Topics:  
(a) History of Employee Benefits Law and Regulation
(b) Importance of Employee Benefits
(c) Types of Plans
(d) ERISA’s Relationship to Other Federal Laws

Required Reading:

ERISA Sections 2, 3(1), (2), (3), (5), (34), (35), (37)(A), 4, 514(d), 4002(a), 4021(a), (b)(1)-(3)

Internal Revenue Code Sections 401(a)(1)-(4), 402(a), (c)(1), 404 (a)(General Rule, flush language), 501(a)

Cases:
Donovan v. Dillingham, 688 F.2d 1367 (11th Cir. 1982) (abridged)

29 U.S. Code § 1001 - Congressional Findings and Declaration of Policy

(a) Benefit plans as affecting interstate commerce and the Federal taxing power
The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of
employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans are carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

29 U.S. Code § 1002- Definitions

For purposes of this subchapter:

(1) The terms “employee welfare benefit plan” and “welfare plan” mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise,
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 any benefit described in section 186 (c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2) Except as provided in subparagraph (B), the terms “employee pension benefit plan” and “pension plan” mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances 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. A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this chapter providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement, shall, for purposes of this subchapter, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this chapter applicable to pension plans, such arrangement or payment shall be treated as a pension plan. An applicable voluntary early retirement incentive plan (as defined in section 457 (e)(11)(D)(i) of title 26) making payments or supplements described in section 457 (e)(11)(D)(ii) of title 26, and an applicable employment retention plan (as defined in section 457 (f)(4)(C) of title 26) making payments of benefits described in section 457 (f)(4)(A) of title 26, shall, for purposes of this subchapter, be treated as a welfare plan (and not a pension plan) with respect to such payments and supplements.

(3) The term “employee benefit plan” or “plan” means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(5) The term “employer” means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(34) The term “individual account plan” or “defined contribution plan” means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant’s account, and any income, expenses, gains and losses,
and any forfeitures of accounts of other participants which may be allocated to such participant’s account.

(35) The term “defined benefit plan” means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 1052 of this title, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 1054 of this title, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

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(37)

(A) The term “multiemployer plan” means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(iii) which satisfies such other requirements as the Secretary may prescribe by regulation.

(B) For purposes of this paragraph, all trades or businesses (whether or not incorporated) which are under common control within the meaning of section 1301 (b)(1) of this title are considered a single employer.

(C) Notwithstanding subparagraph (A), a plan is a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding its termination date.

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29 U.S. Code § 1003 - Coverage

(a) In general
Except as provided in subsection (b) or (c) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) Exceptions for certain plans
The provisions of this subchapter shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 1002 (32) of this title);

(2) such plan is a church plan (as defined in section 1002 (33) of this title) with respect to which no election has been made under section 410 (d) of title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen’s compensation laws or unemployment compensation or disability insurance laws;
(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or
(5) such plan is an excess benefit plan (as defined in section 1002 (36) of this title) and is unfunded.

The provisions of part 7 of subtitle B of this subchapter shall not apply to a health insurance issuer (as defined in section 1191b (b)(2) of this title) solely by reason of health insurance coverage (as defined in section 1191b (b)(1) of this title) provided by such issuer in connection with a group health plan (as defined in section 1191b (a)(1) of this title) if the provisions of this subchapter do not apply to such group health plan.

(c) Voluntary employee contributions to accounts and annuities
If a pension plan allows an employee to elect to make voluntary employee contributions to accounts and annuities as provided in section 408 (q) of title 26, such accounts and annuities (and contributions thereto) shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of this subchapter other than section 1103 (c), 1104, or 1105 of this title (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities) and part 5 of subtitle B of this subchapter [1] (relating to administration and enforcement). Such provisions shall apply to such accounts and annuities in a manner similar to their application to a simplified employee pension under section 408 (k) of title 26.

29 U.S. Code § 1144 - Other Laws

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited
Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137 (b) of this title) or any rule or regulation issued under any such law.

29 U.S. Code § 1302 - Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor
There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall act in accordance with the policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—
(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,
(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and
(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.***
(a) Plans covered
Except as provided in subsection (b) of this section, this subchapter applies to any plan
(including a successor plan) which, for a plan year—
(1) is an employee pension benefit plan (as defined in paragraph (2) of section 1002 of this title)
established or maintained—
(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or
(B) by any employee organization, or organization representing employees, engaged in
commerce or in any industry or activity affecting commerce, or
(C) by both,
which has, in practice, met the requirements of part I of subchapter D of chapter 1 of title 26 (as
in effect for the preceding 5 plan years of the plan) applicable to the plans described in paragraph
(2) for the preceding 5 plan years; or
(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section
401 (a) of title 26, or which meets, or has been determined by the Secretary of the Treasury to
meet, the requirements of section 404 (a)(2) of title 26.
For purposes of this subchapter, a successor plan is considered to be a continuation of a
predecessor plan. For this purpose, unless otherwise specifically indicated in this subchapter, a
successor plan is a plan which covers a group of employees which includes substantially the
same employees as a previously established plan, and provides substantially the same benefits as
that plan provided.

(b) Plans not covered
This section does not apply to any plan—
(1) which is an individual account plan, as defined in paragraph (34) of section 1002 of this title,
(2) established and maintained for its employees by the Government of the United States, by the
government of any State or political subdivision thereof, or by any agency or instrumentality of
any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 [45 U.S.C. 231 et
seq.] applies and which is financed by contributions required under that Act, or which is
described in the last sentence of section 1002 (32) of this title.
(3) which is a church plan as defined in section 414 (e) of title 26, unless that plan has made an
election under section 410 (d) of title 26, and has notified the corporation in accordance with
procedures prescribed by the corporation, that it wishes to have the provisions of this part apply
to it.

26 U.S. Code § 401 - Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification
A trust created or organized in the United States and forming part of a stock bonus, pension, or
profit-sharing plan of an employer for the exclusive benefit of his employees or their
beneficiaries shall constitute a qualified trust under this section—
(1) if contributions are made to the trust by such employer, or employees, or both, or by another
employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to
deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder
trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose
of distributing to such employees or their beneficiaries the corpus and income of the fund
accumulated by the trust in accordance with such plan;
(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination)); [1]
(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and
(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

26 U.S. Code § 402 - Taxability of beneficiary of employees’ trust

(a) Taxability of beneficiary of exempt trust
Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees’ trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

26 U.S. Code § 404 - Deduction for contributions of an employer to an employees’ trust or annuity plan and compensation under a deferred-payment plan
(a) General rule
If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

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26 U.S. Code § 501 - Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation
An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

NATIONWIDE MUTUAL INSURANCE COMPANY v. DARDEN
503 U.S. 318 (1992)

Justice Souter delivered the opinion of the Court.

In this case we construe the term "employee" as it appears in § 3(6) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1002(6), and read it to incorporate traditional agency law criteria for identifying master servant relationships.

I

From 1962 through 1980, respondent Robert Darden operated an insurance agency according to the terms of several contracts he signed with petitioners Nationwide Mutual Insurance Co., et al. Darden promised to sell only Nationwide insurance policies, and, in exchange, Nationwide agreed to pay him commissions on his sales and enroll him in a company retirement scheme called the "Agent's Security Compensation Plan" (Plan). The Plan consisted of two different programs: the "Deferred Compensation Incentive Credit Plan," under which Nationwide annually credited an agent's retirement account with a sum based on his business performance, and the "Extended Earnings Plan," under which Nationwide paid an agent, upon retirement or termination, a sum equal to the total of his policy renewal fees for the previous 12 months.

Such were the contractual terms, however, that Darden would forfeit his entitlement to the Plan's benefits if, within a year of his termination and 25 miles of his prior business location, he sold insurance for Nationwide's competitors. The contracts also disqualified him from receiving those benefits if, after he stopped representing Nationwide, he ever induced a Nationwide policyholder to cancel one of its policies.

In November 1980, Nationwide exercised its contractual right to end its relationship with Darden. A month later, Darden became an independent insurance agent and, doing business from his old office, sold insurance policies for several of Nationwide's competitors. The company reacted with the charge that his new business activities disqualified him from receiving the Plan benefits to which he would have been entitled otherwise. Darden then sued for the benefits,
which he claimed were nonforfeitable because already vested under the terms of ERISA. 29 U.S.C. § 1053(a).

Darden brought his action under 29 U.S.C. § 1132(a), which enables a benefit plan "participant" to enforce the substantive provisions of ERISA. The Act elsewhere defines "participant" as "any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan . . .." § 1002(7). Thus, Darden's ERISA claim can succeed only if he was Nationwide's "employee," a term the Act defines as "any individual employed by an employer." § 1002(6).

It was on this point that the District Court granted summary judgment to Nationwide. After applying common law agency principles and, to an extent unspecified, our decision in United States v. Silk, 331 U.S. 704 (1947), the court found that "the total factual context' of Mr. Darden's relationship with Nationwide shows that he was an independent contractor and not an employee." District Court Order of May 23, 1985, reprinted at Pet. for Cert. 47a, 50a, quoting NLRB v. United Ins. Co. of America, 390 U.S. 254 (1968).

The United States Court of Appeals for the Fourth Circuit reversed. Darden v. Nationwide Mutual Ins. Co., 796 F. 2d 701 (1986) (Darden I). * * *

We have often been asked to construe the meaning of "employee" where the statute containing the term does not helpfully define it. Most recently we confronted this problem in Community for Creative Non Violence v. Reid, 490 U.S. 730 (1989), a case in which a sculptor and a nonprofit group each claimed copyright ownership in a statue the group had commissioned from the artist. The dispute ultimately turned on whether, by the terms of § 101 of the Copyright Act of 1976, 17 U.S.C. § 101 the statue had been "prepared by an employee within the scope of his or her employment." Because the Copyright Act nowhere defined the term "employee," we unanimously applied the "well established" principle that "[w]here Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms. . . . In the past, when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master servant relationship as understood by common law agency doctrine. See, e. g., Kelley v. Southern Pacific Co., 419 U.S. 318, 322-323 (1974); Baker v. Texas & Pacific R. Co., 359 U.S. 227, 228 (1959) (per curiam); Robinson v. Baltimore & Ohio R. Co., 237 U.S. 84, 94 (1915)." 490 U. S., at 739-740 (internal quotations omitted).

While we supported this reading of the Copyright Act with other observations, the general rule stood as independent authority for the decision.

So too should it stand here. ERISA's nominal definition of "employee" as "any individual employed by an employer," 29 U.S.C. § 1002(6), is completely circular and explains nothing. As for the rest of the Act, Darden does not cite, and we do not find, any provision either giving specific guidance on the term's meaning or suggesting that construing it to incorporate traditional agency law principles would thwart the congressional design or lead to absurd results. Thus, we adopt a common law test for determining who qualifies as an "employee" under ERISA, ***a test we most recently summarized in Reid:
"In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party." 490 U. S., at 751-752 (footnotes omitted).

Cf. Restatement (Second) of Agency § 220(2) (1958) (listing nonexhaustive criteria for identifying master servant relationship); Rev. Rul. 87 41, 1987 1 Cum. Bull. 296, 298 299 (setting forth twenty factors as guides in determining whether an individual qualifies as a common law "employee" in various tax law contexts). Since the common law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." NLRB v. United Ins. Co. of America, 390 U. S., at 258.

In taking its different tack, the Court of Appeals cited NLRB v. Hearst Publications, Inc., 322 U. S., at 120-129, and United States v. Silk, 331 U. S., at 713, for the proposition that 'the content of the term 'employee' in the context of a particular federal statute is 'to be construed "in the light of the mischief to be corrected and the end to be attained."' Darden I, 796 F. 2d, at 706, quoting Silk, supra, at 713, in turn quoting Hearst, supra, at 124. But Hearst and Silk, which interpreted "employee" for purposes of the National Labor Relations Act and Social Security Act, respectively, are feeble precedents for unmooring the term from the common law. In each case, the Court read "employee," which neither statute helpfully defined, *** to imply something broader than the common law definition; after each opinion, Congress amended the statute so construed to demonstrate that the usual common law principles were the keys to meaning. See United Ins. Co., 390 U. S., at 256 ("Congressional reaction to [Hearst] was adverse and Congress passed an amendment . . . . [t]he obvious purpose of [which] was to have the . . . courts apply general agency principles in distinguishing between employees and independent contractors under the Act"); Social Security Act of 1948, ch. 468, § 1(a), 62 Stat. 438 (1948) (amending statute to provide that term "employee" "does not include . . . any individual who, under the usual common law rules applicable in determining the employer employee relationship, has the status of an independent contractor") (emphasis added); see also United States v. W. M. Webb, Inc., 397 U.S. 179, 183 188 (1970) (discussing congressional reaction to Silk).

To be sure, Congress did not, strictly speaking, "overrule" our interpretation of those statutes, since the Constitution invests the Judiciary, not the Legislature, with the final power to construe the law. But a principle of statutory construction can endure just so many legislative revisitations, and Reid's presumption that Congress means an agency law definition for "employee" unless it clearly indicates otherwise signaled our abandonment of Silk's emphasis on construing that term " 'in the light of the mischief to be corrected and the end to be attained.' " Silk, supra, at 713, quoting Hearst, supra, at 124.

At oral argument, Darden tried to subordinate Reid to Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947), which adopted a broad reading of "employee" under the Fair Labor Standards Act (FLSA). And amicus United States, while rejecting Darden's position, also relied on
Rutherford Food for the proposition that, when enacting ERISA, Congress must have intended a modified common law definition of "employee" that would advance, in a way not defined, the Act's "remedial purposes." Brief for United States as Amicus Curiae 15-21. *** But Rutherford Food supports neither position. The definition of "employee" in the FLSA evidently derives from the child labor statutes, see Rutherford Food, supra, at 728, and, on its face, goes beyond its ERISA counterpart. While the FLSA, like ERISA, defines an "employee" to include "any individual employed by an employer," it defines the verb "employ"expansively to mean "suffer or permit to work." 52 Stat. 1060, § 3, codified at 29 U.S.C. §§ 203(e), (g). This latter definition, whose striking breadth we have previously noted, Rutherford Food, supra, at 728, stretches the meaning of "employee" to cover some parties who might not qualify as such under a strict application of traditional agency law principles. ERISA lacks any such provision, however, and the textual asymmetry between the two statutes precludes reliance on FLSA cases when construing ERISA's concept of "employee."

Quite apart from its inconsistency with our precedents, the Fourth Circuit's analysis reveals an approach infected with circularity and unable to furnish predictable results. Applying the first element of its test, which ostensibly enquires into an employee's "expectations," the Court of Appeals concluded that Nationwide had "created a reasonable expectation on the 'employees' part that benefits would be paid to them in the future," Darden I, 796 F. 2d, at 706, by establishing "a comprehensive retirement benefits program for its insurance agents," id., at 707. The court thought it was simply irrelevant that the forfeiture clause in Darden's contract "limited" his expectation of receiving pension benefits, since "it is precisely that sort of employer imposed condition on the employee's anticipations that Congress intended to outlaw with the enactment of ERISA." Id., at 707, n. 7 (emphasis added). Thus, the Fourth Circuit's test would turn not on a claimant's actual "expectations," which the court effectively deemed inconsequential, ibid., but on his statutory entitlement to relief, which itself depends on his very status as an "employee." This begs the question.

This circularity infects the test's second prong as well, which considers the extent to which a claimant has relied on his "expectation" of benefits by "remaining for 'long years,' or a substantial period of time, in the 'employer's' service, and by foregoing other significant means of providing for [his] retirement." Id., at 706. While this enquiry is ostensibly factual, we have seen already that one of its objects may not be: to the extent that actual "expectations" are (as in Darden's case) unnecessary to relief, the nature of a claimant's required "reliance" is left unclear. Moreover, any enquiry into "reliance," whatever it might entail, could apparently lead to different results for claimants holding identical jobs and enrolled in identical plans. Because, for example, Darden failed to make much independent provision for his retirement, he satisfied the "reliance" prong of the Fourth Circuit's test, see Darden II, 922 F. 2d, at 206, whereas a more provident colleague who signed exactly the same contracts, but saved for a rainy day, might not.

Any such approach would severely compromise the capacity of companies like Nationwide to figure out who their "employees" are and what, by extension, their pension fund obligations will be. To be sure, the traditional agency law criteria offer no paradigm of determinacy. But their application generally turns on factual variables within an employer's knowledge, thus permitting categorical judgments about the "employee" status of claimants with similar job descriptions. Agency law principles comport, moreover, with our recent precedents and with the common understanding, reflected in those precedents, of the difference between an employee and an independent contractor.
DOVOVAN v. DILLINGHAM
688 F.2d 1367 (11th Cir. 1982) (en banc)

GODBOLD, Chief Judge:

The Secretary of Labor pursuant to his authority under ERISA § 502(a), 29 U.S.C. § 1132(a), brought this action against the trustees of Union Insurance Trust (UIT) and businesses owned and operated by them, alleging they are fiduciaries subject to the fiduciary responsibility provisions contained in Part 4 of Title I of ERISA, 29 U.S.C. §§ 1101 et seq. Fiduciary duties under ERISA, however, arise only if there are employee benefit plans as defined by the Act.***


With a few specific exceptions not pertinent to this decision, Title I of ERISA applies to any "employee benefit plan" if it is established or maintained by any employer or employee organization engaged in commerce or in any industry or activity affecting commerce, or by both an employer and an employee organization. ERISA § 4(a), 29 U.S.C. § 1003(a). "Employee benefit plan" or "plan" means an "employee welfare benefit plan" or an "employee pension benefit plan" or a plan which is both a welfare plan and a pension plan. ERISA § 3(3), 29 U.S.C. § 1002(3).

UIT is a group insurance trust, commonly known as a multiple employer trust ("MET"), whose purpose is to allow employers of small numbers of employees to secure group health insurance coverage for their employees at rates more favorable than offered directly by an insurer. UIT obtained a group health insurance policy from Occidental Life Insurance Company of California to furnish specified insurance benefits. Employers and various employee organizations "subscribe" to UIT to receive the coverage of the blanket Occidental Life policy. Appellees contend that ERISA does not apply because there is involved only the "bare purchase of health insurance" and that no employee welfare benefit plans are implicated.***

ERISA § 3(1), 29 U.S.C. § 1002(1), defines "employee welfare benefit plan" or "welfare plan" as any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship
funds, or prepaid legal services, or (B) any benefit described in § 302(c) of the Labor
Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to
provide such pensions).

By definition, then, a welfare plan requires (1) a "plan, fund, or program" (2) established or
maintained (3) by an employer or by an employee organization, or by both, (4) for the purpose of
providing medical, surgical, hospital care, sickness, accident, disability, death, unemployment or
vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds,
prepaid legal services or severance benefits (5) to participants or their beneficiaries.

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The gist of ERISA's definitions of employer, employee organization, participant, and
beneficiary is that a plan, fund, or program falls within the ambit of ERISA only if the plan,
fund, or program covers ERISA participants because of their employee status in an employment
relationship, and an employer or employee organization is the person that establishes or
maintains the plan, fund, or program. Thus, plans, funds, or programs under which no union
members, employees or former employees participate are not employee welfare benefit plans
under Title I of ERISA. See 29 C.F.R. 2510.3-3(b), (c).

An issue in other cases has been whether a multiple employer trust-the enterprise-is itself an
employee welfare benefit plan. The courts, congressional committees, and the Secretary
uniformly have held they are not. *** All parties to this appeal agree that UIT is subject to state
laws regulating insurance and is not itself an employee welfare benefit plan.[fn. omitted]

Not so well defined are the first two prerequisites: "plan, fund, or program" and "established or
maintained." Commentators and courts define "plan, fund, or program" by synonym-
arangement, scheme, unitary scheme, program of action, method of putting into effect an
intention or proposal, design-but do not specify the prerequisites of a "plan, fund, or program."
At a minimum, however, a "plan, fund, or program" under ERISA implies the existence of
intended benefits, intended beneficiaries, a source of financing, and a procedure to apply for and
collect benefits.

"Established or maintained" appears twice in the definition of an employee welfare benefit plan:
first, an employer or employee organization or both must establish or maintain a plan, fund, or
program, and, second, the plan, fund, or program must be established or maintained for specified
purposes. In many instances a plan is established or maintained, or both, in writing. It is obvious
that a system of providing benefits pursuant to a written instrument that satisfies ERISA §§ 102
and 402, 29 U.S.C. §§ 1022 and 1102, would constitute a "plan, fund or program."

ERISA does not, however, require a formal, written plan. ERISA's coverage provision reaches
"any employee benefit plan if it is established or maintained" by an employer or an employee
organization, or both, who are engaged in any activities or industry affecting commerce. ERISA
§ 4(a), 29 U.S.C. § 1003(a) (emphasis added). There is no requirement of a formal, written plan
in either ERISA's coverage section, ERISA § 4(a), 29 U.S.C. § 1003(a), or its definitions section,
ERISA § 3(1), 29 U.S.C. § 1002(1). Once it is determined that ERISA covers a plan, the Act's
fiduciary and reporting provisions do require the plan to be established pursuant to a written
instrument, ERISA §§ 102 and 402, 29 U.S.C. §§ 1022 and 1102; but clearly these are only the responsibilities of administrators and fiduciaries of plans covered by ERISA and are not prerequisites to coverage under the Act. Furthermore, because the policy of ERISA is to safeguard the well-being and security of working men and women and to apprise them of their rights and obligations under any employee benefit plan, see ERISA § 2, 29 U.S.C. § 1001, it would be incongruous for persons establishing or maintaining informal or unwritten employee benefit plans, or assuming the responsibility of safeguarding plan assets, to circumvent the Act merely because an administrator or other fiduciary failed to satisfy reporting or fiduciary standards. ***

The Secretary contends that "establish" means no more than an ultimate decision by an employer or an employee organization to provide the type of benefits described in ERISA § 3(1), 29 U.S.C. § 1002(1). This sweeps too broadly. A decision to extend benefits is not the establishment of a plan or program. Acts or events that record, exemplify or implement the decision will be direct or circumstantial evidence that the decision has become reality-e.g., financing or arranging to finance or fund the intended benefits, establishing a procedure for disbursing benefits, assuring employees that the plan or program exists—but it is the reality of a plan, fund or program and not the decision to extend certain benefits that is determinative.

In determining whether a plan, fund or program (pursuant to a writing or not) is a reality a court must determine whether from the surrounding circumstances a reasonable person could ascertain the intended benefits, beneficiaries, source of financing, and procedures for receiving benefits. Some essentials of a plan, fund, or program can be adopted, explicitly or implicitly, from sources outside the plan, fund, or program—e.g., an insurance company's procedure for processing claims, *** but no single act in itself necessarily constitutes the establishment of the plan, fund, or program. For example, the purchase of insurance does not conclusively establish a plan, fund, or program, but the purchase is evidence of the establishment of a plan, fund, or program; the purchase of a group policy or multiple policies covering a class of employees offers substantial evidence that a plan, fund, or program has been established.[fn omitted]

In summary, a "plan, fund, or program" under ERISA is established if from the surrounding circumstances a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits. To be an employee welfare benefit plan, the intended benefits must be health, accident, death, disability, unemployment or vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds, prepaid legal services or severance benefits; the intended beneficiaries must include union members, employees, former employees or their beneficiaries; and an employer or employee organization, or both, and not individual employees or entrepreneurial businesses, must establish or maintain the plan, fund, or program.

The record[fn. omitted] indicates that subscribers to UIT included single-employer, collectively bargained programs, multi-employer health and welfare funds, and union-sponsored funds. For some organizations the subscription to UIT was their initial subscription***. Most subscribers, however, replaced other METs or carriers with UIT***.

Without inquiring into other assets or purposes of the subscribers, the purpose stated in the Agreement and Declaration of Trust establishing UIT and thus the purpose of those who
subscribed to UIT, was "to provide, through policies issued by insurers, life, accident-and-health, sickness-and-health, disability-income, hospital benefits, surgical-benefits, dental-care, and pre-paid-legal-expenses insurance for the use and the benefit of insured employees and of their families and dependents." The group health insurance policy UIT obtained from Occidental Life Insurance Company of California may provide less benefits than those listed in the UIT trust agreement, but clearly employers and employee organizations subscribe to UIT with the intent to provide health insurance, which is covered by ERISA § 3(1), 29 U.S.C. § 1002(1). It is equally clear from participation agreements found in the record that the persons benefiting from the group hospitalization are employees of employers or members of the employee organizations that subscribed to UIT and are financing the participation.

Many of the subscriptions were methods of fulfilling collective bargaining agreements between employers and unions to furnish health insurance benefits to employees. In these situations the employer or employee organization, or both, were committed to providing benefits to employees or members through the purchase of health insurance on a continuing basis. In some cases, as noted above, unions or employers were already furnishing insurance benefits and merely substituted UIT for other METs or carriers while continuing to furnish health insurance coverage.

Finally, as stipulated in the Articles of Trust of UIT, the subscribers, the beneficiaries, and UIT itself looked to the group health insurance policy and insurer to determine the eligibility requirements to receive benefits and "all other terms, conditions, limitations, restrictions, and provisions applicable to a policy of group insurance." This common sense approach adequately serves the needs of most employers and unions seeking to provide health insurance to employees at an ascertainable cost; they can agree to furnish only what the insurer contracts to furnish and avoid any unforeseen liability for, or denial of, benefits to employees. For the same reasons employers and unions normally will not require any procedures in addition to those required by the insurer.

Thus, it appears that employers or unions that subscribed to UIT to furnish health insurance for employees or members (either pursuant to an agreement or pursuant to a continuing practice of purchasing the insurance for a class of employees) established employee welfare benefit plans. It also appears that some subscribers that previously had not furnished health insurance to their employees or members, and that did not subscribe to UIT pursuant to an agreement to furnish health benefits, nevertheless did purchase benefits for a substantial percentage of a class of employees or members under circumstances tending to show an anticipated continuing furnishing of such benefits (either through an MET or insurance carrier or otherwise); these subscribers too established employee welfare benefit plans. Thus, it appears that numerous subscribers to UIT established employee welfare benefit plans; with respect to each of these, ERISA conferred subject matter jurisdiction on the district court.

The former Fifth Circuit in Taggart Corp. v. Life & Health Benefits Administration, 617 F.2d 1208 (5th Cir. 1980), cert. denied sub nom. Taggart Corp. v. Efros, 450 U.S. 1030, 101 S. Ct. 1739, 68 L. Ed. 2d 225 (1981), held that the MET, which was providing group insurance to employers too small to qualify for group rates on their own, was not itself an employee welfare benefit plan and that Taggart Corporation's subscription to the MET to furnish insurance
coverage to Taggart Corporation's sole employee did not constitute a "plan, fund, or program" within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1).

We agree with the holding and reasoning of the former Fifth that the MET itself was not an employee welfare benefit plan, see Taggart, 617 F.2d at 1210. We also agree that there was no employee welfare benefit plan in Taggart. Plaintiffs Kansas and Taggart Corporation alleged that the MET was the welfare plan. Neither party argued that Taggart Corporation had a plan, fund, or program. Taggart, 617 F.2d at 1211. Moreover, the Taggart district court appeared to agree with the parties that Taggart Corporation did not have a welfare plan when it found that the MET insured some employees directly and the "circumstances surrounding the submission of the subscription agreement by Stanley M. Kansas ... simply involve(d) the purchase of insurance by plaintiff, Stanley M. Kansas, for himself and his family." Taggert (sic) Corporation v. Efros, 475 F. Supp. 124 (S.D. Tex. 1979), aff'd. sub nom. Taggart Corp. v. Life & Health Benefits Administration, 617 F.2d 1208 (5th Cir. 1980), cert. denied, 450 U.S. 1030, 101 S. Ct. 1739, 68 L. Ed. 2d 225 (1981).***

Although we agree with the holding in Taggart, we find the reasoning of the opinion that Taggart Corporation did not have a "plan, fund or program" encourages too broad an interpretation. If Taggart is interpreted to mean ERISA does not regulate purchases of health insurance when there is no welfare plan, we agree. The purchase of insurance is only a method of implementing a plan, fund, or program and is evidence of the existence of a plan but is not itself a plan. If Taggart implies that an employer or employee organization that only purchases a group health insurance policy or subscribes to a MET to provide health insurance to its employees or members cannot be said to have established or maintained an employee welfare benefit plan, we disagree. To that extent Taggart shall no longer be binding in the Eleventh Circuit.

We hold only that the district court had subject matter jurisdiction over this case. We have not determined how many subscribers established or maintained plans or if any defendant is a fiduciary to any plan. The judgment of the district court dismissing the case is REVERSED and the case is REMANDED for proceedings not inconsistent with this opinion.

GUIDRY v. SHEET METAL WORKERS NATIONAL PENSION FUND
493 U.S. 365 (1990)

JUSTICE BLACKMUN delivered the opinion of the Court.

Petitioner Curtis Guidry pleaded guilty to embezzling funds from his union. The union obtained a judgment against him for $275,000. The District Court imposed a constructive trust on Guidry's pension benefits, and the United States Court of Appeals for the Tenth Circuit affirmed that judgment. Petitioner contends that the constructive trust violates the statutory prohibition on assignment or alienation of pension benefits imposed by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U.S.C. 1001 et seq. (1982 ed.)
From 1964 to 1981, petitioner Guidry was the chief executive officer of respondent Sheet Metal Workers International Association, Local 9 (Union). From 1977 to 1981 he was also a trustee of respondent Sheet Metal Workers Local No. 9 Pension Fund. Petitioner's employment made him eligible to receive benefits from three union pension funds. [fn. omitted]

In 1981, the Department of Labor reviewed the Union's internal accounting procedures. That review demonstrated that Guidry had embezzled substantial sums of money from the Union. See App. 20. This led to petitioner's resignation. A subsequent audit indicated that over $998,000 was missing. Id., at 26. In 1982, petitioner pleaded guilty to embezzling more than $377,000 from the Union, in violation of 501(c) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 536, 29 U.S.C. 501 [493 U.S. 365, 368] (c) (1982 ed.). [fn. omitted] Petitioner began serving a prison sentence. In April 1984, while still incarcerated, petitioner filed a complaint against two of the plans in the United States District Court for the District of Colorado, alleging that the plans had wrongfully refused to pay him the benefits to which he was entitled. [fn. Omitted] The Union intervened, joined the third pension plan as a party, and asserted six claims against petitioner. [fn. Omitted] On the first five claims, petitioner and the Union stipulated to the entry of a $275,000 judgment in the Union's favor. App. 52-58. Petitioner and the Union agreed to litigate the availability of the constructive trust remedy requested in the sixth claim. Id., at 58.

***

Both the District Court and the Court of Appeals presumed that 206(d)(1) of ERISA erects a general bar to the garnishment of pension benefits from plans covered by the Act. This Court, also, indicated as much, although in dictum, in Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825 (1988). *** The view that the statutory restrictions on assignment or alienation of pension benefits apply to garnishment is consistent with applicable [493 U.S. 365, 372] administrative regulations, with the relevant legislative history, and with the views of other federal courts. It is also consonant with other statutory provisions designed to safeguard retirement income. We see no meaningful distinction between a writ of garnishment and the constructive trust remedy imposed in this case. That remedy is therefore prohibited by 206(d)(1) unless some exception to the general statutory ban is applicable.

***

[R]espondents, like the District Court, rely principally on the remedial provisions of the LMRDA. Section 501(a), 29 U.S.C. 501(a) (1982 ed.), of that Act states that a union's officers "occupy positions of trust in relation to such organization and its members as a group" and therefore have a duty "to hold its money and property solely for the benefit of the organization and its members." Section 501(b), 29 U.S.C. 501(b) (1982 ed.), provides, under certain conditions, a private right of action "to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." We assume, without deciding, that the statutory provision for "other appropriate relief" may authorize, in some circumstances, the imposition of a constructive trust. The question is whether that authorization may [493 U.S. 365, 375] override ERISA's prohibition on the alienation of pension benefits.
Respondents point to 514(d) of ERISA, 29 U.S.C. 1144(d) (1982 ed.). It states: "Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." In respondents' view, application of ERISA's anti-alienation provision to preclude a remedy that would otherwise be available would "modify, impair or supersede" the LMRDA. We do not believe, however, that the LMRDA will be modified, impaired, or superseded by our refusal to allow ERISA pension plans to be used to effectuate the remedial goals of the LMRDA. Were we to accept respondents' position, ERISA's anti-alienation provision would be inapplicable whenever a judgment creditor relied on the remedial provisions of a federal statute. Such an approach would eviscerate the protections of 206(d), and we decline to adopt so broad a reading of 514(d).

It is an elementary tenet of statutory construction that "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one . . . ." Morton v. Mancari, 417 U.S. 535, 550-551 (1974). We do not believe that congressional intent would be effectuated by reading the LMRDA's general reference to "other appropriate relief" as overriding an express, specific congressional directive that pension benefits not be subject to assignment or alienation. In our view, the two statutes are more persuasively reconciled by holding that the LMRDA determines what sort of judgment the aggrieved party may obtain, while ERISA governs the narrow question whether that judgment may be collected through a particular means - a constructive trust placed on the pension.

* * *

Editors’s Note: In footnote 17, the Court noted that the LMRDA has its own saving clause, providing that "except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under [any] other Federal law or law of any State." This provision, the Court noted, weighs against the contention that the LMRDA supersedes ERISA.