ERISA: To Sue or Not to Sue-A Question of Statutory Standing

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Congress passed the Employee Retirement Income Security Act of 1974 (ERISA) in response to the tremendous expansion in numbers, scope, coverage, and abuse of employee benefit plans. ERISA provides a comprehensive set of rules “to assure equitable and fair administration” of these benefit plans. The rules were designed to establish new rights and safeguards for workers in such areas as vesting of benefits, funding of pension plans, and fiduciary duties.

Section 502 of ERISA provides for the administration and enforcement of the Act. Subsection (a) of this section, entitled “Persons empowered to bring a civil action,” has been the subject of considerable debate and is the focus of this Note. Sec-

2. “From 1969 to 1970, rapid growth of the private pension system resulted in approximately 30 million workers, comprising 48% of the work force, being covered by private pension plans in 1970.” M. Stokes & L. Fox, Employers’ Guide to the Employee Retirement Income Security Act of 1974 (ERISA) 1 (1976) (available from Stokes & Shapiro, Attorneys-at-Law, 3920 First National Bank Tower, Atlanta, Georgia 30303). This rapid growth was accompanied by problems. Many workers lost their benefits when they left jobs, even after long service. Companies shut down and, due to insufficient funds in their pension plans, were unable to pay their employees promised pension benefits. Pension funds were irresponsibly invested. See id. at 1-2.
5. ERISA § 502(a), 29 U.S.C. § 1132(a) (1982) in its entirety provides:
§ 502. CIVIL ENFORCEMENT
(a) A civil action may be brought—
(1) by a participant or beneficiary—
(A) for the relief provided for in subsection (c) of this section, or
(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;
(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to
tion 502(a) provides, in pertinent part, that persons empowered to bring a civil action under ERISA include plan participants,6 beneficiaries,7 fiduciaries,8 and the Secretary of Labor.9

This Note examines the conflicting authority regarding the scope of section 502(a) of ERISA. There is a fundamental split among the United States Courts of Appeals concerning whether parties not specifically enumerated in section 502(a) have stand-

redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

6. "Participant" is defined as:
any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.


7. "Beneficiary" is defined as:
a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.


8. "Fiduciary" is defined as:
(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 405(c)(1)(B) of this title.

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this subchapter, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment advisor, or principal underwriter by any other law.


9. "Secretary" is defined as the Secretary of Labor. ERISA § 3(13), 29 U.S.C. § 1002(13) (1982).
ing to bring civil actions to enforce ERISA's provisions. The Ninth Circuit has held consistently that non-enumerated parties are entitled to sue under ERISA. The Second Circuit, however, repeatedly has held that parties not explicitly specified in section 502(a) do not have standing to bring an action under the Act. This Note addresses the question of whether employers

10. In Fentron Indus., Inc. v. National Shopmen Pension Fund, 674 F.2d 1300 (9th Cir. 1982), the Ninth Circuit held that the plaintiff-employer, a non-enumerated party, had standing to sue the defendant-pension fund for violations of ERISA. 674 F.2d at 1304. In Fentron, an employer who withdrew from a pension plan brought suit against the fund and its trustees for failing to pay vested pension benefits, for cancelling the past service credits of all Fentron employees, and for offering to restore cancelled past credits to employees who would leave Fentron and work for a contributing employer. Id. The court rejected the defendants' argument that the employer lacked standing to sue for enforcement of ERISA's provisions because it did not fall within one of the four classes of persons enumerated in section 502(a). Id. at 1305.

See also Award Serv., Inc. v. Northern Cal. Retail Clerks Pension Fund, 763 F.2d 1066 (9th Cir. 1985) (holding that employer had standing to sue to recover $167,000 in mistaken contributions to pension fund); Peoria Union Stock Yards Co. Retirement Plan v. Penn Mutual Life Ins. Co., 698 F.2d 320, 326 (7th Cir. 1983) (Judge Posner holding that although pension plans as such do not have standing to sue under the securities laws, "ERISA confers on pension plans standing to sue for breach of fiduciary obligations under ERISA"). Michigan United Food & Commercial Workers' Unions v. Baerwaldt, 572 F. Supp 943 (E.D. Mich. 1983) (holding that fund had standing to sue to obtain declaratory judgment that a Michigan insurance statute was preempted by ERISA as impermissibly dictating terms of an employee benefit plan), rev'd on other grounds, 767 F.2d 308 (6th Cir. 1985); Building Serv. Pension v. Horseman's Quarter Horse Racing Ass'n, 98 F.R.D. 458 (N.D. Cal. 1983) (holding that employer had standing to sue to prevent fund from compelling production of certain employee information for purpose of determining if employees subject to forfeiture of pension payments).

11. In Pressroom Unions-Printers League Income Sec. Fund v. Continental Assurance Co., 700 F.2d 889 (2d Cir.), cert. dismissed, 463 U.S. 1233, cert. denied, 464 U.S. 845 (1983), the Second Circuit held that an employee benefit plan, as a non-enumerated party, did not have standing to bring an action for breach of fiduciary responsibility under ERISA. Id. at 892. The benefit plan in Pressroom was created pursuant to a collective bargaining agreement to provide life insurance and other fund benefits to participants. The fund alleged that the defendant insurance company, which had underwritten all the life insurance for the fund, perpetrated a fraudulent scheme to extract millions of dollars in exorbitant premiums from it. Id. at 891.


12. This Note will limit its discussion to the question of standing of employers qua employers and pension funds qua pension funds. Many cases, however, have held that a plaintiff's role as an employer, or as a pension fund, is inseparable from its role as a fiduciary. See Great Lakes Steel, Div. of Nat'l Steel Corp. v. Deggendorf, 716 F.2d 1101 (6th Cir. 1983) (holding that an employer in a fiduciary capacity has standing to sue); United States Steel Corp. v. Pennsylvania Human Relations Comm'n, 669 F.2d 124 (3d
and pension funds,\textsuperscript{13} as non-enumerated parties, have standing under ERISA.\textsuperscript{14}

Part I of this Note discusses generally the concept of standing to sue. Part II analyzes the language and structure of section 502 of ERISA in light of judicial canons of construction, and concludes that Congress did not intend the statute to preclude an employer and/or a pension fund from bringing an action to enforce its provisions. Part III examines the legislative history underlying section 502 and determines that Congress did not intend to leave employers and pension funds without redress under ERISA. Finally, Part IV considers other relevant statutes and construes section 502(a) in light of these other statutes. After examining the conflicting legal precedents interpreting section 502(a), the language and the history of ERISA, and statutes similar to ERISA, this Note concludes that Congress did not intend section 502(a) to be exclusive and defends the position that

\textsuperscript{13} This Note will use the terms “pension fund,” “fund,” “plan,” and “pension plan” interchangeably to refer to any and all of the employee benefit plans ERISA covers.

\textsuperscript{14} There is a question as to whether other non-enumerated parties have standing to bring an action under ERISA. See, e.g., Utility Workers Union v. Consumers Power Co., 453 F. Supp. 447, 450 (E.D. Mich. 1978) (holding that a union lacks standing to sue), aff’d, 637 F.2d 1082 (6th Cir.), vacated and remanded on other grounds, 451 U.S. 1014 (1981), rev’d, 663 F.2d 1074 (6th Cir. 1981); Hibernia Bank v. International Bhd. of Teamsters, 411 F. Supp. 478, 488 (N.D. Cal. 1976) (holding that a bank with which trusts had commercial accounts lacks standing to sue).
employers and pension funds, collectively, have statutory standing to sue under the Act.

I. STANDING TO SUE GENERALLY

Entry into the federal courts is limited by statutory, constitutional, and prudential considerations. These issues are frequently consolidated by the courts and are considered as a single question of "standing to sue." Failure to separate these dimensions of standing has resulted in an inconsistent body of law in this area. Thus, for purposes of exposition, this Note divides the issue of standing to sue under ERISA into its statutory, constitutional, and prudential components, focusing principally on statutory standing.

A comprehensive analysis of constitutional and prudential standing is beyond the scope of this Note. These dimensions of standing, however, merit brief address so as to clearly distinguish them from statutory standing. Once a court has determined that employers and pension funds, collectively, have statutory standing to sue under ERISA, fact-specific constitutional and prudential considerations may still limit access to judicial review on an ad hoc basis.

In terms of constitutional limitations, standing imports justiciability. The United States Constitution restricts the jurisdiction of the federal courts to "cases" and "controversies." A comprehensive analysis of constitutional and prudential standing is beyond the scope of this Note. These dimensions of standing, however, merit brief address so as to clearly distinguish them from statutory standing. Once a court has determined that employers and pension funds, collectively, have statutory standing to sue under ERISA, fact-specific constitutional and prudential considerations may still limit access to judicial review on an ad hoc basis.

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pute is capable of judicial resolution only if the plaintiff has made out a case or controversy within the meaning of Article III.\textsuperscript{18}

To satisfy the threshold requirement of presenting a case or controversy, the plaintiff must show that she has suffered a personal "injury in fact."\textsuperscript{19} "Injury in fact" has become a term of art.\textsuperscript{20} This requirement prohibits a plaintiff from merely asserting the rights of a third party and assures concrete adversariness so as to sharpen the presentation of the issues.

Many different types of injuries may confer constitutional standing. The sufficiency of a noneconomic injury as a basis upon which to confer standing was established by the Supreme Court in \textit{Sierra Club v. Morton}.\textsuperscript{21} Disruption of the plaintiff's relationship with a third party is one noneconomic injury specifically recognized by the Court as sufficient to lay the basis for standing.\textsuperscript{22} In \textit{Fentron Industries, Inc. v. National Shopmen Pension Fund},\textsuperscript{23} the Ninth Circuit found that the plaintiff had suffered an injury in fact because the defendant's actions had injured Fentron's relationship with a third party—its employees.\textsuperscript{24} The pension fund's failure to pay vested pension benefits to Fentron employees threatened to undermine Fentron's relationship with its work force. Moreover, the defendant's offer to restore cancelled past service credits to employees who would quit Fentron threatened direct economic injury to the employer by creating an incentive for employees to seek other employment.\textsuperscript{25} In sum, the question of constitutional standing, as applied to suits brought by non-enumerated parties under ERISA, requires an ad hoc determination as to whether the employer or the pension fund as plaintiff has suffered an injury in fact. The

\begin{itemize}
  \item 20. WRIGHT, FEDERAL PRACTICE, supra note 15, at § 3531.4.
  \item 21. 405 U.S. 727, 734-35 (1972) (dictum). In \textit{Morton}, a conservation club brought suit against federal officials, seeking to enjoin the commercial exploitation of a national game refuge. Plaintiffs claimed that they would be injured by the destruction of the scenery and wildlife in the park. \textit{Id.} at 734. In dictum, the Court stated that it did not dispute that this type of harm "may amount to an 'injury in fact' sufficient to lay the basis for standing." \textit{Id.} at 734. See also Howe v. Smith, 452 U.S. 473, 479 n.3 (1981) (constitutional or other personal interests); Council for Employment & Economic Energy Use v. F.C.C., 575 F.2d 311, 314 (1st Cir.) (injury to political rights), \textit{cert. denied}, 439 U.S. 911 (1978); Brookhaven Housing Coalition v. Solomen, 583 F.2d 584 (2d Cir. 1978) (denial of public benefits).
  \item 23. 674 F.2d 1300 (9th Cir. 1982).
  \item 24. \textit{Id.} at 1304.
  \item 25. \textit{Id.}
courts have construed the injury in fact prerequisite very broadly. The plaintiff need only establish that its rights, as opposed to the rights of a third party, have been impaired by defendant’s actions. If the plaintiff satisfies this requirement, then the plaintiff’s personal stake in the action is deemed sufficient to pass the constitutional standing hurdle. Once the employer or pension fund has crossed this minimum constitutional threshold, however, prudential considerations may still limit access to the federal courts.

Prudential standing determinations permit the courts to limit their exercise of jurisdiction if, as a matter of judicial self-restraint, it seems wise not to entertain a particular case. In Association of Data Processing Service Organizations v. Camp, the Supreme Court set forth a tripartite prudential test commonly used to determine if a plaintiff should be granted standing to sue where such plaintiff has not been expressly empowered by a statute to enforce its provisions. The Court held that the plaintiff must: (1) suffer an injury in fact; (2) fall within the zone of interests protected by the statute allegedly violated; and (3) show that the statute itself does not preclude the suit.

Article III concepts lie at the heart of the injury in fact requirement. The Court in Data Processing observed that prudential standing must be considered in the framework of the case or controversy requirement. Hence, a plaintiff who has crossed the constitutional standing threshold has necessarily met the first element of the Data Processing test. Applying the Data Processing test, the Ninth Circuit in Fentron held that the plaintiff-employer suffered an injury in fact.

Courts usually consult the legislative history of a statute in determining whether a plaintiff falls within the zone of protected interests so as to satisfy the second element of the Data Processing test. In Fentron, the court held that Fentron’s injuries fell “within the zone of interests that Congress intended to

27. 397 U.S. 150 (1970) (holding that firms selling data processing services had standing to challenge a rule that allowed national banks to provide such services to other banks and to customers).
28. Id. at 152-54.
29. Id. at 151-52.
30. See supra notes 23-24 and accompanying text.
protect when it enacted ERISA,” insofar as ERISA was designed to promote “the stability of employment,” and the “successful development of industrial relations.” The threat to Fentron’s relationship with the union and its employees fell within this range of concerns.

The final condition—that the statute itself does not preclude the suit—is the requirement of statutory standing. This Note concludes that ERISA does not preclude suits brought by employers and pension funds. Similarly, in Fentron, the Ninth Circuit held that it did not “believe that Congress, in enacting ERISA, intended to prohibit employers from suing to enforce its provisions.”

In sum, although this Note defends the position that employers and pension plans have statutory standing to sue under ERISA, their ultimate access to the federal courts may be limited on an ad hoc basis by constitutional and prudential considerations.

In contrast to the constitutional and prudential dimensions of standing, the statutory dimension may be decided categorically by the courts for all employers and all pension funds. Statutory standing decisions are not based on the particular facts of each case. Rather, this inquiry involves interpreting ERISA and determining whether Congress intended employers and pension funds in general to have standing.

The primary objective of statutory interpretation is ascertaining legislative intent. In determining congressional intent, courts consider a variety of different types of evidence. Courts may seek the aid of so-called intrinsic evidence, found by reference to the language and structure of the statute itself, and of so-called extrinsic evidence, found in the statute’s legislative history and by reference to other, related statutes. Each of these types of evidence must be considered in determining whether Congress intended section 502(a) to categorically preclude employers and pension plans from suing to enforce ERISA’s provisions.

32. 674 F.2d at 1305 (citing and quoting ERISA § 2(a), 29 U.S.C. § 1001(a)). See infra notes 63, 65 and accompanying text.
33. 674 F.2d at 1305.
34. Id. at 1305.
35. 2A SUTHERLAND, STATUTORY CONSTRUCTION § 45.01 (Sands 4th ed. 1984) [hereinafter cited as SUTHERLAND] and cases cited therein.
36. See generally F. McCaffrey, STATUTORY CONSTRUCTION §§ 27-46 (1953); SUTHERLAND, supra note 35, at §§ 47.01-48.20, 51.01-08.
II. The Language and Structure of Section 502

The language of a statute should be the starting point of any inquiry into the statute's scope. The language of section 502(a) does not explicitly authorize employers or pension funds to bring actions to enforce ERISA's provisions. Rather, it authorizes actions to be brought by plan participants, beneficiaries, fiduciaries, and the Secretary of Labor. Nonetheless, based upon an examination of the language and structure of section 502 in light of various judicial canons of construction, it is evident that Congress did not intend to leave employers and pension funds without the ability to sue under ERISA.

A. Expressio Unius

As a general rule of statutory construction, in the absence of evidence to the contrary, expressio unius est exclusio alterius. In other words, the specific expression of one thing implies the exclusion of the other. Expressio unius is not a rule of law, however, and the omission of employers and pension funds from the language of section 502(a) is not conclusive evidence that Congress intended the provision to be exclusive. In Fentron, for example, the Ninth Circuit recognized that employers were not one of the four enumerated parties granted standing to sue under section 502(a). Nevertheless, in holding that employers have standing to sue under ERISA, the court found that "[t]he omission of employers from 29 U.S.C. § 1132 [ERISA § 502] is not [in and of itself] significant in this regard."
The force of the *expressio unius* maxim can be overcome by evidence of contrary congressional intent or by a showing that an expanded interpretation of the statute would serve the purpose for which the statute was enacted.\(^4\) This Note establishes both types of evidence with respect to the omission of employers and pension funds from section 502(a), thus negating the *expressio unius* presumption.\(^5\) Furthermore, in light of the realities of the legislative drafting process, a failure to enumerate employers and pension plans in section 502(a), without more, does not demonstrate a congressional intention to leave these parties without redress under ERISA.\(^6\) Despite its superficial appeal, therefore, courts and commentators recognize this maxim as "unreliable" and caution that *expressio unius* must be applied judiciously.\(^7\) In sum, the omission of employers and

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44. *See United States Dep't of Justice v. Federal Labor Relations Auth.*, 727 F.2d 481 (5th Cir. 1984); *Hillis v. Waukesha Title Co.*, 576 F. Supp. 1103 (E.D. Wis. 1983); *Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 551 F. Supp. 580 (S.D. Ohio 1982); *Sutherland*, supra note 35, at § 47.23. *See also Potomac Passengers Ass'n v. Chesapeake & Ohio Ry. Co.*, 475 F.2d 325 (D.C. Cir. 1973). In *Potomac Passengers Ass'n*, the D.C. Circuit held that parties not enumerated under § 307 of the Rail Passenger Service Act of 1970 (the "Amtrak Act"), 45 U.S.C. §§ 501-658 (1970) (i.e., parties other than the Attorney General and employees), had standing to sue under the Act. The court held that in this instance, *expressio unius* gave way to a congressional purpose to benefit passengers. *Id.* at 331. The Supreme Court ultimately reversed this decision, but on factual grounds. 414 U.S. 453 (1974). The Court affirmed the lower court's reasoning as to the possibility of overcoming the *expressio* rule of exclusion by a showing of contrary legislative purpose or intent. *Id.* at 458-61. The Court found, however, that the D.C. Circuit had erred in its interpretation of the legislative history underlying the "Amtrak Act." The Court held that Congress's deliberate failure to adopt a proposal that would have amended § 307 to include "any aggrieved parties," evidenced Congress's intent to preclude passengers from suing to enforce compliance under the Act. *Id.* at 459-60.

45. *See infra* text accompanying notes 63-67.

46. Not all omissions are deliberately drafted. Other reasons for omissions can include congressional oversight, lack of information, or a failure on the part of Congress to foresee a particular situation. It is therefore inappropriate to "impute omniscience to Congress." *See Posner, Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. Chi. L. Rev. 800, 813 (1983).

47. *Herman & Maclean v. Huddleston*, 459 U.S. 375, 387 n.23 (1983) (rejecting use of *expressio unius*, noting that the canon has been "subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose") (quoting *S.E.C. v. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943)); *Illinois Dep't of Public Aid v. Schweiker*, 707 F.2d 273, 277 (7th Cir. 1983) ("not every silence is pregnant"); therefore *expressio unius* is an "uncertain guide to interpreting statutes"); *United States Dep't of Labor v. Bethlehem Mines*, 669 F.2d 187, 197 (4th Cir. 1982) (recognizing the maxim as unreliable); *National Petroleum Refiners Assoc. v. F.T.C.*, 482 F.2d 672, 676 (D.C. Cir. 1973) (holding that the maxim "stands on the faulty premise
pension plans from section 502(a) is not dispositive in determining Congress's intent with respect to these parties' standing to sue under ERISA.

B. Consistency Within the Statute

A second fundamental principle of statutory construction is that a statute is passed as a whole and is animated by one general purpose. This principle is the so-called whole statute canon.\(^4\) Thus, courts should not construe statutory phrases in isolation. When a court is interpreting a single provision of a statute, every effort should be made to find such a meaning as will render the statute a harmonious whole. In construing standing to sue under ERISA, a court should read section 502(a) together with the other subparts of section 502.

Subsection 502(d) of ERISA provides, in pertinent part, that "an employee benefit plan may sue or be sued under this title as an entity."\(^4\) A harmonization of sections 502(a) and 502(d) can be achieved only by construing both sections as granting pension plans standing to sue under ERISA, or alternatively, by interpreting both sections as denying pension plans standing to sue. Construing section 502(d) as denying pension plans standing to sue under ERISA would be inconsistent with the language of section 502(d). Such a construction would violate the plain meaning rule of construction, which provides that a statute that all possible alternatives . . . were necessarily considered and rejected by the legislative draftsmen"), cert. denied, 415 U.S. 951 (1974); Massachusetts Trustees of Eastern Gas & Fuel Assocs. v. United States, 312 F.2d 214, 220 (1st Cir. 1963) ("Whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look to the statute as a whole.")", aff'd, 377 U.S. 235 (1964); Hillis v. Waukesha Title Co., 576 F. Supp. 1103 (E.D. Wis. 1983) (holding that this maxim is to be cautiously applied); F. McCaffrey, supra note 36, at § 17; Sutherland, supra note 46, at § 46.05.

48. ERISA § 502(d), 29 U.S.C. § 1132(d) (1982) in its entirety provides:

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

There is no analogous provision regarding employers.
should be given a literal interpretation.\textsuperscript{50}

Absent persuasive evidence to the contrary, a statute "must be interpreted to mean exactly what it says."\textsuperscript{51} Section 502(d) states that an employee benefit plan "may sue . . . under this Title." The phrase "under this Title" refers to Title I of ERISA, constituting the provisions concerning protection of employee benefit rights and enforcement of ERISA's provisions. There is nothing in the legislative history to suggest that Congress intended section 502(d) to be construed contrary to its plain meaning. Hence, according to the plain meaning of section 502(d), pension plans should have standing to sue to enforce ERISA's provisions.

In \textit{Pressroom Unions-Printers League Income Security Fund v. Continental Assurance Co.},\textsuperscript{52} however, the Second Circuit ignored the plain meaning of section 502(d) and restrictively construed its language.\textsuperscript{53} The court held that section 502(d) deals only with legal capacity, not standing to sue.\textsuperscript{54} In other words, in the opinion of the Second Circuit, section 502(d) does not imply that pension plans "may bring actions under ERISA; it merely authorizes suits to be brought by funds in other situations where there would properly be jurisdiction."\textsuperscript{55}

The Second Circuit's overly technical construction of the section would permit a fund to sue in its own name in minor matters, such as state law contract claims, but not in major matters, such as the enforcement of ERISA. The court cites no authority to support such a distinction. Moreover, the court's strained interpretation of section 502(d) would violate the principle that effect must be given, if possible, to every word, clause, and sentence of a statute.\textsuperscript{56} The clause "under this title," contained in section 502(d), would be rendered meaningless by a decision that

\textsuperscript{50} In \textit{re} Clark, 738 F.2d 869 (7th Cir. 1984); \textit{Shaffer v. Block}, 705 F.2d 805 (6th Cir. 1983); \textit{Sutherland}, supra note 35, at § 46.01 (closely related to the \textit{expressio unius} maxim).

\textsuperscript{51} F. \textit{McCAFFREY}, supra note 36, at § 3.

\textsuperscript{52} 700 F.2d 899 (2d Cir.), \textit{cert. denied}, 463 U.S. 1233 (1983).

\textsuperscript{53} \textit{Id.} at 893.

\textsuperscript{54} \textit{Id.} The court further opined that § 502(d) authorizes suits to be brought against a pension plan under ERISA. Thus, pension plans would not be able to sue under ERISA, but would be able to be sued under ERISA. Such a distinction is absurd.

\textsuperscript{55} \textit{Id.}

\textsuperscript{56} \textit{Reiter v. Sonotone Corp.}, 442 U.S. 330, 339 (1979) (stating that the Court has an obligation to "give effect, if possible, to every word Congress used"); \textit{Zimmerman v. North American Signal Co.}, 704 F.2d 347, 353 (7th Cir. 1983) (stating that courts should not construe statutes in a way that "makes words or phrases meaningless, redundant or superfluous"); F. \textit{McCAFFREY}, supra note 36, at § 26; \textit{Sutherland}, supra note 35, at § 46.06.
section 502(d) merely confers legal capacity on plans to sue in actions unrelated to ERISA. To add any meaning to the words “an employee benefit plan may sue or be sued,” the clause “under this title” must indicate that a fund is authorized to sue specifically to enforce ERISA provisions.

In sum, to avoid violating the plain meaning canon, section 502(d) must be interpreted as granting pension plans standing to sue under ERISA. Hence, to reconcile sections 502(d) and 502(a), thereby giving effect to the “whole statute,” section 502(a) must also be interpreted as granting pension plans standing to sue under the Act.

C. Consistency With Amendments

Finally, it is a cardinal rule of statutory construction that a statute should be construed in light of, and in conjunction with, subsequent amendments. ERISA was amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). MPPAA was designed to remedy certain defects in the existing law relating to funding requirements, plan preservation measures, and termination insurance programs for multiemployer pension plans. An examination of MPPAA indicates that some of its provisions would be rendered meaningless if section 502(a) were interpreted as precluding employers from suing to enforce ERISA’s provisions.

Section 410(a) of MPPAA grants employers the right to recover mistaken contributions to plans within a specified period of time. It stands to reason that, in drafting this provision,

57. Republic Steel Corp. v. Castle, 581 F.2d 1228, 1232 (6th Cir. 1978), cert. denied, 440 U.S. 909 (1978) (holding that court is bound to read statutory amendment together with original provisions as part of an integrated, harmonious whole); F. McCaffrey, supra note 36, at § 81.
59. H.R. Rep. No. 869, 96th Cong., 2d Sess., reprinted in 1980 U.S. Code Cong. & Ad. News 2918. The MPPAA amendments were drafted for the purpose of “improving retirement income security . . . by strengthening the funding requirements . . . authorizing plan preservation measures for financially troubled multi-employer pension plans,” and particularly by “revising the rules governing the termination insurance program.” Id.

In the case of a contribution . . . made by an employer to a multiemployer plan by a mistake of fact or law . . . paragraph (1) shall not prohibit the return of such contributions . . . to the employer within 6 months after the plan administrator determines that the contribution was made by such a mistake.
Congress intended employers to have some means to enforce this right. Yet, Congress left the basic standing provisions of ERISA untouched rather than enacting new, independent standing provisions for MPPAA. An overly narrow interpretation of section 502(a), denying standing to employers to sue under ERISA, would effectively render this provision of MPPAA a nullity. Employers would have the right to recover mistaken contributions under MPPAA, but would have no means to enforce this right. Thus, because MPPAA has no standing provisions of its own, it can be inferred that Congress assumed that section 502(a) extended standing to employers to bring suit under ERISA, making it unnecessary for Congress to enact a separate standing provision for MPPAA.

The foregoing analysis of the language and structure of section 502 suggests that Congress did not intend to leave employers and pension funds without redress under ERISA. First, the omission of employers and pension funds from section 502(a) is not necessarily significant. For example, notwithstanding this omission, the Ninth Circuit in *Fentron Industries, Inc. v. National Shopmen Pension Fund* found employers to have standing to sue under the Act. Second, section 502(a) must be interpreted consistently with section 502(d) as granting pension plans standing to sue under ERISA, so as to render the statute harmonious. Finally, section 502(a) must be construed as granting employers standing to sue under ERISA so that certain provisions of MPPAA are not rendered meaningless. Interpreting section 502(a) as denying employers standing to sue would leave employers with no means to enforce certain rights granted to them under MPPAA.

This examination of ERISA's language should not be the end

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61. ERISA § 4301(a), 29 U.S.C. § 1451(a) (1982), entitled "Persons entitled to maintain actions," provides that an "employer . . . who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan . . . may bring an action for appropriate legal or equitable relief, or both."

This section, however, does not provide standing or subject-matter jurisdiction over refund actions. Section 4301(a)(1) of ERISA is expressly limited to actions brought under the subtitle of MPPAA relating to employer withdrawal liability. See Crown Cork & Seal Co. v. Teamsters Pension Fund, 549 F. Supp. 307, 310 n.3 (E.D. Pa. 1982), aff'd mem., 720 F.2d 661 (3d Cir. 1983); EM Trucks, Inc. v. Central States, Southeast and Southwest Areas Pension Fund, 517 F. Supp. 1122, 1124 (D. Minn. 1981).

62. 674 F.2d 1300 (9th Cir. 1982). See supra text accompanying notes 42-43.
of a thorough inquiry into legislative intent. Where the statutory language does not conclusively convey Congress's intent, the legislative history of the statute should be consulted.

III. THE LEGISLATIVE HISTORY UNDERLYING SECTION 502

In an introductory section to ERISA, Congress reported its findings that employee benefit plans have "become an important factor affecting the stability of employment and the successful development of industrial relations." In view of such findings, Congress passed ERISA, in part, to "strike an appropriate balance between the interests of employers . . . and the need of the workers for a level of protection which will adequately protect their rights." Hence, an expansive interpretation of section 502(a), allowing employers to sue to enforce ERISA provisions where the employer has been injured, would promote the purpose that ERISA was intended to serve. In Fentron, the Ninth Circuit's decision to grant employers standing to sue under ERISA was based, in part, on its interpretation of the purposes underlying the Act. Specifically, the court emphasized "the intent of Congress to protect employer-employee relations."

The legislative history underlying ERISA also indicates that Congress intended ERISA to be a "remedial statute which should be liberally construed." Moreover, Congress intended the provisions of section 502 to provide "broad remedies for redressing or preventing violations of the Act." A liberal construction expands the meaning of a law to embrace cases that are within the spirit or reason of the law. Expanding the meaning of section 502(a) so as to provide remedies for injured employers and/or pension funds is within the spirit of ERISA as intended by Congress.

65. 674 F.2d at 1305. See supra note 32 and accompanying text. See also Building Serv. Employee's Pension Trust v. Horseman's Quarter Horse Racing Ass'n, 98 F.R.D. 458 (N.D. Cal. 1983) (court rejecting defendant's argument that ERISA was designed solely to protect the interests of employees and not the relationship between employers and employees).
If section 502(a) is interpreted to encompass employers and pension plans, an employer could bring suit against a pension plan for failing to pay employees' vested pension benefits or for cancelling past service credits. This type of action would promote ERISA's primary purposes, which are the protection of workers against the loss of their pensions and the protection of employer-employee relations. Moreover, if employers are unable to seek redress for injuries sustained under ERISA, the law would create a disincentive to new employers who are considering entering a plan. This disincentive would clearly be counterproductive to Congress's goals in passing ERISA. A liberal construction of section 502(a) would further enhance the security of plan participants because pension funds would be able to sue to recover money fraudulently extracted from them. Thus, in keeping with Congress's intent, courts should read section 502(a) liberally as authorizing employers and pension funds to bring suit under ERISA.

IV. STATUTES IN PARI MATERIA

To ascertain legislative intent from statutory language, other statutes concerning the same subject can also be examined. Statutes dealing with the same subject as the statute being construed are commonly referred to as statutes in pari materia. Statutes deemed to be in pari materia should be construed together. Two statutes may be considered to be in pari materia when they relate to the same class of persons or when they have the same purpose or object. ERISA and the Labor-Management Relations Act (LMRA) relate to the same two general classes of persons—employers

68. See discussion of Fentron Indus., Inc. v. National Shopmen Pension Fund, 674 F.2d 1300 (9th Cir. 1982), supra note 10.

It may not make sense to require that the trustee/fiduciary, as opposed to the fund as an entity, bring suit in this case. Often, the trustees lack the personal financial resources to support a lawsuit of any magnitude. Thus, the fund ultimately pays all of the fees and costs of litigation. The fund's office contains all of the records pertaining to the action, and the fund's staff are knowledgeable concerning the issues at stake.
70. SUTHERLAND, supra note 35, at § 51.01.
71. Id. at § 51.02. See also Jones v. St. Louis-San Francisco Ry. Co., 728 F.2d 257, 262 (6th Cir. 1984).
and employees. Moreover, the two statutes have overlapping purposes. Section one of the LMRA provides, *inter alia*, that the purpose of the statute is to “promote free flow of commerce,” to “prescribe the legitimate rights of both employees and employers in their relations,” and to “provide orderly and peaceful procedures for preventing the interference by either [employees or employers] with the legitimate rights of the other.”

Similarly, ERISA was passed to “provide for the free flow of commerce,” to “protect the stability of employment,” and to “strike a balance between the interests of employers and the workers.”

Thus, it is fair to characterize ERISA and the LMRA as statutes in *pari materia*.

In addition, the direct reference of ERISA’s legislative history to the LMRA suggests that ERISA and the LMRA should be construed together. In a Conference Report on H.R. 2, ERISA, Senator Harrison A. Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, stated that “[i]t is intended that [actions to enforce ERISA] will be regarded as arising under the laws of the United States, in similar fashion to those [actions] brought under Section 301 of the Labor-Management Relations Act.”

It is well established that an employer has standing to sue under section 301 of the LMRA. Thus, construing section 502 of ERISA in light of section 301 of the LMRA would support this Note’s position that employers should be granted standing to sue under ERISA. Moreover, section 301(b) of the LMRA provides that labor organizations “may sue or be sued as an entity.” The Supreme Court has construed this language to grant labor organizations standing to sue under the LMRA. Section

74. *Id.* at § 141.

75. *See supra* note 62 and accompanying text.


Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

77. 120 CONG. REC. 29,933 (1974).

78. *See Norton v. I.A.M. Nat'l Pension Fund*, 553 F.2d 1352 (D.C. Cir. 1977). In Norton, an employee and employer brought an action pursuant to LMRA § 301 against a union pension fund, seeking a declaratory judgment establishing the employee’s eligibility for pension benefits.


80. *See Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448 (1957). This case was an action brought by a labor union seeking specific performance of the arbitration provisions of a collective bargaining contract. The specific issue on appeal is irrele-
502(d) of ERISA provides, in language identical to that of section 301(b) of the LMRA, that pension funds, as opposed to labor organizations, "may sue or be sued as an entity." Hence, construing section 502(d) of ERISA in light of section 301(b) of the LMRA would buttress the argument that section 502(d) was intended to authorize funds to bring suit to enforce ERISA's provisions.

CONCLUSION

Based on the foregoing analysis of the conflicting legal precedents interpreting section 502, the language of the section, the legislative history underlying ERISA, and the relation of ERISA to the LMRA, this Note concludes that Congress did not intend section 502(a) to be exclusive or to preclude employers or pension funds from suing to enforce ERISA's provisions. Thus courts, consistent with Congress's intentions, should grant employers and pension funds, collectively, statutory standing to sue under ERISA.

—Constance L. Bauer