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Private Pensions: ERISA Permits Offsets of Private Pension Benefits by Amounts Received in Worker's Compensation Awards, Preempting State Laws Prohibiting Such Offsets

Edward J. Dowd
University of Dayton

NOTES

PRIVATE PENSIONS: ERISA PERMITS OFFSETS OF PRIVATE PENSION BENEFITS BY AMOUNTS RECEIVED IN WORKER'S COMPENSATION AWARDS, PREEMPTING STATE LAWS PROHIBITING SUCH OFFSETS—*Alessi v. Raybestos-Manhattan, Inc.*, 101 S. Ct. 1895 (1981).

I. INTRODUCTION

In response to a growing national concern over the loss of private pension benefits by employees, Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA).[1] Congress' primary concern was correcting the inadequate vesting and funding requirements which frequently resulted in defeating retirees' post employment expectations.[2] Through ERISA Congress sought to improve the equitable character and soundness of such plans[3] by providing (1) nonforfeitable

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1. 29 U.S.C. §§ 1001-1381 (1976) (hereinafter cited as ERISA). The Act governs two types of employee benefit plans, "employee pension benefit plan[s]" and "employee welfare benefit plan[s]."

> [An employee pension benefit plan] mean[s] any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program (A) provides retirement income to employees, or (B) results in a deferral of income by employees for periods extending to termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

29 U.S.C. § 1002(2) (1976).

> The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries through the purchase of insurance or otherwise, (A) medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(C) of this title (other than pension or retirement or death, and insurance to provide such pensions).

29 U.S.C. § 1002(1) (1976).

2. The criticisms of the private pension system prior to ERISA were primarily, (1) inadequate vesting, (2) insufficient funding, (3) irresponsibility of fiduciary, and (4) ineffective administration. For a discussion of the inequities prior to ERISA and the subsequent provisions to remedy them, see Comment, *The Employee Retirement Income Security Act of 1974: Policies and Problems*, 26 SYRACUSE L. REV. 539 (1975) [hereinafter cited as *ERISA, Policies and Problems*].

3. 29 U.S.C. § 1001(C) (1976). The preamble to ERISA notes:

> [I]t is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and

vested rights,[4] (2) minimum funding requirements,[5] and (3) termination insurance[6] to protect retirees from insolvent employers.

An additional goal of Congress was to encourage expansion of private pension plans. Congress was aware of the need to minimize the cost of maintaining a plan in order to achieve this additional goal.[7] Thus, ERISA is an attempt to eliminate the inequities which plagued the private pension system prior to its enactment, while simultaneously avoiding undue expense to employers. In order to fulfill these objectives without intrusive state interference, Congress included in the Act a general preemption provision.[8]

Due to the complexity of the Act and the existence of competing interests, i.e., assuring adequate funding to insure benefits upon retirement versus minimizing the cost to employer to encourage expansion, various disputes have arisen over whether certain reductions in pension benefits constitute a forfeiture of vested rights in violation of section

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their beneficiaries by *improving the equitable character and soundness of such plans* by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

Id. (emphasis added).

4. 29 U.S.C. § 1053(a) (1976). ERISA's minimum vesting provision requires, "[e]ach pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the paragraphs (1) and (2) of this subsection.

5. 29 U.S.C. § 1082(a)(1) (1976). The minimum funding provision of ERISA requires,

> Every employee pension benefit plan subject to this part shall *satisfy the minimum funding standard* (or the alternative minimum funding standard under section 1085 of this title) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

Id. (emphasis added).

6. 29 U.S.C. § 1302(a) (1976). The provisions of ERISA establishing the plan termination insurance provides,

> There is established within the Department of Labor, a body corporate to be known as the Pension Benefit Guaranty Corporation. [T]he purposes of this subchapter, which are to be carried out by the corporation are (1) to encourage the continuation and maintenance of voluntary service pension plans for the benefit of the participants, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and (3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

Id.

7. Congress' concern in limiting the cost of private plans to the employer in order to encourage expansion of the system is expressed in various reports. The Committee on Finance reported that it "recognized that private retirement plans are voluntary on the part of the employer, and, therefore, it has carefully weighed the additional costs to the employer and minimized them to the extent consistent with minimum standards for retirement benefits." Sen. Rept. No. 93-383, 93d Cong., 1st Sess. (1973), *reprinted in* I ERISA LEGISLATIVE HISTORY OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 1069 (1976) [hereinafter cited as ERISA LEGIS. HIST.]. *See* H.R. Rep. No. 93-807, note 49 and accompanying text *infra*.

8. 29 U.S.C. § 1144(a) (1976). *See* note 85 and accompanying text *infra*.

1053 of ERISA. The United States Supreme Court resolved such a dispute in *Alessi v. Raybestos-Manhattan, Inc.*[9] The *Alessi* Court was confronted with the issue whether a collectively bargained pension plan allowing offsets of pension benefits by the amount of worker's compensation awards constitutes such a forfeiture;[10] and if not, whether the Act preempts a state worker's compensation law which expressly prohibits such offsets.[11]

To determine the permissibility of the offsets it was necessary for

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9. 101 S. Ct. 1895 (1981).

10. *Id.* at 1898. The worker's compensation offset issue has been addressed by various district courts with conflicting results. In Utility Workers Union v. Consumers Power Co., 453 F.Supp. 447, (E.D. Mich. 1978), the court invalidated the worker's compensation offset as contrary to ERISA § 1053(a) due to the difference in nature between worker's compensation and pension payments. *Id.* at 456. Other district courts have invalidated this offset on the grounds that worker's compensation reductions are not one of the permitted forfeitures enumerated in ERISA § 1053(3)(A). *See* Strong v. Bucyrus-Erie Co., 472 F. Supp. 1089 (E.D. Wis. 1979). *Accord,* Buczynski v. General Motors Corp., 456 F. Supp. 867 (D.N.J.) *aff'd on rehearing* 464 F. Supp. 133 (1978) and Alessi v. Raybestos-Manhattan, Inc., CA No. 78-0434 (D.N.J. Feb. 15, 1979) *consolidated & rev'd sub nom.* Buczynski v. General Motors Corp., 616 F.2d 1238 (3rd Cir. 1980), *aff'd sub nom.* Alessi v. Raybestos-Manhattan, Inc., 101 S. Ct. 1895 (1981); Carpenter Technology Corp. v. Boyton, No. 78-1415 (D. N.J. Dec. 12, 1979); Employee Benefits Committee, etc., of Hawaiian Telephone Co. v. Pascoe, 504 F. Supp. 958 (D. Hawaii 1980).

Only three district court cases, all in Michigan, upheld the offsets as consistent with ERISA. In Bordine v. Evans Products Company, 453 F. Supp. 19 (E.D. Mich. 1978), the court recognized that worker's compensation offsets were not among the enumerated forfeitures permitted by ERISA; however, it found these exceptions were not absolute. *See* Carlson v. Bundy Corp., No. 6-72272 (E.D. Mich. 1977). The *Bordine* court relied on certain treasury regulations which it found were designed to provide guidance for compliance with ERISA. As these regulations permitted the worker's compensation offset in dispute, the court concluded they were consistent with ERISA. *Id.* at 20. *Accord,* Pavlovic v. Chrysler Corp., No. 7-70438 (E.D. Mich. 1978).

In addition to the conflicting district court decisions, a split in the United States circuit courts arose between the third and sixth circuits. In Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980), the court held that since the treasury regulation was issued pursuant to a clear delegation of rule-making authority by Congress, it was legislative and had the same effect as valid statutes. Therefore, absent an abuse of discretion or direct conflict with ERISA, the regulation was valid. *Id.* at 1243. Based on such a standard the third circuit upheld the regulation because there was no clear conflict in the legislative history. *Id.* The *Buczynski* court further supported its conclusion on the grounds that ERISA did recognize exceptions to the forfeiture provision other than those enumerated. *Id.* In addition, the court found insufficient distinction between pension benefits and worker's compensation awards to warrant invalidation of the practice. *Id.* at 1246.

The Sixth Circuit Court of Appeals in Utility Workers v. Consumers Power Co., 637 F.2d 1082 (6th Cir. 1981) held otherwise. The *Utility Workers* court upheld the district court's decision invalidating the offsets due to the differences in nature between worker's compensation and pension benefits. *Id.* at 1089-91.

For a more complete discussion of the worker's compensation offset and its validity under ERISA, *see* Comment, *Can Workers Compensation Payments Offset Retirement Pension Benefits?* 17 CAL. W.L. REV. 493 (1981).

11. Cases addressing the preemption issue when confronted with worker's compensation offsets and state law expressly prohibiting them have reached conflicting decisions. For a discussion of cases addressing the preemption issue and their reasoning, *see* notes 89-95 and accompanying text *infra.*

the Court to concern itself with the competing interest involved in such a dispute. To permit such an offset may appear inconsistent with Congress' desire to assure a nonforfeiture of retiree's vested rights to his pension benefits, but would be consistent with Congress' desire to reduce the cost to the employer, and thus encourage expansion of the private pension system. Allowing this offset would enable the employer to reduce his cost of maintaining the plan by calculating these payments into it.[12]

II. FACTS AND HOLDING

Retired employees of General Motors Corp. and Raybestos-Manhattan, Inc. brought separate suits to challenge their employers' plans' provision for a reduction of their pension benefits by amounts received in worker's compensation awards. These two suits were later removed to the United States District Court of the District of New Jersey[13] which found (1) the offsets were prohibited by ERISA's nonforfeiture provision;[14] (2) thus the applicable treasury regulation and revenue rulings approving the offsets were invalid; and (3) even assuming the offsets were permitted under ERISA, they would be invalidated by the New Jersey Worker's Compensation Act; as (4) Congress had not intended ERISA to preempt such state law.[15]

The cases were consolidated on appeal to the Third Circuit Court of Appeals, which reversed.[16] The appellate court held that such offsets were implicitly allowed by Congress.[17] Thus the offsets were permissible and the treasury regulation and revenue rulings allowing them were consistent with ERISA.[18] The court gave a broad interpretation to ERISA section 1144, finding it preempted the New Jersey statute prohibiting the offsets.[19]

The United States Supreme Court noted probable jurisdiction of the appeal taken from retirees of Raybestos-Manhattan, Inc., and granted certiorari on the petition of retirees of the General Motors Corp. The *Alessi* Court unanimously[20] affirmed the third circuit's opin-

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12. *See* note 49 and accompanying text *infra*.

13. Buczynski v. General Motors Corp., 456 F. Supp. 867 (D.N.J.), *aff'd on rehearing* 464 F. Supp. 133 (1978); Alessi v. Raybestos-Manhattan, Inc. No. 78-0434 (D.N.J. Feb. 15, 1979), *consolidated and rev'd sub nom.* Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980), *aff'd sub nom.* Alessi v. Raybestos-Manhattan, Inc., 101 S. Ct. 1895 (1981).

14. 456 F. Supp. 867, 870.

15. 456 F. Supp. 867, 873.

16. Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980).

17. *Id.* at 1244.

18. *Id.* at 1247.

19. *Id.* at 1250.

20. Justice Brennan took no part in the decision.

ion on both issues,[21] determining private pension benefits may be reduced by amounts received by the employee-retiree from worker's compensation awards, as they do not constitute a forfeiture within the meaning of ERISA.[22] The *Alessi* Court also ruled for the first time on the scope of ERISA's preemption provision, section 1144. The Court found that the New Jersey offset prohibition did sufficiently relate to pension plans for the purposes of ERISA to be encompassed by the federal law.[23] Additionally, the Court found other federal interests involved also required preemption.[24]

III. ANALYSIS

A. Offset for Worker's Compensation Benefits Is Not a Forfeiture

When rendering its decision that the offsets in dispute did not violate ERISA, the *Alessi* Court used a two step process. The Court first defined what a forfeiture was within the meaning of ERISA. It next examined the worker's compensation offsets themselves to determine whether they fell within this definition, concluding they did not.

1. What is a Forfeiture?

Justice Marshall's opinion begins with a discussion of ERISA's nonforfeiture provision, section 1053(a), requiring "[e]ach pension plan shall provide that an employee's right to his normal retirement benefits is *nonforfeitable* upon the attainment of normal retirement age."[25] The Court concluded that, based upon this provision, the contested offsets were not invalid per se.[26] Noting the "facial accuracy"[27] of retirees' argument that (1) no vested benefits may be forfeited except those expressly provided for in section 1053(a)(3); and (2) worker's compensation offsets are not included therein, therefore, (3) the offsets constituted a forfeiture in violation of 1053(a), the Court nevertheless rejected this claim.[28] The *Alessi* Court found such reasoning to overlook the "threshold issue" of what defines the content of the benefit that, once vested, cannot be forfeited.[29]

Therefore, the Court distinguished determining the content of the

21. Alessi v. Raybestos-Manhattan, Inc., 101 S. Ct. 1895 (1981), *aff'g* Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980).
22. *Id.* at 1900-05.
23. *Id.* at 1905-07.
24. *Id.* at 1907.
25. *Id.* at 1900 (quoting 29 U.S.C. § 1053(a) (1976)) (emphasis added).
26. *Id.* at 1903.
27. *Id.* at 1900.
28. *Id. See also* 616 F.2d 1238 (3d Cir. 1980).
29. 101 S. Ct. at 1900.

benefit from providing for nonforfeitability of benefits, once vested. The content or level of the benefit is the total amount to be paid to the individual retiree upon attainment of retirement age.[30] This amount level is determined by calculating the various items agreed upon in each employment plan to come up with a single figure. Such considerations as length of service, amount contributed by both employee and employer, as well as various forms of supplemental post-retirement benefits are added together to determine the level of the payment. It is the retirees' claim to this level of benefit which ERISA makes nonforfeitable.

The *Alessi* Court went on to explain that it was the private parties,[31] the employer and employee bargaining agents, who determined the level or contents of the benefits. After this bargained for benefit has been agreed upon, section 1053(a) prohibits its forfeiture, once vested in the employee.[32] Such a conclusion is consistent with the Court's previous construction of the term "nonforfeitable"[33] in *Nachman Corp. v. Pension Benefit Guaranty Corp.*[34] The *Nachman* Court interpreted nonforfeitable as describing "the quality of the participant's right to a pension rather than a limit on the amount he may collect."[35] Under the *Nachman* approach, the private parties agree upon the level of the benefit. Unless there is a forfeiture of the right to claim this bargained-for benefit there can be no violation of ERISA. The *Nachman* Court held "it is the claim to the benefit, rather than the benefit itself, that must be 'unconditional' and 'legally enforceable against the plan.' "[36] The *Alessi* Court's reliance upon *Nachman* indicates its approval of granting a broad deference to the private parties in establishing and maintaining a plan. Instead of requiring a plan to establish a mandatory level of benefits in a specified amount, the Court allowed the private parties to take into consideration the various forms of supplemental income in calculating the benefit to which an individual retiree is entitled.

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30. ERISA defines a "normal retirement benefit" as "the greater of the early retirement benefit *under the plan*, or the benefit under the plan commencing at normal retirement age." 29 U.S.C. § 1002(22) (1976) (emphasis added). The "under the plan" language indicates that the level of the retirement benefit is to be determined by the pension planners and it is this amount for which retiree is to have a nonforfeitable claim.

31. 101 S. Ct. at 1900.

32. *Id.*

33. Congress has defined the term "nonforfeitable" as a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. 29 U.S.C. § 1002(19) (1976).

34. 446 U.S. 359 (1980).

35. 101 S. Ct. 1895, 1900 (quoting 446 U.S. 359, 372-73 (1981)).

36. 446 U.S. 359, 371 (1981), *quoted in* 101 S. Ct. 1895, 1900 (1981).

To further support this conclusion, the *Alessi* Court pointed out that "rather than imposing mandatory pension levels or methods for calculating benefits, Congress in ERISA set outer bounds on permissible accrual practices, 29 U.S.C. section 1054(b), and specified three alternative schedules for the vesting of pension rights, 29 U.S.C. section 1053(a)(2)."[37] Thus, provided the plan meets the minimum accrued benefit as described by ERISA under section 1054(b)(1)(2), and assures retirees a legal right to that vested benefit under one of the three schedules under section 1053(a), the private parties may determine the content of the benefit. The *Alessi* Court concluded, that absent a violation of these restrictions, each total benefit level may vary from plan to plan.[38]

2. Worker's Compensation as an Integration

Despite the *Alessi* Court's apparent grant of broad discretion to the private parties in determining the level of the benefit, the court did not give these parties complete freedom; but instead limited them to certain accepted practices.[39] The *Alessi* definition of nonforfeiture as not prohibiting the offset for worker compensation payments, would, on its face, appear to narrowly limit the application of section 1053(a) as an attack on the validity of pension plans. If so, pension planners could interpret the *Alessi* decision as allowing offsets for nearly all other income sources. The Court limited its holding to worker's compensation offsets, however, leaving no room for such a broad interpretation.

By concluding the parties planning the pension are to determine the level of the benefits,[40] the Court did not grant per se validity to this or any other offset. The Court found it necessary to determine whether the offset was in accord with other practices in determining the level of the benefit, as accepted by Congress when enacting ERISA. For the

37. 101 S. Ct. 1895, 1900 (1981). ERISA provides for three alternative formulas for the vesting of pension rights. 29 U.S.C. § 1053(a)(2) (1976). The first allows for a graded schedule under which the participant becomes twenty-five percent vested after five years and receives an additional five percent interest for each of the next five years and an additional ten percent for each of the remaining five years. *Id.* § 1053(a)(2)(B). A second alternative offers a ten year vesting schedule by which the participant is fully vested after ten years of service. *Id.* § 1053(a)(2)(A). The third alternative, referred to as the "rule of 45" provides that a worker with at least five years of service must become fifty percent vested when the sum of his age and years of service equals forty-five, after which an additional ten percent must become vested for each of the next five years. *Id.* § 1053(a)(2)(C). *See* Comment, *ERISA Preemption of State Law: The Meaning of "Relate To" in Section 514,* 58 WASH. U.L.Q. 143 (1980) (hereinafter cited as *Preemption of State Law*). For a further explanation of these alternative vesting schedules, *see ERISA, Policies and Problems, supra* note 2, at 571-75.

38. 101 S. Ct. 1895, 1901 (1981).

39. *Id.* at 1901-05.

40. *See* Comment, 1981, accompanying text *supra.*

purpose of the issue before the Court, Justice Marshall found it "particularly pertinent" that "Congress did not prohibit 'integration' ", a calculation practice under which benefit levels are determined by combining pension funds with other income streams available to retired employees.[41]

Integration, as described by the *Alessi* Court, is the contribution of various income streams to the total benefit pool to be distributed to all retirees.[42] These income streams include non-pension funds, such as worker's compensation, which are available to only a subgroup of employees. The private pension funds are integrated with these other income maintenance programs, including social security, and the pension level is determined based on the entire pool.[43] The result of such a practice is to assure that all the retirees receive a certain amount of post-retirement income even though some achieve this payment strictly through pension payments, while others achieve it by a combination of the various income streams to which they are entitled.[44]

The *Alessi* Court reasoned that allowing integration as a permissible calculation device would benefit the employees as a group because it would allow a higher pension level "although an individual employee may reach that level by a combination of payments from the pension fund and payments from other income maintenance sources."[45] The Court's concern for the permissible use of integration shows its attempt to balance the tension between the primary goal of benefitting the employees and the subsidiary goal of containing pension costs.

The *Alessi* Court correctly pointed out that the practice of integration with benefits under the Social Security Act[46] and Railroad Retirement Act[47] was expressly preserved by Congress.[48] Following a discussion of Congress' consideration of these particular offsets[49] the

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41. 101 S. Ct. 1895, 1901 (1981).

42. *Id.*

43. *Id.*

44. For an extensive explanation of what an integration is, as well as the various types of integration, *see* Comment, *Qualified Pension and Profit Sharing Plans: Integration with Social Security*, 29 U. MIAMI L. REV. 119 (1974).

45. 101 S. Ct. 1895, 1901 (1981).

46. 42 U.S.C. § 401-02 (1976).

47. 45 U.S.C. § 231 (1976).

48. 101 S. Ct. 1895, 1902 (1981). The *Alessi* Court cited various sections of 29 U.S.C. § 1054 (1976), the provision which sets forth the requirements for accrual of benefits to meet ERISA approval, to support its finding that social security benefits were a permissible integration. "A defined benefit plan satisfies the requirements of [§ 1054] if under the plan . . . *social security* benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year." *Id.* § 1054(b)(1)(B)(iv) (emphasis added). *See Id.* § 1054(b)(1)(C), for similar language with reference to social security.

49. The *Alessi* Court referred to various legislative history which clearly indicated Congress' awareness of the use of Social Security integration prior to ERISA. The House Ways and

Court concluded that, by setting a limitation on integration with these benefits, "Congress acknowledged and accepted the practice, rather than prohibiting it."[50] The Court recognized that Congress permitted these integration practices (at least with social security and railroad retirement benefits) without finding it necessary to add an exemption for this purpose to ERISA's nonforfeiture provision. Consequently, the Court was "unpersuaded by retirees' claim that the nonforfeiture provisions by their own force prohibit any offset of pension benefits by worker's compensation awards."[51] The worker's compensation offsets used by General Motors and Raybestos-Manhattan work much like the integrations with social security or railroad retirement payments allowed by Congress. Under each the individual employee remains entitled to the established pension level, but payments received from the pension fund are reduced by the amount received from the other income streams.[52]

Means Committee report noted the proposed bill would,

> not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your Committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your Committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth or perhaps even elimina[ting] private retirement plans.

101 S. Ct. 1895, 1902 (1981) (quoting H.R. REP. No. 807, 93d Cong., 2d Sess. 69 (1974), *reprinted in* II ERISA, LEGIS. HIST., at 3189 (1976)).

The Court also took cognizance of the fact that the bill had originally included a provision to temporarily restrict any increases in pension reductions due to increases in Social Security benefits accruing after December 31, 1971. 101 S. Ct. 1895, 1902 n.12 (citing H.R. REP. No. 1280 93d Cong., 2d Sess. 277; *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4639. Its subsequent deletion was explained on grounds of increased cost which might result in termination of private pension plans. *See* Sen. Harrison Williams 120 Cong. Rec. 29928, *reprinted in* III ERISA LEGIS. HIST. at 4732 (1976).

50. 101 S. Ct. 1895, 1902 (1981). The *Alessi* Court cited 29 U.S.C. § 1056(b) (1976) to support its conclusion. Section 1056(b) deals with the form and payment of benefits under ERISA and provides,

> If (1) a participant or beneficiary is receiving benefits under a pension plan, or (2) a participant is separated from the service and has nonforfeitable rights to benefits, a plan may not decrease benefits of such participant by reason of any increase in the benefit levels payable under Title II of the Social Security Act or the Railroad Retirement Act of 1937, or any increase in the wage base under such Title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

The *Alessi* Court concluded § 1056(b) did not give clear Congressional expression to maintain these integration practices under ERISA.

51. 101 S. Ct. 1895, 1902 (1981).

52. *Id.* at 1902-09. The *Alessi* Court concluded that § 1053 had no more applicability to

The *Alessi* Court's conclusion that the disputed offsets are sufficiently like integration practices is the key to the Court's ultimate finding that the offsets are permissible. Before rendering this decision, however, the Court needed to address retirees' various arguments that such a finding was inappropriate. Because the legislative history is silent on the particular offset for worker's compensation, the Court found it necessary to discuss whether Congress' adoption of the integration practice was limited to those federal benefits expressly addressed in the Act.[53] In opposition to such a claim, the Court referred to a current regulation[54] issued by the Internal Revenue Service[55] permitting integration with other federal and state benefits. In addition, the Court took notice of certain revenue rulings[56] issued prior to ERISA which expressly approve of such offsets.

The retirees put forth two contentions alleging that the Treasury regulation and revenue rulings contravene ERISA. First, the retirees objected to the validity of the regulation and rulings on the grounds that ERISA's approval of integration was limited to social security and railroad retirement payments.[57] Second, retirees contended that "workers' compensation awards are so different in kind from social security

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worker's compensation integration than the analogous reduction permitted for social security or railroad retirement payments because "the same Congressional purpose—promoting a system of private pensions by giving employers avenues for cutting the cost of their pension obligations—underlies all such offset possibilities." *Id.* The Court's finding on this point implied that permissible offsets as integrations are based upon the fact each system is funded by the employer; therefore, where the payments come from the *same fund,* there is strong likelihood that they will be similarly treated as integrations. *Accord,* Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980). For a further discussion on this point, *see* note 80 and accompanying text *infra.*

53. 101 S. Ct. 1895, 1903 (1981).

54. The relevant regulation provides in part: "Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under any other Federal or State law and which are taken into account in determining plan benefits." 26 C.F.R. § 1.411(a)-4(a) (1979).

55. The tax code requirement for pension plans was enacted in title II of ERISA. ERISA expressly provides that Treasury Department regulations under the tax code pension provisions, I.R.C. §§ 401-420, shall apply to the analogous provisions of ERISA codified in title 29 of the United States Code. *See* 29 U.S.C. § 1202(c) (1976).

56. *See* Rev. Rul. 421, pt. 4(j), 1969-2 C.B. 72; Rev. Rul. 243, 1968-1 C.B. 157. The pertinent language of 68-243, later encompassed by 69-421 part 4(j), is as follows:

> (4) Integration with Benefits Provided Under Other Programs - Benefits provided under a pension, annuity, profit sharing or stock bonus plan may be integrated with those provided under a State or Federal program, that like the Social Security program, requires employer contributions and makes benefits available to the general public. Thus, *benefits payable under a state workmen's compensation law . . . may be an acceptable offset against benefits payable under a qualified plan.* However, benefits payable under a qualified plan may not be offset by disability damages recovered by an employee in a common law action against the employer.

Id. (emphasis added) (This Rev. Rul. was rendered obsolete by Rev. Rul. 488, 1972-2 C.B. 649).

57. 101 S. Ct. 1895, 1903 (1981).

and railroad retirement payments that their integration could not be authorized under the same rubric."[58]

The *Alessi* Court found the retirees' first contention easily dismissible because of its prior conclusion that, since ERISA does not prescribe the level of pension benefits, the reduction of pension benefits based on the integration procedure is not per se prohibited by ERISA's nonforfeiture provision.[59] Because Congress had accepted and acknowledged the practice of integration the Court apparently reasoned that, absent Congressional intent to the contrary, worker's compensation reductions should be evaluated as a possible permissible use of this practice.[60]

Following its brief dismissal of this objection, the *Alessi* Court found it necessary to give greater attention to the retirees' second claim. The *Alessi* Court nevertheless ultimately rejected retirees' claim that worker's compensation is so different in kind that offset for its payments is unsupported by the rationale behind the integration of pension funds with social security and railroad retirement benefits.[61]

In developing this argument, retirees attempted to distinguish worker's compensation from social security and railroad retirement payments due to the lack of "identity of purpose"[62] between what the payments represent. Retirees claimed worker's compensation should be treated the same as common law tort damages because the purpose of worker's compensation, like tort recoveries from an employer, is to make whole or reimburse an employee for work-related injuries.[63] In contrast, retirees contended, the purpose of social security, railroad retirement, and private pension payments is to supply income to substitute for wages lost due to retirement.[64]

A similar argument was put forth and upheld by the Sixth Circuit Court of Appeals when it decided the validity of the worker's compensation offsets in *Utility Workers v. Consumers Power Co.*[65] The *Utility Workers* court focused on "the source of entitlement" to the particular payment as the factor determinative of whether the benefit is like a

58. *Id.*
59. *Id.*
60. *See id.* at 1904.
61. *Id.*
62. *Id.*
63. *Id.* The Court discussed the difference in judicial treatment between worker's compensation payments and tort judgments. *Id.* at 1904 n.16. Retirees made this claim because the I.R.S. has clearly established that recoveries in personal injury suits against an employer may not be used to reduce pension benefits. *See* note 56 and accompanying text *supra.*
64. 101 S. Ct. 1895, 1904 (1981).
65. 647 F.2d 682 (6th Cir. 1981).

pension for integration purposes.[66] Relying upon Congress' definition of "nonforfeitable"[67] under ERISA, particularly the phrase, *"which arises from the participant's service,"*[68] the *Utility Workers* court concluded this was an indication that it is the service of the employee which gives rise to his accrued benefit.[69] It concluded the "source of entitlement" for social security, railroad retirement, and private pension benefits was the years of service performed for the employer,[70] thus these benefits are in the nature of deferred wages.[71] The sixth circuit concluded worker's compensation was distinguishable because it is triggered by an injury, and not by the employee's term of service.[72]

The "identity of purpose" theory put forth by retirees in *Alessi* and the "source of entitlement" theory adopted by the *Utility Workers* court are both attempts to distinguish worker's compensation from other federal benefits for purposes of determining the proper use of integration. Both theories view the federal benefits as income earned through years of service for the employer, but view worker's compensation as compensation for injury.

The *Alessi* Court rejected such an attempt to distinguish worker's compensation awards from other federal benefits on two grounds. The Court found that neither the Social Security Act nor the Railroad Retirement Act supports such a claim.[73] In addition, the Court noted Congress knew and approved of I.R.S. rulings permitting integration, and recognized that the rulings do not draw the line between permissible and impermissible integration where retirees prefer.[74]

The *Alessi* Court noted that retirees' claim presumes that ERISA

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66. *Id.* at 1091.

67. *See* note 33 *supra.*

68. 29 U.S.C. § 1002(19) (1976) (emphasis added).

69. 637 F.2d 1082, 1091 (6th Cir. 1981).

70. *Id.*

71. *Id.* The view of pension benefits as deferred wages has been widely accepted today; the theory was proposed as early as 1913, and derived substantial support in case law since pensions were held to be "wages" within the meaning of section 9(a) of the National Labor Relations Act. Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), *cert. denied,* 336 U.S. 960 (1949). However, at various times other theories on the nature of pension benefits were viewed with some popularity. For example, (1) The Gratuity Theory viewed all private pensions as coming from a grateful employer in recognition of long and faithful service; (2) The Promissory Estoppel Theory held that if an employer by words or deeds created justifiable expectations of retirement benefits on the part of his labor force, he would be judicially prohibited from denying these benefits to those who satisfied all conditions of entitlement; and (3) The Unilateral Contract Theory treats a plan as an offer by the employer to enter into a unilateral contract to provide benefits under certain conditions, which offer is accepted by the employee by remaining in the service of the employer until retirement. *See* D. MCGILL, FULLFILLING PENSION EXPECTATIONS at 161-65 (1962).

72. 637 F.2d 1082, 1091 (6th Cir. 1981).

73. 101 S. Ct. 1895, 1904 (1981).

permits integration with other benefits only where there is an identity between the purposes of pension payments and purposes of other integrated benefits.[75] The Court discredited such a claim, however, by indicating that not even the funds which Congress had approved for integration shared the identity of purpose ascribed to them by retirees.[76] The Court noted "both the Social Security and Railroad Retirement Acts provide payments for disability as well as for wages lost due to retirement, and ERISA permits pension integration without distinguishing these different kinds of benefits."[77] Such a finding by the Court undercuts retirees' identity of purpose argument because disability benefits also provide payment for injury, thus serving much the same purpose as worker's compensation awards, yet Congress allows for their integration with private pensions.

To further support its conclusion that the revenue rulings themselves do not contravene ERISA, the *Alessi* Court found that when Congress enacted ERISA, it knew of the I.R.S. rulings permitting integration and left them in effect.[78] The rulings do not necessarily refute the identity of purpose theory put forth by retirees, but merely seem to draw the line at a different place in determining what is a permissible use of integration.[79] These I.R.S. rulings base their allowance of pension payment integration on three factors; provided a particular reduction meets these requirements it may be integrated with the pension benefit. The factors in the ruling require that "the employer must contribute to the other benefit funds, these other funds must be designed for general public use, and the benefits they supply must correspond to benefits available under the pension plan."[80] When these conditions are satisfied, the I.R.S. has consistently upheld reductions as permissible integrations with private pensions.[81]

By setting these criteria the I.R.S. recognized that not all offsets are permissible. But, contrary to retirees' preference, to determine permissibility the I.R.S. focuses on the source of the funds and their avail-

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75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id. See* Rev. Rul. 243, 1968-1 C.B. 157, note 56 and accompanying text *supra.*
81. *See* note 56 and accompanying text *supra.* In this revenue ruling the I.R.S. upheld worker's compensation as a permissible integration with pension benefits. However, various other rulings have invalidated certain attempts to integrate pension benefits. *See* Rev. Rul. 69-421 pt. 4(j)(4), C.B. 1962-2, 72; Rev. Rul. 68-243, C.B. 157-158 (I.R.S. disallowed offsets of pension benefits with damages recovered through common law tort judgment against employer); Rev. Rul. 78-178, C.B. 1978-1, at 118 (I.R.S. disallowed integration with reimbursement for medical expenses and integration with unemployment compensation). These rulings indicate the Service's consistent application of the three factors listed above.

ability to the general public,[82] and not on the purposes for which each payment is intended as compensation. The Court concluded that, since the I.R.S. has found worker's compensation offsets may be appropriately treated as an integration, it would "defer to the consistent agency position that is itself reasonable and consonant with the Act."[83] Thus, although retirees' "identity of purpose" theory is not totally baseless, it must be rejected in favor of the Service's standards, as long as its rules are not contrary to legislative purposes.

To further support its deference to the I.R.S. position, the *Alessi* Court pointed out that Congress was not only aware of, but actually embraced, such revenue rulings when enacting ERISA.[84] Thus Congress implicitly permitted worker's compensation integration as approved by the I.R.S. The *Alessi* Court concluded that it was not its "judicial function . . . to second-guess the policy decisions of the legislature, no matter how appealing [it] may find contrary rationales."[85]

The *Alessi* Court had thus held that the integration of worker's compensation with private pension benefits does not contravene ERISA. This conclusion did not, however, end the Court's inquiry into ERISA, because unless ERISA preempted the New Jersey statute expressly prohibiting such offsets,[86] the General Motors and Raybestos-Manhattan plans were still invalidated by state law.

B. ERISA's Preemption of State Law

Ordinarily where state law expressly prohibits a federally permissible activity, the preemption issue will be addressed first because a finding of no preemption is dispositive of any further inquiry. In this case,

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82. The *Alessi* Court's finding with regard to the appropriate criteria for establishing whether a pension reduction is a permissible integration under ERISA is consistent with the theory that worker's compensation is merely one unit in an overall system of wage loss protection. 4 A. LARSON, WORKMEN'S COMPENSATION LAWS § 97.00 (1979). If worker's compensation is viewed in this way rather than as resembling a recovery in a tort action, the conclusion follows that duplication of benefits from different parts of the overall system should not be permitted. *Id.*

83. 101 S. Ct. 1895, 1904, 1905 n.16 (1981).

84. *Id.* at 1905. The *Alessi* Court was correct in finding Congress was aware of the I.R.S.'s use of integration in determining pension levels; however, it is not clear whether Congress was aware of the particular practice of integrating worker's compensation awards. The committee reports to which the Court refers discuss integration in regard to approval of existing antidiscrimination rules, but make no reference to worker's compensation. *See* H.R. REP. NO. 1280, 93d Cong., 2d Sess. 277, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 5038, 5058. Therefore, the Court's subsequent conclusion that Congress embraced worker's compensation offsets is not clear.

85. 101 S. Ct. 1895, 1905 (1981).

86. The New Jersey Workers' Compensation Statute provides in part: "The right of compensation granted by this chapter may be set off against disability pension benefits or payments *but shall not be set off against employees' retirement pension benefits or payments.*" N.J. STAT. ANN. § 34:15-29 (West Supp. 1979) (emphasis added).

however, the Court found it necessary to address the offset issue at the outset in order to find the connection between the state law and the pension plan necessary to support its conclusion that ERISA did indeed preempt the New Jersey statute in question.

The *Alessi* Court began its preemption analysis by expressing its concerns for federalism, noting that the "exercise of federal supremacy is not lightly presumed."[87] The Court found, however, that the specific preemption provision in ERISA was sufficient indication of Congress' intent to authorize judicial intervention.[88] The *Alessi* Court therefore proceeded to address the issue whether ERISA preempted the New Jersey Worker's Compensation Law in question.

1. The "Relate to" Requirement

ERISA section 1144(a), the preemption section, provides that "[e]xcept as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan. . . ."[89] The wording of this provision clearly indicates that if the state law "relates to" the benefit plan, ERISA shall supersede and invalidate that law. Therefore, the specific issue confronting the *Alessi* Court was whether New Jersey Stat. Ann. 34:15-29, the state law prohibiting offsets for worker's compensation, sufficiently "relates to" the General Motors and Raybestos-Manhattan plans to warrant preemption.[90] Relying on its earlier finding that the worker's compensation offsets were permissible as an integration, the *Alessi* Court concluded that the state law did "relate to" the plans and was therefore preempted by ERISA.[91] Due to conflicting interpretations of the meaning of "relate to" in lower court decisions, however, the *Alessi* Court found it necessary to address its meaning under section 1144(a).[92]

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87. 101 S. Ct. 1895, 1905 (1981) (citing New York State Dept. of Social Services v. Dublino, 413 U.S. 405, 413 (1973) (quoting Schwartz v. Texas, 344 U.S. 199, 203 (1952)).

88. 101 S. Ct. 1895, 1906 (1981).

89. 29 U.S.C. § 1144(a) (1976) (emphasis added). The scope of ERISA is expressly limited by the Act itself. The statute explicitly preserves state regulation of "insurance, banking, or securities." *Id.* § 1144(b)(2)(A) and "generally applicable criminal law(s) of a State." *Id.* § 1144(b)(4).

90. 101 S. Ct. 1895, 1906 (1981).

91. *Id.* at 1908.

92. The *Alessi* Court recognized the confusion which had resulted from the "relate to" requirement of § 1144(a). 101 S. Ct. 1895, 1906, as indicated by the Court's reference to the conflicting decisions and rationales between the district court and the Third Circuit Court of Appeals on the scope of ERISA preemption. *Id.*

2. The Meaning of "Relate to"

The conflict regarding the "relate to" requirement of section 1144(a) centers around the scope of Congress' preemptive intent. Courts addressing the issue have split over whether this provision requires direct interference with the benefit plan or whether an indirect relation is sufficient.[93] As the Supreme Court pointed out in *Alessi*,[94] the district courts in both *Buczynski v. General Motors Corp.*[95] and *Alessi v. Raybestos-Manhattan, Inc.*[96] denied the preemption challenges because they viewed ERISA as preempting only when a state law directly interferes with, or "relates to" a pension plan. The reasoning of these lower court opinions was that because the New Jersey statute addressed worker's compensation and not pension plans it only "related to" the plan indirectly and therefore was not preempted.[97] The Third Circuit Court of Appeals, however, rejected these analyses and reversed.[98] It interpreted the "relate to pension plans" language as indicating a broad preemptive intent.[99] Because the purpose of the New Jersey law was to create an additional requirement for pension plans not permitted by ERISA, the third circuit reasoned, its broad scope required preemption.[100]

The Supreme Court in *Alessi* agreed with the third circuit's finding; however, it based its conclusion on different reasoning.[101] Primarily, the *Alessi* Court determined that "whatever the purpose or purposes of the New Jersey statute . . . it relate[s] to pension plans governed by ERISA because it eliminates one method of calculating pension benefits — integration — that is permitted by federal law."[102] Thus the Supreme Court strongly relied upon its earlier finding that private pension benefits may be offset by worker's compensation awards. The Court reasoned that since it was permissible for the private parties to integrate these funds in calculating the level of the pension benefit, the New Jersey statute directly "relates to" the pension

93. 101 S. Ct. at 1906.

94. *Id.*

95. 456 F. Supp. 867 (D.N.J.), *aff'd on rehearing* 464 F. Supp. 133 (1978), *rev'd* Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980).

96. No. 78-0434 (D.N.J. Feb. 15, 1979), *rev'd* Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980).

97. 456 F. Supp. 867, 873 (D.N.J.); *aff'd on rehearing* 464 F. Supp. 133 (1978), *rev'd* Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980).

98. Buczynski v. General Motors Corp., 616 F.2d 1238 (3d Cir. 1980).

99. *Id.* at 1250. The *Buczynski* Court here concluded that "it [was] clear that the preemption provision is intended to be read in its normal dictionary sense." *Id.*

100. *Id.*

101. 101 S. Ct. 1895, 1907 (1981).

102. *Id.*

plan as it expressly prohibits a federally permissible calculation technique for purposes of ERISA.[103]

From this language the *Alessi* Court indicated that ERISA requires a direct relationship in order for section 1144(a) to be involved as superseding the state law. The *Alessi* Court, however, did not wish to impose such a narrow view on the scope of ERISA's preemption. This is evidenced by its further effort to discredit the direct relationship requirement adopted by the district court.[104] Relying on the ERISA definition of state, the Court concluded the Act makes clear that "even indirect state action bearing on private pensions may encroach upon [an] area of exclusive federal concern."[105] Section 1144(c)(2) defines state to include: "a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, *directly or indirectly,* the terms and conditions of employee benefit plans covered by this title."[106] The *Alessi* Court concluded, therefore, that the drafters of ERISA "clearly meant to preclude the States from avoiding through form the substance of the pre-emption provision."[107]

C. *Effect of the* Alessi *Decision*

The *Alessi* Court overruled the district court's attempt to uphold the New Jersey law on the grounds that because it is a worker's compensation law and not a law directly dealing with pension plans there is only an indirect relationship.[108] Such an argument is clearly insufficient under the *Alessi* findings as this would merely be the state's attempt to avoid through form the substance of section 1144(a).

The *Alessi* opinion should not be read as giving approval to the third circuit's view of section 1144(a) showing broad preemptive intent.[109] Under this broad view nearly all state laws which would intrude upon a pension plan, no matter how indirectly or remotely, would be invalidated. The *Alessi* Court did not support such a reading of ERISA's preemption. Although the Court agreed that even indirect intrusions may violate ERISA, it still discussed how the New Jersey law

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103. *Id.*

104. *See* notes 94 and 95 and accompanying text *supra.*

105. 101 S. Ct. 1895, 1907 (1981). The *Alessi* Court discussed earlier in the opinion how ERISA's preemption provision § 1144(a) demonstrated Congressional intent to depart from its previous legislation that 'envisioned the exercise of state regulation over pension funds'. *Id.* at 1906 (quoting Malone v. White Motor Corp., 435 U.S. 497, 512, 514 (1978) (plurality opinion)). Through ERISA Congress therefore meant to establish pension plan regulation as exclusively a federal concern. 101 S. Ct. 1895, 1906 (1981).

106. 29 U.S.C. § 1444(c)(2) (1976) (*emphasis added*).

107. 101 S. Ct. 1895, 1907 (1981).

108. *See* note 96 and accompanying text *supra.*

109. *See* note 97 and accompanying text *supra.*

related to the General Motors and Raybestos-Manhattan plans. Under the *Alessi* facts there was a clear relationship between the state law's prohibition, and the federal law's permission of the worker's compensation offset. Although the Court failed to specify how close a relationship must exist between a state law and ERISA, it did indicate that a remote relationship would be insufficient to trigger ERISA preemption. Consequently, the *Alessi* Court has apparently rejected the broad interpretation of ERISA's preemptive effect put forth by the *Buczynski* court.

Perhaps even more supportive of the Court's refusal to adopt such a broad view is the fact that in the various lower courts there have been conflicting views of the preemptive language in areas of law outside worker's compensation.[110] The *Alessi* Court was aware of such decisions but clearly refused to express its views on the merits of each.[111] Had the Court supported broad preemptive scope of the preemption provision, it could have made such finding implicit so as to give the lower courts some guidance. Its refusal to do so indicates its desire to limit its holding to the precise preemptive dispute before it.[112]

The *Alessi* opinion indicates the Supreme Court's support of a standard for preemption which lies somewhere between the narrow direct relationship view put forth in the district court and the broad preemptive view of the circuit court. The Supreme Court, however, has failed to express exactly where that point is. The *Alessi* Court did clearly decide that state laws which would prohibit worker's compensation offsets are preempted by ERISA. Beyond this, however, its holding gave little indication what standards courts should use when presented with ERISA preemption issues outside the area of worker's compensation offsets.

Absent a prohibition of a federally permissible practice under ERISA, such as the New Jersey law, it is not clear how indirect a

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110. ERISA's preemption provision § 1144(a) has spawned considerable litigation over its scope, particularly in relation to state laws concerning insurance, domestic relations, and civil rights. This same question has arisen on occasion in other contexts such as debtor-creditor relations, taxation, professional licensing and regulation, and restitution. For a comprehensive discussion of the various cases and their conflicting decisions, *see Preemption of State Law*, note 37 *supra*.

111. 101 S. Ct. 1895, 1907 n.21 (1981).

112. To further support its conclusion that the New Jersey statute was preempted, the *Alessi* Court noted that "where, as here, the pension plans emerge from collective bargaining, the additional federal interest in precluding state interference with labor-management negotiations calls for pre-emption of state efforts to regulate pension terms." *Id.* at 1907 (citing Teamsters Union v. Oliver, 358 U.S. 283, 296 (1959); Railway Exmployees' Dept. v. Hanson, 351 U.S. 225, 232 (1956)). Although this conclusion is supported by case law, the cases cited speak little to the "relate to" requirement and were merely added for the purpose, as the Court points out, of bolstering its conclusion. *Id.*

relationship between a state law and a pension plan need be to warrant preemption. The *Alessi* opinion suggests the Supreme Court will handle these disputes on a case-by-case analysis. The practical effect is to continue to permit the conflicting results in the various jurisdictions in those areas other than worker's compensation until the Court chooses to hear the dispute, a challenge it has been reluctant to confront in recent years.[113]

IV. CONCLUSION

The Supreme Court in *Alessi* determined that private pension benefits may be reduced by amounts received in worker's compensation awards. The Court showed concern for the competing interests involved when Congress enacted ERISA. Although the primary goal of ERISA was to assure retirees of post-employment income by providing nonforfeitable vested rights, the Court realized the need to keep cost of the plans to a minimum to encourage expansion of the private pension system. The *Alessi* Court noted that prior to ERISA such payments were treated as proper integration practices; it therefore concluded Congress has approved of such practices when it enacted the legislation.[114] Thus, absent Congressional change,[115] worker's compensation offsets are permissible integration devices for the purpose of calculating the level of pension benefits to which each retiree is entitled.

The *Alessi* Court further found ERISA to preempt any state law which prohibits such offsets.[116] The Court found that the New Jersey law which prohibited the integration of private pension benefits with worker's compensation awards was contrary to ERISA because it eliminated a federally permissible practice for calculating the level of pension benefits.[117] Beyond this finding, the *Alessi* opinion regarding pre-

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113. The Supreme Court has twice refused to hear the preemption issue in regard to state insurance laws when confronted with the opportunity. *See* Wadsworth v. Whaland, 562 F.2d 70, 76-78 (1977), *cert. denied,* 435 U.S. 980 (1978) (gave broad interpretaion of ERISA's preemptive effect); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd per curiam,* 571 F.2d 502 (9th Cir.), *cert. denied,* 439 U.S. 831 (1978) (likewise gave broad interpretation to ERISA preemption).

114. *See* note 83 *supra.*

115. In 1979 a bill was introduced to the Senate which would have amended ERISA to expressly prohibit the offset upheld in *Alessi.* The bill provides in part,

> (a) pension plan may not reduce or suspend retirement pension benefits being received by a participant or beneficiary or retirement pension benefits in which a participant is separated from service has a nonforfeitable right by reason of any payment made to the participant or beneficiary by the employer maintaining the plan as the result of an award or settlement made under or pursuant to a worker's compensation law.

S.209 96th Cong., 1st Sess. § 126(a)(3), at 26-27 [1979]. This bill was never enacted.

116. *See* note 90 *supra.*

117. *See* note 101 *supra.*

emption is an unsatisfactory decision because it fails to establish any clear standards on the meaning of "relate to" under ERISA's preemption provision. Although the Court answered the specific issue on preemption of a worker's compensation law, it failed to adequately establish workable standards which lower courts may use to uniformly describe the effect of certain state laws on ERISA.

Edward J. Dowd