who also funded the retirement plan?

MR. REICH: That's right, an injury or other disability.

QUESTION: What would the retirement plan and what would the law be if after his retirement he went to work for an entirely different employer and was injured and then became entitled to workmen's compensation as a result of that injury? Would there be an offset there?

MR. REICH: No, there would not.

QUESTION: Because it's not funded?

MR. REICH: It's only where the same employer funds both the wormen's compensation benefits and the pension benefits, If he got the benefits from another employer, then --

QUESTION: There's no offset.

MR. REICH: -- the plan would take no offset.

MR. CHIEF JUSTICE BURGER: Mr. Casey.

ORAL ARGUMENT OF WARREN J. CASEY, ESQ.,

ON BEHALF OF THE APPELLEES IN NO. 79-1943

MR. CASEY: Mr. Chief Justice and may it please the Court:

On the vesting question I'd like to address three short points. I think it's important to keep in mind that we're dealing with private contracts. Agreements by the

private parties deal in their own way with economic security during retirement. In agreeing to set up a retirement plan for its employees, the employer faces two competing interests. The employees want the employer to agree to pay them and to assure them some level of monthly income during retirement. The employer as a businessman is willing to incur some level of retirement costs for his employees but no more. The private retirement contract reflects how these two competing interests, retirement costs and monthly payments, were balanced by the parties.

The benefit agreed upon under the Raybestos plan is an integrated benefit. The plan takes into account any benefits paid by Raybestos during retirement under the workers' compensation program. This was the benefit decided upon by the parties in collective bargaining as stated in the plan document, both before and after ERISA.

The vesting rules, which are at issue here, operate on that integrated benefit. The right to that integrated benefit, whether the plan integrates with social security, railroad retirement, or as here, the benefits paid by Raybestos at the same time during retirement under the workers' compensation program, the right to that integrated benefit vests and is nonforfeitable. The plan assure a defined level of monthly income during retirement. There is never any moment when the plan participant does not receive that monthly income

during retirement assured by the private plan.

When, for example, the plan member's also receiving certain periodic income under the workers' compensation program during retirement, and that statutory payment ceases for whatever reason or is even taken away retroactively, the private plan assures a defined monthly benefit. There is never a moment when that assured monthly benefit is conditional or not fully enforceable against the private plan.

QUESTION: Are you saying that the Raybestos collective bargaining contract expressly contemplated workmen's compensation payments as a part of the pension plan?

MR. CASEY: Exactly, Your Honor. The employer takes into account any other periodic income under the workers' compensation program. It did not, for example, offset with social security, which was another permissible offset. Rather, the employer took into account that a plan member may also be receiving by Raybestos certain periodic income under the workers' compensation program during retirement, and it assures each plan member, it addresses the economic security for each plan member. In setting up the plan it assures each employee who vests this defined level of monthly income assured by the private plan, and the right to that integrated benefit; whether it's zero or $100 a month, it's an integrated benefit. The right to that integrated benefit, to that monthly income assured by the private plan is nonforfeitable.

This integration was approved prior to ERISA, first in the 1968 Revenue Ruling, which Mr. Reich alluded to, and also in the comprehensive guides for pension plan qualification which were published and republished during Congress's consideration of the ERISA bills. Those comprehensive guides brought together in a simple approach the general requirements of the Government for the qualification of retirement plans. They stated what integration with what statutory income programs during retirement may be permissible under the Tax Code.

ERISA is a highly technical, highly specific statute, the result of a decade of study of the private retirement system. When Congress intended to effect subsequent changes in the existing rules, it acted with precision. Nowhere in the statute or in the thousands of pages of legislative history did Congress ever prohibit this integrated benefit or did it ever suggest to the Treasury Department and to the private parties who draft these contracts that the integrated benefit should be prohibited under the vesting rules. It simply never was, prior to ERISA, nor was there any time after ERISA, was there any inconsistency between a private plan agreeing to provide an integrated benefit during retirement, fully financed by the plan's sponsor, and the entirely separate requirement that the employee's property right to that integrated benefit must at all times be unconditional and fully enforceable against the private plan. There is never

any reduction in the monthly income assured by Raybestos under the private plan, and all paid by Raybestos.

QUESTION: Mr. Casey, how do you -- do you have an answer to Mr. Gettis's argument based on 4(b)(3)?

MR. CASEY: Your Honor, Mr. Gettis basically argues that ERISA does not preempt and includes express relief from preemption for any state law related to retirement plans so long as it is part of the workers' compensation statute. This simply misstates the statute. The statute relieves from all the coverage provisions of ERISA, including the vesting funding, any plan that's maintained solely to comply with the workers' compensation law.

As Mr. Gettis stated and it has always been agreed, that these plans simply are not maintained solely to comply with the workers' compensation law. This 1977 New Jersey statute directly prohibits a private plan from providing a benefit during retirement integrated with other benefits the private employer pays at the same time, concurrently, periodically, with that retirement income. It directly regulates these private retirement plans and directly regulates the terms and conditions of the retirement plans. It affects nothing else other than retirement plans. For that reason it's preempted under 4(b) assertion.

QUESTION: What kinds of plans, Mr. Casey, are maintained solely for the purpose of complying with applicable

workmen's compensation laws?

MR. CASEY: Justice Brennan, under most state workers' compensation laws, an employer may either pay into a state fund an insurance premium which will then fund the periodic income for the disability or it may make arrangements with a private insuror. The third possibility is for an employer to be a self-insuror. In order to be a self-insuror he just can't say, I'm going to agree to pay these benefits. He has to, I believe in just about every state, have an approved plan, a plan approved by the state, which specifies what, for example, the claims processing procedures often are part of these things. But assuming --

QUESTION: Is there anything in the legislative history of 4(b)(3) to show us that kind of plan and only that kind of plan was in the reach of 4(b)(3)?

MR. CASEY: As I recall, the legislative history in that provision is very scant. However, as I recall, the legislative history does note that there was no reason to worry about the vesting and funding of these plans, because they're totally divorced from a private employer plan which is voluntary, are going to provide a period income benefit during retirement. This Raybestos plan was a collectively bargained plan. This was a benefit, it was a voluntary plan between the union and the employer, agreed to in 1967. And this is the benefit it provides. Thank you.

MR. CHIEF JUSTICE BURGER: You have about three minutes.

MR. SACHS: Thank you, Your Honor.

ORAL ARGUMENT OF THEODORE SACHS, ESQ.,
ON BEHALF OF THE APPELLANTS IN NO. 79-1943 -- REBUTTAL

MR. SACHS: Mr. Chief Justice and may it please the Court:

I would submit that it's an extraordinary mode of interpreting a pension reform law to look at prior practices which we submit Congress intended to end, because they were abuses. Now, it's been suggested to you that nothing has changed. I suggest to you that by this Act everything has changed. In the first place, those practices which are sought to be escalated here into justification for continuation of the practices were never permissible before.

26 U.S.C. 401(a)(5) which appears at 1a of appellants' Appendix indicates that this word integration, which doesn't appear in the plan, but it's the euphemism which now permeates all the briefs -- 401(a)(5) says that the difference may be permitted "because of any retirement benefits created under state or federal law."

Now, the U.S. brief to the 3rd Circuit acknowledged that the word retirement had to be read into the regulation it was relying on. Unless the conclusion can be reached that men suffer disabilities and occupational injuries and

occupational diseases as part of a claimed retirement plan, it makes a mockery of this law. In fact, we demonstrated in the brief, in our reply brief citing the legislative history -- page 8 of appellants' reply brief, that Congress intended in 203(a) supplemental and additional requirements, in addition to 401(a)(5), even a 401(a)(5) as a tax measure for anti-discrimination -- totally unrelated purposes -- made any sense.

But I am constrained to point out to the Court in the light of the argument made that there is a misquotation in the appellees' brief, I'm sure inadvertent. But if you will look at page 26 of the brief of appellees, which talks about the alleged change, fact that there is no change, the sentence reads, purporting to quote from the committee report:

> "Moreover, the conferees intend that the anti-discrimination rules of present law are not to be changed."

The legislative history, at 3 Legislative History 4544, inserts after the word "law" the phrase, "in areas other than the vesting schedule." So the sentence should read:

> "Moreover, the conferees intend that the anti-discrimination rules of present law in areas other than the vesting schedule are not to be changed."

QUESTION: Do you think this is what you would call a typographical error or omission?

MR. SACHS: Yes, Your Honor.

QUESTION: If one were to turn to the original source one would find the thing that you state it was?

MR. SACHS: The words I just read, Your Honor, "in areas other than the vesting schedule." And of course, the vesting schedule is 203(a). And that's precisely what Congress was adding as a new and independent requirement which did not previously exist. The problem with the arguments of appellees is they make 203(a) a dead letter. You don't need any exceptions for 203(a), as they do exist, if their arguments hold any water, because those provisions would be superfluous and they would be redundant. There's no need, if you can put it all in the plan and write it off. These men lost their benefits. They paid for them with their livelihood, and those benefits should be restored.

Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 1:17 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1943
JOSEPH ALESSI ET AL.
V.
RAYBESTOS-MANHATTAN, INC., ET AL.
&
No. 80-193
HENRY BUCZYNSKI ET AL.
V.
THE GENERAL MOTORS CORPORATION ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: Gail F. Wilson