

1990

Vern L. Peterson v. Browning and David W. Rich : Brief of Petitioners

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

VERN L. PETERSON,

Plaintiff,
Respondent,

VS.

BROWNING and DAVID W. RICH,

Defendants,
Petitioners.

[illegible]

Supreme Court Docket
Number 900401

Priority 12

BRIEF OF PETITIONERS

Certification from the United States District Court
in and for the District of Utah, Northern Division

Docket Number 87-NE-121G

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FILED

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Clerk, Supreme C

IN THE SUPREME COURT OF THE STATE OF UTAH

VERN L. PETERSON,	:	
	:	
Plaintiff,	:	
Respondent,	:	Supreme Court Docket
	:	Number 400401
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I. JURISDICTION.

This matter has been certified to this Court by the Honorable Judge Thomas Greene of the United States District Court for the District of Utah, Northern Division, pursuant to Utah Rules of Appellate Procedure, Rule 41. The matter is within the jurisdiction of the Utah Supreme Court pursuant to Article 8 Section 3 of the Utah Constitution and Utah Code Ann. § 78-2-2(1).

II. ISSUES PRESENTED FOR REVIEW.

Judge Greene has certified the following question to this Court for consideration:

Does an action for termination of employment based upon the public policy exception to the employment-at-will doctrine for violation of or refusal to violate Federal, other state, or Utah law, sound in tort or contract?

Defendants believe that in order to consider that question in the context of this dispute, this Court should also examine whether the facts as alleged by the plaintiff are sufficient to satisfy the public policy exception to the at-will employment doctrine as that doctrine has been articulated to date by this Court. See Utah Rules of Appellate Procedure, Rule 41(d) (providing for this Court's review of the record in a Rule 41 certification matter in answering the substantive question posed by the United States District Court).

Additionally, defendants believe that the issue certified by Judge Greene is mooted by new case law from the United States Supreme Court, released after the certification of this matter to this Court. Therefore, defendants submit that it is appropriate that this Court address the issue of whether the certified question has become moot because the state law causes of action are preempted by federal law.

III. NON-CASE LAW AUTHORITY.

This matter requires the interpretation of several portions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq., including 29 U.S.C. § 1140 (ERISA Section 510) which provides:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act.

This matter also requires an interpretation of the ERISA preemption clause which is contained at 29 U.S.C § 1144 (ERISA § 514). The ERISA preemption states: "the provisions

of this title and title IV shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under 4(b) [any ERISA-covered plan]."

IV. STATEMENT OF THE CASE

A. Course of Proceedings.

Plaintiff is a former employee of Browning. Plaintiff filed a Complaint against Browning and David W. Rich, Browning's personnel manager and a member of the committee that administers Browning's pension plan, on October 30, 1987.

That Complaint asserts three causes of action: a claim that plaintiff was constructively discharged from Browning's employ in violation of ERISA; a claim for breach of employment contract; and a claim that his employment was wrongfully terminated in violation of Utah public policy. A copy of plaintiff's Complaint is included in the Addendum to this Brief.

Plaintiff alleges that by undertaking certain actions constituting a breach of his employment contract and a violation of Utah public policy, Mr. Rich also violated ERISA. Plaintiff's Complaint states: "Defendant Rich's conduct in using the Browning Pension Plan as part of the scheme to

terminate [plaintiff's] employment in violation of defendant Browning's contract with [plaintiff] constitutes a breach of defendant Rich's fiduciary duty as a member of the Committee which is the Plan Administrator . . . and a violation of . . . [ERISA]", Complaint paragraph 14.

The Complaint further alleges that Browning knowingly participated in Mr. Rich's breach of his fiduciary duty as part of its own scheme to terminate plaintiff's employment and that Browning's participation in Mr. Rich's alleged breach "in violation of its contract with [plaintiff] and the public policy of the State of Utah constitutes a violation of ERISA." Complaint, paragraph 15 (emphasis added).

On September 27, 1988, defendants filed a motion seeking to dismiss plaintiff's non-federal claims. In that motion they argued that plaintiff's state law causes of action were preempted by Section 514 (29 U.S.C. § 1144) of ERISA and that Utah law did not recognize plaintiff's contract and public policy claims. Judge Greene granted that motion in part and on December 21, 1988 dismissed plaintiff's third cause of action (wrongful discharge in violation of public policy). He did so on the ground that Utah law did not recognize a cause of action for wrongful discharge from employment. See Order re Defendants' Motion to Dismiss plaintiff's Non-Federal Claims

¶¶ 1, 3. A copy of that Order has been included in the Addendum to this brief.

After this Court published its decision in Berube v. Fashion Center, Ltd., 771 P.2d 1033 (Utah 1989), plaintiff persuaded Judge Greene to restore his third cause of action on the basis that Utah law now recognizes a cause of action for wrongful discharge from employment.

Judge Greene concluded that the cause of action sounded in tort rather than contract and that plaintiff could be entitled to an award of punitive damages on that claim. Order dated January 23, 1990. A copy of Judge Greene's Order is included in the Addendum to this Brief.

Judge Greene certified that issue to this Court for its consideration.

B. Facts Relevant to the Issues Presented for Review.

Defendants submit the following undisputed facts which are relevant to this Court's determination of the second issue articulated by defendants in Section II, supra: whether Utah law would recognize the facts asserted by plaintiff as sufficient for a finding of discharge in violation of public policy, as Utah law recognizes that doctrine.

1. Plaintiff began his employment with Browning in 1953. Deposition of Vern L. Peterson ("Peterson Deposition") at 18.

2. In 1982, plaintiff became general manager of Browning's facility in Arnold, Missouri and moved to Missouri. Peterson Deposition at 20.

3. Plaintiff retired from Browning's employ on October 31, 1984. Peterson Deposition at 20.

4. In his Complaint, plaintiff alleges that he was constructively discharged because he "opposed certain unlawful actions purposed by other officers and division managers of defendant Browning and because he conscientiously carried out his duties as Customs Officer and as a corporate officer." Complaint, Third Claim for Relief ¶ 23.

5. Plaintiff further alleges that Browning's "discharge of [him] for exercising his duty of loyalty and care in the affairs of the corporation and for conscientiously performing his duties as Customs Officer as required by the law of Utah and the law of the United States violates the public policy of Utah and constitutes wrongful termination." Complaint, Third Cause for Relief ¶ 24.

6. At his deposition, plaintiff agreed that what "really led" to his separation from Browning was "backstabbing" of him by other Browning employees because they were "jealous" of plaintiff's rise through the corporate ranks. Peterson Deposition at 199-200.

7. Plaintiff also felt that his treatment of certain customs situation "had something to do with" his retirement from Browning. Peterson Deposition at 203.

8. Plaintiff identified several situations dealing with custom law as the basis for his allegations of paragraph 23 in his Complaint. Those situations consisted of an issue concerning the importation of pistol parts from Japan, an incident involving the use of a Browning import permit to ship certain Beretta pistols to the United States, a situation surrounding the closing of a warehouse in Montreal, and a situation involving the importation of golf products. Peterson Deposition at 162, 164, 188, 189, 195-196, 192.

9. According to plaintiff, only Don Gobel, President of Browning North America, had (with the possible exception of Browning's Board of Directors) actual authority to terminate plaintiff's employment relationship with Browning. Peterson Deposition at 147-148.

10. Plaintiff testified concerning the issue of the importation of the pistols from Japan that he had a conflict with another Browning officer over the issue and believed that officer desired him to ignore the instructions given to him by Mr. Gobel that plaintiff was to abide by the letter and the spirit of customs laws. Peterson Deposition at 162-166, 191-192.

11. Plaintiff did not inform Mr. Gobel of the incident and felt that the repercussion from the incident was that he was "bad mouthed" for being uncooperative by the other Browning officer involved. Peterson Deposition at 162-166.

12. Concerning the import of the Beretta pistols from Italy, plaintiff testified that he had a conflict with another Browning officer when he as Customs Officer indicated that certain Beretta pistols could not be imported under a Browning license. Peterson Deposition at 190-191.

13. Plaintiff discussed the incident regarding the Beretta pistols with Don Gobel who in no way suggested that plaintiff should not follow customs regulations. Indeed, Mr. Gobel is described by plaintiff as "an incredible stickler for adherence to customs practices." Peterson Deposition at 191-192.

14. Concerning the closing of a Browning facility in Montreal and the customs duties relative to that project, plaintiff believed only that his insistence on strict adherence to customs practices led to a perception that he was not "cooperative." Peterson Deposition at 192-194.

15. Plaintiff has no reason to disbelieve Mr. Gobel when he says that he was unaware of the Montreal situation. Peterson Deposition 192-194.

16. Plaintiff's final allegation regarding customs law is that Don Gobel was on one occasion "not pleased" that plaintiff could not achieve the customs preference on certain golf products that Mr. Gobel had suggested in a memorandum. Peterson Deposition at 196.

17. The above incidents are the only allegations concerning customs law that plaintiff alleges support the allegations of paragraph 23 of his Complaint. Peterson Deposition at 196.

18. The only other situation that plaintiff alleges in support of his allegations of paragraph 23 regards the payment of a particular tax imposed on merchants by the state of Missouri. Peterson Deposition at 201-202.

19. Plaintiff's testimony concerning the non-payment of the Missouri tax is that he believed his predecessor as manager of the Arnold facility had undervalued some inventory for purposes of payment of the Missouri Merchant's tax. Plaintiff believed that Mr. Gobel was aware of this situation and asked another Browning officer to handle it. Peterson Deposition at 182-185.

20. Plaintiff's testimony on the foregoing issue was corroborated by Mr. Gobel at his own deposition, at which he testified that he simply asked another Browning officer to

investigate the situation with the Missouri tax and take care of the problem in Missouri. Mr. Gobel then heard no more about the matter. Deposition of Don Gobel at 132-133.

V. SUMMARY OF ARGUMENTS.

- A. THE ISSUE CERTIFIED BY JUDGE GREENE IS MOOT BECAUSE THE PUBLIC POLICY CLAIM ASSERTED BY PLAINTIFF IS PRE-EMPTED BY SECTION 514 OF ERISA (29 U.S.C. § 1144).
- B. CONSISTENT WITH ITS DECISION IN BERUBE, THIS COURT SHOULD FIND THAT ANY CAUSE OF ACTION AVAILABLE UNDER UTAH LAW FOR WRONGFUL DISCHARGE FROM EMPLOYMENT IN VIOLATION OF PUBLIC POLICY SOUNDS IN CONTRACT AND NOT IN TORT AND THEREFORE PUNITIVE DAMAGES ARE NOT AVAILABLE TO PLAINTIFF.
- C. PLAINTIFF HAS NOT ASSERTED FACTS SUFFICIENT TO FALL WITHIN THE PUBLIC POLICY EXCEPTION TO THE AT WILL DOCTRINE AS IT HAS BEEN ARTICULATED IN THIS COURT'S OPINION IN BERUBE.

VI. ARGUMENT.

- A. THE UNITED STATES SUPREME COURT'S DECISION IN THE INGERSOLL-RAND COMPANY v. McCLENDON, 59 U.S.L.W. 4033 (DECEMBER 4, 1990) MOOTS THE ISSUE CERTIFIED TO THIS COURT BY JUDGE GREENE.

As explained above, plaintiff's allegations intermesh his claims under Utah law with his claims under ERISA.

Plaintiff has essentially alleged that Browning used its ERISA

governed pension plan as part of a "scheme to terminate [plaintiff's] employment in violation of . . . (his contract) and the public policy of the State of Utah." Complaint ¶ 15.

Plaintiff's Complaint explains the relationship between defendant Rich's conduct as a Browning pension plan fiduciary and Browning's breach of Utah public policy as follows:

Defendant Rich's conduct in using the Browning pension plan as part of a scheme to terminate [plaintiff's] employment in violation of defendant Browning's contract with [plaintiff] and the public policy of the State of Utah constitutes a breach of defendant Rich's fiduciary duty as a member of the Committee which is Plan Administrator of the Browning Pension Plan . . . and a violation of . . . [ERISA].
Complaint ¶ 14.

The Complaint goes even further and asserts that Browning knowingly participated in Rich's breach of his fiduciary duty under ERISA as part of its own scheme to remove plaintiff from his employment and asserts that Browning's acquiescence in Rich's alleged breach "in violation of its contract with Peterson and the public policy of the State of Utah constitutes a violation of ERISA." Complaint ¶ 15 (emphasis added).

Since the Complaint did not allege a specific section of ERISA that had been violated by defendants, defendants posed an interrogatory asking plaintiff to identify the section of ERISA that they had allegedly violated. In response, plaintiff alleged that Section 510 of ERISA (29 U.S.C. 1140) was breached by defendants.^{1/}

Section 510 provides:

[I]t shall be unlawful for any person to discharge, find, suspend, expel, discipline, or discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled to under the plan, this title, or the Welfare and Pension Plan Disclosure Act

^{1/} Plaintiff's Interrogatory Answers also alleged that defendants had violated ERISA §§ 502 and 409 (29 U.S.C. §§ 1140, 1132). Plaintiff's Response to Defendants' First Set of Interrogatories and Requests for Production Documents, Interrogatory No. 1(e). Section 502 is simply the statute authorizing civil enforcement of ERISA. Section 409 allows the removal of a fiduciary who has violated his duties and requires repayment to the plan of monies lost for the breach of fiduciary duty. That Section does not create a private cause of action for damages. Massachusetts Mutual Life Insurance Co. v. Russell, 473 U.S. 134, 87 L.Ed. 2d 96 (1985). Plaintiff has not even attempted to cause restoration of any monies to the plan. Therefore, plaintiff's only actionable claim under ERISA is under Section 510.

In answer to defendants' interrogatories, plaintiff alleged that Browning and Rich forced "him to accept an early retirement or face termination and risk losing any retirement benefits accrued by him or which he would accrue during the remaining years of his employment to full retirement." See Plaintiff's Response to Defendants' First Set of Interrogatories and Requests for Production of Documents, Interrogatory No. 1(d).

On December 3, 1990 the United States Supreme Court issued its opinion in Ingersoll-Rand Company v. McClendon, 59 U.S.L.W. 4033 (December 4, 1990). A copy of that opinion is included in the Addendum to this Brief. In that case, McClendon sued his former employer under Texas common law alleging that he was wrongfully discharged from employment in order to prevent his employer from having to continue to make contributions to its pension fund on his behalf. McClendon made no allegations in his Complaint that any section of ERISA had been violated by his employer's conduct. The United States Supreme Court held to that even in the absence of such specific invocation of ERISA, McClendon's state law cause of action was pre-empted. Its reasoning was two fold. First, the Court relied on the specific text of Section 514 of ERISA which

creates a blanket pre-emption of all state laws as they "relate to" any employee benefit plan. See ERISA § 514(a); 29 U.S.C. § 1144(a). The Supreme Court reasoned that since the existence of a pension plan was a "critical factor" in establishing liability under Texas wrongful discharge law, the plaintiff's cause of action clearly "related to" an ERISA covered plan. Id. at 4035.

Second, the Court also held that pre-emption was particularly in order when ERISA already anticipated the sort of wrong plaintiff alleged and provided a remedy therefor. In McClendon's case, although he did not plead it as such, he clearly had a cause of action under Section 510 of ERISA, the same section expressly relied upon by plaintiff. In discussing this issue, the Court reasoned that Congress had, by passing Section 510 and providing for enforcement of Section 510 through Section 502 (29 U.S.C. § 1132), created an exclusive remedy that was intended to in its own right pre-empt any overlapping state law cause of action. The Court held:

It is clear to us that the exclusive remedy provided by § 502(a) is precisely the kind of "'special featur[e]'" that "'warrant[s] pre-emption'" in this case. English, supra, at--(slip op., at 14); see also Automated Medical, supra, at 719. As we explained in Pilot Life, ERISA's legislative history makes clear that "the

pre-emptive force of § 502(a) was modeled on the exclusive remedy provided by § 301 of the Labor Management Relations Act, 1947 (LMRA), 61 Stat. 156, 29 U.S.C. § 185." 481 U.S., at 52; id., at 54-55 (citing H.R. Conf. Rep. No. 93-1280, p. 327 (1974)). "Congress was well aware that the powerful pre-emptive force of § 301 of the LMRA displaced" all state-law claims, "even when the state action purported to authorize a remedy unavailable under the federal provision." Pilot Life, 481 U.S., at 55. In Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987), we again drew upon the parallel between § 502(a) and § 301 of the LMRA to support our conclusion that the pre-emptive effect of § 502(a) was so complete that an ERISA pre-emption defense provides a sufficient basis for removal of a cause of action to the federal forum notwithstanding the traditional limitation imposed by the "well-pleaded complaint" rule. Id., at 64-67.

Id. 4036.

Therefore, the issue relating to the content of plaintiff's claim for wrongful termination and violation of Utah policy has been mooted by the Ingersol-Rand decision because the state law cause of action has been entirely pre-empted by ERISA.

B. CONSISTENT WITH ITS OPINION IN BERUBE, THIS COURT SHOULD HOLD THAT ANY CAUSE OF ACTION FOR WRONGFUL TERMINATION OF EMPLOYMENT IN VIOLATION OF PUBLIC POLICY IS AN ACTION IN CONTRACT NOT AN ACTION IN TORT.

On March 20, 1989, this Court released its opinion in Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989) and in doing so changed forever the face of Utah employment law. The Berube opinion (at least on the at-will employment issue) contains no majority opinion. Rather, Justice Durham authored a lead opinion in which only Justice Stewart concurred without further comment. The Chief Justice and Justice Howe concurred only in the result of the lead opinion's section on the at-will employment rule. Berube at 1050. Justices Hall and Howe found no need to go beyond the immediate issue raised by the Berube case, that of whether the employer's written policy manual should be viewed as part of a total employment contract. Justice Zimmerman specifically declined to join in Section V.B. of the lead opinion which contained Justice Durham's discussion of the exceptions to the at-will employment rule. Berube at 1051.

Defendants believe that this Court in Berube did not expressly recognize a public policy exception to the at-will doctrine. Rather, two members of this court, Justices Stewart

and Durham in a dicta statement (since Ms. Berube's claim had nothing to do with public policy) acknowledged that Utah law should recognize such an exception. Justices Hall and Howe found no need to comment on the matter, while Justice Zimmerman expressed a desire to at some point recognize such a cause of action but declined to do so in Berube. Justice Zimmerman was adamant in his reasoning concerning the sort of damages that should be recoverable at such time as the Court may choose to recognize that cause of action. He stated:

I am of the view that any cause of action that may accrue to an employee discharged in violation of public policy would not ordinarily be in tort. I would embed the public policy exception in the law by holding that every employment contract has an implied-in-law covenant that the employee will not be discharged in violation of public policy. Absent proof sufficient to show an independent tort, damages recoverable for a breach of that covenant would be measured by contract principles only.

Berube at 1051.

In support of his reasoning on that point, Justice Zimmerman cites to Beck v. Farmers Insurance Exchange, 701 P.2d 795 (Utah 1985).

In that case, this Court found that an insured has no ability to sue his insurer for tort damages for a bad faith refusal to settle a claim directly levied by the insured. In reaching that conclusion, this Court reasoned that an insurer's duty to treat its insured in good faith or to bargain or settle a claim is merely one aspect of the general duty of good faith and fair dealing that is implied in all contractual relationships. Beck at 798. The Court specifically rejected the reasoning of a majority of courts that tort damages are appropriate in order to provide insurers with an incentive to fulfill their duties to their insureds promptly. Beck at 799. This court rejected that reasoning on the basis that the concept of contractual damages is in itself broad enough to provide ample compensation. Beck at 801. Beck also made it clear that tort damages could appropriately be levied against the insurer if its conduct was independently actionable under tort law. Beck at 803.

Defendants believe that this analysis is appropriately applied to the public policy exception to the at will doctrine. If the employer's conduct is independently tortious, nothing in Utah law prevents an employee from recovering for that tort.

Justice Zimmerman's approach, which Justices Durham and Stewart do not disagree with or even comment upon, also avoids having the full brunt of the ambiguity inherent in defining public policy fall on employers. As Justice Durham stated in the lead opinion in Berube, the term public policy is frequently applied with no precise definition. Berube at 1043. Even Justice Durham's further refinement that the exception to the at-will doctrine must involve "substantial and important" public policies is of little aid in prospectively guiding an employer's behavior. Defendants submit that it is inherently inequitable for the law to impose a burden that can be enforceable by the imposition of punitive damages on employers in the absence of independently tortious conduct on their part based on the employer making an employment decision that is not expressly prohibited by statute but is later determined to violate some "substantial and important" public policy not articulated at the time of the employer's conduct. Defendants' reasoning in this regard is consistent with Judge Aldon Anderson's applications of Utah law in Howcroft v. Mountain States Telephone & Telegraph Co., 712 F. Supp. 1514 (D. Utah 1989). He analyzed Berube and came to the conclusion that "the Utah Supreme Court has not yet recognized tort remedies for wrongful termination." Id. at 1522.

Defendants' position is also buttressed by this Court's unanimous statement in Lowe v. Sorenson Research Co., 779 P.2d 668 (Utah 1989) that in Berube, the court "refused to recognize a variety of wrongful discharge actions sounding in tort." Lowe at 670. It is noteworthy that in Lowe, the Supreme Court upheld, without comment, the district court's dismissal of a tort claim for a public policy violation.

In sum, this Court has not held that an employee terminated in violation of public policy should be entitled to tort damages. Indeed a contrary conclusion would be contrary to the principles articulated by Judge Zimmerman's concurring opinion in Berube and by the unanimous opinion of this court in Beck.

C. PLAINTIFF HAS NOT ALLEGED FACTS SUFFICIENT TO ESTABLISH A VIOLATION OF PUBLIC POLICY UNDER THE STANDARDS SET FORTH BY THIS COURT UNDER THE LEAD OPINION IN BERUBE.

The lead opinion in Berube makes it plain that the Utah Supreme Court intends to "construe public policies narrowly and will generally utilize those based on prior legislative pronouncements or judicial decisions, applying only those principles which are so substantial and fundamental there can virtually be no question as to their importance for promotion of the public good." Berube at 1043. Plaintiff's

Complaint articulates no specific public policy embodied in a statute or judicial opinion (or anywhere else) that he alleges was violated by Browning in terminating his employment.

Plaintiff does not allege that Mr. Gobel asked him to violate any laws, nor does he allege that his employment was terminated because he refused to violate any law. The uncontroverted testimony of plaintiff fails to link Mr. Gobel (the only Browning officer whom plaintiff recognizes as having power to terminate his employment) to any knowledge of the alleged customs violations proposed by other officers or plaintiff's refusal to participate therein, with the exception of the incident involving the importation of Beretta pistols. In regard to that incident, plaintiff testified that Mr. Gobel did not request him to engage in any impropriety. Facts 13, 14. Plaintiff has acknowledged that to have done so would have been entirely out of character for Mr. Gobel who was, according to plaintiff, an incredible stickler for adherence to customs practices. Fact 13.

The allegations linking Mr. Gobel to the Missouri tax situation are even more attenuated. Mr. Gobel's uncontroverted testimony (and the testimony of plaintiff on the same issue) indicates that Mr. Gobel did not concern himself with the tax situation in Missouri and simply asked another corporate

officer to investigate. Fact 21. Mr. Gobel then heard no more about the incident. Therefore, Mr. Gobel could not have been influenced in any way by it in making any decision relative to the termination of plaintiff's employment by Browning.

Thus, even if plaintiff's allegations are accepted as true, plaintiff has failed to articulate a public policy violated by Browning that has its origin in a judicial decision or legislative enactment that embodies the policy "so substantial and fundamental that there can be virtually no question as to [its] importance for promotion of the public good." Berube at 1043. Rather, plaintiff has alleged nothing more than he thinks that his attitude towards certain customs practices and his rather attenuated involvement in and knowledge of Browning's payment practices regarding a particular Missouri Merchant's tax were somehow connected to his separation from Browning. Even if believed, those allegations are insufficient to establish a violation of public policy actionable under the lead opinion in Berube.

Finally, although Judge Greene has phrased the issue he certified as one that assumes that Utah law will recognize as the source of the public policy "federal, other state, or Utah law," that conclusion does not necessarily follow from the lead opinion in Berube. As a matter of public policy, Utah has

little (if any) interest in enforcing principles of federal or other state law. In this case, the state has no conceivable public policy interest to vindicate by concerning itself with whether a Missouri tax imposed on corporations storing inventory in that state was complied with.

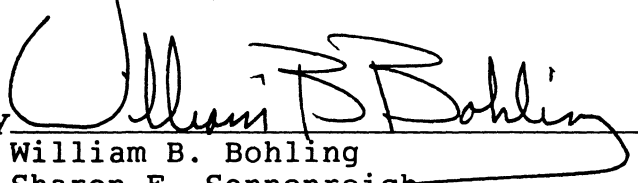
VII. CONCLUSION

Based on the foregoing, defendants respectfully submit that this Court should determine that plaintiff's state law causes of action are preempted by Section 514 of ERISA (29 U.S.C. § 1144). Alternatively, if this Court finds that plaintiff's cause of action for discharge in violation of public policy is not preempted, this Court should rule that that cause of action sounds in contract and not in tort and that punitive damages are not available thereunder. Finally, defendants request that should this court determine that a public policy exception to the at-will doctrine exists, and is compensable either in tort or in contract, it hold that the facts as alleged by plaintiff in his undisputed deposition testimony are insufficient to maintain a cause of action for discharge in violation of public policy under Utah law.

Respectfully submitted this 28 day of January, 1991.

JONES, WALDO, HOLBROOK & McDONOUGH

By


William B. Bohling
Sharon E. Sonnenreich
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 1991, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing BRIEF OF PETITIONERS, to the following:

David B. Havas
Michelle E. Heward
David B. Havas & Associates
2604 Madison Avenue
Ogden, Utah 84401

Sharon E. Sannenreich

B 5/ses/tc

VIII. ADDENDUM

Elizabeth T. Dunning
WATKISS & CAMPBELL
310 South Main Street, Suite 1200
Salt Lake City, Utah 84101-2171
Telephone: (801) 363-3300

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

VERN L. PETERSON,	:	
	:	
Plaintiff,	:	VERIFIED COMPLAINT
	:	
vs.	:	
	:	Civil No. <u>87-NC-121G</u>
BROWNING, a Utah	:	
corporation, and	:	
DAVID W. RICH,	:	Jury Trial Demanded
	:	
Defendants.	:	

Vern L. Peterson alleges as follows:

PARTIES

1. Vern L. Peterson ("Peterson") is a resident of South Ogden, Utah.
2. Browning is a corporation organized under the laws of the State of Utah and having its principal place of business in Morgan, Utah.
3. David W. Rich is a resident of Weber County, Utah, and at all times material to this Complaint was the Personnel Director of defendant Browning and a member of the Committee which is the Plan Administrator of the Employees' Pension Plan

of Browning and other Adopting Companies ("Browning Pension Plan").

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1132, and the doctrine of pendent jurisdiction.

5. This Court has pendent jurisdiction over plaintiff's state law claims because the state and federal claims set forth arise from a common nucleus of operative facts.

6. Venue is proper in this Court because the breach occurred in this district and the defendants are found in this district.

FACTS

7. In 1953 plaintiff Peterson began employment with Browning as a sales correspondent.

8. For the next 31 years Peterson continued to work for Browning and received numerous promotions. In 1981 Peterson was promoted to Vice President of Browning and was appointed Customs Officer and Corporate Secretary of Browning.

9. In August 1982 Peterson was transferred to the Arnold, Missouri facility of Browning as general manager. Prior to Peterson's transfer Browning agreed that it would continue to employ Peterson as general manager of the Arnold facility for six years until he reached age 60 and would pay the cost

of Peterson's relocation to Missouri and back to Utah.

10. At all times during his employment Peterson's performance was satisfactory. During the time he was a vice president, he exercised the duties of loyalty and care in the conduct of the affairs of Browning required of a corporate officer. During the time he was Customs Officer, Peterson fulfilled the duties of that position with diligence and care.

11. On October 31, 1984, Peterson was constructively discharged from his employment by Browning.

FIRST CLAIM FOR RELIEF

12. Plaintiff realleges paragraphs 1 through 11 above.

13. Defendant Rich failed to discharge his duties with respect to the Browning Pension Plan solely in the interest of participants and beneficiaries and instead manipulated the Plan to coerce Peterson's early retirement as part of a scheme to terminate Peterson's employment.

14. Defendant Rich's conduct in using the Browning Pension Plan as part of a scheme to terminate Peterson's employment in violation of defendant Browning's contract with Peterson and the public policy of the State of Utah constitutes a breach of defendant Rich's fiduciary duty as a member of the Committee which is the Plan Administrator of the Browning Pension Plan and a violation of the Employee Retirement Security Act, 29 U.S.C. §1001, et seq. (ERISA).

15. Defendant Browning's knowing participation in defendant Rich's breach of fiduciary duty as part of its scheme to terminate Peterson's employment in violation of its contract with Peterson and the public policy of the State of Utah constitutes a violation of ERISA.

16. As a result of defendants' conduct as aforesaid Peterson has lost salary, bonuses and fringe benefits, including contributions to his Browning Pension Plan account.

SECOND CLAIM FOR RELIEF

17. Plaintiff realleges paragraphs 1 through 16 above.

18. Defendant Browning's constructive discharge of plaintiff on October 31, 1984, constituted a breach of its side employment contract with Peterson.

19. Defendant Browning's constructive discharge of Peterson after 31 years of loyal and satisfactory service without any notice of dissatisfaction with his performance, without any opportunity for him to respond to criticism and without any investigation of the criticisms breached defendant Browning's duty of good faith and fair dealing in its contract of employment with Peterson.

20. Defendant Browning's constructive discharge of Peterson without notice of performance deficiencies and an opportunity to improve violated Browning's policy and practice of giving employees oral and written warnings and an opportunity to improve prior to termination and constituted a breach of

its contract of employment with Peterson.

21. As a result of Browning's breaches as set forth above, Peterson has lost salary, bonuses and fringe benefits, including contributions to his Browning Pension Plan account.

THIRD CLAIM FOR RELIEF

22. Plaintiff realleges paragraphs 1 through 21 above.

23. Peterson was constructively discharged because he opposed certain unlawful actions proposed by other officers and division managers of defendant Browning and because he conscientiously carried out his duties as Customs Officer and as a corporate officer.

24. Defendant Browning's constructive discharge of Peterson for exercising his duty of loyalty and care in the affairs of the corporation and for conscientiously performing his duties as Customs Officer as required by the law of Utah and the law of the United States violates the public policy of Utah and constitutes wrongful termination.

25. Defendant Browning's wrongful termination of Peterson has caused Peterson to lose salary, bonuses and fringe benefits, including contributions to his Browning Pension Plan account, and to suffer mental anguish, embarrassment and humiliation.

WHEREFORE, plaintiff prays as follows:

1. On his first claim for relief, for lost salary,

WATKISS & CAMPBELL

ATTORNEYS AT LAW
TWELFTH FLOOR, 310 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101-2171

bonuses and fringe benefits, including contributions to his Browning Pension Plan account, with interest; for punitive damages and for attorneys fees;

2. On his second claim for relief, for lost salary bonuses and fringe benefits, including contributions to his Browning Pension Plan account, with interest;

3. On his third claim for relief, for lost salary, bonuses and fringe benefits, including contributions to his Browning Pension Plan account, with interest; for general damages in an amount to be determined at trial and for punitive damages in an amount not less than \$500,000;

4. And for costs and for such other relief as the Court deems proper.

DATED this 30th day of October, 1987.

WATKISS & CAMPBELL

By Elizabeth T. Dunning
Elizabeth T. Dunning
310 South Main Street
Suite 1200
Salt Lake City, Utah 84101-

Attorneys for Plaintiff

Plaintiff's Address:

813 E. 5750 S.
South Ogden, Utah 84405

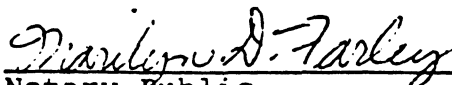
VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

VERN L. PETERSON, being duly sworn, deposes and states
that he resides at 813 E. 5750 S., South Ogden, Utah 84405;
that he is the plaintiff named in the foregoing complaint; and
that he has read the foregoing complaint and that the allega-
tions therein are true and correct to the best of his knowledge,
information and belief.


VERN L. PETERSON

SUBSCRIBED AND SWORN to before me this 30 day of
October, 1987.


Notary Public
Residing in Ogden, Utah

My commission expires:

9-27-91

ATTORNEYS AT LAW
TWELFTH FLOOR, 310 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101-2171

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
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MARKUS B. ZIMMER
CLERK, DISTRICT COURT

David R. Money (USB #3837)
Sharon E. Sonnenreich (USB #4918)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Defendants
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, NORTHERN DIVISION

VERN L. PETERSON,	:	ORDER RE DEFENDANTS' MOTIONS
	:	TO DISMISS PLAINTIFF'S
Plaintiff,	:	NON-FEDERAL CLAIMS
	:	
vs.	:	
	:	
BROWNING, a Utah corporation,	:	
and DAVID W. RICH, an	:	
individual,	:	
	:	Civil No. 87-NC-121G
Defendants.	:	

Defendants' Motions to Dismiss Plaintiff's Non-Federal Claims were heard before the Honorable J. Thomas Greene, United States District Court Judge, on December 5, 1988. Plaintiff was represented by David Bert Havas and Michelle E. Heward of David Bert Havas & Associates. Defendants were represented by David R. Money and Sharon E. Sonnenreich of Jones, Waldo, Holbrook & McDonough.

The court, having considered the arguments of counsel, finds the following:

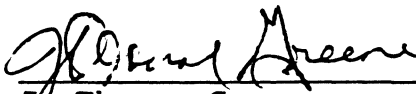
1. Defendants' Motion to Dismiss plaintiff's state law claims on the basis that they are pre-empted by the Employee Retirement Income Security Act, 29 U.S.C. 1001, et seq. is denied;

2. Defendants' Motion pursuant to Federal Rule of Civil Procedure 12(b)(1) to dismiss plaintiff's state law claims on the basis that this court lacks pendent jurisdiction is denied; and

3. Defendants' Motion to Dismiss plaintiff's Third Cause of Action (Wrongful Discharge) pursuant to Federal Rule of Civil Procedure 12(b)(6) is hereby granted and plaintiff's Third Cause of Action is dismissed without prejudice.

DATED this 21 day of December, 1988.

Copies mailed to counsel, 12-27-88jm BY THE COURT:
David B. Havas, Esq.
David R. Money, Esq.



J. Thomas Greene
United States District Court Judge

APPROVED AS TO FORM:



David Bert Havas

FILED
UNITED STATES
DISTRICT COURT
JAN 24 11 53 AM '89
HON. JUDGE [illegible]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - NORTHERN DIVISION

VERN L. PETERSON,

Plaintiff,

Civil No. 87-NC-121G

v.

MEMORANDUM DECISION
AND ORDER

BROWNING, a Utah Corporation,
and DAVID W. RICH,

Defendants.

The above matter came on regularly for hearing on December 7, 1989 on Defendants' Motion for Certification for Interlocutory Appeal and Stay. David Bert Havas and Michelle E. Heward represented plaintiff, and Sharon Sonnenreich represented defendants. The court heard oral arguments and reviewed extensive briefs. Being fully advised, the court now enters its Memorandum Decision and Order.

The Court denies defendants' Motion for Certification to the Tenth Circuit.

The issue before the Court is driven by Utah law. It is clear to this court that the Utah Supreme Court recognizes a

public policy exception to the at-will employment doctrine.¹ Berube v. Fashion Center, Ltd., 771 P.2d 1033 (Utah 1989);² Loose v. Nature-All Corporation, 1989 Utah Lexis 146 (Utah Nov. 27, 1989). The majority in Loose said: "The post Berube exceptions to the employment at will doctrine in Utah include termination in violation of public policy, . . ." Howcroft v. Mountain States Telephone & Telegraph Co., 712 F.Supp. 1514 (D. Utah April 28, 1989), cited by the defendants is not inapposite. The public policy exception recognized in Berube was not at issue in Howcroft and Judge Anderson did not rule upon or even discuss it.

This Court rules that an action for wrongful termination based upon the public policy exception to the at-will employment doctrine is an action founded upon tort rather than contract. The general rule in states recognizing such an exception characterize it as the tort of wrongful discharge.³

¹ This exception protects an at-will employee from being discharged for a reason or in a manner that contravenes sound principles of established and substantial policy.

² Although there was no majority opinion in Berube, the Plurality opinion as well as Justice Zimmermann's concurrence indicated willingness to recognize a public policy exception.

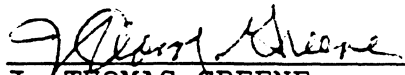
³ Arthur S. Leonard in his law review article, A New Common Law of Employment Termination, North Carolina Law Review, Vol. 66, 631 (1988) reviews reported cases and says: In Order to prevent an employer from acting contrary to an important public policy, some state courts have recognized a tort of "wrongful discharge" as an exception to the at will presumption. . . . Courts faced with a public policy argument have searched for an existing label to place on the resulting legal action. They have most frequently described

The clearest statement which appears to indicate the direction of Utah law on this matter is Justice Durham's plurality opinion in Berube: "Where an employee is discharged for a reason or in a manner that contravenes sound principles of established and substantial policy, the employee may typically bring a tort action against his employer" (emphasis added). Berube at 1042

The rulings set forth in this memorandum decision and order will become the law of this case unless within 30 days after the date hereof a party or the parties jointly, on motion supported by memorandum and necessary documentation, request this court to certify the issues to the Utah Supreme Court pursuant to Rule 41 of the Rules of the Utah Supreme Court. If such a motion is filed, the court will set the matter for argument.

IT IS SO ORDERED.

DATED: January 23, 1990.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

COPIES TO: cns1 1/24/90MP:
David Havas, Esq.
David R. Money, Esq.

it as a tort of wrongful discharge." (emphasis added) Id. at 658-662.

... is significant that cases construing 'forge' under other federal statutes have generally drawn a distinction between false or fraudulent statements and spurious or fictitious makings." 370 U. S., at 658 (footnote omitted).

We should have rejected the argument in precisely those terms today. Instead, the Court adopts a new principle that can accurately be described as follows: "Where a term of art has a plain meaning, the Court will divine the statute's purpose and substitute a meaning more appropriate to that purpose."

V

I feel constrained to mention, though it is surely superfluous for decision of the present case, the so-called Rule of Lenity—the venerable principle that "before a man can be punished as a criminal under the federal law his case must be plainly and unmistakably within the provisions of some statute." *United States v. Gradwell*, 243 U. S. 476, 485 (1917) (internal quotation omitted). See also, *McNally v. United States*, 483 U. S. 350, 359–360 (1987). As JUSTICE MARSHALL explained some years ago:

"This principle is founded on two policies that have long been part of our tradition. First, a 'fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.' *McBoyle v. United States*, 253 U. S. 25, 27 (1931) (Holmes, J.) . . . Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity. This policy embodies 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.' H. Friendly, Mr. Justice Frankfurter and The Reading of Statutes, in *Benchmarks*, 196, 209 (1967)." *United States v. Bass*, 404 U. S. 336, 347–349 (1971).

"Falsely made, forged, altered or counterfeited" had a plain meaning in 1939, a meaning recognized by five Circuit courts and approved by this Court in *Gilbert*. If the Rule of Lenity means anything, it means that the Court ought not do what it does today: use an ill-defined general purpose to override an unquestionably clear term of art, and (to make matters worse) give the words a meaning that even one unfamiliar with the term of art would not imagine. The temptation to stretch the law to fit the evil is an ancient one, and it must be resisted. As Chief Justice Marshall wrote:

"The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated." *United States v. Wiltberger*, 5 Wheat. 76, 96 (1820).

For the foregoing reasons, I respectfully dissent.

DENNIS M. HART, Washington, D.C., for petitioner; STEPHEN L. NIGHTINGALE, Assistant to the Attorney General (KENNETH W. STARR, Sol. Gen., EDWARD S.G. DENNIS JR., Asst. Atty. Gen., WILLIAM C. BRYSON, Dpty. Sol. Gen., CHRISTINE DESAN HUSSON, Asst. to the Sol. Gen., and JOEL M. GERSHOWITZ, Justice Dept. Atty., on the briefs) for respondent.

No. 89-1298

INGERSOLL-RAND COMPANY, PETITIONER v.
PERRY McCLENDON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Syllabus

No. 89-1298. Argued October 9, 1990—Decided December 3, 1990

After petitioner company fired respondent McClendon, he filed a wrongful discharge action under various state law tort and contract theories, alleging that a principal reason for his termination was the company's desire to avoid contributing to his pension fund. The Texas court granted the company summary judgment, and the State Court of Appeals affirmed, ruling that McClendon's employment was terminable at will. The State Supreme Court reversed and remanded for trial, holding that public policy required recognition of an exception to the employment-at-will doctrine. Therefore, recovery would be permitted in a wrongful discharge action if the plaintiff could prove that "the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." In distinguishing federal cases holding similar claims pre-empted by the Employee Retirement Income Security Act of 1974 (ERISA), the court reasoned that McClendon was seeking future lost wages, recovery for mental anguish, and punitive damages rather than lost pension benefits.

Held: ERISA's explicit language and its structure and purpose demonstrate a congressional intent to pre-empt a state common law claim that an employee was unlawfully discharged to prevent his attainment of benefits under an ERISA-covered plan.

(a) The cause of action in this case is expressly pre-empted by § 514(a) of ERISA, which broadly declares that that statute supersedes all state laws (including decisions having the effect of law) that "relate to" any covered employee benefit plan. In order to prevail on the cause of action, as formulated by the Texas Supreme Court, a plaintiff must plead, and the trial court must find, that an ERISA plan exists and the employer had a pension-defeating motive in terminating the employment. Because the existence of a plan is a critical factor in establishing liability, and the trial court's inquiry must be directed to the plan, this judicially created cause of action "relate[s] to" an ERISA plan. Cf. *Mackey v. Lormer Collection Agency & Service, Inc.*, 456 U. S. 825, 828. *Id.*, at 841, and *Fort Halifax Packing Co. v. Coyne*, 482 U. S. 1, 12, 23, distinguished. In arguing that the plan is irrelevant to the cause of action because all that is at issue is the employer's improper motive, McClendon misses the point, which is that under the state court's analysis there simply is no cause of action if there is no plan. Similarly unavailing is McClendon's argument that § 514(c)(2)—which defines "State" to include any state instrumentality purporting to regulate the terms and conditions of covered plans—causes § 514(a) to pre-empt only those state laws that affect plan terms, conditions, or administration and not those that focus on the employer's termination decision. That argument misreads § 514(c)(2) and consequently misapprehends its purpose of expanding ERISA's general definition of "State" to "include" state instrumentalities whose actions might not otherwise be considered state law for pre-emption purposes; would render § 514(a)'s "relate to" language superfluous, since Congress need only have said that "all" state laws would be pre-empted; and is foreclosed by this Court's precedents, see *Mackey*, *supra*, at 828, and n. 2, 829. Pre-emption here is also supported by § 514(a)'s goal of ensuring uniformity in pension law, since allowing state based actions like the one at issue might subject plans and plan sponsors to conflicting substantive requirements developed by the courts of each jurisdiction.

(b) The Texas cause of action is also pre-empted because it conflicts directly with an ERISA cause of action. McClendon's claim falls squarely within ERISA § 510 which prohibits the discharge of a plan participant "for the purpose of interfering with [his] attainment of any right . . . under the plan." However, that in itself does not imply pre-emption of state remedies absent "special features" warranting pre-emption. See, e. g., *English v. General Electric Co.*, 496 U. S. —. Such a "special featur[e]" exists in the form of § 502(a), which authorizes a civil action by a plan participant to enforce ERISA's or the plan's terms, gives the federal district courts exclusive jurisdiction of such actions, and has been held to be the exclusive remedy for rights guaranteed by ERISA, including those provided by § 510, *Pilot Life Ins.*

Co. v. Dedeaux, 481 U. S. 41, 52, 64-55. Thus, the lower court's attempt to distinguish this case as not one within ERISA's purview is without merit. Moreover, since there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek "pension benefits," it is clear that the relief requested here is well within the power of federal courts; the fact that a particular plaintiff is not seeking recovery of pension benefits is no answer to a pre-emption argument.

779 S. W. 2d 69, reversed.

O'CONNOR, J., delivered the opinion for a unanimous Court with respect to Parts I and II-B, and the opinion of the Court with respect to Part II-A, in which REHNQUIST, C. J., and WHITE, SCALIA, KENNEDY, and SOUTER, JJ., joined.

JUSTICE O'CONNOR delivered the opinion of the Court.*

This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.*, pre-empts a state common law claim that an employee was unlawfully discharged to prevent his attainment of benefits under a plan covered by ERISA.

I

Petitioner Ingersoll-Rand employed respondent Perry McClendon as a salesman and distributor of construction equipment. In 1981, after McClendon had worked for the company for nine years and eight months, the company fired him citing a companywide reduction in force. McClendon sued the company in Texas state court, alleging that his pension would have vested in another four months and that a principal reason for his termination was the company's desire to avoid making contributions to his pension fund. McClendon did not realize that pursuant to applicable regulations, see 29 CFR § 2530.200b-4 (1990) (break-in-service regulation), he had already been credited with sufficient service to vest his pension under the plan's 10-year requirement. McClendon sought compensatory and punitive damages under various tort and contract theories; he did not assert any cause of action under ERISA. After a period of discovery, the company moved for, and obtained, summary judgment on all claims. The State Court of Appeals affirmed, holding that McClendon's employment was terminable at will. 757 S. W. 2d 816 (1988).

In a 5 to 4 decision, the Texas Supreme Court reversed and remanded for trial. The majority reasoned that notwithstanding the traditional employment-at-will doctrine, public policy imposes certain limitations upon an employer's power to discharge at-will employees. Citing *Tex. Rev. Civ. Stat. Ann.*, Title 110B (Vernon 1988 pamphlet), and § 510 of ERISA, the majority concluded that "the state has an interest in protecting employees' interests in pension plans." 779 S. W. 2d 69, 71 (1989). As support the court noted that "[t]he very passage of ERISA demonstrates the great significance attached to income security for retirement purposes." *Ibid.* Accordingly, the court held that under Texas law a plaintiff could recover in a wrongful discharge action if he established that "the principal reason for his termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." *Ibid.* The court noted that federal courts had held similar claims pre-empted by ERISA, but distinguished the present case on the basis that McClendon was "not seeking lost pension benefits but

[was] instead seeking future lost wages, mental anguish punitive damages as a result of the wrongful discharge." *Id.*, at 71, n. 3 (emphasis in original).

Because this issue has divided state and federal courts we granted certiorari, 494 U. S. — (1990), and reverse.

II

"ERISA is a comprehensive statute designed to protect the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U. S. 90 (1983). "The statute imposes participation, funding, vesting requirements on pension plans. It also sets various uniform standards, including rules concerning reporting, closure, and fiduciary responsibility, for both pension and welfare plans." *Id.*, at 91 (citation omitted). As part of a closely integrated regulatory system Congress included various safeguards to preclude abuse and "to completely secure the rights and expectations brought into being by this landmark reform legislation." S. Rep. No. 93-127, p. 36 (1974). Prominent among these safeguards are three provisions of particular relevance to this case: § 514(a), 29 U. S. C. § 1144, ERISA's broad pre-emption provision; § 510, 29 U. S. C. § 1140, which proscribes interference with rights protected by ERISA; and § 502(a), 29 U. S. C. § 1132(a), a "carefully integrated" civil enforcement scheme that "is one of the essential tools for accomplishing the stated purposes of ERISA." *Pilot Life Ins. Co. v. Dedeaux*, 481 U. S. 41, 54 (1987).

We must decide whether these provisions, singly or in combination, pre-empt the cause of action at issue in this case. "[T]he question whether a certain state action is pre-empted by federal law is one of congressional intent. 'The purpose of Congress is the ultimate touchstone.'" *Al Chalmers Corp. v. Lueck*, 471 U. S. 202, 208 (1985) (interquotation omitted) (quoting *Malone v. White Motor Corp.*, 435 U. S. 497, 504 (1978)). To discern Congress' intent we examine the explicit statutory language and the structure and purpose of the statute. See *FMC Corp. v. Hollid*, 498 U. S. —, — (1990) (slip op., at 3), (citing *Shaw v. Delta Air Lines, Inc.*, *supra*, at 95). Regardless of the avenue we follow—whether explicit or implied pre-emption—this state law cause of action cannot be sustained.

A

Where, as here, Congress has expressly included a broad worded pre-emption provision in a comprehensive statute such as ERISA, our task of discerning congressional intent is considerably simplified. In § 514(a) of ERISA, as set forth in 29 U. S. C. § 1144(a), Congress provided:

"Except 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 described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

"The pre-emption clause is conspicuous for its breadth." *FMC Corp.*, *supra*, at —. Its "deliberately expansive

*JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join Parts I and II-B of this opinion.

†See, e. g., *Fitzgerald v. Codex Corp.*, 882 F. 2d 586 (CA1 1988) (ERISA pre-empts state wrongful discharge actions premised on employee interference with the attainment of rights under employee benefit plans); *Pane v. RCA Corp.*, 868 F. 2d 631 (CA3 1989) (same); *Sorosky v. Burlington Corp.*, 826 F. 2d 794 (CA9 1987) (same). Accord, *Conaway v. Eastern Associated Coal Corp.*, — W. Va. —, 358 S. E. 2d 423 (1986); *Contra, K Mart Corp. v. Ponsick*, 103 Nev. 39, 732 P. 2d 1364 (1987); *Hovey v. Lutheran Medical Center*, 516 F. Supp. 554 (EDNY 1981); *Savodnik v. Korvettes, Inc.*, 488 F. Supp. 822 (EDNY 1980).

language was "designed to 'establish pension plan regulation as exclusively a federal concern.'" *Pilot Life, supra*, at 46 (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U. S. 504, 523 (1981)). The key to § 514(a) is found in the words "relate to." Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause "applicable only to state laws relating to the specific subjects covered by ERISA." *Shaw, supra*, at 98. Moreover, to underscore its intent that § 514(a) be expansively applied, Congress used equally broad language in defining the "State law" that would be pre-empted. Such laws include "all laws, decisions, rules, regulations, or other State action having the effect of law." § 514(c)(1), 29 U. S. C. § 1144(c)(1).

"A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw, supra*, at 96-97. Under this "broad common-sense meaning," a state law may "relate to" a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect. *Pilot Life, supra*, at 47. See also *Alessi v. Raybestos-Manhattan, Inc.*, *supra*, at 525. Pre-emption is also not precluded simply because a state law is consistent with ERISA's substantive requirements. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U. S. 724, 739 (1985).

Notwithstanding its breadth, we have recognized limits to ERISA's pre-emption clause. In *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U. S. 825 (1988), the Court held that ERISA did not pre-empt a State's general garnishment statute, even though it was applied to collect judgments against plan participants. *Id.*, at 841. The fact that collection might burden the administration of a plan did not, by itself, compel pre-emption. Moreover, under the plain language of § 514(a) the Court has held that only state laws that relate to benefit plans are pre-empted. *Fort Halifax Packing Co. v. Coyne*, 482 U. S. 1, 23 (1987). Thus, even though a state law required payment of severance benefits, which would normally fall within the purview of ERISA, it was not pre-empted because the statute did not require the establishment or maintenance of an ongoing plan. *Id.*, at 12.

Neither of these limitations is applicable to this case. We are not dealing here with a generally applicable statute that makes no reference to, or indeed functions irrespective of, the existence of an ERISA plan. Nor is the cost of defending this lawsuit a mere administrative burden. Here, the existence of a pension plan is a critical factor in establishing liability under the State's wrongful discharge law. As a result, this cause of action relates not merely to pension benefits, but to the essence of the pension plan itself.

We have no difficulty in concluding that the cause of action which the Texas Supreme Court recognized here—a claim that the employer wrongfully terminated plaintiff primarily because of the employer's desire to avoid contributing to or paying benefits under the employee's pension fund—"relate[s] to" an ERISA-covered plan within the meaning of § 514(a), and is therefore pre-empted.

"[W]e have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted under § 514(a)." *Mackey, supra*, at 829. In *Mackey* the statute's express reference to ERISA plans established that it was so designed; consequently, it was pre-empted. The facts here are slightly different but the principle is the same: The Texas cause of action makes specific reference to, and indeed is premised on, the existence of a pension plan. In the words of the Texas court, the cause of action "allows recovery when the plaintiff proves that the principal reason for his termination was the employ-

er's desire to avoid contributing to or paying benefits under the employee's pension fund." 779 S. W. 2d, at 71. Thus, in order to prevail, a plaintiff must plead, and the court must find, that an ERISA plan exists and the employer had a pension-defeating motive in terminating the employment. Because the court's inquiry must be directed to the plan, this judicially created cause of action "relate[s] to" an ERISA plan.

McClendon argues that the pension plan is irrelevant to the Texas cause of action because all that is at issue is the employer's improper motive to avoid its pension obligations. The argument misses the point, which is that under the Texas court's analysis there simply is no cause of action if there is no plan.

Similarly unavailing is McClendon's argument that § 514(a) is limited by the narrower language of § 514(c)(2) which provides:

"The term 'State' includes a State, any political subdivisions 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 subchapter." 29 U. S. C. § 1144(c)(2).

McClendon argues that § 514(c)(2)'s limiting language causes § 514(a) to pre-empt only those state laws that affect plan terms, conditions, or administration. Since the cause of action recognized by the Texas court does not focus on those items but rather on the employer's termination decision, McClendon claims that there can be no pre-emption here.

The flaw in this argument is that it misreads § 514(c)(2) and consequently misapprehends its purpose. The ERISA definition of "State" is found in § 3(10), which defines the term as "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone." 29 U. S. C. § 1002(10). Section 514(c)(2) expands, rather than restricts, that definition for pre-emption purposes in order to "include" state agencies and instrumentalities whose actions might not otherwise be considered state law. Had Congress intended to restrict ERISA's pre-emptive effect to state laws purporting to regulate plan terms and conditions, it surely would not have done so by placing the restriction in an adjunct definition section while using the broad phrase "relate to" in the pre-emption section itself. Moreover, if § 514(a) were construed as McClendon urges, the "relate to" language would be superfluous—Congress need only have said that "all" state laws would be pre-empted. Moreover, our precedents foreclose this argument. In *Mackey* the Court held that ERISA pre-empted a Georgia garnishment statute that excluded from garnishment ERISA plan benefits. *Mackey, supra*, at 828, and n. 2, 829. Such a law clearly did not regulate the terms or conditions of ERISA-covered plans, and yet we found pre-emption. *Mackey* demonstrates that § 514(a) cannot be read so restrictively.

The conclusion that the cause of action in this case is pre-empted by § 514(a) is supported by our understanding of the purposes of that provision. Section 514(a) was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government. Otherwise, the inefficiencies created could work to the detriment of plan beneficiaries. *FMC Corp.*, 498 U. S., at — (citing *Fort Halifax*, 482 U. S., at 10-11); *Shaw*, 463 U. S., at 105, and n. 25. Allowing state based actions like the one at issue here would subject plans and plan

sponsors to burdens not unlike those that Congress sought to foreclose through § 514(a). Particularly disruptive is the potential for conflict in substantive law. It is foreseeable that state courts, exercising their common law powers, might develop different substantive standards applicable to the same employer conduct, requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction. Such an outcome is fundamentally at odds with the goal of uniformity that Congress sought to implement.

B

Even if there were no express pre-emption in this case, the Texas cause of action would be pre-empted because it conflicts directly with an ERISA cause of action. McClendon's claim falls squarely within the ambit of ERISA § 510, which provides:

"It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan" 29 U. S. C. § 1140 (emphasis added).

By its terms § 510 protects plan participants from termination motivated by an employer's desire to prevent a pension from vesting. Congress viewed this section as a crucial part of ERISA because, without it, employers would be able to circumvent the provision of promised benefits. S. Rep. No. 93-127, pp. 35-36 (1973); H. R. Rep. No. 93-533, p. 17 (1973). We have no doubt that this claim is prototypical of the kind Congress intended to cover under § 510.

"[T]he mere existence of a federal regulatory or enforcement scheme," however, even a considerably detailed one, "does not by itself pre-emption of state remedies." *English v. General Electric Co.*, 496 U. S. —, — (1990) (slip op., at 14). Accordingly, "we must look for special features warranting pre-emption." *Ibid.* (quoting *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U. S. 707, 719 (1985)).

Of particular relevance in this inquiry is § 502(a)—ERISA's civil enforcement mechanism. That section as set forth in 29 U. S. C. §§ 1132(a)(3), (e), provides, in pertinent part:

"A civil action may be brought—

"(3) by a participant . . . (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

"(e) (1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have *exclusive jurisdiction* of civil actions under this subchapter brought by . . . a participant." (Emphasis added.)

In *Pilot Life* we examined this section at some length and explained that Congress intended § 502(a) to be the exclusive remedy for rights guaranteed under ERISA, including those provided by § 510:

"[T]he detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain reme-

dies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. . . . "The six carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." 481 U. S., at 54 (quoting *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U. S. 134, 14 (1985)).

It is clear to us that the exclusive remedy provided by § 502(a) is precisely the kind of "special featur[e]" that "warrant[s] pre-emption" in this case. *English*, *supra*, at — (slip op., at 14); see also *Automated Medical*, *supra*, at 719. As we explained in *Pilot Life*, ERISA's legislative history makes clear that "the pre-emptive force of § 502(a) was modeled on the exclusive remedy provided by § 301 of the Labor Management Relations Act, 1947 (LMRA), 61 Stat. 156, 29 U. S. C. § 185." 481 U. S., at 52; *id.*, at 54-55 (citing H. R. Conf. Rep. No. 93-1280, p. 327 (1974)). "Congress was well aware that the powerful pre-emptive force of § 301 of the LMRA displaced" all state-law claims, "even when the state action purported to authorize a remedy unavailable under the federal provision." *Pilot Life*, 481 U. S., at 55. In *Metropolitan Life Ins. Co. v. Taylor*, 481 U. S. 58 (1987) we again drew upon the parallel between § 502(a) and § 301 of the LMRA to support our conclusion that the pre-emptive effect of § 502(a) was so complete that an ERISA pre-emption defense provides a sufficient basis for removal of a cause of action to the federal forum notwithstanding the traditional limitation imposed by the "well-pleaded complaint" rule. *Id.*, at 64-67.

We rely on this same evidence in concluding that the requirements of conflict pre-emption are satisfied in this case. Unquestionably, the Texas cause of action purports to provide a remedy for the violation of a right expressly guaranteed by § 510 and exclusively enforced by § 502(a). Accordingly we hold that "[w]hen it is clear or may fairly be assumed that the activities which a State purports to regulate are protected" by § 510 of ERISA, "due regard for the federal enactment requires that state jurisdiction must yield." *Cf. Lingle v. Norge Division of Magic Chef, Inc.*, 486 U. S. 399, 409, n. 8 (1988).

The preceding discussion also responds to the Texas court's attempt to distinguish this case as not one within ERISA's purview. Not only is § 502(a) the exclusive remedy for vindicating § 510-protected rights, there is no basis in § 502(a)'s language for limiting ERISA actions to only those which seek "pension benefits." It is clear that the relief requested here is well within the power of federal courts to provide. Consequently, it is no answer to a pre-emption argument that a particular plaintiff is not seeking recovery of pension benefits.

The judgment of the Texas Supreme Court is reversed.

It is so ordered.

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