Introductory Remarks

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A SYMPOSIUM CONFERENCE UPON THE TWENTIETH ANNIVERSARY OF ERISA

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The Employee Retirement Income Security Act1 ("ERISA") was signed into law by President Gerald Ford on Labor Day of 1974. Recall the summer of 1974. It was, to say the least, a very volatile period in our national political life. The world witnessed Richard M. Nixon's resignation from the presidency of the United States. Some might erroneously conclude that ERISA was not thoroughly considered prior to its enactment into law, given those very compelling and difficult political times. In fact, however, national consensus regarding pension retirement security has never been achieved unproblematically. Pension retirement security increasingly came to the attention of several successive administra-

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tions, beginning in the modern era with that of President Eisenhower. President Kennedy's administration continued pension policy studies, and both executive and legislative attention to pension retirement security accelerated during the administrations of Presidents Johnson and Nixon. These initiatives culminated in President Ford signing ERISA into law in 1974. New York State played a very important role throughout much of this chronology; Jacob Javits, the late great United States Senator from New York, was one of the primary sponsors of ERISA, and equally important, he spurred, monitored, and furthered much of the ground work leading to the enactment of ERISA.

Private pension plans in the United States represent the largest single block of private capital in the world, with an estimated asset value approaching three trillion dollars. Major pension plan funds own approximately one-third of the value of the equity securities on the United States equity markets. Pension retirement security, for both these very pragmatic and highly conceptual reasons, presents a panoply of fundamental policy issues.

The primary policy objective of ERISA is to encourage and enhance greater pension retirement security in the private sector in the United States, but without government compulsion of universal pension coverage. Has this goal been achieved? Unfortunately, less than one-half of those employed in the private sector today have a pension plan. This has declined from somewhat more than one-half of the private sector workforce with pension plans in the late 1970s. ERISA has not fulfilled its primary policy objective. Why not? What is the status of pension retirement

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2 The pre-ERISA developments in pension retirement security are thoroughly traced in John Langbein & Bruce Wolk, Pension and Employee Benefit Law (2d ed. 1993).
3 Id.
4 Id.
5 Nell Minow, Do Your Duty, Retirement Managers, N.Y. Times, Jan. 30, 1994, at F11 (“Corporate pension plans . . . control an unrivaled $2.4 trillion. . . .”).
7 Robert J. Samuelson, R.I.P.: The Good Corporation, Newsweek, July 5, 1993, at 41 (“In 1979, 55 percent of full-time male workers had employer-paid pensions. By 1988, that had dropped to 49 percent, according to the Labor Department.”).
8 Id.
security today? Perhaps most important, what are the prospects for the future?

As it enters its third decade, ERISA increasingly intersects issues of employee benefits, such as health insurance in employment. The National Health Security Act, proposed by the Clinton administration and currently subject to sweeping national debate, promises to have a dramatic impact upon pension retirement security and especially upon employee health and benefit law, potentially superseding much of current ERISA law.\(^9\)

To paraphrase Admiral Stockdale's well-put aphorism in the Vice Presidential candidates' debate during the 1992 national campaign: who are we and why are we here? The Symposium participants, speakers and audience, and now you, the broader readership of the Law Review, share several concerns. What is the future of pension retirement security? How can employment-related health insurance and benefits be best provided for both as a matter of law and of policy? These are some of the fundamental questions posed during the first two decades of ERISA. The future will not necessarily be peaceful, evolutionary, and incremental. Pension retirement security and related benefits law may be in for very difficult times. This Symposium offers a valuable opportunity for reflection upon ERISA's origins, its present situation, and the course of possible future developments. For all of these reasons, these proceedings will have broad utility for practitioners, scholars, and governmental policy makers.

Paul Majkowski, the Editor-in-Chief of the St. John's Law Review, and Richard Novak, the Executive Articles Editor, have assembled a remarkably gifted array of Symposium participants. The speakers represent the finest and most insightful pension and benefits law experts from among the practicing bar, government, and academia. The papers in this Symposium will pose, and begin to answer, some of these most fundamental questions for pension retirement security and related employee benefits law.

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