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OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-686 & 85-688

TITLE METROPOLITAN LIFE INSURANCE COMPANY, Petitioner V. ARTHUR TAYLOR; and GENERAL MOTORS CORPORATION, Petitioner V. ARTHUR TAYLOR

PLACE Washington, D. C.

DATE January 21, 1987

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IN THE SUPREME COURT OF THE UNITED STATES

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METROPOLITAN LIFE INSURANCE :
COMPANY, :
: :
Petitioner :
v. : No. 85-686
ARTHUR TAYLOR; and :
GENERAL MOTORS CORPORATION, :
Petitioner :
v. : No. 85-688
ARTHUR TAYLOR :

- -x

Washington, D.C.

January 21, 1987

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:04 o'clock a.m.

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APPEARANCES:

DAVID M. DAVIS, ESQ., Detroit, Mich.;

on behalf of Petitioners

PETER EDWARD SCHEER, ESQ., Washington, D.C.;

on behalf of Respondent

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: Mr. Davis, you may proceed whenever you're ready.

ORAL ARGUMENT OF

DAVID M. DAVIS, ESQ.,

ON BEHALF OF PETITIONER

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

The issue presented by this case is whether a claim filed in state court for disability benefits under an ERISA-covered welfare plan is a claim rising under federal law by either federal preemption or falls within the original jurisdiction of the district court by reason of an express grant of jurisdiction in the federal statute so that it may properly be removed to the federal court.

General Motors Corporation provides disability benefits to its employees under the General Motors Insurance Program. General Motors Corporation is the plan administrator. The named fiduciary is the finance committee of the General Motors Board of Directors. Disabled employees can receive sickness and accident benefits providing 75 percent of normal compensation for up to 52 weeks. The benefit is provided through Metropolitan Life Insurance Company.

In addition, General Motors provides an additional benefit called salary continuation benefit, equal to 25 percent of normal compensation for up to 26 weeks. The salary continuation benefit is provided solely by General Motors, is not insured and is self-funded.

Mr. Taylor commenced a sick leave of absence in 1980. During his sick leave and through July of 1980 he received both sickness and accident benefits and salary continuation benefits. Benefits ceased upon a determination that Mr. Taylor was no longer disabled.

Mr. Taylor was advised to report to the General Motors medical department and there advised that he was capable of returning to employment. His continued absence from employment caused his termination of employment. Thereafter he filed a lawsuit against both General Motors and Metropolitan Life Insurance Company seeking the immediate re-implementation of all benefits.

The complaint referred specifically to sickness and accident benefits provided by Metropolitan and salary continuation benefits provided by General Motors. In addition, the plaintiff sought extra contractual damages.

The action was removed by General Motors

Corporation to the federal district court based on a claim that the claim arose within the original jurisdiction of the federal court and that any claim for benefits had to arise under federal law.

In 1981, the District Court considered a motion to remand filed by the plaintiff. The plaintiff at that time conceded that he sought disability salary continuation benefits directly from General Motors and his motion to remand was denied.

Thereafter a summary judgment was granted in favor of the defendants. The Sixth Circuit, upon consideration of the case, found no federal jurisdiction. They found that based on three reasons. They refused, despite the statutory and legislative history, they refused to consider the claims under ERISA were to be treated in similar fashion as arising under the laws of the United States as those under the Labor Management Relations Act.

They further felt that the plaintiff had limited his complaint to state law principles and thus the well-pleaded complaint rule precluded removal. And lastly, they interpreted General Motors' reference to ERISA as raising only a defense under federal law and thus interpreted the Franchise Tax Board decision of this Court as precluding removal.

Because Taylor's suit necessarily arises under federal law and because it's within the original jurisdiction of the federal court, it is properly removable. The Federal Removal Statute applies to claims within the jurisdiction, within the original jurisdiction of the federal court and also to claims arising under federal law.

ERISA, at Section 502, authorizes a participant to commence a civil action to recover benefits due him under the plan, to enforce his rights under the plan, or to clarify his rights to future benefits under the plan. ERISA at 502(e) and (f) specifically provide that such claims seeking benefit entitlement are within the original jurisdiction of the federal courts regardless of citizenship of the parties, and regardless of the amount in controversy.

QUESTION: I think all of that is probably conceded, Mr. Davis, and what the fight here about is the conflict between the well-pleaded complaint doctrine and the rules that you're talking about.

MR. DAVIS: Okay, I think it's important to recognize that under 502 Congress, in the legislative history, specifically advised that claims seeking benefit entitlement were to be considered arising under the laws of the federal, of the United States in similar

fashion to Section 301 of the Labor Management Relations Act. And that reference is extremely important.

QUESTION: What the plaintiff has said here, as I understand it, is, yes, I'm pleading this case. Perhaps I could have brought it under federal law, but I'm bringing it under state law.

MR. DAVIS: Okay. And that's why the reference to 301 is extremely important. This Court has indicated that a claim based on a collectively-bargained agreement under Section 301, although the plaintiff attempts to rely on state law remedies, or state law breach of contract principles, that claim necessarily arises under federal law.

In Avco, this Court indicated that 301 actions, and Congress intended ERISA to be treated the same, are controlled by federal substantive law that arise under the United States, laws of the United States.

In Franchise Tax Board again, this Court considered that premise and indicated that Avco stood for the proposition that if a federal cause of action completely preempts a state cause of action any complaint coming within the scope of the federal action, although attempting to rely on state law, necessarily arises under the federal law.

Indeed, in the Franchise Tax Board decision,

this Court commented on the specific remedies under Section 502 of ERISA and indicated that it may well be if a complaint attempting to rely on state law comes within the bounds of Section 502 and the remedies enumerated therein, then the case necessarily arises under federal law. And --

QUESTION: We're those cases that say that the so-called 301 actions aren't -- don't completely preempt the state causes of action.

MR. DAVIS: And probably the issue in those cases are whether the action is peripheral, far enough apart, tangential to the labor agreement.

QUESTION: Whatever way you put it, the argument is that state law is not put aside.

MR. DAVIS: One difference between the Labor Management Relations Act is that statute didn't include a comprehensive remedial scheme such as ERISA, so the courts have fashioned federal remedies under section 301. It didn't have express remedies in the federal statute.

And it didn't have express federal preemption in the statute. ERISA has both of those. It has a private member in the statute --

QUESTION: So, you say that preemption is much more stricter and more obvious here than in the 301

cases?

MR. DAVIS: That's right. That would be my position.

It's clear that Congress, in enacting ERISA remedies in Section 502, and claims procedures in Section 503, intended that those provisions be exclusive and preempt state law. This can be demonstrated by the statutory language of ERISA as well as the legislative history under ERISA.

Congress recognized that federal governance of a growing body of employee benefit plans that implicated as participants the vast majority of citizens of this country, they declared the policy to be to protect participants by establishing standards of conduct, responsibility and obligations for fiduciaries of employee benefit plans, and by providing appropriate remedies, sanctions and ready access to the federal courts.

QUESTION: Well, Mr. Davis, you heard the last case argued, did you not?

MR. DAVIS: Yes.

QUESTION: Supposing that in deciding that case this Court were to decide either 5-to-4 that it was preempted, or 5-to-4 that it wasn't preempted; does that mean that the defendant in the last case, had it been

brought in state court, could have removed?

MR. DAVIS: Yes, it does. It means that the -- the argument in the last case focused on Section 514. I'm focusing more so on Section 503 and 502 as an express grant of federal jurisdiction.

QUESTION: You're saying that no matter how debateable the preemption point may be, if it ultimately turns out to be preempted then removal was proper?

MR. DAVIS: That's right. I would refer to the Merrill Dodd decision v. Thompson, recently decided by this Court, where you considered whether a private remedy existed in a federal statute. That was a 5-4 split, the majority rejecting removal because of the absence of a federal remedy in the statute.

The dissent nevertheless explained the rationale of the Court in advising if the FDCA had a federal remedy in it, then removal would have been proper even if the plaintiff --

QUESTION: Well, you can't always rely on the dissent to explain the rationale of the majority.

(Laughter).

MR. DAVIS: I understand. But in this particular case the dissent was summarized in the majority. And, the majority stated the importance of a federal private remedy in reaching its decision. In

ERISA we have that private federal remedy.

So I think Congress clearly intended to regulate the remedies under ERISA and preclude states from doing the same. And it's evident by 502, and it's evident by the Congressional history under 502.

QUESTION: So that any action trying to collect a claim is a federal claim?

MR. DAVIS: That's right. That's my position.

QUESTION: Of course, you would argue that there was original jurisdiction even if there wasn't a federal claim and it was just a state claim.

MR. DAVIS: I would argue no matter how the complaint was written, if it was one seeking benefits under the plan then it arises under the federal law and it's a federal claim.

QUESTION: What if it doesn't arise under federal law? You acknowledge that if it doesn't arise under federal law there's no jurisdiction in the federal district court?

MR. DAVIS: If it doesn't arise under federal law, I would acknowledge that.

QUESTION: Well, but --

MR. DAVIS: But, I think Congress intended specifically --

QUESTION: -- can't be.

MR. DAVIS: -- what it indicated --

QUESTION: From your position that couldn't be.

MR. DAVIS: Well, I think any claim for benefits under an ERISA plan must arise under federal law.

QUESTION: Yes.

MR. DAVIS: If you want me to assume that that premise is incorrect then, yeah, it's disagreement with my argument.

QUESTION: Yes.

MR. DAVIS: I think Congress clearly stated that when they said these claims are similar to the Labor Relations Law. And the rationale for that was very simple. At General Motors the salaried, non-represented plan is virtually identical to a collectively bargained, hourly plan. I think Congress recognized that and didn't want to have --

QUESTION: You're really saying the well-pleaded contempt, complaint rule just doesn't apply when on its face the state claim is frivolous. I mean, it's frivolous to claim that it's a state claim.

MR. DAVIS: That's right. I think it doesn't apply when the law is such that the state claims have been preempted and been replaced by federal remedies. I

think this Court recognized that in Franchise Tax Court and in Avco, and the same situation exists here.

When that happens, the well-pleaded complaint rule doesn't preclude the Court from looking behind the complaint to determine the true character of the cause of action. In this case, it's a federal cause of action. I think also that is very clear from the legislative history under ERISA.

In reviewing the legislative history it's apparent Senator Harrison Williams stressed that the substantive and enforcement provisions of ERISA are intended to preempt the field for federal regulation, thus eliminating the threat of conflicting and inconsistent state and local regulation of employee benefit plans.

Congressman John Dent made note of what to many is the crowning achievement of the legislation, the reservations of federal authority of the sole power to regulate the field of employee benefit plans. Again, the Conference Committee referred to actions for claims under Section 502 as arising in federal or state courts, or to regarded as arising under the laws of the United States in similar fashion to labor laws.

Senator Javits, one of the two principal Senate sponsors, in presenting the Conference Committee

report indicated that it was also intended that a federal substantive law be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans.

Allowing the plaintiff to pursue state remedies would undercut these congressional goals. These goals were recognized by this Court in Alessi v. Raybestos-Manhattan and Shaw v. Delta Airlines where state statutes were held preempted and the benefit plan regulation was declared to be an area of exclusively federal concern.

This Court noted that Congress minimized the need for interstate employers to administer their plans differently in each state in which they have employees. And participants, if state remedies survive, will be able to avoid the carefully designed claims procedures mandated by ERISA for all plans, both insured and self-insured.

This Court, in Allis Chalmers v. Lueck, held that a state tort claim for breach of the duty of good faith was preempted by federal labor law. Importantly, this Court noted that the most harmful aspect of the Wisconsin decision rejecting preemption was that it would allow essentially the same suit to be brought in state court without first exhausting the grievance

procedures established in the bargaining agreement.

That same undesirable result would be here as well if the plaintiffs were allowed to avoid these federal remedies and federal claims procedures and proceed directly to state court under state claims.

Additionally, exhausting of the state remedies of the claims procedures and the remedies in ERISA would have the tendency of providing the participant with a reasoned knowledge of why his claim was denied and would have a tendency to reduce litigation rather than encourage it.

The claims procedures and remedies set forth in ERISA would be rendered ineffectual for the vast majority of plans if plaintiffs were allowed to pursue state remedies. As the Solicitor General noted -- and, Justice O'Connor, the figures you cited were correct -- I would say about 90 percent of the welfare plans are insured and administered by insurance companies.

Allowing different remedies for insured versus self-insured plans would act to lessen the protection for participants because employers would tend to move toward self-insured plans. Not surprising that the United States in its amicus brief filed in Pilot Life, the case preceding, noted that Congress intends the remedies provided under Section 502 to be exclusive.

The government recognized that Congress had established a detailed enforcement scheme, that Congress made clear that federal law applies and that federal common law was to be developed, that Congress declared that all actions arise in similar fashion as those under the Labor law, and, further, that the legislative history under 502 failed to mention, or even contemplate, that participants could pursue alternative state remedies.

The government felt that was important because had such been the intent it surely would have been mentioned. Congress enacted Section 514 as an express preemption of state law. No doubt Section 514 supersedes any and all state laws that may relate to an employee benefit plan.

And further, Section 514 provided for an insurance savings clause preserving the state's ability to regulate the business of insurance. Nevertheless, the deemer clause limited the exception so that state laws would not be applied directly to the plans, not be applied directly in areas where ERISA comprehensively regulated the plans.

The Metropolitan v. Massachusetts case is not to the contrary. In that particular case a Massachusetts-mandated benefit law survived preemption.

That was an area under ERISA that was not regulated. ERISA does not regulate the content of a welfare benefit plan. That was a -- that was a result that did not provide direct regulation of the plan; it only provided regulation of an insurance company in the type of policy they could sell to a plan.

In this case, ERISA comprehensively regulates remedies available to participants. ERISA comprehensively, if state remedies survive that would be state law acting directly on the plan, not on any insurance company, directly on the plan and its claims processing procedure. That result was far different than that in the Metropolitan case.

Lastly, Taylor's complaint contains a claim for an uninsured or self-insured benefit, that being the salary continuation benefit. That's a benefit that's not governed at all, no relevance to the insurance savings clause under Section 514, clearly a benefit that's self-insured and self-funded, independent. That claim alone would support removal and along with the removal of that claim would come the rest of the complaint.

In summary, allowing participants to pursue state remedies in seeking entitlement to benefits under ERISA would be contrary to Congressional intent to have

benefit plan regulation to be a matter of exclusive federal concern, to encourage the continued growth of such plans by protecting plans and plan administrators from inconsistent and varying state regulations.

QUESTION: Well, in your case are you -- if case just argued, if Pilot Life is decided against preemption, will your case be more difficult?

MR. DAVIS: If Pilot Life is decided against preemption, I contend in this case the case was properly removable, or removed because of the claim for the uninsured benefit.

QUESTION: But, that's in, but then, but otherwise, otherwise --

MR. DAVIS: Otherwise --

QUESTION: -- you have a tough case I take it.

MR. DAVIS: Well otherwise, you know, I'm putting more focus on the remedies. I'm not talking about Section 514.

QUESTION: Well, a lot of the focus in Pilot Life is on the remedies too.

MR. DAVIS: Well, I think additionally, even if there's no preemption, I think there was an express federal grant that comes within the original jurisdiction of the federal courts and I think the case would be removable whether or not there was preemption.

Congress --

QUESTION: I asked you that before and you said no. My earlier question was referring to part, the portion of your brief beginning on page 43 where you say even if this is a valid state cause of action and not a federal cause of action it would still be removable.

MR. DAVIS: It would be removable. You asked me whether the claim would arise under federal law, assume that it doesn't arise under federal law. I think --

QUESTION: It's a state cause of action that arises under federal law?

MR. DAVIS: I think it would be, it may be a state cause of action where Congress ordained and granted the federal court's jurisdiction under 502 to consider the state claims, maybe under the premise of protective jurisdiction.

QUESTION: Sure.

MR. DAVIS: And, I think that, I think even if it was recognized as a state law claim --

QUESTION: You're not abandoning that portion?

MR. DAVIS: No, I'm not. Allowing participants to pursue state remedies would retard and preclude the development of a uniform body of federal law intended by Congress.

Any distinction in remedies available under insured versus self-insured plans would lessen the protection to participants by encouraging employers to establish self-funded or self-insured plans so as not to be subject to the varying state regulation. This would be contrary to the goals of Congress in enacting ERISA. Thank you.

I would like to reserve the remainder of my time.

QUESTION: Very well, Mr. Davis. We'll hear now from you, Mr. Scheer.

ORAL ARGUMENT OF PETER EDWARD SCHEER, ESQ.,

ON BEHALF OF RESPONDENT

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

Respondent Art Taylor's position in this case is two-fold. First of all, we contend that the Court of Appeals' reasoning regarding removal of jurisdiction was exactly correct and that proper application of removal principles precluded the removal of this case to federal court without regard for any of petitioner's preemption arguments.

Secondly, even if the Court of Appeals' reasoning regarding removal was incorrect, this case still could not have been removed to federal court

because none of Respondent Taylor's state law breach of contract claims were in fact preempted by ERISA, much less supplanted by a substitute ERISA cause of action.

QUESTION: What if we decide that they are preempted, in effect, in the preceding case, Pilot Life? Then how does it affect this case do you think? What if we decide in the preceding case that there is federal preemption of remedies?

MR. SCHEER: If the Court decided in the Pilot Life decision that the savings clause of Section 514 did not save the type of state law claim brought by Dedeaux, I would not be able to meaningfully distinguish that decision from the state law claims involved here. And, I would like to speak just very briefly --

QUESTION: That would be just like Avco in the Labor --

MR. SCHEER: Well, all I mean to say is that the nature of respondent's breach of contract claims against the insurance company, Metropolitan Life in this case, are not meaningfully distinguishable in my mind from the state law claims in Pilot Life, the purposes of the ERISA savings clause.

QUESTION: And so, there would be -- would this case have been properly removable then?

MR. SCHEER: No, it would not, if the court

accepts our removal theory. Our removal theory is as follows:

QUESTION: Even with preemption, no removal?

MR. SCHEER: That's correct. Even if this Court now decides in the Pilot Life case, for example, that there was preemption --

QUESTION: Yes.

MR. SCHEER: -- we would still win on our removal theory.

QUESTION: Yes.

MR. SCHEER: Our removal theory is as follows: It is that, as the court below held, that Taylor's breach of contract claim against the insurer was not properly removable because it was not obvious, and obvious at the time of the commencement of the litigation.

QUESTION: At the time. At the time.

MR. SCHEER: That's correct. Not obvious at the time of the commencement of the suit that it was preempted by ERISA and replaced by an ERISA cause of action -- the obviousness of the test.

QUESTION: Although it might be removable the day after Pilot Life is -- if Pilot Life were decided against preemption, or decided in favor of preemption. A case like --

MR. SCHEER: No. If in Pilot Life, Your Honor, you decided that the state law claims were preempted --

QUESTION: Yes.

MR. SCHEER: -- this case would still not be, would still not be properly removable if that were the case.

QUESTION: You mean, even if it were filed later?

MR. SCHEER: That is correct, because the removal determination, the determination as to whether a federal court has removal jurisdiction, has to be made and has to speak to the commencement of the case. Subsequent developments --

QUESTION: Exactly, but I mean, let's assume Pilot Life is decided and it is decided that remedies are preempted and then a case is filed like yours.

MR. SCHEER: Yes. It would govern a subsequent case, but it would not effect our case. In our case --

QUESTION: No no, not yours, but a new case would be affected? It would be removable then?

MR. SCHEER: That is correct. A new case would be instantly removable under the obviousness test that we are, that we are propounding.

QUESTION: It would be like Avco then?

MR. SCHEER: That would be exactly like Avco and Avco is, of course, an example of the obviousness test.

QUESTION: Yes.

QUESTION: Was it obvious in Avco?

MR. SCHEER: Yes.

QUESTION: At the time we made our decision I thought there was a Circuit conflict.

MR. SCHEER: There was a Circuit conflict, Justice Scalia, but it was not regarding the obviousness of preemption.

QUESTION: Oh, really?

MR. SCHEER: In Avco an employer brought a breach of contract action to enforce a no strike provision of a collective bargaining agreement. It was perfectly clear at all levels of litigation, including the Supreme Court, that based on this Court's prior decisions that was a preempted claim under Section 301 of the Labor Management Relations Act.

What created the conflict in the Circuit so much was less than clear before the case reached the Supreme Court was whether the Norris-LaGuardia Act, which was then interpreted as barring federal court injunctions against strike activity, nonetheless

divested the federal court of jurisdiction. But, what was perfectly clear --

QUESTION: (Inaudible) preemption.

MR. SCHEER: Well no, the preemption issue is, I see it as conceptually distinct. On the preemption issue it was perfectly clear that the state law claim was preempted under Section 301. That was established. What was unclear, and there was a split between the Third Circuit and the Sixth Circuit on the different question of whether or not, because of the limitation on remedies, the federal court could actually take the case.

QUESTION: I see.

MR. SCHEER: And the obviousness test subscribed to by the Court of Appeals below in our case, as we are urging here is one that focuses on preemption.

The question is, is preemption obvious at the time the law suit is filed? Now this obviousness test derives from the well-pleaded complaint doctrine. Under the well-pleaded complaint doctrine a plaintiff has the power of choice. He can choose what law to rely on and by means of that choice select his forum.

If a plaintiff under the well-pleaded complaint doctrine has available to him a federal remedy and a state law remedy he is perfectly free to forego the federal remedy, assert only the state law remedy

and, in so doing, preclude removal of his case from federal court.

Now this power of choice guaranteed by the well-pleaded complaint doctrine is subject to a very narrow exception and the narrow exception is that the courts will not honor the plaintiff's choice of law if it is patently unreasonable, or to use the legal term of art in removal cases, if the plaintiff has engaged in a fraud on the court, or has engaged in artful pleading.

QUESTION: So, whenever we have a removal case such as this, where the issue comes up, the case comes all the way up to the Supreme Court and really the only thing we can determine is whether it is obvious that there was preemption and we shouldn't get any further because that's as far as we have to go.

If it was not obvious, even though there is preemption, we have to say, well, that's for the next case -- right? -- and we send it back down and it goes back to state court and the state court finds, yes, there is preemption, and then it comes up to us on cert and then we can say, yes, there is preemption.

MR. SCHEER: That is correct.

QUESTION: That's a really strange way to run a system, don't you think? Why can't we say the first time whether it is or is not preemption?

MR. SCHEER: Because the plaintiff's entitled to stay in state court, and that preemption issue will get to this court, either in cases filed originally in federal court, or in cases that are appealed to the state system to this court by certiorari.

QUESTION: But all we can answer now is whether it's obvious or not that there's preemption, right? And we can presumably write an opinion that says, Well, there is preemption, but it's not obvious. It's hard to write an opinion that decides whether it's obvious that there is preemption without getting into the issue of whether there is preemption, isn't there?

And by the time we have written that opinion and it goes back down to state court, I guess the state court would know pretty well what to do. But it has to have been obvious at the time it was filed, you say.

MR. SCHEER: It has to be obvious at the time it was filed.

QUESTION: And presumably if we could decide this sort of case by just deciding whether or not we think its preempted, every district court that's called upon to make a removal decision also would decide on that basis.

MR. SCHEER: Every district court called upon to make a removal decision would look to see whether in

fact, if the plaintiff has stated on the face of this complaint simply a state law claim, whether that state law claim is obviously preempted, and if this court has already addressed the issue, then clearly it has been obviously preempted for purposes of that (Inaudible) --

QUESTION: But the alternative to your way of looking at it is that the district court would simply make a, decide whether or not it's obvious. You know, it may be 51-49, but this is the way I come down on the thing.

MR. SCHEER: Well that is correct, but the decision, I think, is not a particularly difficult one to make. I mean, after all, very similar kinds of determinations have to be made under the substantiality doctrine every day. Whenever a federal claim is filed initially in federal court the court has to decide whether in fact it's a substantial federal question.

QUESTION: In the old -- the law governing convening of three judge courts had something much like that in it.

MR. SCHEER: Um-hum. It seems to me that it is a reasonably easy inquiry for the district court to make. The law, even in the case of first impression, if the law is unambiguously clear, federal law, then it preempts the state law claim. Then it's obviously

preempted and the case goes into a federal court.

If there is a split in the circuits on that particular issue then it's, the obviousness test is not satisfied. If there are substantial arguments, generally speaking, if there are substantial arguments to be made that the claim is not preempted by federal law, then the obviousness test is not met and the case should stay in state court.

QUESTION: Suppose we decide in Pilot Life that there, that the remedies are preempted.

MR. SCHEER: Um-hum.

QUESTION: I suppose that then all the defendant does, in your case has to do is move to dismiss?

MR. SCHEER: That -- certainly the petitioner's in this case would have the benefit of that ruling in Pilot Life by moving to dismiss in state court.

QUESTION: And so it's great to have it back in state, great to have it back in state court just so it can be dismissed there.

MR. SCHEER: Oh no, that claim would be dismissed.

QUESTION: Oh.

MR. SCHEER: That claim would be dismissed. However, once the case, once our case is remanded to

state court the lack of subject matter jurisdiction in the removal --

QUESTION: Yes.

MR. SCHEER: -- Mr. Taylor can then proceed against petitioner, General Motors, for his separate tort claim against GM -- his separate, concededly state law, claim.

QUESTION: I see.

MR. SCHEER: That state law claim was decided on the merits by the federal district court after removal in this case under the mistaken theory that it was a Section 5, excuse me, on a pendent jurisdiction --

QUESTION: Pendent jurisdiction.

MR. SCHEER: -- a pendent jurisdiction theory.

QUESTION: Mr. Scheer, it really is a very unproductive enterprise to spend a lot of time litigating over jurisdiction. Let's assume that there's no preemption.

The petitioner says that even if there isn't any preemption the district court still has jurisdiction, even if this is a state claim, because Congress, realizing that it doesn't make any sense to spend a lot of money litigating over jurisdiction, provided that what is removable is, the district court shall have jurisdiction to grant the relief provided for

in Sub-section (a) of this Section in any action.

And the relief provided for is relief to recover benefits due to a participant or beneficiary under the terms of the plan. Whether that relief, the petitioner says, is under state law or federal law isn't specified in that language.

MR. SCHEER: If the argument --

QUESTION: Now, why isn't that a lovely way to handle it? Even it is a state claim, you bring it in federal court and whether you want to attach it to the federal claim or not, and then you never have to worry about where to litigate the thing.

MR. SCHEER: As I understand that theory, it derives from what has sometimes been called by the commentators "protected federal jurisdiction." And the first thing I should say about that is that the argument was not made by the Court of Appeals below, but in any event, should the Court reach it here. When Congress wants --

QUESTION: It was not made to the Court of Appeals?

MR. SCHEER: It was not made to the Court of Appeals below. It has been made here in the reply belief in particular. If Congress wants to give a federal district court subject matter jurisdiction,

jurisdictional power to decide a purely state law claim, Congress has to be absolutely explicit about that.

Congress certainly was not the least bit explicit about it in ERISA. ERISA contains no clear indication in its language or in its statutory history that purely state law claims, unpreempted by hypothesis state law claims, would be hauled into federal court and decided as state claims by a federal court under the jurisdictional provision of Section 502.

Furthermore, if that theory were to be seriously considered, in our view it raises some difficult Article III problems, because what you're hypothesizing again is a breach of contract claim against an insurance company purely under state law in federal court, and so far as I'm aware, because we're assuming that the state law claim is not preempted, ERISA doesn't enter into the picture at all.

There are no federal policies, there are no federal issues, there are no federal questions implicated by the litigation and that really stretches this protected jurisdictional theory to the extreme limits in our view.

QUESTION: The federal policy would be lets get rid of it all together. Do them all in one piece of litigation and save people the money of deciding where

you have to litigate?

MR. SCHEER: Uh-huh. However, ERISA expresses no such federal policy is the essential point.

QUESTION: I see.

MR. SCHEER: It has been stated here again and again this morning that Congress intended Section 502 remedies to be exclusive and that any state law claim that might possibly fall within their sphere, like a breach of contract action against an insurance company, is simply because it falls within the scope of Section 502 preempted.

It's worthwhile, I think, to step back for a moment and consider what the, what is essentially at stake here. There has been talk here about the possibility of remedies under state law, punitive damages, extra contractual relief and so forth that would be excessive, harmful to the insurance industry.

There have been arguments about disuniformity created by state tort systems and state breach of contract claims co-existing with remedies under Section 502. But the real, what is really at issue here is that under Section 502 a claim for benefits is subject to the highly deferential, arbitrary and capricious standard.

That is a standard review in federal court in a 502 action by a claimant for benefits, including a

claim for breach of the insurance policy. Now it's perfectly understandable why the insurance industry feels so strongly about Section 502 exclusivity. They want full benefit of that deferential, arbitrary and capricious standard in every case.

But Congress had good reason not to make that Section 502 remedy and the deferential standard that goes with it exclusively applicable precluding state remedies in cases against insurance companies. And it's simply this, insurance companies are interested parties.

It may be one thing for Congress to make 502 remedies exclusively for suing a neutral trustee, or a neutral plan administrator, but when you're suing an insurance company, the insurance company is a contracting party. If you're suing an insurance company for breach of contract does it make any sense to defer to one party of a two party contract and its interpretation of the contract language?

I think it does not and that is why Congress meant to permit de novo judicial review under state breach of contract principles of the meaning and interpretation of an insurance policy.

QUESTION: Why is it any different when the company is a self-insured? Isn't the company then an interested party?

MR. SCHEER: A company that is self-insured is a somewhat interested party, but (Inaudible) --

QUESTION: Just as much, just as much as the insurance company.

MR. SCHEER: No, I would disagree, Justice Scalia. I mean, when a company is self-insured it is concerned about continuing good relations with its employees.

When a company is self-insured its plan very frequently is a result of a collective bargaining agreement, arm's length negotiation between a union and the company.

QUESTION: Well, I mean there may be some differences but don't tell me that it's not a self-interested party that you're allowing to adjudicate the rights under this contract.

MR. SCHEER: I think it is a party that is certainly less directly interested in the outcome of a particular benefit claim case than is an insurance company. In the insurance context, by and large every dollar of benefits one gets in the insurance company reduces the insurer's profits on that plan by that amount.

QUESTION: The insurance company is interested in keeping General Motors' business certainly. It isn't

as if it's just totally self-interested. It doesn't want a whole bunch of complaints from employees that their claims have been wrongly turned down.

MR. SCHEER: Mr. Chief Justice, that argument can cut the other way too. If it's interested in maintaining GM's business what it would like to do is keep its premiums as low as possible to GM. To keep its premiums as low as possible to GM could be very difficult with claimants for benefits.

QUESTION: Well, then we get a --

MR. SCHEER: GM (Inaudible) --

QUESTION: -- we'd get a wrong (Inaudible) to GM too.

(Laughter).

QUESTION: I mean, what does GM really want? Does it want a few dollars saved on insurance or does it want better industrial relations? None of those things, I think, are crystal clear.

MR. SCHEER: In Section 502 of ERISA Congress intended to provide minimum remedies. It did not intend to provide all-inclusive remedies to regulate, to legislative comprehensively in the field so far as claims against insurance companies are concerned.

There's nothing in the legislative history, obviously nothing in the language of the statute to

suggest that Congress meant to deprive a policyholder of the pre-existing body of state law protections simply because that policy holder was a participant in ERISA plan.

Conversely, there's nothing in the legislative history to suggest that Congress meant to immunize insurance companies from the vast body of pre-existing state insurance regulation simply because the insurance company was insuring an ERISA-regulated plan. What 502 does is simply provide additional supplemental remedies, remedies that supplement the state law.

Congress, when it was enacting ERISA, had had no experience whatever in regulating insurance. Under the McCarran-Ferguson Act that had been the exclusive domain of the states for many decades. What Congress wanted to do here was to defer to that expertise, to leave those state remedies intact, and at the same time provide Section 502 remedies which would be minimal remedies, advantageous in many instances particularly for small claims, but would not be exclusive, would not be the only remedies available. If one had a remedy under state law, one could pursue a remedy under state law.

QUESTION: (Inaudible) a remedy for a small claim ends up in federal court in Jackson, Mississippi,

or Madison, Wisconsin, when if you could sue in state court you might be many miles closer to home doesn't make a lot of sense.

MR. SCHEER: I'm not quite sure I'm following the question.

QUESTION: Well, you're saying that the congressionally-designed remedy for claims was to benefit small, small claims. I'm suggesting that a small claimant might find the distance necessary to travel to a federal court a good deal more onerous than the distance to a much nearer state court.

MR. SCHEER: That may be in some circumstances. It may not be in others. The venue provisions of ERISA are quite generous and ERISA does provide for an award of attorney's fees which state law ordinarily does not.

QUESTION: In no event could the venue provisions of ERISA provide anything better than the nearest federal court house? They're not going to build a new court house near you.

(Laughter).

MR. SCHEER: All I mean to say is that in certain respects a Section 502 claim is advantageous to a state law claim. It does provide for an award of attorney's fees that's generally not available in state

court.

It does waive jurisdictional amount requirements which might apply in some state courts. And for small claimants suing insurance companies, it makes sense frequently to use Section 502. But it makes no sense to think that Congress wanted to preclude de novo judicial review under state breach of contract law of the meaning of a clause of an insurance policy drafted by an insurer, and to force plaintiffs to go to federal court and to have that issue subjected to an arbitrary and capricious attack.

QUESTION: Mr. Scheer, are these clauses typically drafted by the insurance companies, or are they typically the product of a union management negotiation as to just what the benefits will be and the conditions of eligibility and all the rest? Isn't there a group interest rather than an individual claimant here?

MR. SCHEER: It is my understanding that in the vast majority of cases, not necessarily the plans covering the vast majority of employees who are subject to ERISA, but in the vast majority of individual plans the insurance company has a policy and it drafts the policy and it sells it to the employer.

QUESTION: For the entire work force, of

course, for everybody employed by that company. It isn't the situation where you have one individual who has to look to a state agency for protection if he feels he's unfairly dealt with or sue. He at least has the interest of the company and the union in being sure they want to continue to do business with this particular insurer. So you do have some built in protections here.

MR. SCHEER: Well you have some built-in protection, but I should also point out that ERISA permits a fiduciary to delegate his fiduciary responsibility to an insurance company.

And in the vast majority of these small ERISA plans it is my understanding, simply having talked to lawyers who practice ERISA full-time, that that delegation takes place such that the only party you can sue under Section 502 is the insurance company.

You don't have available to you the opportunity to sue someone who might be more neutral -- a trustee, a plant administrator, (Inaudible) --

QUESTION: If the insurance company habitually was slow paying because it wanted to, you know, get the use of the money and so forth, do you suppose it would keep the business very long? In these cases, it isn't quite the same situation where you on the open market with individual policy holders.

MR. SCHEER: Obviously market forces, you know, are at work and if an insurance company, at some point an insurance company's intransigence in dealing with claimants with bona fide claims would certainly, one could see that it would be to termination of that relationship.

QUESTION: Yes.

MR. SCHEER: But the mere fact that, you know, the marketplace is at work doesn't --

QUESTION: What we started with was the question of the drafting of the -- in this particular case, was the General Motors' plan drafted by Metropolitan or was it drafted by the company and the union?

MR. SCHEER: That I don't know. The record does not make that clear.

QUESTION: Why would the Congress want to save these important state rights only in the case of insurance companies and not where you have a self-insurer?

MR. SCHEER: Well, I think again, I'm not sure that Congress first of all necessarily focused on all of the possible permutations of plan arrangements that might exist under ERISA. But one category that was certainly on their minds because of the

McCarran-Ferguson Act was the insurance industry.

And in the insurance industry I think Congress could well understand that it would be dangerous and perhaps reckless to restrict claimants under Section 502 for benefits for breach of a contract to the determination of the insurer subject only to an arbitrary and capricious standard of review.

QUESTION: Mr. Scheer, aren't we dealing here with a self-insurer, in effect, who just uses the insurance company as an administrator?

MR. SCHEER: No, Justice O'Connor, that is not correct in this case. All of the benefits here are insured by the insurance company save one, according to petitioners, and that is the separate claim regarding salary continuation benefits.

They say that because that is not an insured plan the savings clause for insurance does not apply. The short answer to that, Justice O'Connor, is that the argument was not made below in the Sixth Circuit and so it should not be made here.

A somewhat longer answer, a different answer is if the Court wishes to consider what matters there is that the claim was nonetheless made against an insurance company. Whether or not the insurance company had the power to pay the benefit that was sought goes to the

merits of the contract claim.

But the fact is that it was a claim against the insurance company and to that extent was fully subject to the ERISA savings clause.

Now, there's been reference again and again under the savings clause to this alleged distinction between laws of general applicability and laws or statutes or regulations of a state that are more specifically focused on the insurance industry.

The distinction cannot withstand scrutiny under ERISA for several reasons. First of all, it is contrary to the law of the statute. ERISA defines state law for purposes of the savings clause, as well as the basic preemption provisions, to include decisions, and the courts of appeals have been absolutely uniform in interpreting the word, "decisions" to mean common law actions for breach of contract, for tort and the like.

QUESTION: Not, of course, define law of any state.

MR. SCHEER: Justice Scalia, the distinction really escapes me. I mean, if it's the law of any state or --

QUESTION: The term, you define a term. And the term is not "state laws" but "the law of any state". There may well have been an intent to convey a

different meaning by the use of one phrase rather than the other. You define the term "state laws," whenever you use the word "state laws", that's what you mean. They didn't use "state law" here.

MR. SCHEER: But what is the difference between "state laws" and a "law of any state?"

QUESTION: The basic distinction is that the phrase "law of any state" is not defined.

MR. SCHEER: But, if I sit here and try to imagine what the difference might be, I simply can't come up with any explanation.

QUESTION: You don't need any difference except that it's not defined.

QUESTION: Much has been made in the briefs of petitioners about the McCarran-Ferguson Act and they refer to the three criteria that have been set up by this court to decide in certain instances whether certain kinds of private activity are subject to the McCarran-Ferguson Act.

Those three criteria, spreading of the risk, whether or not the matter governs the relationship between the insured and the insurance company and whether or not the arrangement involves only entities within the insurance industry are not at all relevant to this case.

Those three criteria that were used in the Metropolitan Life decision, are relied on there, are designed solely to decide whether economic arrangements ancillary to actual insurance are subject to the McCarran-Ferguson Act.

Those three criteria don't have anything to do with the core of insurance regulation. The McCarran-Ferguson Act covers many more things than state laws and regulations that meet those three criteria. And at the very core of what the McCarran-Ferguson Act does protect in its policies is the enforcement of contracts for insurance between policy holders and insurance companies, the interpretation of those policies and precisely the matters that we are pursuing here.

I see that my time is up.

QUESTION: Thank you, Mr. Scheer.

Mr. Davis, do you have something more? You have eight minutes remaining.

REBUTTAL ARGUMENT OF

DAVID M. DAVIS, ESQ.,

ON BEHALF OF PETITIONER

MR. DAVIS: Briefly, if we talk or focus on the obviousness test, in the Avco case the issue was whether a state injunctive remedy was preempted by

federal law. That was not clear and obvious. There was a split in the Circuits on that issue.

This Court granted jurisdiction, or took the case to resolve the conflict. An obviousness test would preclude the development of any uniformity development of the law.

Under ERISA it is important that it was intended by Congress that the body of the uniform law be developed. Any obviousness test precluding removal would retard that. Further, this Court has recently in the Merrill Dow case indicated a preference to have federal courts decide issues of federal law.

In answer to the question of how the General Motors' plan came into existence, General Motors and its labor unions negotiated a plan for hourly employees. The salaried plan is fashioned from the hourly plan. It's a result of General Motors adopting the plans that were negotiated and conferring with insurance companies to provide the benefits.

Lastly, General Motors did make an argument to the Sixth Circuit on page 21 of its opening brief that 502 alone provided sufficient language and granted the federal courts original jurisdiction separate and apart from preemption.

Thank you, Your Honors.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Davis. The case is submitted.

(Whereupon, at 11:59 a.m., the above-entitled case was submitted).

CERTIFICATION

lderson Reporting Company, Inc., hereby certifies that the ttached pages represents an accurate transcription of lectronic sound recording of the oral argument before the upreme Court of The United States in the Matter of:

85-686 - METROPOLITAN LIFE INSURANCE COMPANY, Petitioner V. ARTHUR TAYLOR; and

85-688 - GENERAL MOTORS CORPORATION, Petitioner V. ARTHUR TAYLOR

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BY Paul A. Richardson

(REPORTER)