

Preemption or Preservation of State Remedies Under ERISA? The New York Court of Appeals Preserves A State Remedy in Sasso v. Vachris

Patricia Loftus-Matthews

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Comment is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

PREEMPTION OR PRESERVATION OF STATE REMEDIES UNDER ERISA? THE NEW YORK COURT OF APPEALS PRESERVES A STATE REMEDY IN *SASSO V. VACHRIS*

The interests of employees in welfare benefit and pension plans are federally protected by the Employee Retirement Income Security Act of 1974 (ERISA).¹ With the enactment of ERISA, Congress intended to preempt state regulation of employee benefit plans.² Section 514(a) of the Act states that ERISA's provisions

¹ Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified at 29 U.S.C. §§ 1001-1461 (1982)). Congress saw the need to establish minimum standards for employee benefit plans to insure that employees and their beneficiaries were not deprived of benefits owed to them under such plans. See 29 U.S.C. § 1001 (1982). This legislation assured that those who had worked all their lives would have adequate income to meet their retirement needs. See H.R. REP. NO. 12906, 93rd Cong., 2d Sess. (1974); Hutchinson & Ifshin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 46 U. CHI. L. REV. 23, 23 (1978); Note, *ERISA Preemption of State Law: The Meaning of "Relate to" in Section 514*, 58 WASH. U.L.Q. 143, 143.

ERISA regulates both employee welfare benefit plans and employee pension benefit plans. 29 U.S.C. § 1002 (1982). An "employee welfare benefit plan" is defined as any plan established:

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 pensions on retirement or death, and insurance to provide such pensions) (citation omitted).

29 U.S.C. § 1002(1) (1982).

An "employee pension benefit plan" is defined as any plan established:
by an employer or by an employee organization, or by both, to the extent that . . . such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the 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)(A) (1982).

Certain employee benefit plans, such as governmental plans, church plans, plans maintained outside the United States primarily for the benefit of aliens, and excess benefit plans, are exempted from ERISA coverage. See 29 U.S.C. § 1003(b) (1982).

² See *infra* note 3.

“shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” covered by ERISA.³ This mandate of preemption is unique in that the intent of Congress to preempt state law turns on a question of statutory construction — whether a law “relate[s] to” an ERISA benefit plan.⁴

³ 29 U.S.C. § 1144(a) (1982). ERISA's preemption provision does not apply to benefit plans not covered by ERISA. See *supra* note 1. Section 514(b) exempts state laws regulating “insurance, banking, or securities” as well as “generally applicable criminal law(s)” from preemption. 29 U.S.C. § 1144(2)(A)(4) (1982).

The bill that became ERISA originally contained a limited preemption provision superseding only state regulation relating to subjects expressly covered by the bill. See H.R. REP. NO. 2, 93rd Cong., 2d Sess. § 699(a) (1974) (as amended by the Senate). The Senate bill provided for the preemption of state law relating to subject matters regulated by the Welfare and Pension Plans Disclosure Act. See *id.* The House version of the bill provided for preemption relating to the reporting, disclosure, and fiduciary responsibilities established in Part 1 of the bill. See H.R. REP. NO. 2, 93rd Cong., 2d Sess. § 514(a) (1974).

In the Senate debates on the House version of the bill, Senator Javits explained the difficulty with the limited preemption provision:

[The original provision] raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws . . . [On] balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit plans.

120 CONG. REC. 29942 (1974). The Conference Committee replaced the limited preemption provision with the present one, indicating that its scope was as broad as its language. See H.R. CONF. REP. NO. 1280, 93rd Cong., 2d Sess. (1974); S. CONF. REP. NO. 1090, 93rd Cong., 2d Sess. (1974). Senator Williams, a sponsor of the Conference bill, stressed that the substantive and enforcement provisions of the revised bill were “intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.” 120 CONG. REC. 29933 (1974).

⁴ Cf. *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 24 n.26 (1983) (ERISA's preemption provision “virtually unique”).

Historically, the supremacy of federal law was recognized in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), when a state law was held invalid under the supremacy clause of article VI of the Constitution. As long as Congress acts pursuant to its constitutionally granted power, a preemption question does not present a constitutional issue, although it may pose a complex question of statutory interpretation. L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 376 (1978). Due to the assumption that federal law is interstitial, preemption will not lightly be presumed. *Id.*, at 377; Hutchinson & Ifshin, *supra* note 1, at 35. The presumption of non-preemption of a state law traditionally within the realm of the states is overcome only by the “clear and manifest purpose of Congress.” *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

Two traditional tests for federal preemption have been developed by the Supreme Court — whether there is a direct conflict between the federal and state action, or whether Congress has intended to “occupy the field,” thereby precluding state regulation in that area. See *Jones* 430 U.S. at 525-26; *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-46 (1963); L. TRIBE, *supra*, at 377; Turza & Holloway, *Preemption of State Laws Under the Employee Retirement Income Security Act of 1974*, 28 CATH. U.L. REV. 163, 175

Case law construing the preemption provision demonstrates that certain state laws clearly "relate to" employee benefit plans,⁵ while the connection of other laws with ERISA plans is remote.⁶ The precise boundary of ERISA preemption, however, has yet to be determined;⁷ indeed, its perimeter varies according to which of

(1979).

The most extreme example of a direct conflict between state and federal law occurs when compliance with both is a physical impossibility. See *Florida Lime*, 373 U.S. at 142-43; *Union Bridge Co. v. U.S.*, 204 U.S. 364, 399-401 (1907). A direct conflict may also take place when compliance with the state statute frustrates the purpose of the federal law. *L. TRIBE*, *supra*, at 378. In the absence of a direct conflict, federal occupation of a field will be found only if "the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime*, 373 U.S. at 142. "Occupation of the field" analysis involves an examination of the scope of the federal statute to see whether Congress intended the federal law to be the sole regulatory body in the area; if so, state law falling within the ambit of the federal statute will be preempted. *Turza & Halloway*, *supra*, at 176.

Congress has expressly manifested its intention of preemption with respect to ERISA in § 514(a). See 29 U.S.C. § 1144 (1982); Kilberg & Inman, *Preemption of State Laws Relating to Employee Benefit Plans: An Analysis of ERISA Section 514*, 62 TEX. L. REV. 1313, 1315 (1984); *Turza & Halloway*, *supra*, at 178. With the enactment of section 514(a), Congress has legislated a test for preemption with respect to ERISA: whether the state law in issue "relate[s] to" a benefit plan within the meaning of section 514(a). See 29 U.S.C. § 1144(a) (1982).

⁵ See, e.g., *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 100 n.21 (1983) (New York statutes requiring plans to provide benefits for pregnancy); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981) (New Jersey law prohibiting offset of pension benefits by workers' compensation benefits); *Stone & Webster Eng'g Corp. v. Ilesley*, 690 F.2d 323, 329 (2d Cir. 1982), *aff'd sub nom.*, *Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983) (mem.) (Connecticut law requiring benefit plans to provide health insurance to former employee receiving workers' compensation benefits); *Retail Shoe Health Comm'n v. Reminick*, 62 N.Y.2d 173, 198, 464 N.E.2d 974, 998, 476 N.Y.S.2d 276, 292 (1984) (claim for breach of fiduciary duty with respect to benefit plan), *cert. denied*, 105 S. Ct. 2034 (1985).

⁶ See, e.g., *Rebaldo v. Cuomo*, 749 F.2d 133, 138-39 (2d Cir. 1984) (New York law precluding benefit plans from negotiating hospital inpatient charges other than as authorized by statute), *cert. denied*, 105 S. Ct. 2702 (1985); *Saving & Profit Fund v. Gago*, 717 F.2d 1038, 1039 (7th Cir. 1983) (state court order directing former husband to pay alimony from his retirement income pursuant to Wisconsin's property distribution law); *American Tel. & Tel. Co. v. Merry*, 592 F.2d 118, 121 (7th Cir. 1983) (garnishment order requiring former husband to pay alimony from his retirement income).

⁷ See *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 100 n.21 (1983); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981) (Court noted in both cases that state laws in issue did not require determination of the outer bounds of ERISA preemption). In the most recent ERISA preemption case addressed by the Supreme Court, the state law in issue required the provision of minimum mental health-care benefits under a plan. See *Metropolitan Life Ins. Co. v. Massachusetts*, 105 S.Ct. 2380, 2383 (1985). Because this law required the provision of specific benefits under a plan, it was similar to *Shaw* and other cases in which the state law clearly "related to" the plan and thus did not represent the outer boundary of ERISA preemption. See *supra* note 5.

several theories analyzing ERISA preemption is used.⁸ The difficulty of where to draw the line is apparent in the conflicting court decisions in the area of state remedies enforcing rights under a benefit plan.⁹ Recently, the New York Court of Appeals restricted the reach of ERISA's preemption provision when it held in *Sasso v. Vachris*¹⁰ that a New York statute providing a remedy for unpaid contributions to an employee benefit plan was not preempted by ERISA.¹¹

Plaintiffs in *Sasso* were trustees of an employee pension and welfare trust fund who sought to recover payments which the Vacar Construction Company ("Vacar") had failed to contribute to

⁸ See Note, *supra* note 1, at 151. The scope of ERISA preemption varies considerably with the theory of preemption used. See *id.*; see also Kilberg & Inman, *supra* note 4, at 1320 (divergent approaches adopted by courts have narrowed or expanded "relate to" language to reach desired results).

Courts have used traditional as well as non-traditional theories of preemption to analyze ERISA preemption issues. At least one court has used the "occupation of the field" analysis. See *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1215-16 (8th Cir. 1981). But see Kilberg & Inman, *supra* note 4, at 1315-16 (rejecting this approach). Other courts have developed guidelines for preemption from the "purports to regulate, directly or indirectly, the terms and conditions, of the plan" language from section 514(c)(2) of ERISA. See *Rebaldo v. Cuomo*, 749 F.2d 133, 137 (2d Cir. 1984), *cert. denied*, 105 S. Ct. 2702 (1985); *Stone & Webster Eng'g Corp. v. Ilsley*, 690 F.2d 323, 329 (2d Cir. 1982).

Analysis of whether there is a direct conflict between the state law and ERISA has resulted in a narrow reading of ERISA's preemption clause. See, e.g., *Lane v. Goren*, 743 F.2d 1337, 1340 (9th Cir. 1984) (preemption of state laws limited to areas covered by ERISA). The preemptive effect of ERISA has also been restricted by emphasizing the importance of the state interest at stake, particularly in the area of domestic relations. See *Saving & Profit Fund v. Gago*, 717 F.2d 1038, 1042 (7th Cir. 1983); *American Tel. & Tel. Co. v. Merry*, 592 F.2d 118, 122 (7th Cir. 1983); *Providence v. Valley Clerks Trust Fund*, 509 F. Supp. 388, 391 (E.D. Cal. 1981); *infra* notes 30-35 and accompanying text.

⁹ Compare *Authier v. Ginsberg*, 757 F.2d 796, 801-02 (6th Cir. 1985) (common law retaliatory discharge action preempted upon court's conclusion that enforcement of ERISA is solely a federal concern), *cert. denied*, 106 S. Ct. 208 (1985) and *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1215-16 (8th Cir. 1981) (since ERISA provides plaintiff with remedy, claim of tortious interference with benefit plan preempted) and *Nedd v. United Mine Workers of America*, 488 F. Supp. 1208, 1213 (M.D. Pa. 1980) (in dictum, court holds inconsistent state damage rules to be inapplicable to claims involving ERISA plans), with *Carpenters Health & Welfare Fund v. Kenneth R. Ambrose, Inc.*, 727 F.2d 279, 282 n.5 (3d Cir. 1983) (Pennsylvania statute holding corporate officers liable for unpaid contributions to benefit plan not preempted by ERISA); *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 589 F. Supp. 1061, 1072 (M.D. Tenn. 1984) (remedies provided under ERISA additional to those provided under State law), *aff'd*, 780 F.2d 1020 (6th Cir. 1985); *Central States, Southeast & Southwest Areas Pension Fund v. Alco Express Co.*, 522 F. Supp. 919, 922 (E.D. Mich. 1981) (state remedies in connection with benefit plans are preserved).

¹⁰ 66 N.Y.2d 28, 484 N.E.2d 1359, 494 N.Y.S.2d 856 (1985).

¹¹ See *id.* at 33, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859.

the fund.¹² The unpaid contributions were required by agreements between the employees' union and Vacar.¹³ Plaintiffs brought a claim against the shareholders of the corporation, pursuant to New York Business Corporation Law ("BCL") section 630 which provides a remedy against the ten largest shareholders of a closely held corporation for unpaid contributions to an employee benefit plan.¹⁴ The Nassau County Supreme Court at Special Term held that the plaintiffs' claim under section 630 was preempted by ERISA.¹⁵ This ruling was affirmed by the Appellate Division, Second Department.¹⁶

¹² See *id.* at 30, 484 N.E.2d at 1359-60, 494 N.Y.S.2d at 856-57. The trust fund of which plaintiffs were trustees was established by Union 282 which was affiliated with the International Brotherhood of Teamsters, chauffeur, Warehousemen and Helpers of America. *Id.*

¹³ *Id.*, 484 N.E.2d at 1360, 494 N.Y.S.2d at 857.

¹⁴ See *id.*, 484 N.E.2d at 1360, 494 N.Y.S.2d at 857. Section 630 of N.Y. Business Corporation Law (BCL) provides:

[T]he ten largest shareholders, as determined by the fair value of their beneficial interest as of the beginning of the period during which the unpaid services referred to in this section are performed, of every corporation . . . shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants or employees other than contractors, for services performed by them by such corporation.

N.Y.BUS.CORP.LAW. § 630(a) (McKinney Supp. 1986). Section 630(b) provides that wages or salaries specifically include "employer contributions to or payments of insurance or welfare benefits; employer contributions to pensions or annuity funds. . . ." *Id.*

A cause of action was brought against Vacar's officers under New York Labor Law section 198-c as well. See *Sasso*, 66 N.Y.2d at 30, 484 N.E.2d at 360, 494 N.Y.S.2d at 857. Special Term granted summary judgment for plaintiffs on this cause of action. See *Sasso*, 116 Misc. 2d 797, 800-02, 456 N.Y.S.2d 629, 632-33 (Sup. Ct. Spec. T. Nassau County 1982). However, Appellate Division reversed this judgment, See *Sasso*, 106 App. Div. 2d 132, 141, 482 N.Y.S.2d 875, 881 (2d Dep't 1984), and this holding was not challenged on appeal to the Court of Appeals. See *Sasso*, 66 N.Y.2d at 31, 484 N.E.2d at 1360, 494 N.Y.S.2d at 857.

Plaintiffs did not bring an action against Vacar Construction Company since the corporation had filed a bankruptcy petition. See *Sasso*, 66 N.Y.2d at 30, 484 N.E.2d at 1360, 494 N.Y.S.2d at 857. The filing of a bankruptcy petition stays the commencement of any judicial action to recover a claim against the debtor. See 11 U.S.C. § 362(a)(1) (1982).

¹⁵ See *Sasso v. Vachris*, 116 Misc. 2d 797, 798-800, 456 N.Y.S.2d 629, 631-32 (Sup. Ct. Spec. T. Nassau County 1982) Special Term found that the words of ERISA, its legislative history, and case law construing its preemption provision established that the regulation of employee benefit plans was "exclusively a federal concern" *Id.* at 799, 456 N.Y.S.2d at 631 (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). The lower court noted that the civil enforcement provision of ERISA would preclude an action against the shareholders and officers of a bankrupt corporation for unpaid employer contributions, and concluded that section 630 of the BCL was preempted by section 514(a) of ERISA. See *id.* at 799-800, 456 N.Y.S. at 632.

¹⁶ See *Sasso v. Vachris*, 106 App. Div. 2d 132, 141, 482 N.Y.S.2d 875, 881 (2d Dep't 1984). The Appellate Division reasoned that Special Term's ruling that BCL section 630 was preempted by ERISA section 514(a) was proper since the preemption provision was intended to have a broad effect and since remedies for delinquent contributions are provided

The New York Court of Appeals reversed the Appellate Division, holding that the statute was not preempted by section 514(a) of ERISA.¹⁷ Writing for the court, Judge Simons described section 630 as merely providing an additional enforcement mechanism to recover contributions already owed to the plaintiffs.¹⁸ The statute did not, according to Judge Simons, "regulate, directly or indirectly, the terms and conditions" of the benefit plan.¹⁹ The court noted that, unlike laws regulating the provision or calculation of specific benefits, the effect of section 630 on the trust fund was remote.²⁰ Relying on the United States Supreme Court's most recent construction of ERISA's preemption clause in *Metropolitan Life Insurance Co. v. Massachusetts*,²¹ the court stressed that section 630 regulated only the employer, not the content of a benefit plan.²² Additionally, the court found that the enforcement provi-

for by ERISA. *See id.* at 136-141, 482 N.Y.S.2d at 878-81.

¹⁷ *See Sasso*, 66 N.Y.2d at 30, 484 N.E.2d at 1359, 494 N.Y.S.2d at 856. The case was remitted to the Nassau County Supreme Court to resolve the issues of whether defendant Helen Vachris had received notice of the impending claim as required by BCL section 630 and whether the notice to defendant Charles Vachris was timely. *See id.* at 37, 484 N.E.2d at 1364, 494 N.Y.S.2d at 861.

Defendants presented two alternative arguments against plaintiffs' claim under BCL section 630, both of which were rejected by the court. *See id.* at 32-37, 484 N.E.2d at 1361-64, 494 N.Y.S.2d at 858-61. First, defendants argued that because ERISA was intended to occupy the field of employee benefit plans and because remedies for unpaid employer contributions were explicitly provided for by ERISA, section 630 must be preempted. *See id.* at 32-33, 484 N.E.2d at 1361-62, 494 N.Y.S.2d at 858-59. Alternatively, defendants argued that section 630 regulated the terms and conditions of the plan by imposing an additional substantive requirement on the employer beyond what was required by ERISA. *See id.* at 32, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859.

¹⁸ *See id.* at 31-32, 33, 484 N.E.2d at 1360-61, 1362, 494 N.Y.S.2d at 857-58, 859.

¹⁹ *See id.* at 33, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859 (quoting 29 U.S.C. § 1144(c)(2) (1982)); *infra* notes 37-40 and accompanying text.

²⁰ *See Sasso*, 66 N.Y.2d at 33-34, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859. The court distinguished section 630 from laws requiring the provision of, *inter alia*, insurance coverage for minimal mental health protection, workers' compensation, and disability payments for pregnancy. *See id.* at 33-34, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859. Additionally, the court analogized section 630 to a law requiring the payment of alimony from retirement income and to a law setting rates that hospitals must charge employee benefit plans; such laws had been held as not "relating to" employee benefit plans since their connection to such plans was remote. *See id.* at 34, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859.

²¹ 105 S.Ct. 2380 (1985).

²² *See Sasso*, 66 N.Y.2d at 34, 484 N.E.2d at 1362, 494 N.Y.S.2d at 860. The Supreme Court in *Metropolitan* held that a Massachusetts statute specifying minimum mental health-care benefits provided under insurance policies was not preempted by ERISA despite the fact that the law "relate[d] to" employee health care plans; the law was saved from preemption since it fell within the exemption for "laws regulating insurance" found in ERISA section 514(b)(2)(A). *See Metropolitan*, 105 S.Ct. at 2390. Appellants had argued that only laws regulating the insurer or the way in which insurance is sold came within the

sions of ERISA, including recent amendments, did not indicate a congressional intent to preempt state law remedies such as the one provided by section 630.²³

In determining that a state law remedy could be enforced de-

exemption for insurance. *See id.* The Court rejected this argument, reasoning that, unlike the mandated-benefit law at issue, "laws that regulate only the insurer, or the way in which it may sell insurance, do not 'relate to' benefit plans in the first instance." *Id.*

Relying on the distinction made in *Metropolitan*, the Court of Appeals characterized section 630 as a law regulating an employer, analogizing it to a law regulating an insurer which would not "relate to" a benefit plan. *See Sasso*, 66 N.Y.2d at 34, 484 N.E.2d at 1363, 494 N.Y.S.2d at 860.

²³ *See Sasso*, 66 N.Y.2d at 34-35, 484 N.E.2d at 1363, 494 N.Y.S.2d at 860. The court found that ERISA's original enforcement provision, found in 29 U.S.C. § 1132(a)(3), provided only equitable relief to enforce the federal statute or terms of the benefit plan. *See id.* As for the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1295 (1980) (codified at 29 U.S.C. § 1145 (1982)) (amendments to ERISA), the court concluded that "[t]hey merely added a statutory obligation upon employers to make contributions to multiemployer plans as required by the terms of the employee benefit plan or the collective bargaining agreement . . . and provided a civil cause of action in favor of fiduciaries to enforce this obligation." *Sasso*, 66 N.Y.2d at 35, 484 N.E.2d at 1363, 494 N.Y.S.2d at 860 (citations omitted).

The court pointed to case law as well as to pertinent provisions in the legislative history of the Multiemployer Pension Plan Amendments Act of 1980 to indicate that ERISA's remedies were intended to supplement rather than supersede existing state remedies. *See Sasso*, 66 N.Y.2d at 35-36, 484 N.E.2d at 1364, 494 N.Y.S.2d at 861. The court relied on a statement from the Senate Labor and Finance Committees' joint explanation of S. 1076, which contained the provisions that later became 29 U.S.C. sections 1145 and 1132(g). *See id.* at 36 n.4, 484 N.E.2d at 1364 n.4, 494 N.Y.S.2d at 861 n.4. That statement provides:

Under the bill, in the case of a civil action by any person to collect delinquent multiemployer plan contributions, regardless of otherwise applicable law, in which a judgment in favor of the plan is awarded, the court before which the action is brought must award the plan (1) the unpaid contributions, (2) interest on the unpaid contributions, (3) an amount equal to the greater of interest on the unpaid contributions or liquidated damages provided for under the plan not to exceed 20 percent of the amount of delinquent contributions as determined by the court. The bill preempts any State or other law which would prevent the award of reasonable attorneys fees, court costs or liquidated damages or which would limit liquidated damages to an amount below the 20 percent level.

However, the bill does not preclude the award of liquidated damages in excess of the 20 percent level where an award of such a higher level of liquidated damages is permitted under applicable State or other law. *This does not change any other type of remedy permitted under State or Federal law with respect to delinquent multiemployer plan contributions.*

126 CONG. REC. 20,202 (emphasis added). The court noted that the Report of the House Ways and Means Committee "contained a virtually identical statement" and concluded that "both Houses of Congress viewed the enforcement amendments of 1980 as setting forth a floor of Federal remedy in the case of delinquent contributions below which the States could not go but which did not preempt or supersede *State remedies* that granted greater protection than that contained in ERISA." *Sasso*, 66 N.Y.2d at 36 n.4, 484 N.E.2d at 1364 n.4, 494 N.Y.S.2d at 861 n.4 (emphasis in original).

spite ERISA's broad preemptive reach, the New York Court of Appeals articulated a means by which to resolve issues falling in the disputed gray area of ERISA preemption. This Comment will demonstrate that the court in *Sasso* gave effect to legislative intent by focusing on the language of ERISA's preemption clause, rather than resorting to traditional federal preemption theories. It will also be shown that *Sasso* contributed to further defining the boundary of ERISA preemption by its analysis of whether the state law in issue regulated the content of a benefit plan. A test for ERISA preemption drawing upon the *Sasso* analysis will then be proposed.

Sasso COURT REFRAINS FROM FOLLOWING OTHER FEDERAL PREEMPTION THEORIES

In resolving the issue of the preemption of section 630, the Court of Appeals did not resort to traditional federal preemption theories as other courts addressing ERISA preemption issues have done.²⁴ The first of the traditional theories compares the state and federal statute to see whether there is a direct conflict between the two that would require the state statute's preemption.²⁵ The second traditional theory, used in the absence of a direct conflict, examines whether the scheme of the federal statute is sufficiently comprehensive to denote a congressional intent to "occupy the field" of the federal statute.²⁶ Legislative history indicates that direct conflict analysis is vastly underinclusive as applied to ERISA since congress intended preemption to extend to laws consistent with ERISA as well.²⁷ Furthermore, it is not necessary to examine

²⁴ See, e.g., *Authier v. Ginsberg*, 757 F.2d 796, 801-02 (6th Cir. 1984) (analysis similar to "occupying the field" used to determine whether Congress intended to make enforcement of ERISA solely a federal concern); *Lane v. Goren*, 743 F.2d 1337, 1340 (9th Cir. 1984) (direct-conflict analysis); *Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1215-16 (8th Cir. 1981) ("occupy the field" analysis); *Providence v. Valley Clerks Trust Fund*, 509 F. Supp. 388, 392 (E.D. Cal. 1981) (applies direct-conflict analysis to actions based on state consumers' legal remedies and unfair business practice statutes).

²⁵ See *supra* note 4.

²⁶ See *supra* note 4.

²⁷ See *supra* note 3. The bill that became ERISA originally contained a narrower preemption clause that preempted only laws conflicting with the express provisions covered by ERISA. See *id.* ERISA's present preemption clause requires the preemption of even those laws consistent with ERISA, provided they "relate to" a benefit plan, as has been noted by the Supreme Court. See *Metropolitan*, 105 S.Ct. at 2389; *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 98-99 (1983); *Kilberg & Inman*, *supra* note 4, at 1321-24; Note, *supra* note 1, at 151-52.

the scope of ERISA to discern an intent to "occupy the field" since Congress has expressly indicated its preemptive intent in section 514(a).²⁸ Thus, inasmuch as these traditional tests are of limited value in analyzing ERISA preemption, the Court of Appeals gave effect to the unique congressional intention of preemption with respect to ERISA by avoiding them.

Another approach to ERISA preemption which the Court of Appeals declined to use analyzes the nature of the state law, invoking a presumption of non-preemption when the state law regulates an area traditionally within the realm of the states.²⁹ This approach was used by one court which held in a domestic relations case that a state garnishment order against a former husband's pension fund to meet support obligations owed his former wife was not preempted by ERISA.³⁰ In emphasizing the maintenance of traditional areas of state control, this approach varies the weight given ERISA's preemption clause according to the nature of the state activity in issue although no justification for doing so exists in the statute.³¹ Section 514(a) indicates that Congress intended to preempt all state activity relating to ERISA plans, regardless of whether the activity regulates an area traditionally left to the states.³² It is asserted that the *Sasso* court adhered to legislative

²⁸ See Kilberg & Inman, *supra* note 4, at 1315-16 ("occupation of the field" analysis inapplicable since ERISA contains an express preemption provision).

²⁹ See *supra* note 8; see also Note, *supra* note 1, at 164-65 (advocates, *inter alia*, use of state-interest approach in its proposal for ERISA preemption analysis); but see *Gilbert v. Burlington Indus.*, 765 F.2d 320, 327 (2d Cir. 1985) (to avoid preemption it is not sufficient that state statute represent exercise of traditional police power); Kilberg & Inman, *supra* note 4, at 1326 (criticizing state-interest approach).

Plaintiffs in *Sasso* had argued against the preemption of BCL section 630, claiming that it was an exercise of the state's police power. See Brief for Appellants at 22-24. The Court of Appeals noted a general presumption of non-preemption of a state law by a federal statute but did not give more weight to this based on the important state concern implicated by section 630 as plaintiffs had advocated. See *Sasso*, 66 N.Y.2d at 33-36, 484 N.E.2d at 1362-64, 494 N.Y.S.2d at 859-61.

³⁰ See *American Tel. & Tel. Co. v. Merry*, 592 F.2d 118, 118 (2d Cir. 1979).

³¹ The only types of state laws that are distinguished in ERISA are laws regulating insurance, banking, and securities, and generally applicable criminal laws. See 29 U.S.C. § 1144(b) (1982). These laws were expressly exempted from ERISA preemption. See *id.* While this Comment criticizes use of the state-interest approach, it is submitted that courts holding that orders to pay alimony from retirement income are not preempted have reached the correct result. Since court orders to pay alimony do not affect a benefit plan's content or administration, Congress did not intend such orders to be preempted by ERISA. See *infra* note 48 and accompanying text.

³² See 29 U.S.C. § 1144(a) (1982); see also *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 98-99 (1983) (Congress intended to preempt all laws relating to ERISA plans).

intent by refusing to vary the weight given the preemption clause according to the nature of the state law in issue.

USE OF THE STATUTORY LANGUAGE OF ERISA IN *Sasso*

The court in *Sasso* resolved the preemption issue by determining whether section 630 "relate[d] to" plaintiffs' benefit plan.³³ The court reasoned that a law could be considered as relating to an ERISA plan if it "regulate[d], directly or indirectly, the terms and conditions" of the plan.³⁴ This language, which has been used as a standard for ERISA's preemption by several federal courts,³⁵ derives from section 514(c)(2) of ERISA in which Congress defined the term "State" for the purposes of ERISA's preemption provision in 514(a).³⁶ Section 514(c)(2) defines "State" as including a state, its political subdivisions, "or any agency or instrumentality of either which purports to regulate, directly or indirectly, the terms and conditions of [ERISA] plans."³⁷

In using this as a standard for preemption, the Court of Appeals interpreted this language as limiting the kinds of state activity subject to preemption; that is, in order for a state law to "relate to" an ERISA plan, it must "regulate . . . the terms and conditions" of the plan.³⁸ This view rests on the presupposition that the clause following "which" in section 514(c)(2) was intended to modify, not only the terms immediately preceding it ("agency or instrumentality"), but the other preceding terms as well (including the word "State"). This interpretation, though shared by several federal courts,³⁹ is arguably ambiguous,⁴⁰ and has not been adopted

³³ See *Sasso*, 66 N.Y.2d at 33, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859.

³⁴ *Id.* at 33, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859 (quoting 29 U.S.C. § 1144(c)(2)).

³⁵ See *Rebaldo v. Cuomo*, 749 F.2d 133, 137 (2d Cir. 1984); *Lane v. Goren*, 743 F.2d 1337, 1339 (9th Cir. 1984); *Stone & Webster Eng'g Corp. v. Ilsley*, 609 F.2d 323, 329 (2d Cir. 1982).

³⁶ See 29 U.S.C. § 1144(c)(2) (1982).

³⁷ *Id.* (emphasis added).

³⁸ See *Sasso*, 66 N.Y.2d at 33, 484 N.E.2d at 1362, 494 N.Y.S.2d at 859.

³⁹ See *supra* note 35.

⁴⁰ See H.R. REP. No. 1785, 94th Cong., 2d Sess. 47-48 (1977). This report, issued by the House Committee on Education and Labor three years after the passage of ERISA, states that the phrase "purports to regulate, directly or indirectly, the terms and conditions" was intended to modify only the words "agency or instrumentality" and was not intended to modify the word "State." See *id.* While this post-hoc report has only limited weight, the interpretation suggested by it coincides with the unusually broad effect Congress intended ERISA's preemption provision to have. See H.R. CONF. REP. No. 1280, 93rd Cong., 2d Sess. 383 (1974); S. CONF. REP. No. 1090, 93rd Cong., 2d Sess. 383 (1974); see also *Metropolitan*

by the United States Supreme Court.⁴¹ However, even if the phrase in question was not intended to modify the word "State" and does not operate as an express limit to the preemption clause, the phrase is indicative of the kind of activity Congress had in mind as being subject to preemption. It is submitted, therefore, that the *Sasso* court's "regulates . . . the terms and conditions" standard should be regarded as a useful criterion, though not a verbatim or all-inclusive test for ERISA preemption.

Sasso COURT DEVELOPS CONTENT-BASED PREEMPTION TEST

The Court of Appeals used the following test to decide whether section 630 of the BCL regulated the terms and conditions of plaintiffs' plan: whether the New York statute either mandated or prohibited the provision of specific benefits under the plan or otherwise regulated the plan's content.⁴² In developing this content-based test for preemption, the court relied on the construction of ERISA's preemption provision used in *Metropolitan Life Insurance Co. v. Massachusetts*.⁴³ The United States Supreme Court in *Metropolitan* distinguished laws regulating an insurer or the transaction of selling insurance from those regulating the substantive terms of insurance contracts, noting that the former did not "relate to" employee benefit plans.⁴⁴ The Court of Appeals analogized laws regulating an insurer to those regulating an employer and reasoned that, unlike laws regulating the content of a plan itself, those regulating only an employer did not "relate to" a plan.⁴⁵ It is submitted that, while the analogy is sound as applied to section 630,

Life Ins. Co. v. Massachusetts, 105 S.Ct. 2380, 2389 (1985); *Shaw v. Delta Airlines*, 463 U.S. 85, 98 (1983). There is no suggestion in ERISA's legislative history that these words were intended to limit the effect of the preemption provision. See generally LEGISLATIVE HISTORY OF ERISA (1974); see also *Authier v. Ginsberg*, 757 F.2d 796, 799 n.4 (questioning use of "terms and conditions" language to limit ERISA's preemptive effect). But see *Rebaldo v. Cuomo*, 749 F.2d 133, 137 n.1 (2d Cir. 1984) (rejects view presented by post-hoc report of House Committee on Education and Labor as lacking even persuasive authority).

⁴¹ See generally *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 105 S.Ct. 2380 (1985); see also *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 91 & n.6 (1983); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981). Indeed, in *Alessi*, the Supreme Court interpreted the phrase "purports to regulate, directly or indirectly, the terms and conditions" as indicating the breadth of ERISA's preemption clause. See *Alessi*, 451 U.S. at 525.

⁴² See *Sasso*, 66 N.Y.2d at 33-34, 484 N.E.2d at 1362-63; 494 N.Y.S.2d at 859-60.

⁴³ 471 U.S. 724, 105 S.Ct. 2380 (1985); see *Sasso*, 66 N.Y.2d at 34, 484 N.E.2d at 1363, 494 N.Y.S.2d at 860.

⁴⁴ See *Metropolitan Life Ins. Co. v. Massachusetts*, 105 S.Ct. 2380, 2390; *supra* note 22.

⁴⁵ See *Sasso*, 66 N.Y.2d at 34, 484 N.E.2d at 1363, 494 N.Y.S.2d at 860.

the transition from insurer to employer is a rather broad leap and creates dangerous precedent. A law regulating an employer differs from one regulating an insurer in that it is much more likely to relate to an employee benefit plan.⁴⁶

Nevertheless, it is submitted that, by focusing on the words of the federal statute and its legislative history⁴⁷ rather than resorting to traditional preemption theories as other courts have done, the *Sasso* court has given effect to the unique congressional intention of preemption expressed in section 514(a). The content-based test for preemption derived from the language of ERISA provides a means to discern legislative intent despite the imprecision of the "relate to" clause. It is suggested that the *Sasso* test falls short of ascertaining legislative intent only to the extent that it does not require the preemption of laws regulating the administration of employee benefit plans. ERISA and its legislative history indicate that such laws were intended to be preempted as well.⁴⁸

A test for ERISA preemption can, therefore, be derived from the preceding discussion of the merits and deficiencies of *Sasso*. The issue of whether Congress intended a particular state law to be preempted by ERISA is resolved by determining whether the law in issue "relates to" an ERISA plan. This determination turns on whether the law requires or prohibits the provisions of specific benefits under the plan or otherwise regulates the plan's content or administration. Specific references to the type of state law in issue in either ERISA or its legislative history may also aid in discerning legislative intent to preempt a particular state law, though such references will not likely be dispositive.

⁴⁶ It is foreseeable that *Sasso's* interpretation of *Metropolitan* could be relied on to refuse to preempt laws regulating the administration of employee benefit plans by analogizing such laws to laws regulating the transaction of selling insurance. See *supra* note 22. It is submitted that such an analogy would frustrate congressional intent in that Congress intended ERISA to preempt state laws regulating administration of benefit plans. See *infra* note 48.

⁴⁷ See *supra* note 23.

⁴⁸ See 29 U.S.C. § 1001 (1982). The policy of ERISA is to assure that "disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans." *Id.* (emphasis added). Sections 101-306 of ERISA (codified at 29 U.S.C. §§ 1021-1086 (1982)) regulate administration of benefit plans by establishing requirements for reporting, disclosure, participation, vesting, and funding of plans. See H.R. REP. No. 533, 93rd Cong., 2d Sess. 1-2 (1974). Cf. *Gilbert v. Burlington Indus.*, 765 F.2d 320, 326-28 (2d Cir. 1985) (content, structure or administration of plan test for ERISA preemption); *Rebaldo v. Cuomo*, 749 F.2d 133, 139 (2d Cir. 1984) (test for ERISA preemption is whether law affects structure, administration or type of benefits provided under a plan).

CONCLUSION

The Court of Appeals in *Sasso* produced a well-reasoned construction of legislative intent in holding a state remedy not preempted despite the broad reach of ERISA's preemption clause. The content-based test developed in *Sasso*, which enabled the court to reconcile ERISA's preemptive mandate with the preservation of a state remedy, advances the effort to define the outer boundary of ERISA preemption. As the outer boundary of ERISA preemption continues to be defined, use of the proper analysis will become increasingly critical if courts are to give effect to the unique Congressional expression of preemption in section 514(a).

Patricia Loftus-Matthews