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PROCEEDINGS BEFORE

THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: INGERSOLL-RAND COMPANY, Petitioner V.

PERRY McCLENDON

CASE NO: 89-1298

PLACE: Washington, D.C.

DATE: October 9, 1990

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----X
3 INGERSOLL-RAND COMPANY, :
4 Petitioner :
5 v. : No. 89-1298
6 PERRY McCLENDON :
7 -----X

8 Washington, D.C.

9 Tuesday, October 9, 1990

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:19 a.m.

13 APPEARANCES:

14 HOLLIS T. HURD, ESQ., Pittsburgh, Pennsylvania; on behalf
15 of the Petitioner.

16 CHRISTOPHER J. WRIGHT, ESQ., Assistant to the Solicitor
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18 on behalf of the United States, as amicus curiae, in
19 support of the Petitioner.

20 JOHN W. TAVORMINA, ESQ., Houston, Texas; on behalf
21 of the Respondent.

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1 In the language of ERISA where the express
2 preemption provision preempts any State law that relates
3 to an employee benefit plan, and this law clearly relates
4 to pension plans; from the structure of ERISA, because
5 Congress inserted in ERISA itself a provision which is
6 numbered 510 of ERISA which does essentially the same
7 thing as the Texas law common law cause of action, and
8 which demonstrates that Congress thought that protection
9 against purposeful interference with rights under a plan
10 was not remote, peripheral, or tangential but was central
11 to the business of regulating employee benefit plans.

12 Next, from the enforcement provisions of ERISA
13 which this Court has held are comprehensive, interrelated
14 and exclusive, and those are the means for enforcing
15 section 510 of ERISA.

16 Next, from the legislative history of ERISA,
17 which demonstrates clearly as this Court has previously
18 held in the Shaw case that Congress intended to preempt at
19 a minimum all State laws treating the same subjects as
20 ERISA, and the Texas law clearly treats the same subject
21 as ERISA section 510 does; and finally, from the purposes
22 of ERISA preemption. The purpose of every provision of
23 ERISA is to promote and protect employees' interests in
24 pension plans.

25 QUESTION: Mr. Hurd, let me just ask you a

1 question if I may. This is a case in which, as I
2 understand it, the Texas court said that because your
3 opponent's client was terminated allegedly in order to
4 escape a pension fund liability that that's -- that ERISA
5 preemption applies. This exclusive remedy for that kind
6 of termination is Federal. Is that right?

7 MR. HURD: That's correct, Your Honor.

8 QUESTION: What if they had had a written
9 contract. Supposing a man had -- an executive had a
10 20-year written contract that guaranteed him at the end of
11 20 years participation in the pension fund, maybe a car
12 when he leaves the company and two or three other things,
13 and in the 19th year they fired him in breach of the
14 written contract, and he was able to at least allege
15 and -- and prove that the reason they did it, they wanted
16 to escape their pension liability.

17 Would he have any cause of action in State court
18 for any percent -- part of the salary he didn't get for
19 his 19th year and so forth?

20 MR. HURD: In that case, Your Honor, if the
21 employer's motivation is alleged to be a purpose to
22 interfere with the attainment of benefits under a plan --

23 QUESTION: Right.

24 MR. HURD: -- then that would stay a claim under
25 section 510 of ERISA, and that State law, whatever State

1 law was used, contract or misrepresentation and so forth,
2 that State law would be preempted as applied to that cause
3 of action.

4 QUESTION: Even if his damages that he seeks are
5 the salary for the 19th year -- the 20th year of the
6 contract?

7 MR. HURD: That's correct, Your Honor.

8 QUESTION: Would he have a remedy for those
9 damages in -- in Federal court?

10 MR. HURD: Absolutely. That's my next point.

11 Under section 510 of ERISA, the lower courts
12 have held that uniformly that the relief available is
13 employment-related relief. That is to say, the courts can
14 order the individual reinstated to employment. The courts
15 can also order back pay and front pay and also damages
16 equal to the value of the lost benefits.

17 In other words, the wrong is -- is an employment
18 action, and the remedy is to reverse that employment
19 action. It's not to award benefits.

20 QUESTION: And that State rule of law, as you
21 interpret, relates to the plan?

22 MR. HURD: Yes, it does, Your Honor, through the
23 employer's purpose to interfere with rights under the
24 plan.

25 Our point is that Congress set up the rights and

1 remedies for those who believe that the employer
2 purposefully interfered with our attainment of benefits
3 under a plan, and Congress' scheme is exclusive.

4 QUESTION: Mr. Hurd, under the Federal cause of
5 action that you say would exist under the circumstances
6 inquired about by Justice Stevens, would there be any
7 right to punitive damages?

8 MR. HURD: Your Honor, the lower courts so far
9 have held that punitive damages are not available in
10 actions --

11 QUESTION: What about attorneys' fees?

12 MR. HURD: Under ERISA, Your Honor, attorneys'
13 fees may be granted in the discretion of the court to a
14 prevailing plaintiff.

15 QUESTION: Counsel, what -- what would happen in
16 Justice Stevens' hypothetical if there were three or four
17 independent reasons given for the termination? One, they
18 tried -- they terminated early to avoid having to pay the
19 pension benefits. Two, because he was allegedly
20 infringing on -- ah, exclusive sales territory that the
21 contract promised him. And any number of different
22 reasons are usually alleged in these wrongful discharge
23 cases.

24 If -- if one of them is the ERISA reason, does
25 that preempt the whole cause of action?

1 MR. HURD: I would say, Your Honor, it preempts
2 the cause of action based on the employer's alleged
3 motivation to deprive the individual of benefits.

4 Now if the employee --

5 QUESTION: What you say -- if -- you said -- if
6 one of the motivations?

7 MR. HURD: That's correct. The -- there is a
8 cause of action for purposeful interference with right to
9 benefits under a plan, and that cause of action is
10 preempted, including other nonpreempted cause of actions
11 in the complaint, doesn't diminish the Federal character
12 of that one.

13 QUESTION: May I push that just a step further?
14 Supposing he doesn't allege the reason; he just alleges
15 the written contract. He was ready, willing and able to
16 perform and they fired him without just cause, period.
17 And then in defense they come in and say the real reason
18 we did it was this -- they go to State law, and they get
19 ready to go to the jury, but their defense is in State
20 cause of action the real reason we did it is we didn't
21 want to pay him a pension.

22 What do you do with that case if you're a State
23 judge?

24 MR. HURD: If the -- if the cause of action
25 alleged by the individual does not reveal that he's

1 relying on an alleged motivation to deprive the individual
2 of benefits, then that does not have any connection with a
3 reference to a plan. As soon as the element of connection
4 to the plan is introduced, then his claim has a connection
5 with a reference to the plan.

6 QUESTION: If it comes out on discovery and he
7 then says I didn't know what the reason was but now I
8 realize the real reason was they wanted to save money on
9 the pension, then his case goes out the window as soon as
10 he finds that out? Is that right?

11 MR. HURD: The case becomes Federal in
12 character. Congress provided that causes of action under
13 section 510 are to be heard exclusively in the Federal
14 courts. So when it becomes clear that the complaint
15 states a Federal cause of action, the case could be
16 removed to Federal court. Also --

17 QUESTION: Mr. Hurd, suppose an employer induces
18 him to quit by threatening him. He sends some friends
19 around who say if you don't quit we will break your legs.
20 And he brings a cause of action for -- for assault against
21 the employer.

22 Is -- Is that precluded?

23 MR. HURD: In your question, Your Honor, I
24 haven't heard any connection with a reference to a plan.

25 QUESTION: Well, the reason -- the reason that

1 they want him to quit is so that he won't -- he won't
2 qualify for benefits.

3 MR. HURD: If that --

4 QUESTION: So -- so it is -- it is, indeed -- it
5 fits within section 110, that they are discriminating
6 against him in order to prevent him from becoming entitled
7 under the plan. That's precluded. You couldn't bring a
8 State assault action.

9 MR. HURD: State law, State criminal laws of
10 general application are expressly --

11 QUESTION: No, this is -- is an assault, civil
12 action for assault, tort.

13 MR. HURD: Not a civil action.

14 QUESTION: Couldn't bring a civil action?

15 MR. HURD: There is a section 510 case --

16 QUESTION: How about a wrongful death action?
17 They -- they actually blow him away in order to -- a
18 wrongful death action would not lie, either?

19 MR. HURD: No, Your Honor. The examples can get
20 pretty extreme, but the principle is --

21 QUESTION: Well, but it's testing the principle
22 of whether any State law, no matter how generally
23 applicable, if it happens to overlap in its -- in its
24 relief with section 510 is -- is invalid.

25 MR. HURD: Well, our point, Your Honor, is that

1 Congress decided what remedies should be available to
2 someone who believed that the employer discharged, fined,
3 expelled, et cetera, or otherwise discriminated against
4 them.

5 QUESTION: So what is your answer to the
6 wrongful death? I didn't get your answer. You said it
7 was extreme, but -- but what is your answer to it?

8 MR. HURD: My answer is that would be preempted.

9 QUESTION: Oh.

10 QUESTION: What -- you say this -- this should
11 be a Federal cause of action. Of course, the employer
12 denies that he -- he fired him for this reason, and so the
13 issue in the Federal case would -- would be
14 whether -- whether he did it to interfere with the plan;
15 is that it?

16 MR. HURD: That's correct, Your Honor.

17 QUESTION: Suppose the -- suppose the employer
18 wins on that, that it -- that he didn't fire him for that
19 reason. What happens to the employee's State cause of
20 action? It's probably -- is it to be dismissed? Do you
21 think they should dismiss the State cause of action?

22 MR. HURD: That's a question of Federal courts,
23 Your Honor, after the individual has lost on the merits of
24 his Federal claim what happens to the State --

25 QUESTION: Well, he loses on it because it

1 really -- the employer really didn't interfere with plan
2 benefits. That's the reason the employer wins.

3 MR. HURD: That's correct.

4 QUESTION: So what -- but he's nevertheless may
5 have a State claim.

6 MR. HURD: Because the discharge was wrongful
7 for other reasons such as a breach of the common law
8 contract.

9 QUESTION: Yes, exactly. Exactly.

10 MR. HURD: That's correct.

11 QUESTION: So how does he protect himself while
12 this Federal case is dismissed, I mean while the State
13 cause of action is being dismissed? Can it just -- and
14 you say it can't continue to be on file.

15 MR. HURD: The Federal court would have pendent
16 jurisdiction over those purely State law claims while
17 considering the Federal cause of action under section 510.

18 QUESTION: So he should bring his State law
19 claims with him in the Federal court?

20 MR. HURD: That's correct, Your Honor.

21 QUESTION: May -- may I just add one point to
22 the question Justice Scalia was asking?

23 Although it sounds farfetched, there is in fact
24 a case under ERISA section 510 where an individual was a
25 participant in a multiemployer pension plan and alleged

1 that the trustees of the plan threatened him that they
2 would break his legs unless he ceased from insisting on
3 receiving information regarding the administration of the
4 plan. That was held to state a cause of action under
5 section 510 of ERISA, and he prevailed.

6 QUESTION: I'm sure it did, but the issue here
7 is whether it also states a valid cause of action under
8 State law, and the case did not hold that you couldn't.

9 Isn't there a difference as to whether, in order
10 to recover under State law you must prove that the purpose
11 was to deprive you of benefits under the plan? In this
12 case, that that was essential to recovering under the
13 State law, wasn't it?

14 MR. HURD: Absolutely.

15 QUESTION: That you didn't fire him for no
16 reason at all but precisely in order to prevent his
17 recovering.

18 Whereas, if someone comes up to me and threatens
19 to break my legs, it really doesn't matter what, you know,
20 what their reason is, does it? I mean, I have a cause of
21 action for assault. Or if somebody wrongfully kills me,
22 my -- my -- you know, there's a wrongful death action,
23 whatever their reason was.

24 Couldn't you distinguish the situations on that
25 basis and say that only the former are preempted and not

1 the latter? I wish you would, because I find it
2 very -- very upsetting that there's no wrongful death
3 action.

4 (Laughter.)

5 MR. HURD: I suppose so, Your Honor. The
6 section 510 ERISA relates to employment-type actions, and
7 I think that in your case assault or murder can reasonably
8 regarded as -- be regarded as not an employment-type
9 action.

10 QUESTION: Well, more than that. You don't have
11 to prove that the reason was to deprive you of benefits
12 under the plan. It doesn't matter what the reason was.

13 MR. HURD: I'm sorry, Your Honor. I'm just now
14 catching the drift of your question.

15 That's completely correct. The cause of action
16 in order for the individual to prevail doesn't require any
17 connection to a plan. In that sense, it's not necessarily
18 connected, whereas in this case the cause of action exists
19 only because the employer's conduct is connected to a
20 plan.

21 QUESTION: Well, an assault doesn't require any
22 particular motive, either. I mean, the -- the touching of
23 the person or the -- the attack on the person regardless
24 of the motive with which it's done constitutes an assault.

25 So do -- do you follow the distinctions

1 suggested by Justice Scalia that far?

2 MR. HURD: Yes, Your Honor. I agree with that
3 distinction.

4 QUESTION: But if -- but if the -- but if it's
5 proved in the case that the reason for the assault was to
6 deprive him of pension benefits, then it's preempted? Is
7 that it?

8 MR. HURD: If he can recover for assault merely
9 because he was in fact assaulted without regard to the
10 reason, then I'd say that his cause of action for assault
11 has no necessary connection to or reference to a plan,
12 and --

13 QUESTION: Even if it's proven what the real
14 reason was?

15 MR. HURD: That's correct, because it's not
16 necessary to his recovery, Your Honor.

17 Mr. Chief Justice, I'd like to reserve the
18 balance of my time for rebuttal.

19 QUESTION: Mr. Hurd, before you sit down, you
20 probably have answered this but I want to be sure.

21 Did you raise the defense of ERISA preemption
22 below?

23 MR. HURD: No, Your Honor.

24 QUESTION: I didn't hear it.

25 MR. HURD: No, Your Honor.

1 QUESTION: Well, if it's so clear, why didn't
2 you?

3 MR. HURD: The truth of the matter is, Your
4 Honor, that the case was treated as a run-of-the-mill
5 wrongful discharge case from the very beginning. After
6 Ingersoll-Rand demonstrated to Mr. McClendon that he was
7 in fact vested in his pension and had been vested before
8 he was terminated, that aspect of the case was not pushed
9 by Mr. McClendon, and so Ingersoll-Rand didn't work on a
10 defense.

11 It was really the Supreme Court of Texas that
12 resurrected that issue and addressed and decided the
13 Federal question that's presented here for this Court's
14 decision.

15 QUESTION: Thank you, Mr. Hurd.

16 Mr. Wright, we'll hear now from you.

17 ORAL ARGUMENT OF CHRISTOPHER J. WRIGHT, ESQ.
18 ON BEHALF OF UNITED STATES, AS AMICUS CURIAE,
19 IN SUPPORT OF PETITIONER

20 MR. WRIGHT: Mr. Chief Justice, and may it
21 please the Court:

22 Let me first say that I -- I agree with what I
23 take to be the ultimate resolution of the assault and
24 wrongful death hypothetical situations. Normally one can
25 prevail in a tort action for assault or for wrongful death

1 without proving why you assaulted or killed the person,
2 and, likewise, it is not a defense in a wrongful death
3 case or in an assault case to say I did it in order to
4 deprive the person of pension benefits. To the contrary.

5 QUESTION: What about my -- what about my breach
6 of contract case? Do you agree with your colleague on
7 that one?

8 MR. WRIGHT: Yes, and -- and in the contract
9 case, as I understand it, there is no question that the
10 person would have a claim under ERISA.

11 Now the only thing that was -- that was left
12 open, I think, in the assault and -- ah, wrongful death
13 hypothetical was I wouldn't read the word discriminate,
14 Justice Scalia, normally -- normally to cover such extreme
15 situations; but of course, you have in -- in a contract
16 case you would have a claim under ERISA.

17 I might say --

18 QUESTION: Excuse me. I don't -- I don't
19 understand. Why -- why is firing him discriminating but
20 breaking his legs not? I -- I don't understand --

21 MR. WRIGHT: Well, firing him is discharging
22 him, and discharging him is covered by the statute.

23 QUESTION: Oh, okay.

24 MR. WRIGHT: The other things in the statute are
25 expel, suspend, discipline and discriminate.

1 QUESTION: So you're -- you're not even sure
2 he'd have a -- an ERISA action?

3 MR. WRIGHT: I -- I don't think he would,
4 probably. He certainly would in Justice Stevens' --

5 QUESTION: But in my hypothetical, if the
6 plaintiff proves the breach in the contract but fails to
7 prove that the reason was to terminate, you know, get him
8 out of the pension but, rather, they just -- it was
9 other -- otherwise a breach of the contract so that the
10 basis for Federal jurisdiction would no longer survive,
11 there would be, I take it, ancillary jurisdiction to grant
12 relief on a State law claim even though it had been
13 preempted?

14 MR. WRIGHT: I assume that that's how
15 they -- yes.

16 QUESTION: So that preemption is kind of an on
17 and off thing? It's preempted until you decide the merits
18 of the ERISA claim, and if you decide the merits of the
19 ERISA theory adversely to the plaintiff, then the
20 preemption ceases and it's sort of a springing use and the
21 State law cause of action revives?

22 MR. WRIGHT: Well, I -- I think that this sort
23 of thing happens all the time in these sorts of cases,
24 as -- as this one. The way this one, I think, should have
25 been handled, he argued two very different reasons for why

1 he was discharged. One was a breach of contract; one was
2 discharge to prevent the attainment of pension benefits.

3 The -- the contract action was actually the
4 focus of the case.

5 QUESTION: And then your view is that the entire
6 case should have been transferred to the United States
7 District Court, and it would have pendent jurisdiction on
8 the other issues?

9 MR. WRIGHT: Yes, Your Honor.

10 The United States would like to emphasize that
11 Congress specifically intended ERISA's broad preemption
12 provision, section 502, to displace State law. In Pilot
13 Life, this Court concluded, and I quote, "The deliberate
14 care with which ERISA's civil enforcement remedies were
15 drafted and the balancing of policies embodied in its
16 choice of remedies argue strongly for the conclusion that
17 ERISA's civil enforcement remedies were intended to be
18 exclusive."

19 The Court also recognized --

20 QUESTION: Of course, this is a remedy against
21 the employer, not against the client.

22 MR. WRIGHT: Justice Stevens, section 510 of
23 ERISA also establishes a remedy against employers, and it
24 is enforceable under section 502(a)(3), one of the
25 six -- one of the six provisions that was described in the

1 opinion of the Court in Russell as interlocking,
2 interdependent, and interrelated remedies. I believe you
3 wrote the opinion for the Court.

4 QUESTION: Nothing in that opinion says anything
5 about preemption.

6 MR. WRIGHT: Well, but the fact remains that
7 this Court has relied on the comprehensive nature of the
8 six remedies considered as a whole.

9 Now respondent here argues that his claim for
10 benefits is -- I'm sorry, his claim for interference with
11 the attainment of benefits is different than a claim for
12 benefits, but we think that there are two sides to the
13 same coin, and we don't think that there is a basis, given
14 this Court's statements in Pilot Life and Russell, for any
15 distinction between a claim arising under section
16 502(a)(1)(b), the provision involving claims for benefits,
17 and section 502(a)(3), the provision that allows for
18 enforcement of section 510.

19 Related to this -- ah, question, I might say,
20 is -- is the suggestion perhaps that section 510 as -- as
21 a wrongful discharge remedy is not central to ERISA. I'd
22 like to say that, to the contrary, Congress recognized and
23 Senator Harkin explicitly stated that if employers could
24 fire employees in order to avoid the payment of pension
25 benefits, then ERISA's vesting provisions which are

1 critical to the statute would be worthless. And I think
2 that that -- that makes sense.

3 The First Circuit in the Fitzgerald case
4 likewise said that section 510 is essential to the act,
5 and we agree.

6 QUESTION: That's all a strong argument why you
7 need a Federal remedy. Nobody's disputing that. The
8 question is whether the existence of the Federal remedy
9 precludes any kind of State supplementary remedy.

10 MR. WRIGHT: We think it shows two things. We
11 think the existence of section 510 shows that Congress
12 clearly understood that a wrongful discharge remedy
13 relates to ERISA and -- and, hence, the State law claim is
14 preempted under 514(a). We also agree -- we also think
15 that consistent to the remedy --

16 QUESTION: Why does it show that? Why does it
17 show that it relates, too, within the meaning of the
18 preemption provisions? I just don't follow that.

19 MR. WRIGHT: Well, it's a very broad preemption
20 provision. We think the fact that Congress put it in the
21 heart of title I of ERISA shows that it's -- it relates to
22 ERISA.

23 QUESTION: It's a hard argument, yeah. It's a
24 different argument.

25 I don't see why the fact that it's an important

1 remedy, an important part of the statute, necessarily
2 means that this particular State law cause of action is a
3 law relating to a plan. It's relating to a way of getting
4 a remedy when you've been discharged for an impermissible
5 Federal reason.

6 MR. WRIGHT: Well, this particular State law
7 remedy is, of course, identical to the remedy Congress
8 provided in ERISA, and we think Congress put that remedy
9 in ERISA because it thought that it relates to ERISA. And
10 we also think it intended it to be exclusive.

11 In addition to Pilot Life, we think that this
12 Court's decision in Metropolitan Life v. Taylor is
13 particularly informative. In that case, Congress held in
14 light of ERISA's comprehensive enforcement provision and
15 its broad express preemption provision that Congress had
16 so completely preempted the field that any complaint
17 raising a claim under ERISA could be removed to Federal
18 court despite the well-pleaded complaint rule.

19 This Court recognized that this special rule
20 applies only under ERISA section 502(a) and under section
21 301 of the Labor Management and Relations Act but
22 determined that a special rule was warranted in light of
23 Congress' especially thorough preemption of these two
24 fields.

25 Respondent cannot explain how it can be that

1 Congress has so displaced State law that the well-pleaded
2 complaint rule has no applicability here, and yet his
3 claim which is identical to a claim that could be raised
4 under ERISA is not preempted.

5 In our view, both provisions, separately or
6 together, the comprehensive enforcement provision and the
7 broad express preemption provision, make clear that
8 Congress did not leave room for actions parallel to those
9 enforcing section 510 of ERISA.

10 If there are no questions, I have nothing
11 further.

12 ORAL ARGUMENT OF JOHN W. TAVORMINA

13 ON BEHALF OF THE RESPONDENT

14 MR. TAVORMINA: Mr. Chief Justice, and may it
15 please this Honorable Court:

16 102 years ago, the Texas supreme court came down
17 with the Eastline decision which held unequivocally,
18 without exception, any employer could terminate any
19 employee for no reason at all -- the employment-at-will
20 doctrine, or sometimes referred to as the fire-at-will
21 doctrine.

22 Over the last century, the Texas court has
23 changed and developed that law to take its harsh remedies
24 and look at those harsh remedies in light of the realities
25 of today's environment. The Texas supreme court has

1 imposed some restrictions on that harsh employment-at-will
2 doctrine. They have imposed that if the parties contract
3 an employment, a for cause provision will be inferred in
4 all the contracts.

5 Very recently, the Texas supreme court, based on
6 the public policy of the State, said, if an employee is
7 fired for refusing to commit a crime, well, we can't let
8 the employment-at-will doctrine prevent a cause of action
9 because our State public policy warrants, it mandates,
10 that we can't let that wrong go without redress, and the
11 court carved out another exception to the
12 employment-at-will doctrine and said, if you can prove
13 that the reason this employee was terminated was because
14 he failed to commit a crime, he will have, or she will
15 have, a State cause of action for wrongful termination.

16 In this case, the McClendon case, the court
17 again looked at the realities of today's employment
18 setting. Pension benefits, welfare benefits, and health
19 plans are -- are so much more an essential element of our
20 employment packages today than they were in 1988, and the
21 court said, we have a public policy. We have an interest
22 in protecting our employees, our men and women, with
23 respect to their pension benefits, and therefore, because
24 of our public policy, if you prove that a man or a woman
25 is fired for the principal reason of the employer trying

1 to avoid pension obligations, then that person has a State
2 cause of action.

3 QUESTION: Mr. Tavormina, do you agree that
4 Mr. McClendon also had a cause of action under ERISA,
5 section 510, to compel reinstatement or payment of the
6 benefits?

7 MR. TAVORMINA: Your Honor, he did have a cause
8 of action under ERISA to compel that. When the suit was
9 first filed, he also had the cause of action for the
10 processing of a claim for his retirement benefits which he
11 did not get. Once he received those benefits, from that
12 point on, the court -- the case took the posture of simply
13 a wrongful termination case.

14 QUESTION: Well, since he did have a cause of
15 action, doesn't that indicate that the cause of action
16 relates to the terms of the plan?

17 MR. TAVORMINA: No, Your Honor, it does not
18 indicate it relates to the plan. It relates to the
19 employer's motivation for terminating the employment. It
20 does not relate at all to the terms or conditions of a
21 plan.

22 You have -- if you take a step back, what do we
23 have? We have a State law in a traditionally regulated
24 area, wrongful employment termination. All States have a
25 right to do that, and the State of Texas has said, this is

1 a wrong for which an employee can sue for wrongful
2 termination.

3 Then we have ERISA. What was the purpose of
4 ERISA? ERISA was -- ah, passed to promote the interests
5 of employees in pension plans and in benefit plans. It
6 was --

7 QUESTION: Certainly all the preemption
8 provisions of ERISA were not necessarily put in to protect
9 employees as opposed to employers?

10 MR. TAVORMINA: No, Your Honor, but the key
11 element of the preemption provisions were to ensure
12 uniformity to the employers to avoid different processing
13 and different procedures in different States, if they
14 operated across State lines. That was the key element of
15 the preemption provision, and this cause of action created
16 by the Texas supreme court does absolutely nothing to the
17 uniformity of the structure of ERISA plans.

18 QUESTION: Well, I thought in Pilot Life the
19 Court held that section 502 of ERISA was the exclusive
20 mechanism for enforcement of obligations just like this
21 one.

22 MR. TAVORMINA: Your Honor, you're exactly
23 right, but Pilot Life was a holding where the Court said,
24 all we're dealing with here is the way a claim should have
25 been processed under a specific plan. We're -- the

1 employee is basically saying the employer did not process
2 the claim properly.

3 That is not the claim here. We are not claiming
4 any pension benefits or any pension rights. We are not
5 claiming anything at all under the plan itself.

6 Going back to the Justice's contract example for
7 just a second, if I understand what the petitioner and the
8 Government are arguing, if we are to let the provision in
9 ERISA control the damages, then wouldn't every wrongful
10 termination suit that is effected in any way -- if part of
11 the element of damages is, well, what did I lose?

12 I lost my salary, but I lost my pension, for
13 whatever reason -- contract or no contract. Would that
14 mean that in every State, in every cause of action, if an
15 employee sues for everything that he or she lost by the
16 termination -- under their rationale, wouldn't every
17 single employment case then automatically be removed to
18 Federal court? Don't most of us have pensions that are
19 going to vest, or have vested, and if --

20 QUESTION: No, only if it is alleged and
21 it -- it is an essential part of the State cause of action
22 that the reason for the dismissal was specifically to
23 prevent the vesting of the pension.

24 MR. TAVORMINA: Well, Your Honor, but the way --

25 QUESTION: I mean, that certainly narrows the

1 category of cases enormously.

2 MR. TAVORMINA: But under the contract example,
3 if the contract included wages -- I'm going to pay a
4 certain amount of money, plus I'm going to vest you in 20
5 years -- and the contract was then terminated after 19
6 years -- breach of contract action, wrongful termination
7 action, what are your elements of damages? One of them is
8 my pension. I didn't get it.

9 QUESTION: It may be an element of damages, but
10 it is not, as it is in this suit, an element of the cause
11 of action. It is an element of the cause of action here,
12 to establish that the reason the firing occurred was to
13 prevent the vesting, and that is quite different from
14 merely being an element of the damages.

15 MR. TAVORMINA: Sir, it's different, but if you
16 look at the Court's decision in English v. GE, that was
17 the Energy Reorganization Act that was involved in that
18 case. That act had a similar provision.

19 That was the case where a woman was fired. She
20 had reported several times to GE that radioactive waste
21 had not been cleaned up properly, and her warnings were
22 ignored, and she put a big piece of red tape around it to
23 show how absurd things were getting, to point out that
24 things weren't being done in the workplace for safety, and
25 the employer wound up firing her for that.

1 Well, if you look at that cause, which the Court
2 held the intentional infliction of emotional distress was
3 not preempted --

4 QUESTION: But there -- there you didn't have
5 the express and preemption provisions that you do with
6 ERISA, did you?

7 MR. TAVORMINA: No -- well, Your Honor, you
8 had -- you didn't have an express preemption provision,
9 but you had two very similar enforcement statutes, one
10 that said you couldn't discriminate or discharge an
11 employee, and the other that gave specific remedies for
12 any action under that --

13 QUESTION: I -- I think you'll find the Court's
14 treatment of preemption has been quite different in ERISA
15 cases, where you have a broad, statutory preemption
16 provision, as opposed to simply occupation of the field
17 and implied preemption, where they're simply claiming it's
18 the same cause of action.

19 MR. TAVORMINA: Your Honor, I agree with that,
20 but again, you have the State law and you have the
21 preemption opinion -- preemption provision, which, if you
22 look at the definition of State, it says, "any regulatory
23 agency or any legislative agency that purports, either
24 directly or indirectly, to regulate the terms or
25 conditions of a pension plan."

1 What does this State law do to regulate,
2 directly or indirectly, the terms and conditions of any
3 pension plan at all? It is a broad preemption statute,
4 but if you look at it, this State law has nothing to do
5 with the terms and conditions of Ingersoll-Rand's pension
6 plan. It has nothing to do with the uniformity of their
7 pension plan.

8 It only has to do with, why did they terminate
9 them, and the point raised, why wasn't it raised by
10 petitioner in the lower court if it was so obvious, was
11 because it's a different cause of action. They're
12 going -- we're looking to the motivation. Why were they
13 terminated?

14 They use an example, petitioner does in its
15 brief, about, well, we're going to -- we would have to
16 introduce evidence at trial to show the complicated
17 formula for vesting. Well, I think that proves that there
18 is no preemption in this case.

19 QUESTION: You're -- You're saying that a cause
20 of action under 510 doesn't relate to ERISA?

21 MR. TAVORMINA: Well, Your Honor, it doesn't
22 relate --

23 QUESTION: I mean, isn't that -- isn't that the
24 effect of your position?

25 MR. TAVORMINA: It doesn't relate to the terms

1 and conditions of an ERISA plan, and that's what
2 preemption is supposed to go to. Preemption was made so
3 there could be a uniform scheme that the employers could
4 use and rely upon. It wasn't so you can take away causes
5 of action, and there are many cases -- English v. GE is
6 one, but there are other cases where this Court has held
7 that just because a State court imposes additional
8 liability, or further liability than a Federal action,
9 that is not enough to preempt.

10 QUESTION: Actually, it doesn't say that. The
11 statute does not require that it relate to the terms or
12 conditions of an ERISA plan. The statute simply says,
13 "relate to any employee benefit plan."

14 MR. TAVORMINA: Your Honor, I agree with that,
15 but I also go back to the language of the definition of
16 State, where it says, "regulates directly or indirectly
17 the terms or conditions of a pension plan."

18 If you go back to the original premise, you have
19 the State law and you have a Federal act which was meant
20 to protect the interest of employees and protect them from
21 things like fraud and misappropriation, and then Congress
22 said, but we -- we have to give something to the
23 employers, and we're going to let them have a uniform
24 plan. Now, how is that affected by a State cause of
25 action?

1 QUESTION: Petitioner's explanation, and it
2 strikes me as a good one, is that the definition of the
3 term State to include political subdivisions that purport
4 to regulate is an expansion, so that you qualify as a
5 State even though you -- ah -- you are not a State in the
6 narrow sense, if you purport to regulate.

7 But if you are a State, whether you're
8 purporting to regulate the terms and conditions of a plan
9 or not, if you are a State properly speaking,
10 you're -- you're bound by 514(a), it seems to me --

11 MR. TAVORMINA: Well, Your Honor, I --

12 QUESTION: And the test is whether it relates to
13 the plan.

14 MR. TAVORMINA: When you say, whether it relates
15 to the plan, you have to go back to the terms and
16 conditions of a plan, or the administration of a plan
17 versus a cause of action for an employer's motivation.

18 QUESTION: Well, why do you have to do that?
19 Why, when the statutory language doesn't relate to any
20 employee benefit plan, do you have to go back to the terms
21 and conditions of the plan?

22 MR. TAVORMINA: Because I think if you look at
23 the majority opinion, for instance, in the Halifax case,
24 where the plant closing law came down from the State, and
25 they said so many plants have been closing in Maine, if an

1 employer closes a plant we're going to demand a one-time
2 severance payment.

3 The Court said well, we're not -- anything --
4 severance relates to some kind of employee benefits, but
5 they said, well look at the benefits, not -- there's a
6 difference between employee benefits and an employee
7 benefit plan. The Court made that distinction.

8 Now, the dissent in that case said, we're
9 dissenting -- as I understood it, we're dissenting because
10 we think that the State of Maine actually is creating a
11 pension plan, or a form of pension plan, so the Court
12 concentrated on that in its analysis as well, and here, in
13 the State of Texas, we don't even come as close as Fort
14 Halifax. We don't even have something that could even
15 look like a plan, or any terms and conditions of a plan.
16 All we have is the motivation. What was the motivation
17 for someone to go ahead and terminate?

18 Finally, I want to -- I would like to just talk
19 about the issue of damages. Just because there is a
20 provision for certain damages in the ERISA statute does
21 not preclude a State cause of action in a traditionally
22 State-regulated field from imposing additional damages,
23 whether they be punitive damages, or whether they be
24 mental anguish.

25 The issue of punitive damages was really not

1 addressed by the Texas supreme court, and one of the
2 justices said it was an open question, but there are
3 several cases from this Court, including an antitrust
4 case, which was California v. ARC America, where this
5 Court said that just because a State cause of action gives
6 further liability, or additional liability, to a cause of
7 action similar to the Federal cause of action, that's not
8 enough for preemption, and that case -- as well, going
9 back to the Halifax case -- this Court has said, well, is
10 there any conflict? Is there a conflict with ERISA with
11 this cause of action?

12 There is no conflict. It's consistent, and just
13 as in Fort Halifax, where the Court said, if it's
14 consistent and there's no conflict, we're going to let the
15 State's public policy --

16 QUESTION: May I interrupt you there for a
17 moment? You say there's no conflict. Is it not possible
18 that a very large punitive damages award against employers
19 who are funding their own plans could jeopardize the
20 safety of the financial soundness of the plan and that
21 there is a Federal interest in maintaining the financial
22 soundness which might be inconsistent with awards of -- of
23 punitive damages?

24 MR. TAVORMINA: Well, Your Honor, I would again
25 just go to the Court's opinions in Silkwood, for instance,

1 where the Court said that punitive damages, or the
2 prospect of punitive damages --

3 QUESTION: Yes, but there, you didn't have a
4 Federal interest in maintaining the financial stability of
5 the employer. Here you have a financial -- a Federal
6 interest in maintaining the soundness and the -- the
7 fiscal integrity of -- ah, employer-financed plans.

8 MR. TAVORMINA: Well, Your Honor, you have the
9 plan, and then you have the employer, and this highlights,
10 again, the difference between the two. It's the
11 employer's conduct, the employer's motivation --

12 QUESTION: It's his conduct, but that conduct
13 could rub off on a plan if he's responsible there. We've
14 had cases in which the employers go bankrupt, and that
15 sort of thing, and therefore the plan fails and you've got
16 to get involved in all this insurance, and so forth.

17 MR. TAVORMINA: Well, Your Honor, that's true,
18 and hopefully that will make employers look at it more
19 closely and focus on not terminating someone's employment
20 whether it be 5, 10, 15, 30, 40 years, and not -- not
21 terminate that person's employment for the principal
22 reason of avoiding pension obligations. Yes, it is a
23 serious remedy, but it's a serious wrong that needs to be
24 remedied. There --

25 QUESTION: All I'm suggesting is, there is a

1 Federal interest in -- it may not be sufficient to
2 prevail, but there's at least a Federal interest which
3 would support an argument against punitive damages in
4 order to maintain the kind of balance that you've got in
5 ERISA that might not necessarily be available in the State
6 system.

7 MR. TAVORMINA: I would agree with that, Your
8 Honor, and also, I don't know for sure if ERISA has
9 excluded the idea, or this thing of punitive damages.
10 I -- you know better than I on that point, but I can't
11 answer that question, so --

12 QUESTION: None of us knows, yet.

13 MR. TAVORMINA: I don't know if that's ever been
14 ruled upon.

15 QUESTION: Do you have a jury trial in the ERISA
16 action as compared to the State action?

17 MR. TAVORMINA: Would you, or did we?

18 QUESTION: Yes.

19 QUESTION: Would you. Would you be entitled to
20 a jury trial?

21 MR. TAVORMINA: Not under ERISA.

22 QUESTION: Would you be entitled to a jury trial
23 under State law?

24 MR. TAVORMINA: Yes, sir.

25 QUESTION: Well, do you think an employer might

1 be less inclined to set up one of these newfangled pension
2 plans that the Government was trying to encourage if he
3 knew that he'd be subject to a -- a jury action in State
4 court for allegedly dismissing people in order to avoid
5 the rights vesting under the plan?

6 MR. TAVORMINA: Well, Your Honor, if we use that
7 logic, then we're basically saying that because ERISA
8 limits the damages -- because I think everyone agrees that
9 there's nothing conflicting about the cause of action.
10 There is a cause of action in ERISA, and there is now, at
11 least at present, a State cause of action in Texas.

12 So then we'd be saying that the reason that
13 ERISA is preferred is because it has, or might have, less
14 damages --

15 QUESTION: Right.

16 MR. TAVORMINA: Than the right to a jury trial.

17 QUESTION: But isn't that conceivably why the
18 Federal Government put in that provision? We're going to
19 assure you, up front, what your liability, or the manner
20 in which it will be determined, will be like. It will not
21 be a jury trial, and it'll be in Federal court. Isn't --
22 might that not be an attraction to the employer who's
23 thinking of setting up, or not setting up, a pension plan?

24 MR. TAVORMINA: Your Honor, I -- that could have
25 been something considered. I don't remember seeing it in

1 the legislative history.

2 QUESTION: Well, perhaps --

3 (Laughter.)

4 MR. TAVORMINA: Unless there are further
5 questions, I have nothing further.

6 QUESTION: Thank you, Mr. Tavormina.

7 MR. TAVORMINA: Thank you.

8 QUESTION: Mr. Hurd, you have 4 minutes
9 remaining.

10 REBUTTAL ARGUMENT OF HOLLIS T. HURD

11 ON BEHALF OF THE PETITIONER

12 MR. HURD: I think it's important to understand
13 that, throughout ERISA, Congress was making a delicate
14 balance. When you talk about promoting and preserving
15 employees' interests in plans, there are two elements.
16 One is promoting the employees' rights, but the other part
17 of it is promoting the maintenance and establishment of
18 plans themselves.

19 Section 510 enforced, through the remedies of
20 section 502, are the enforcement mechanism and the
21 remedies that Congress decided were appropriate and struck
22 the right balance between the employee's interest in
23 recovering damages and their desire not to discourage the
24 establishment and maintenance of plans.

25 To -- to take Justice Scalia's question, it's --

1 you can imagine a grocery store with 20 employees in
2 Texas. Suppose there's high turnover within the first 2
3 years, but very little turnover of employees after that.
4 It would make sense for the employer in that case to
5 establish a pension plan with 2-year cliff vesting, so
6 that no one was vested before 2 years, everyone was fully
7 vested after 2 years.

8 But the first time a jury verdict comes down
9 from the State court in Texas with punitive damages in it,
10 the employer's going to think very seriously about whether
11 he should alter the vesting schedule and make it the
12 maximum permitted by law -- 5-year cliff vesting, so as to
13 diminish the credibility of the claims of people who might
14 sue who were let go in the first 2 years. This, of
15 course, would work to the disadvantage of the other
16 participants in the plan.

17 Another thing the employer might do in that
18 situation is install full and immediate vesting, so that
19 everyone is vested on the day they walk in, so that once
20 again, there's no risk of an employee who is terminated
21 claiming the termination was for the purpose of
22 interfering with his vesting. But once again, that would
23 result in giving pensions to people who only worked there
24 for a month, and would diminish, overall, the pool of
25 pension money available to those who really do stay with

1 the employer until retirement.

2 Congress decided that the balance that they
3 struck in sections 510 and 502 of ERISA was the
4 appropriate balance, so that employees had protections
5 without going so far as to discourage the establishment
6 and maintenance of plans.

7 In this way, section 510 clearly does relate to
8 plans. Congress understood that there's really a
9 triangular relationship at work. You have the plan, the
10 employer, and the employee, and all three sides of that
11 triangle relate to the plan.

12 The employee versus the plan is vesting claim
13 procedures, and so forth, the employer vis-a-vis the plan
14 is the funding requirements, for example, but equally
15 important is the employer versus the employee, whenever
16 the employer acts for the purpose of interfering with the
17 rights under the plan. In that case, that aspect of the
18 employment relationship is where it overlaps with the
19 field of employee benefit plans.

20 When the Congress occupied the field of employee
21 benefit plans, it did occupy that portion of the
22 employment relationship precisely because it does relate
23 to employee benefit plans.

24 Back on the subject of force or the threat of
25 force, let me just note that the following section of

1 ERISA, section 511, makes it unlawful to employ force,
2 fraud, or the threat of force in order to interfere with
3 someone's right to benefits under a plan.

4 QUESTION: May -- may I just ask this one
5 question? Am I correct that the Federal claim could be
6 brought in a State court, that would be based on a
7 Federal -- based on the Federal cause of action?

8 MR. HURD: No, Your Honor.

9 QUESTION: It could not?

10 MR. HURD: Claims of violation of section 510
11 are enforced under section 502(a)(3), of which the Federal
12 courts have exclusive --

13 QUESTION: There's something in the conference
14 report that's quoted that says that whether it's brought
15 in State or Federal court, it's still a Federal cause of
16 action. I don't --

17 MR. HURD: I think that portion of the
18 conference report is referring to claims for benefits
19 under 502(a)(1)(b).

20 QUESTION: I see.

21 MR. HURD: Claims for benefits --

22 QUESTION: Rather than a claim of this kind.

23 MR. HURD: Can be brought in either State or
24 Federal court, although the law applied is Federal law.

25 QUESTION: Is Federal law, right.

1 MR. HURD: But under 502(a)(3), which is used to
2 enforce section 510, only the Federal courts have
3 jurisdiction of those actions.

4 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Hurd.
5 The case is submitted.

6 (Whereupon, at 12:06 p.m., the case in the
7 above-entitled matter was submitted.)
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CERTIFICATION

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BY *Robert Stuart Antel*
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