Washington and Lee Law Review

Volume 38 | Issue 4 Article 13

Fall 9-1-1981

Abstention under ERISA: Levy v. Lewis

COMMENTS

ABSTENTION UNDER ERISA: *LEVY V. LEWIS*

Congress enacted the Employee Retirement Income Security Act (ERISA)[1] to protect employees' benefit rights by establishing minimum standards for the regulation of certain private employee benefits plans.[2] Widespread abuses in the management of employee benefit plans, combined with the chaotic condition of state law governing benefit plans, often rendered promised benefits illusory.[3] In enacting ERISA, Congress sought to establish a comprehensive uniform scheme regulating covered employee benefit plans[4] to assure that such plans would be equitable, properly managed, and financially sound.[5] ERISA regulations on the operation and administration of covered plans[6] expressly preempt rele-

---

[1] Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified at 29 U.S.C. §§ 1001-1381 (1976)) [hereinafter referred to as ERISA or the Act]. *See generally* S. GOLDBERG, PENSION PLANS UNDER ERISA (1976).

[2] ERISA § 2(a), 29 U.S.C. § 1001(a) (1976); General Motors Corp. v. Buha, 623 F.2d 455, 459 (6th Cir. 1980) (ERISA enacted to protect employees' benefit rights).

ERISA covers private employee benefit plans, which include both employee welfare benefit plans and employee pension benefit plans. ERISA § 3(3), 29 U.S.C. § 1002(3) (1976). An employee welfare benefit plan is any plan, fund or program maintained by an employer which provides various non-income benefits, such as health care benefits, including benefits secured through the purchase of insurance. *Id.* at § 3(1), 29 U.S.C. § 1002(1). An employee pension benefit plan covers any plan, fund or program maintained by an employer and intended to provide retirement income or which results in the deferral of income. *Id.* at § 3(2)(A)(b), 29 U.S.C. § 1002(2)(A)(B).

[3] *See id.*; H.R. REP. No. 93-533, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4639, 4643. *See generally* Hutchinson and Ifshkin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 46 U. CHI. L. REV. 23, 23 (1976) [hereinafter cited as Hutchinson and Ifshkin]; Turza and Halloway, *Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 28 CATH. L. REV. 163, 165-66 (1978) [hereinafter cited as Turza and Halloway]; Comment, *The Employer Retirement Income Security Act of 1974: Policies and Problems*, 26 SYRACUSE L. REV. 539, 549 (1975) [hereinafter cited as *Security Act*].

[4] *See* note 2 *supra*.

[5] H.R. REP. No. 93-533, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4640.

[6] ERISA regulates employee benefit plans by specifying minimum standards for the operation and administration of covered plans. *Id., reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4639-43. ERISA regulates covered plans in the following four areas: participation and vesting, reporting and disclosure, funding, and fiduciary responsibility. ERISA specifies minimum vesting standards and strict participation requirements to clarify when an employee is entitled to participate in a plan and when an employee has a vested right to accrued benefits. ERISA §§ 201-11, 29 U.S.C. §§ 1051-61 (1976). ERISA also establishes requirements for reporting and disclosure to insure that plans are not mismanaged and that employees are aware of all rights under a plan. *Id.* §§ 101-111, 29 U.S.C. §§ 1021-31. A plan administrator must provide each participant and beneficiary with a summary description of

vant state law except for state law regulating insurance, banking or securities.[7]

The enforcement provisions of ERISA give the Secretary of Labor, as well as participants and beneficiaries of the benefit plans, broad remedies for redressing or preventing violations of the ERISA guidelines.[8] Congress intended to remove jurisdictional and procedural obstacles to the effective enforcement of ERISA by providing a full range of legal and equitable remedies.[9] Congress expressly entrusted general enforcement of ERISA to the federal district courts by granting federal courts exclusive jurisdiction over ERISA claims.[10] ERISA also provides that state and federal courts have concurrent jurisdiction in actions involving the contractual interpretation of a plan.[11] Under the concurrent jurisdiction provision, participants or beneficiaries of an ERISA

---

the plan, as well as his rights and obligations under ERISA. *Id.* §§ 101(a)(1), 102(a)(1), 104(b)(1), 29 U.S.C. §§ 1021(a)(1), 1022(a)(1), 1024(b)(1). ERISA specifies minimum funding levels to assure that covered plans are properly financed. *Id.* §§ 301-06, 29 U.S.C. §§ 1081-86. ERISA also imposes fiduciary duties on any person who exercises any discretionary authority or control over the management of a plan or the disposition of its assets. *Id.* §§ 3(21)(A), 401-14, 29 U.S.C. §§ 1002(21)(a), 1101-14. A fiduciary must discharge his duties solely in the interests of plan participants and beneficiaries. *Id.* §§ 403(c)(1), 404(a)(1), 29 U.S.C. §§ 1103(c)(1), 1104(a)(1). *See generally, Security Act*, note 3, *supra* at 556-80, 596-606, 660-66; Comment, *Who's Afraid of ERISA Wolf: § 405(d) and other Houses of Straw for Trustees Under the Employment Retirement Income Security Act of 1974*, 32 WASH. & LEE L. REV. 921 (1975).

[7] ERISA §§ 514(a), 514(2)(A), 29 U.S.C. §§ 1144(a), 1144(2)(A) (1976). Courts and commentators have affirmed that Congress intended ERISA to have broad preemptive effect. Murphy v. The Heppenstall Co., Nos. 80-1690, 80-1724, slip op. at 8 (3d Cir., filed Dec. 10, 1980) (ERISA wholly regulates and federalizes the pension field); Central States Fund v. Old Security Life Ins. Co., 600 F.2d 671, 676 (7th Cir. 1979) (ERISA preempts all state law related to covered plans); Hutchinson and Ifshkin, *supra* note 3, at 23, 24; Turza and Halloway, *supra* note 3, at 168-69.

Courts continue to narrow ERISA's preemptive scope. *See* AT&T v. Merry, 592 F.2d 118, 124 (2d Cir. 1979) (domestic relations law not preempted by ERISA, therefore, pension payments can be garnished for support payments); In Re Marriages of Lionberger, 97 Cal. App. 3d 56, 66, ___ Cal. Rptr. ___, ___ (1979) (ERISA does not preempt California's community property laws); Lukus v. Westinghouse Electric Corp., 419 F.2d 431, 445 (Pa. Super. 1980) (ERISA does not preempt Pennsylvania Human Relations Act forbidding sex discrimination).

[8] H.R. REP. No. 93-533, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4655.

[9] *Id.* Congress failed to articulate the legal and equitable remedies created by ERISA. Apparently, Congress presumed that the grant of federal jurisdiction would remove jurisdictional obstacles that had hindered the enforcement of pension plans under state law.

[10] *See* ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) (1976). United States District Courts have exclusive jurisdiction of ERISA civil actions brought by the Secretary of Labor, participants, beneficiaries, or fiduciaries except in actions involving interpretation of plan terms in which state courts have concurrent jurisdiction. *Id.*; *see* Tagliaferri v. Weiss Bros. Stores, Inc., 388 So. 2d 765, 767 (La. Supr. 1980).

[11] ERISA §§ 502(e)(1), 502(a)(1)(B), 29 U.S.C. §§ 1132(e)(1), 1132(a)(1)(B) (1976). Congress failed to articulate the policy reasons for granting concurrent jurisdiction. Congress intended ERISA's enforcement provisions to provide broad remedies for violations of the Act and to remove jurisdictional and procedural obstacles to effective enforcement of the Act.

plan can bring a civil action in state or federal court to receive benefits, enforce rights or clarify future benefit rights under the terms of a plan.[12] ERISA's grant of concurrent jurisdiction, however, can create conflicts between state and federal courts that, in effect, raise new procedural and jurisdictional obstacles to effective enforcement of ERISA.

In *Levy v. Lewis*,[13] the Second Circuit abstained from deciding an ERISA question,[14] and thereby denied the plaintiff access to a federal forum for an ERISA action. Appellee Lewis, the New York State Superintendent of Insurance, had instituted proceedings to liquidate Consolidated Mutual Insurance Company (CMIC) pursuant to a state court order.[15] Lewis terminated CMIC's retirees' benefit plans to preserve CMIC's assets for policyholders and general creditors.[16] While the proceedings were pending before the state referee,[17] Levy, a retired CMIC employee, brought suit in the Southern District of New York on behalf of similarly situated retirees.[18] Levy alleged that ERISA governed CMIC's benefit plans and that Lewis's termination of the plan violated ERISA.[19] Levy also alleged that by terminating the benefit plans, Lewis, as trustee of the plan, violated a fiduciary duty under ERISA.[20]

H.R REP. NO. 93-533, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4655. Although concurrent jurisdiction does not provide broader remedies under ERISA, Congress may have granted concurrent jurisdiction in order to promote access to both state and federal courts by aggrieved participants and beneficiaries seeking interpretation or enforcement of an ERISA plan.

[12] ERISA §§ 502(e)(1), 502(a)(1)(B), 29 U.S.C. §§ 1132(e)(1), 1132(a)(1)(B) (1976); *see* notes 9-10 *supra*.

[13] 635 F.2d 960 (2d Cir. 1980).

[14] *Id.* at 963.

[15] *Id.* at 962. On May 31, 1979, the New York Supreme Court appointed Lewis to liquidate CMIC as authorized by New York Insurance Law. *Id.*; N.Y. INS. LAW § 526 (McKinney) (1966). Article XVI of the New York Insurance Law delineates regulations for the rehabilitation, liquidation, conservation and dissolution of insurance companies. Section 526 authorizes the Superintendent of Insurance to petition the court for orders to liquidate. *Id.* Sections 517-24 adopted the Uniform Insurers' Liquidation Act. *Id.* §§ 517-24.

[16] 635 F.2d at 962. The Superintendent of Insurance is vested with title to all property and contracts of the insurance company in liquidation. N.Y. INS. LAW § 514 (McKinney) (1966). The Superintendent has the duty to liquidate the assets of the company for distribution to creditors. *Id.* §§ 514(1), 539, 545(1).

[17] After Lewis terminated the plans, Levy and four other retirees filed a Notice of Claim with Lewis, pursuant to § 544 of the New York Insurance Law, seeking to restore benefits under the employee benefit plan. 635 F.2d at 962. On October 19, 1979, Lewis denied the claims and instituted special proceedings in New York's Supreme Court to affirm his decision. *Id.* On November 19, 1979, the New York Supreme Court referred the proceedings to a state referee. *Id.*

[18] *Id.* Levy alleged that CMIC's benefit plans for retirees constituted an employee welfare benefit plan under ERISA § 3(1)(A), 29 U.S.C. § 1002(1)(A) (1976), and that Lewis' termination violated the terms of the plans. Levy sought to enforce the plan under ERISA's concurrent jurisdiction provisions. ERISA §§ 502(e)(1), 502(a)(1)(B), 29 U.S.C. §§ 1132(e)(1), 1132(a)(1)(B).

[19] 635 F.2d at 962; *see* note 18 *supra*.

[20] *Id.* Levy claimed that Lewis was a fiduciary under ERISA § 3(21), 29 U.S.C. § 1002(21) (1976) and that, therefore, Lewis's termination of the plan amounted to a breach of a fiduciary duty imposed by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

The federal district court dismissed the suit.[21] The district court held that in the event of an employer's insolvency, ERISA did not require the company to continue a plan which was funded annually out of operating revenue.[22]

On appeal, the Second Circuit affirmed the dismissal on different grounds.[23] The Second Circuit held that since there was a concurrent state proceeding, the district court should have abstained on Levy's first claim that termination of the benefit plan violated ERISA.[24] Since Congress had granted concurrent jurisdiction to enforce such claims[25] and the state liquidation proceeding involved related issues of plan interpretation, the Second Circuit held that abstention was proper to prevent disruption of the state proceeding.[26] The Second Circuit, however, held that abstention was improper on the fiduciary claim,[27] because ERISA vested exclusive jurisdiction over fiduciary claims in federal courts.[28]

---

[21] 635 F.2d at 962.

[22] *Id.*

[23] *Id.* at 963.

[24] *Id.*

[25] *Id.* at 963-67. Even though the alleged violation of an ERISA plan raised questions of federal law, the *Levy* court concluded that proper respect for state officials compelled deference to the concurrent jurisdiction of the state courts. *Id.* at 964; *see* notes 45-61 *infra*. The *Levy* court noted the McCarran-Ferguson Act, 15 U.S.C. §§ 1011, 1015 (1976), evinced a clear federal policy not to interfere with state regulation of insurance. 635 F.2d at 963-64. The concurring opinion, however, properly recognized that the McCarran-Ferguson Act does not preclude federal courts from adjudicating claims simply because insurance companies are involved. *Id.* at 970-71 (Mansfield, J., concurring).

[26] *Id.* at 963, *citing* Smith v. Metropolitan Prop. Liab. Ins. Co., 629 F.2d 757 (2d Cir. 1980). *Smith* held that federal courts should defer to state courts to determine the validity of an exclusionary clause in an insurance policy. 629 F.2d at 758-59. In *Smith*, the Second Circuit emphasized that the insurance industry is regulated primarily by the states. *Id.* at 761. The *Smith* court held that abstention is inappropriate unless a case involves both an unclear state law and significant state policy. *Id. Smith* indicates that the *Levy* court erred by abstaining absent unclear state law. *See* text accompanying notes 62-70 *infra*.

Only the federal courts have power to provide affirmative relief in cases of exclusive federal jurisdiction. McGough v. First Arlington National Bank, 519 F.2d 552, 555 (7th Cir. 1975). Abstention, therefore, is inappropriate on claims mandating exclusive federal jurisdiction. *See* Levy v. Lewis, 635 F.2d 960, 963 (2d Cir. 1980). Federal courts have refused to abstain in cases involving a breach of an ERISA fiduciary duty even though parties had initiated related state proceedings. Central States Fund v. Old Security Life Ins. Co., 600 F.2d 671, 674 (2d Cir. 1979); Marshall v. Chase Manhattan Bank, 558 F.2d 680, 684 (2d Cir. 1977); *see* text accompanying notes 27 & 28 *infra*.

The Supreme Court has recognized that a pending state proceeding is not sufficient grounds to justify abstention in actions that allow concurrent jurisdiction. Colorado River Water Cons. District v. United States, 424 U.S. 800, 813-17 (1976). Only exceptional circumstances will justify federal abstention due to a concurrent state proceeding. *Id.* at 817-818; Kraftsman Container Corp. v. Finkelstein, 461 F. Supp. 245, 252-53 (E.D.N.Y. 1978); C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4247 (1978) [hereinafter cited as WRIGHT, MILLER & COOPER]. The decision whether to defer to the concurrent jurisdiction of the state court is in the discretion of the district court. Will v. Calvert Fire Ins. Co., 437 U.S. 655, 662-63 (1978).

[27] 365 F.2d at 967.

[28] ERISA vests exclusive jurisdiction in federal courts to enforce claims for breach of a

The abstention doctrine is a narrow exception to the duty of the federal courts to adjudicate a controversy properly before the court.[29] The United States Supreme Court has limited the circumstances appropriate for abstention to three general categories.[30] In *Railroad Commission of Texas v. Pullman Co.*,[31] the Supreme Court recognized that abstention was appropriate in cases presenting a federal constitutional issue that might be mooted by a state court determination of relevant state law.[32] In *Burford v. Sun Oil Co.*,[33] the Court abstained to avoid conflicts in the interpretation of state law which might endanger important state policies.[34] Subsequent cases have expanded *Burford* to justify abstention to avoid federal interference with specialized state regulatory schemes.[35] In *Younger v. Harris*,[36] the Court held that a federal court should abstain from issuing an injunction that would interfere with

---

fiduciary duty imposed by ERISA. *See* ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) (1976); note 10 *supra*. Federal courts may not abstain from claims mandating exclusive jurisdiction because only the federal courts have power to provide affirmative relief on such claims. McGough v. First Arlington National Bank, 519 F.2d 552, 555 (7th Cir. 1975). In cases alleging breach of a fiduciary duty under ERISA, the Second Circuit has refused to defer to a concurrent state proceeding. Central States Fund v. Old Security Life Ins. Co., 600 F.2d 671, 674 (2d Cir. 1979); Marshall v. Chase Manhattan Bank, 558 F.2d 680, 684 (2d Cir. 1977); Morrisey v. Curran, 567 F.2d 546, 549 (2d Cir. 1977).

[29] Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 813 (1975); County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-89 (1959). In *Cohens v. Virginia*, Justice Marshall first stressed the obligation of the federal courts to exercise the jurisdiction given them. 19 U.S. (6 Wheat.) 264, 404 (1821) (dictum). Generally, a concurrent state proceeding does not bar the federal courts from exercising jurisdiction over the same subject matter. McClellan v. Carland, 217 U.S. 268, 282 (1910); *see* note 26 *supra*.

[30] Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 814-17 (1975).

[31] 312 U.S. 496 (1941).

[32] *Id.* at 501. In *Pullman*, the Court refused to adjudicate the constitutionality of a Texas Railroad Commission order before a state court determination of the issue. *Id.* at 500. The Court concluded that respect for state court independence warranted abstention to avoid conflict between state and federal authorities. *Id. See generally* P. BATOR, P. MISHKIN, D. SHAPIRO & H. WECHSLER, HART AND WECHSLER'S THE FEDERAL COURTS AND FEDERAL SYSTEM, 980-1009 (2d ed. 1973) [hereinafter cited as HART AND WECHSLER].

[33] 319 U.S. 315 (1943).

[34] *Id.* at 334. In *Burford*, the Sun Oil Co. brought an action in a federal district court to attack an order of the Texas Railroad Commission granting Burford a permit to drill four wells in East Texas. *Id.* at 316-17. The Texas legislature had provided that the Commission's orders were reviewable exclusively in the state district courts in Travis County. *Id.* at 326. After invoking federal diversity jurisdiction, the federal district court dismissed the action. *Id.* at 316. On certiorari, the Supreme Court held that the federal district court should have declined to exercise jurisdiction as a matter of sound equitable discretion. *Id.* at 317-318. Justice Black's majority opinion underscored the thorny complexities of oil and gas regulation and the import of the regulations to Texas policy. *Id.* at 318, 325. By abstaining, the federal district court avoided conflicts in interpretation of state law which could endanger state policy. *Id.* at 334.

[35] Colorado River v. United States, 424 U.S. 800, 812-15 (1975) (*Burford* authorizes abstention to avoid federal interference in matter of substantial state concern); County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 189 (1959) (*Burford* authorizes abstention to avoid federal interference with state administrative process).

[36] 401 U.S. 37 (1971).

a pending state criminal prosecution.[37] Subsequent cases have expanded *Younger* to require abstention in civil actions if the pending state proceeding involves a vital state interest.[38]

Additionally, in cases in which abstention is inappropriate, wise judicial administration can warrant federal deference to a concurrent state proceeding in exceptional circumstances.[39] In *Colorado River v. United States*,[40] the Supreme Court recognized that principles unrelated to federal-state relations can support federal deference to a concurrent state proceeding.[41] The Supreme Court emphasized that only exceptional reasons of judicial administration permit a federal court to defer to a concurrent state proceeding.[42] The Court indicated that conservation of judicial resources and expeditious disposition of litigation are the fundamental considerations underlying judicial dismissal.[43] Inconvenience of the federal forum, avoidance of piecemeal litigation, and the extent of the state proceeding are also pertinent factors in considering whether dismissal is appropriate.[44]

---

[37] *Id.* at 54. In *Younger* the Supreme Court held that the possible unconstitutionality of a state statute does not justify a federal injunction against a state's attempt to enforce the statute, absent bad faith or harrassment. *Id.* The Supreme Court noted that the defendant would have an opportunity to raise constitutional claims in the pending state criminal proceeding. *Id.* at 45.

[38] The Supreme Court recently extended *Younger* to prevent federal interference with a pending state child custody proceeding. Moore v. Sims, 442 U.S. 415, 423-24 (1979). In *Sims*, the Supreme Court noted that the *Younger* doctrine also applied to civil proceedings in aid of and closely related to criminal statutes. *Id.* at 423, *citing* Huffman v. Pursue Ltd., 420 U.S. 592, 604 (1975). Prior to *Sims*, the Court had held abstention appropriate if the state proceeding involved a vital state interest, Juidice v. Vail, 430 U.S. 327, 335 (1977), or vindicated an important state policy, Trainor v. Hernandez, 431 U.S. 434, 444 (1977). *See generally*, HART AND WECHSLER, *supra* note 32, at 281 (Supp. 1981); WRIGHT, MILLER & COOPER, *supra* note 26, at §§ 4452-4454.

[39] Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 817 (1975). *See generally*, WRIGHT, MILLER & COOPER, *supra* note 26, at § 4247.

[40] 424 U.S. at 817. *See* Abrams, *Reserved Water Rights, Indian Rights and the Narrowing Scope of Federal Jurisdiction: The* Colorado River *Decision*, 30 STAN. L. REV. 1111, 1122 (1978).

[41] 424 U.S. 800 (1975). In *Colorado River*, the United States sought a declaration of the Government's rights to waters in certain Colorado rivers. *Id.* at 805. The Government also claimed the waters as trustee for certain Indian tribes. *Id.* Subsequently, one of the water-users and a defendant in the Government's case filed suit in state court under the Colorado's Water Rights Determination and Administration Act, which has complex regulations for establishing and enforcing water rights. *Id.* at 804-05. The federal district court held that the abstention doctrine required deference to the state proceeding. *Id.* at 805. The circuit court reversed, holding that 28 U.S.C. § 1345 established federal jurisdiction and that abstention was not appropriate. 504 F.2d 115, 119 (1974). On certiorari, the Supreme Court held that although the abstention doctrine was not applicable, the dismissal was appropriate for purposes of wise judicial administration. 424 U.S. 800, 817.

[42] 424 U.S. at 817. *See* WRIGHT, MILLER & COOPER, *supra* note 26, at § 4247.

[43] *Id.* at 818.

[44] *Id.* at 818-20. In *Colorado River*, the Supreme Court emphasized that no one factor is determinative for dismissal. *Id.* at 818. The federal courts must weigh the obligation to exer-

In *Levy*, the Second Circuit relied on *Burford*, *Younger*, and *Colorado River* to justify abstention.[45] The *Levy* court interpreted *Burford* expansively to require abstention in order to avoid federal interference with a specialized state administrative scheme involving important state policy.[46] The *Levy* court noted that New York State has a complex system for liquidating insurance companies,[47] as well as an unusual interest in the liquidation of insurance companies.[48] The Second Circuit abstained to avoid interfering with the liquidation proceeding.[49] Even though *Levy* involved a purely federal question,[50] the Second Circuit declined to interfere with a state administrative decision that might have created inequities in the administration of a state scheme.[51]

The Second Circuit also justified abstention under the *Younger* doctrine.[52] The *Levy* court recognized that the Supreme Court has not extended the *Younger* rationale for abstention to a proceeding as remote from the criminal process as an insurance company liquidation.[53] Never-

---

cise jurisdiction with the pertinent factors which support deference to the concurrent state proceeding. *Id.*

[45] 635 F.2d at 965.

[46] *Id.* at 963. In *Burford*, the Supreme Court recognized that federal court decisions which misapplied complex state law had created needless conflicts with specialized state schemes. 319 U.S. at 327-29.

[47] 635 F.2d at 963; *see* notes 15-16 *supra*.

[48] *Id.* The Second Circuit reasoned that the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (1976) evinced a federal policy of state regulation of insurance companies. *Id.* The Second Circuit emphasized that in the liquidation proceedings the claims of policyholders are adjusted by reinsuring existing policies from a state fund. *Id.*

[49] *Id.* at 964. The Second Circuit stressed the importance of consolidating all assets and claims of an insolvent insurance company in a single forum. *Id.* (citing *Motlow v. Southern Holding & Securities Corp.*, 95 F.2d 721, 725-26 (8th Cir.), *cert. denied* 305 U.S. 609 (1938)). In *Motlow*, however, the court was concerned only with the consolidation of assets in a single forum. 95 F.2d at 725-26. In *Levy*, the Second Circuit noted that an unfunded benefit plan did not constitute an asset. 635 F.2d at 968.

[50] ERISA preempts all state law relating to employee benefit plans. ERISA §§ 514(a), 514(2)(A), 29 U.S.C. §§ 1144(a), 1144(2)(A) (1976). Whether a qualified ERISA plan existed and whether termination of the plan following insolvency violated ERISA guidelines are purely federal questions. *See* note 6 *supra*.

[51] Levy v. Lewis, 635 F.2d 960, 964. The Second Circuit concluded that the superintendent should make the initial determination of whether an ERISA plan existed and its status in liquidation, with review available in the state courts. *Id.*

[52] *Id. See* text accompanying notes 37-38 *supra*. Under the *Younger* doctrine, federal courts cannot interfere with a pending state criminal prosecution absent compelling circumstances. 401 U.S. 37, 49 (1971). *See generally* WRIGHT, MILLER & COOPER, *supra* note 26, at §§ 4253-55. Federal injunctive relief is justified only on a showing of bad faith, harassment, or any unusual circumstances necessitating equitable relief. 401 U.S. at 53-54. The Supreme Court has extended the *Younger* types of abstention to civil proceedings involving vital state interests. Juidice v. Vail, 430 U.S. 327, 335 (1977). In Moore v. Sims, 442 U.S. 415, 423 n.8 (1979), the Supreme Court relied on *Younger* to abstain to a state child custody proceeding, but disclaimed the applicability of *Younger* to civil proceedings absent a compelling state interest. *See generally* WRIGHT, MILLER & COOPER, *supra* note 26, at § 4254 (Supp. 1980).

[53] 635 F.2d at 965.

theless after determining that the liquidation proceeding involved vital state interests, the Second Circuit reasoned that the principles of comity[54] and federalism[55] underlying *Younger* justified federal deference to the pending state proceeding.[56] The Second Circuit held that *Younger* supported abstention to allow the states to enforce important state interests in state courts.[57]

The Second Circuit further justified dismissal on principles of wise judicial administration[58] derived from *Colorado River*.[59] The Second Circuit held that the concurrent liquidation proceeding created exceptional circumstances warranting dismissal for reasons of judicial administration.[60] The Second Circuit deferred to the state proceeding to allow the Superintendent to consolidate all claims in one forum, avoid duplicative or piecemeal litigation, and promote the federal policy of state regulation of insurance.[61]

The Second Circuit improperly abstained from exercising concurring jurisdiction to decide Levy's ERISA claim. Neither *Burford*, *Younger*, nor *Colorado River* support federal abstention in *Levy*.[62] By failing to recognize that the status of an employee benefit plan in a liquidation proceeding is primarily a federal concern[63] that is separable from the state

---

[54] Comity reflects the federal courts' respect for the power and ability of state courts to uphold and enforce the Constitution. *See* Steffel v. Thompson, 415 U.S. 452, 460-61 (1974). Comity requires a federal court not to interfere with an action in state court. McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Protections*, 60 VA. L. REV. 1, 45 (1974).

[55] Federalism requires that the federal courts protect federal rights and federal interests without undue interference in the legitimate activities of the state. Younger v. Harris, 401 U.S. 37, 44 (1971).

[56] 635 F.2d at 965. The Supreme Court has recognized that comity demands a strong federal policy against federal intervention in the state judicial processes in the absence of irreparable injury to the federal plaintiff. Moore v. Sims, 442 U.S. 415, 423 (1979). Comity warrants federal deference to state civil proceedings involving vital state interests to prevent the displacement of the state courts by the federal courts. *Id.*

[57] 635 F.2d at 965.

[58] *See* text accompanying notes 39-44 *supra*.

[59] 424 U.S. 800 (1975).

[60] 635 F.2d at 965.

[61] *Id.*

[62] *See* text accompanying notes 63-83 *infra*.

[63] ERISA's preemption provision, which preempts all relevant state law, underscores the superior federal interest in the regulation of employee benefit plans. ERISA § 514(a), 29 U.S.C. § 1144(a) (1976); *see* note 6 *supra*. In *Marshall v. Chase Manhattan Bank*, the Second Circuit noted no discernible state interest in pension plan litigation. 580 F.2d 680, 684 n.6 (2d Cir. 1977). In *Marshall*, the Second Circuit reversed the district court's dismissal of an action against the trustee of an ERISA plan. *Id.* at 680. Even though related claims were pending in state court, the Second Circuit held abstention improper because ERISA provided that federal courts have exclusive jurisdiction over fiduciary claims and preempted all state law related to ERISA plans. *Id.* at 684. The Second Circuit ruled that no issue of comity or federalism supporting abstention arises unless federal constitutional issues are pending before the state court. *Id.*

interest in insurance company liquidation,[64] the Second Circuit miscast the potential federal-state conflict resulting from concurring jurisdiction.[65] New York State law protects all policyholders, general creditors, and employees of liquidated insurance companies but does not address the status of ERISA claims.[66] Whether the termination of Levy's benefits violated ERISA does not depend on state law but requires interpretation of a complex federal statute evincing important federal policy.[67] The exercise of federal jurisdiction to clarify Levy's rights under ERISA, therefore, would have resolved unsettled issues of federal law that are independent of the liquidation proceeding. Furthermore, although New York has a comprehensive scheme for the liquidation of insurance companies, the Uniform Insurance Liquidation Act adopted by New York[68] does not create a specialized or complex administrative

---

[64] The status of an employee benefit plan in a liquidation proceeding is dependent upon the interpretation of a federal statute which reflects a compelling federal interest. ERISA evinces a federal policy to protect the interests of participants and beneficiaries in ERISA plans and provide ready access to federal courts. ERISA § 2(b), 29 U.S.C. § 1001(b) (1976).

The *Levy* court noted that the McCarran-Ferguson Act mandates regulation of insurance companies by the individual states. 635 F.2d at 963. An express provision in the Act provides that no act of Congress shall impair or supersede any state law for the purpose of regulating the business of insurance. 15 U.S.C. § 1012(b) (1976). ERISA affirms the policy of the McCarran-Ferguson Act by providing that ERISA does not alter existing federal law. ERISA § 514(d), 29 U.S.C. § 1144(d) (1976). Congress also chose not to preempt any state law which regulates insurance, banking or securities. *Id.* at § 514(a)(2)(B), 29 U.S.C. § 1144(a)(2)(A). State regulation of insurance companies is not preempted by ERISA. State law regulating insurance, however, may have an indirect yet profound effect on employee benefit plans. *See* Note, *ERISA Preemption and Indirect Regulation of Employee Welfare Plans Through State Insurance Law*, 78 COLUM. L. REV. 1536, 1537 (1978). As Judge Mansfield properly recognized in his concurring opinion in *Levy*, the McCarran-Ferguson Act does not suggest that federal courts abstain from exercising concurrent jurisdiction over any claim involving a regulated insurance company. 635 F.2d at 970-71 (Mansfield, J., concurring). Furthermore, the establishment of ERISA claims will not affect the claims of other creditors of CMIC since the creditors' claims are guaranteed by the New York Security Fund. *Id.* at 971. The ERISA claims, therefore, are independent of the outcome of the liquidation proceeding. *Id.*

[65] Considerations of federalism are a fundamental basis for abstention. WRIGHT, MILLER & COOPER, *supra* note 26, at § 4241. Principles of federalism require federal deference to state court proceedings to preserve harmonious federal-state relations. *Id.* § 4241 n.45. Whether the exercise of concurrent jurisdiction will disrupt federal-state relations, therefore, depends in part on the characterization of the respective state and federal interests in the concurrent proceedings.

[66] The New York Insurance Law provides priority status for past wages due an employee. N.Y. INS. LAW § 537 (McKinney) (1966). The law, however, does not define "wages." Under the Bankruptcy Reform Act of 1978, pension plan benefits are treated as wages. 11 U.S.C. § 507(4) (Supp. 1978) (overruling United States v. Embassy Restaurant, 359 U.S. 29 (1959)). Insurance companies, however, are exempt from the Bankruptcy Reform Act. 11 U.S.C. §§ 109 & 301 (Supp. 1978).

[67] *See* notes 6, 63, & 64 *supra*.

[68] N.Y. INS. LAW §§ 517-24 (McKinney) (1966); *see* notes 15-16 *supra*.

scheme.[69] Absent a complex administrative scheme or a state proceeding of vital state interest, even a broad interpretation of *Burford* or *Younger* will not support abstention.[70] Neither *Burford* nor *Younger* support federal deference to state courts on issues of unsettled federal law that are independent of the concurrent state proceeding.

Levy does not present the exceptional and limited circumstances necessary for a judicial dismissal under *Colorado River*.[71] Adjudication of Levy's ERISA claim would not result in duplicative or piecemeal litigation since the ERISA claims do not depend on the outcome of the state liquidation proceeding.[72] Unlike the claim in *Colorado River*,[73] resolution of the federal claim in *Levy* would not generate additional litigation by permitting inconsistent dispositions of property.[74] Nor would adjudication undermine the federal policy of state regulation of insurance since the ERISA claim involves the status of an employee benefit plan and not the regulation of insurance.[75] By ruling on the merits, the Second Circuit would expedite the disposition of the case by aiding the state referee in the proper application of an oblique and complex federal statute. Although abstention allows the Superintendent to consolidate all claims against the insolvent insurance company, the Uniform Insurers Liquidation Act does not create a right to an exclusive forum.[76] Consolidation of claims, therefore, should not excuse a federal court from exercising congressionally granted jurisdiction.[77]

Finally, considerations of judicial administration support the exercise of concurrent jurisdiction by the Second Circuit due to the interrelated nature of Levy's ERISA claims. A proper resolution of a fiduci-

---

[69] The Uniform Insurance Liquidation Act has been adopted by 32 states. Central States Fund v. Old Security Life Ins. Co., 600 F.2d 671, 673 n.3 (7th Cir. 1979).

[70] *See* text accompanying notes 33-38 *supra*.

[71] *See* text accompanying notes 41-44 *supra*. Since a dismissal based on wise judicial administration is unrelated to regard for federal-state relations, only exceptional circumstances will permit federal courts to abstain from the obligation to exercise jurisdiction given them. Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 817 (1975); *see* notes 39-44 *supra*.

[72] *See* text accompanying note 64 *supra*.

[73] *See* 424 U.S. at 819.

[74] Levy's claim, if allowed, would not adversely affect CMIC's policyholders, since policyholder claims are guaranteed by the New York Security Fund. 635 F.2d at 971.

[75] *See* text accompanying note 64 *supra*.

[76] The Uniform Insurers Liquidation Act expressly authorizes separate claims proceedings in states adopting the Act. N.Y. INS. LAW §§ 518, 519 (McKinney) (1966); Central States Fund v. Old Security Life Ins. Co., 600 F.2d 671, 677 (7th Cir. 1979). The Act, therefore, presumes multiple forum actions.

[77] In *Dempsey v. Pink*, the Second Circuit asserted jurisdiction to determine the validity of liens over funds of an insurance company in liquidation, even though the insurance company was being liquidated in state court. 92 F.2d 572, 572 (2d Cir. 1937). The Second Circuit held federal jurisdiction proper to establish the status of the liens in the liquidation proceedings where the determination would not interfere with the possession of the fund in state court. *Id.* at 573.

ary claim under ERISA depends in part on the type of retirees' benefit plan involved.[78] ERISA covers both retirement plans[79] and welfare benefit plans.[80] Levy argued that CMIC's retiree plan constituted a retirement plan.[81] If CMIC's plans are retirement plans, a plan administrator may not decrease accrued benefits without the approval of the Secretary of Labor.[82] The characterization of a plan, therefore, is essential to the determination of Superintendent Lewis's role and obligations in the plan termination. If the court deemed the superintendent to be a plan administrator[83] with the power to amend benefit plans, the amendment of a retirement plan would violate ERISA unless approved by the Secretary of Labor. A full inquiry into a fiduciary issue under ERISA, therefore, is dependent in part on the characterization of the benefit plan. By abstaining, the Second Circuit risked improper resolution of Levy's fiduciary claim.[84] Federal courts should resolve interdependent federal claims in the same forum to preserve judicial resources and to dispose comprehensively of litigation.[85]

Abstention is a narrow and extraordinary exception to the duty of the federal courts to exercise congressionally granted jurisdiction.[86] Federal courts should abstain only to avoid interfering with state efforts to deal with problems of great public import.[87] By abstaining improperly,

---

[78] *See* text accompanying notes 78-83 *infra*.

[79] ERISA § 3(2)(A)(B), 29 U.S.C. § 1002(2)(A)(B) (1976); *see* note 2 *supra*.

[80] *Id.* § 3(1), 29 U.S.C. § 1002(1); *see* note 2 *supra*.

[81] CMIC's retiree benefit plans provided retirees with various insurance benefits, including group life insurance, medical and health insurance and major medical coverage. The benefits were provided through insurance policies held by CMIC on which CMIC paid premiums annually out of general operating revenues. Levy v. Lewis, 635 F.2d 960, 962 (2d Cir. 1980). Levy's plan, therefore, appears to be a welfare benefit plan rather than a retirement plan. The Second Circuit, however, referred to the Levy plan as a retirement plan, although such a haphazard reference should not be dispositive. *See id.* at 963.

[82] ERISA §§ 204(g), 302(c)(8), 29 U.S.C. §§ 1054(g), 1082(c)(8) (1976). ERISA's vesting and participation requirements do not apply to welfare benefit plans. *Id.* § 201(1), 29 U.S.C. § 1051(1).

[83] *Id.* § 3(16), 29 U.S.C. § 1002(16).

[84] Under ERISA, any person who exercises any discretionary authority or control over the management of a plan or the disposition of its assets is a fiduciary. *Id.* § 3(21)(A), 29 U.S.C. § 1002(21)(A). A fiduciary must exercise his discretion solely in the interest of plan participants and beneficiaries. *Id.* §§ 403(c)(1), 404(a)(1), 29 U.S.C. §§ 1103(c)(1), 1104(a)(1)(3). The *Levy* court, therefore, held that Lewis was not a fiduciary because of his statutory obligations as liquidator to consolidate and distribute assets for the benefit of all policy holders and creditors, and not exclusively for the benefit of plan participants. 635 F.2d 960, 967-68. *But see* Kaleidoscope, Inc. Profit Sharing Plan v. Scroggino, Pension Reporter (BNA) No. 306, D1-D2 (Trustee in bankruptcy a fiduciary under ERISA).

[85] The notion that resolution of interdependent claims in one forum promotes judicial economy underlies both ancillary and pendant jurisdiction. *See generally,* WRIGHT, MILLER & COOPER, *supra* note 26, at §§ 3523 & 3562.

[86] County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-89 (1959); *see* text accompanying notes 39-44 *supra*.

[87] Smith v. Metropolitan Property & Liability Ins., 629 F.2d 757, 761-62 (1980) (Mansfield, J., dissenting) (citing Colorado River v. United States, 424 U.S. 800, 814 (1976)).

the Second Circuit denied Levy any access to a federal forum to enforce an ERISA claim.[88] Courts should consider the congressional purpose behind the grant of federal jurisdiction before declining to exercise that jurisdiction.[89] Congress did not intend ERISA's grant of concurrent jurisdiction to close federal courts to protected individuals who have not initiated an action in state court,[90] or to prevent the adjudication of interdependent claims in one forum.[91] By abstaining, the *Levy* court seriously undermined the creation of a uniform scheme regulating employee benefit plans by leaving important interpretations of a federal statute to state courts without review in federal courts.[92] If the federal courts rely on *Levy* to avoid the exercise of federal jurisdiction, retirees and employees, dependent on benefit rights in ERISA plans, may lose promised benefits in terminated plans without access to a federal forum to vindicate their rights.[93]

W. IAN LAIRD

See generally Dombrowski v. Pfister, 380 U.S. 479, 492 (1965); Cheesman v. Carey, 485 F. Supp. 203, 216 (D.C.N.Y. 1980) (absent exceptional circumstances pending state proceeding no bar to federal jurisdiction over same subject matter); Zeigler, *An Accommodation of the Younger Doctrine And The Duty of The Federal Courts to Enforce Constitutional Safeguards In The State Criminal Process*, 125 U. PA. L. REV. 266, 278-79 (1976).

[88] By abstaining, the federal courts must assume that the state courts will resolve the controversy. If the action returns to federal court, res judicata or collateral estoppel should bar the federal suit. WRIGHT, MILLER & COOPER, *supra* note 26, at § 4247. Under *Burford* type abstention, after a federal court defers to state court, res judicata will bar a party from having the federal district court decide the issue. Baltimore Bank v. Farmers Cheese Corp., 583 F.2d 104, 108 (3d Cir. 1978) *citing* M. Field, *Abstention in Constitutional Cases: The Scope of the Pullman Doctrine*, 122 U. PA. L. REV. 1071, 1153-54 (1974); *see* Alabama PSC v. Southern Ry., 341 U.S. 341 (1951). The Second Circuit has affirmed that res judicata effect may attach to determinations of administrative agencies. Mitchell v. National Broadcasting Co., 553 F.2d 265, 268 (2d Cir. 1977).

[89] Alabama PSC v. Southern Ry., 411 U.S. 341, 360-62 (1951) (Frankfurter, J., dissenting) (abstention improper if conflict with congressional intent).

[90] *See* note 64 *supra.*

[91] *See* text accompanying notes 8-11 *supra.*

[92] *See* note 88 *supra.*

[93] Congress recognized the potentially devastating impact of termination of retirement plans on retirees and enacted provisions to cover voluntary and involuntary termination and provide plan termination insurance. 29 U.S.C. § 1301-80 (1976). ERISA establishes a United States government corporation, the Pension Benefit Guaranty Corp. (PBG), to administer a self-insured pension plan termination program. *Id.* §§ 1301-81. The PBG guarantees payment of a certain percentage of vested benefits for terminated plans. *Id.* at § 1322. To be covered, the employer must pay PBG an annual premium. *Id.* at § 1307. ERISA imposes liability upon employers who terminate a plan and cause PBG to be liable for the guaranty. *Id.* at § 1362. An employer can insure against contingent liability with optional additional insurance coverage. *Id.* at § 1323.