Participant and Beneficiary Remedies Under ERISA: Extracontractual and Punitive Damages After Massachusetts Mutual Life Insurance Co. v. Russell

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PARTICIPANT AND BENEFICIARY REMEDIES UNDER ERISA: EXTRACONTRACTUAL AND PUNITIVE DAMAGES AFTER MASSACHUSETTS MUTUAL LIFE INSURANCE CO. v. RUSSELL

INTRODUCTION

In Massachusetts Mutual Life Insurance Co. v. Russell, the Supreme Court held that a participant in an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA) could not state a claim for extracontractual or punitive damages under section 409 of the statute. By limiting its holding to section 409, the Court failed to provide lower courts with any useful guidance to evaluate claims for such damages under other sections of ERISA. Thus the question whether an individual participant can ever recover extracontractual or punitive damages under ERISA remains open.

This Note outlines in Section I the portions of ERISA that apply to participants’ rights of action. Section II discusses the Massachusetts Mutual decision. Section III evaluates the scope of the decision, concludes that the narrowness of the Court’s holding limits the decision’s impact on ERISA claims, and explores the relief available to ERISA claimants following the decision. Next, section IV studies ERISA’s legislative history, applicable trust law concepts, and the language of the statute, arguing that ERISA supports extracontractual, but not punitive damages. Finally, section V proposes a framework for resolving damage claims under ERISA and analyzes the Massachusetts Mutual case using this framework.

I

BACKGROUND

A. Participants’ Civil Enforcement Actions Under ERISA

1. Relief for the Plan

ERISA allows plan participants to bring an action to recover damages and receive equitable relief on behalf of the plan. The creation of this private cause of action reflects Congress’s desire to protect plan participants and helps to reduce the Secretary of Labor’s
burden to enforce ERISA's substantive standards.\(^5\) Two ERISA sections permit private actions on behalf of the plan. First, section 502(a)(2) provides:

A civil action may be brought —

(2) ... by a participant ... for appropriate relief under section 1109 of this title[.]\(^6\)

Second, section 409(a) provides:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.\(^7\)

A participant may bring an action under these provisions to recover “appropriate relief” for the plan against a fiduciary’s breach of his duty.

2. Participant Relief

When a fiduciary violates his duty, harming a participant, the participant may also bring a civil action on her own behalf. Two sections of the Act provide for this type of relief. First, under section 502(a)(1)(B),\(^8\) a plaintiff may sue both a fiduciary and the plan participants in private pension plans ... by improving the ... soundness of such plans ...,” 29 U.S.C. § 1001(c) (1982).

\(^5\) The Act imposes an obligation on the Secretary of Labor to police employee benefit plans. See 29 U.S.C. § 1021 (1982). Considering the immense number of such plans and their prominence in the national economy, this presents the Secretary with a formidable task. See infra note 98.


\(^7\) 29 U.S.C. § 1109(a) (1982).

\(^8\) Section 502(a)(1)(B) provides:

A civil action may be brought —

(1) by a participant ... —

... (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[.]


\(^9\) The Act does not detail the potential defendants that a plan participant may sue; the question remains open. In oral argument plaintiff Russell argued that a fiduciary cannot be sued under this section and that any relief awarded should come from the plan itself. See Transcript of Oral Argument at 31-32, Mass. Mut., 105 S. Ct. 3085 (1985). When pressed by the Court, Massachusetts Mutual, the defendant employer and plan fiduciary, conceded that a fiduciary could be liable under this section as well. See id. at 45. Although § 409 is the only remedial provision explicitly stating that a fiduciary
to recover benefits due, enforce plan rights, and clarify future benefits.

Second, utilizing section 502(a)(3), a plan participant may sue for two types of equitable relief. Subsection A allows a participant to enjoin actions that violate ERISA. Subsection B provides for a broader form of equitable relief to redress violations or enforce the Act or the plan. Given that Congress directed courts to grant "appropriate equitable relief," courts seemingly possess great discretion in fashioning remedies that they deem "appropriate" in a particular situation.

B. Damages Under ERISA

1. Types of Damages

This Note refers to two types of damages: compensatory and punitive. In addition, compensatory damages are of two sorts: general and extracontractual. Before examining what damages are available under ERISA, it is helpful to outline these various forms of relief.

Compensatory damages "compensate the injured party for the injury sustained, and nothing more." These damages serve to "make good or replace the loss caused by the . . . injury." General damages are "the natural, necessary, and usual result" of the wrong. In the context of an ERISA claim, "general damages"

will be liable for any damages awarded under its terms, courts have also read another ERISA section, § 502(a)(3), see infra note 10, as providing for fiduciary liability. See, e.g., Kann v. Keystone Resources, Inc., 575 F. Supp. 1084 (W.D. Pa. 1983) (company and individual trustees may be liable under § 502(a)(3) for refusal to pay accrued benefits); Jiminez v. Pioneer Diecasters, 549 F. Supp. 677 (C.D. Cal. 1982) (ERISA action allowed against individual fiduciaries for breach of exclusive benefit duty).

A civil action may be brought —

(3) by a participant . . . (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 redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]


10. BLACK'S LAW DICTIONARY 352 (5th ed. 1979) [hereinafter cited as BLACK'S]. Most sources suggest that compensatory damages are comprised of both general and special damages. Because the Massachusetts Mutual Court chose to use the term "extracontractual" instead of "special," this Note adopts the Court's language.

ERISA itself does not describe damages as punitive, compensatory, general, or extracontractual. See supra notes 6-8, 10 and accompanying text. These terms will, however, be useful in discussing the Court's opinion and in studying the damages available under the Act.

13. Id. See also D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES 138 (1973) ("General
might include the benefits that a fiduciary wrongfully denied a participant.

Extracontractual damages "are the actual, but not the necessary, result of the injury complained of." They arise from "some of the consequences or results of such act." A claim for mental distress caused by a fiduciary's breach falls within this category. Monetary loss above and beyond the contractual terms is also a source of extracontractual damages.

Distinguishing between general and extracontractual damages can be troublesome. Both are "proximately caused" by the fiduciary's breach. The cause of the extracontractual compensatory component of a damages award is slightly more remote, however, than the cause of a general compensatory award.

Punitive damages are those "given to the plaintiff over and above the full compensation for [her] injuries." These damages serve three purposes: punishing the defendant, deterring the defendant from repeating the injurious act, and deterring others from following the defendant's example.

2. Expressly Provided Damage Relief

Although ERISA does not specify the types of damages available for a violation, the express causes of action for a benefit plan participant include provisions for damage relief. Damages are generally assessed in monetary terms. For instance, under 502(a)(1)(B), a participant may recover an amount equal to the ben-

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16 BLACK'S, supra note 12, at 354. See also D. DOBBS, supra note 15, at 138 ("Special damages [extracontractual damages] include items of loss that are more or less peculiar to the particular plaintiff and would not be expected to occur regularly to other plaintiffs in similar circumstances.").

17 BLACK'S, supra note 12, at 352.

18 D. DOBBS, supra note 15, at 138. "Courts traditionally attack the problem of assessing damages in a two-step process. In the first step they lay down and apply a rule of general damages. In the second step they add in 'special' or 'consequential' damages [extracontractual damages] if such damages are adequately proved and not considered too remote." Id.

19 First, "special damages must be proved to a reasonable certainty. . . . [Second,] no special damages are recoverable if they are deemed remote. In tort cases this may be expressed in terms of proximate cause." Id. at 139 (footnote omitted).


21 Id. Professors Prosser and Keeton add that another purpose of punitive damages occasionally cited by the courts is to reimburse "the plaintiff for elements of damage which are not legally compensable, such as wounded feelings or the expenses of suit." Id.

22 "The damages award is substitutionary relief, that is, it gives the plaintiff money . . . to make up for some loss." D. DOBBS, supra note 15, at 135.
Although other ERISA sections do not explicitly mention damages, some sections obliquely provide for them. Under section 502(a)(3), for example, a participant may obtain "appropriate equitable relief" that will provide "redress" for violations of the Fiduciary Responsibility subchapter. Equitable relief commonly includes injunctions, specific performance, and restitution. However, in certain situations, equitable relief may also include monetary damages. Similarly, sections 502(a)(2) and 409(a) may authorize money damages in appropriate circumstances.

II

THE MASSACHUSETTS MUTUAL CASE

A. The District Court's Decision

Doris Russell, a claims examiner for Massachusetts Mutual Life Insurance Company, was a beneficiary under the company's employee benefit plans governed by ERISA. In May of 1979, Russell became disabled with a back ailment. She received benefits until October, when the company's disability committee terminated her payments based on an orthopedic surgeon's report. Later that month, Russell requested internal review of the termination and in November, she submitted a report from her own psychiatrist stating that the ailment was a psychosomatic disability with physical manifestations rather than an orthopedic illness. Although the plan provided disability benefits for psychosomatic illnesses, the plan fiduciaries required that Russell undergo another psychiatric evaluation with a company-selected psychiatrist. The second psychiatrist confirmed that Russell was temporarily disabled. On March 11, 1980, the plan administrators reinstated Russell's benefit payments and fully paid her retroactive benefits.

Russell sued Massachusetts Mutual in California Superior Court, claiming numerous violations of state law. She alleged that
during the 132 days that she was denied her plan benefits, the resulting financial difficulties forced her disabled husband to cash out his retirement savings. She further claimed that the delay aggravated the psychological condition that caused her back ailment. Massachusetts Mutual removed the case to federal court.

In federal district court, Russell argued that the disability committee's termination of her benefits, based solely on the orthopedic surgeon's report, violated her rights to competent and timely claims administration under ERISA. She requested extracontractual and punitive damages. The court granted summary judgment in favor of Massachusetts Mutual holding that, as a matter of law, neither extracontractual nor punitive damages are available under ERISA in connection with a review of a benefit termination.

B. The Ninth Circuit's Decision

The Ninth Circuit partly reversed the district court, holding that ERISA authorizes recovery of both extracontractual and punitive damages for a fiduciary's breach of duty. The court reasoned that section 502(a)(2) provides a beneficiary with a cause of action through section 409(a) for the breach of the fiduciary's duty to provide competent and timely claims administration. According to the court, section 409(a) contains the critical language supporting an award of extracontractual damages. This section expressly authorizes a court to award "equitable or remedial relief it deems appropriate" against an errant fiduciary. The court found additional support for its holding in ERISA's legislative history, arguing further that allowing such relief encourages fiduciaries to abide by the breach of a duty of good faith and fair dealing, breach of fiduciary duty, and intentional and negligent infliction of emotional distress. All were based on the initial suspension of her benefits.

31 Id. at 486-87.
32 Id. at 484. Massachusetts Mutual removed the action to district court on the grounds that ERISA governed Russell's claim.
33 Russell amended her complaint to allege that the fiduciary actions also violated ERISA. The district court held that ERISA preempted Russell's state-law claims and accordingly dismissed them. Russell unsuccessfully appealed the dismissal to the court of appeals. Mass. Mut., 105 S. Ct. at 3088.
34 Russell, 722 F.2d at 485.
36 Russell, 722 F.2d at 485-86.
37 See supra note 6 and accompanying text.
38 See supra note 7 and accompanying text.
39 Russell, 722 F.2d at 488.
40 Id. at 490.
41 Id. (citing H.R. REP. No. 533, 93d Cong., 1st Sess. 17 (1973), reprinted in 1974
The court relied on similar reasoning to support the availability of punitive damages. It pointed to House and Senate committee reports, which stated that the Act would provide “the full range of legal and equitable remedies available in both state and federal courts.” The court stressed that courts should only grant punitive awards in situations where the fiduciary “acted with actual malice or wanton indifference to the rights of a participant or beneficiary.”

C. The Supreme Court’s Decision

In a unanimous decision with four Justices concurring, the Supreme Court reversed the Ninth Circuit. Writing for the Court, Justice Stevens first parsed ERISA’s statutory text for explicit authority for the requested damage award. The Court, noting that Russell relied exclusively on section 409(a) of ERISA, analyzed her claim under that section. The Court agreed with Massachusetts Mutual and found that section 409 authorizes recovery only by the pension plan and not by an individual participant. The Court pointed out that section 409 refers to the fiduciary relationship as one “with respect to a plan,” noting that the section required the fiduciary “to make good to such plan any losses to the plan... and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan.” The Court concluded that the section, viewed as a whole, indicated that the concluding phrase, “such other equitable or remedial relief,” refers to “plan-related” relief only. Consequently, the statute did not explicitly authorize Russell’s individual claim for extracontractual and punitive damages.


Russell, 722 F.2d at 490.


Id. at 492.

Id. at 3088-92.

Id. at 3089. In a footnote, Justice Stevens commented, “Because respondent relies entirely on § 409(a), and expressly disclaims reliance on § 502(a)(3), we have no occasion to consider whether any other provision of ERISA authorizes recovery of extracontractual damages.” Id. at 3089 n.5. Russell relied solely on § 409 because she did not think that a fiduciary could be a defendant under 502(a)(3). See supra note 9.


Id. at 3089.

Id. at 3090 (quoting 29 U.S.C. § 1109(a) (1982)) (emphasis added by Court).


Because the Court found that Russell could not state a claim on her own behalf
The Court then considered whether such a right of action should be implied under the guidelines set forth in *Cort v. Ash*. In that case, the Supreme Court established a four-pronged test for courts to apply when deciding whether to imply a private right of action if one is not expressly provided by the statute. The test requires that a court ask:

1) Is the plaintiff one of the class for whose *especial* benefit the statute was enacted?
2) Is there any indication of legislative intent—explicit or implicit—to create or to deny such a remedy?
3) Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy?
4) Is the cause of action traditionally relegated to state law?

Massachusetts Mutual contended that a claim under section 409(a) failed under the second prong of the *Cort v. Ash* test because ERISA's legislative history did not evince congressional intent to provide extracontractual damages. Justice Stevens argued that the Ninth Circuit's reliance on the legislative history's reference to "the full range of legal and equitable relief" was misplaced because the phrase referred to a version of section 409(a) which Congress later changed. Justice Stevens also found that Russell's claim did not satisfy the third prong of the *Cort v. Ash* test. He noted that the statutory scheme was "carefully-integrated" and that the Court should not "fine-tune" such an enforcement mechanism. The Court concluded that Russell was not entitled to any additional damages for the plan administrators' refusal to pay benefits.

In dicta, the Court indicated that ERISA's fiduciary duty provisions did not even apply to a claim for misadministration or untimely processing of a benefit claim. The Court surveyed the principal statutory duties imposed on ERISA fiduciaries and concluded that these duties apply primarily to the management and administration of the plan assets, as opposed to administration of benefit claims. The Court noted that the statutory section involving "Administration and Enforcement" is located in a completely sepa-
rate part of ERISA than the "Fiduciary Responsibility" section, suggesting that the responsibilities the Act imposes on fiduciaries may not apply to claims administration.

In further dicta, the Court cursorily examined the Secretary of Labor's regulations concerning claims review. The Court found that the regulations, which set time limits for fiduciary review of a participant's claim, do not provide for a participant's recovery from either the plan or its fiduciaries if a claim exceeds the prescribed time limit. Justice Stevens concluded that Congress did not intend to provide an action for untimely processing of a benefit claim.

The Court mentioned one further consideration in determining that a plan participant could not seek extracontractual damages. The Court noted that "the statutory provision explicitly authorizing a beneficiary to bring an action to enforce his rights under the plan—§ 502(a)(1)(B) . . .—says nothing about the recovery of extracontractual damages, or about the possible consequences of delay in the plan administrators' processing of a disputed claim." Justice Brennan, joined by Justices White, Marshall, and Blackmun, concurred in the Court's judgment. Justice Brennan agreed that section 409(a) authorized relief only for the plan and not for an individual participant. He emphasized, however, that the Court's denial of damages applied strictly to section 409(a). He further stressed that he did not subscribe to the Court's dicta that undermined the availability of extracontractual and punitive damages under the other enforcement provisions of ERISA.

Justice Brennan asserted that "some of the Court's remarks are simply incompatible with the structure, legislative history, and purposes of ERISA." He "could not more strongly disagree" with the Court's remarks that the separation of the "Administration and Enforcement" and "Fiduciary Responsibility" sections implied that plan administrators' fiduciary duties run only to the plan itself and not to its participants. In his view, Congress's intent to incorporate trust law into ERISA and its explicit adoption of the "exclusive

60 Id.
61 Id. The Secretary's regulations can be found at 29 C.F.R. § 2560.503-1 (1985).
62 Mass. Mut., 105 S. Ct. at 3091. The regulations provide that a claim is deemed denied if a fiduciary does not issue a decision within the prescribed time limits. 29 C.F.R. § 2560.503-1(h)(4) (1985). If a participant wants to contest this "decision," the regulations permit her to bring suit. Mass. Mut., 105 S. Ct. at 3091.
63 Id. at 3091.
64 Id. at 3094-95.
65 Id. at 3095.
66 Id.
67 Id.
68 Id. See infra note 104 and accompanying text.
benefit" rule require strict fiduciary care in claims administration as well as in administration and management of the trust corpus.

The concurrence emphasized that Russell's sole reliance on section 409(a) left open the possibility of recovery under other ERISA sections. Justice Brennan specifically referred to section 502(a)(3), which authorizes the award of "appropriate equitable relief" for a participant whose rights under subchapter I have been violated. He noted that the fiduciary standards and the enforcement provisions meant to protect beneficiary's rights both appear in subchapter I. Thus, if a fiduciary fails to administer competently a benefit claim, this section should provide the wronged participant with relief.

Justice Brennan also objected to the Court's approach to judicial construction of ERISA, criticizing as unwarranted the court's reluctance to "fine tune" ERISA's remedial scheme. Instead, Justice Brennan contended that Congress explicitly directed courts to apply trust law concepts and develop a federal common law that provides "appropriate equitable relief" for violations of the Act.

With this congressional purpose in mind, the concurrence concluded by presenting its own general approach to the construction of ERISA when considering damage claims. First, courts should look to trust and pension law as developed by state courts to ascertain the extent that damages beyond the withheld benefits would be available. If state law furnishes this remedy, courts should then determine whether such relief would conflict with ERISA's overall scheme. Finally, courts should consider whether such relief furthers the underlying purposes of ERISA.

III
THE IMPACT OF MASSACHUSETTS MUTUAL

A. The Narrow Holding: Section 409

The Court's actual holding applies only to the denial of extracontractual and punitive relief to individual participants under section 409. In this narrow form, the Court's holding is appropriately

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69 See infra note 134.
74 Id. at 3097.
75 Id.
76 Id. at 3097-98.
77 Id. at 3098-99.
78 See supra note 47 and accompanying text.
The language of section 409(a)—which repeatedly refers to recovery by the plan—strongly supports the Court's reading that courts should grant the section's relief only to a plan and not to an individual participant.

The Court also considered the possibility of an implied right of action in reaching its result. The Court's *Cort v. Ash* analysis also strictly applies to section 409. The *Massachusetts Mutual* Court stated that it could imply no right of action under section 409 allowing a participant to sue for personal relief in the form of extracontractual or punitive damages. The *Cort v. Ash* analysis, however, is misplaced when applied to the *Massachusetts Mutual* case. The *Cort v. Ash* test explores whether an implied cause of action exists when a statute does not expressly provide for one. In *Cort v. Ash*, the Court sought to determine whether a plaintiff could receive civil damages based on the authority of a criminal statute. In contrast, the text of section 409 clearly provides a private right of action. Thus, the real issue in *Massachusetts Mutual* was whether a private plaintiff could bring this action to recover damages on her own behalf, rather than on behalf of the plan. Asking who receives damages and asking whether a cause of action for damages exists at all are fundamentally different questions. Furthermore, the *Cort v. Ash* test provides no guidance for determining the scope of a damage award: it merely focuses on whether Congress intended to permit a private right of action at all. Whether these damages are compensatory, extracontractual, or punitive involves an entirely separate inquiry, one not addressed by the *Cort v. Ash* analysis.

**B. The Dangerous Dicta**

Given the narrowness of the Court's holding in *Massachusetts Mutual*, much of its opinion is dicta. Yet the apparent breadth of this decision is troubling. Although the Court's holding only applies to section 409, its general remarks concerning ERISA suggest that it will be reluctant to award extracontractual or punitive damages under other sections of the statute. Lower courts, however, should not follow this language because the Court's supporting reasoning does not extend to ERISA's other remedial provisions.

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79 *Cort v. Ash*, 422 U.S. at 68.
80 See Piper v. Chris-Craft Indus., Inc., 430 U.S. 1, 55 n.4 (1977) (Stevens, J., dissenting) ("This case . . . does not present the same kind of issue discussed in *Cort v. Ash*, . . . namely, whether the statute created an implied private remedy. Rather, the question presented here is who may invoke that remedy.") (citation omitted).
81 See Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 20 (1979) ("evidence of intent . . . weighs against the implication of a private right of action"); Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979) ("our task is limited solely to determining whether Congress intended to create [a] private right of action").
The Court's formulation of the question presented was too expansive, reflecting its failure to recognize the narrowness of its precise holding. The majority cast the issue as follows:

The question presented for decision is whether, under . . . (ERISA), a fiduciary to an employee benefit plan may be held personally liable to a plan participant or beneficiary for extra-contractual compensatory or punitive damages caused by improper or untimely processing of benefit claims.82

This formulation suggests that the Court's decision construes ERISA as a whole, not just section 409(a). Lower courts should recognize that the opinion does not represent a blanket prohibition of extracontractual and punitive damages under ERISA.

The Court's analysis of other remedial sections of ERISA was wholly inadequate. For instance, the Court commented that section 502 does not mention extracontractual and punitive damages, implying that the section does not provide for such damages.83 This discussion was irrelevant to the issue before the Court: namely, whether section 409(a) provides for such relief. The possibility that section 502 may well allow a claim for extracontractual and punitive damages even though it makes no mention of such awards underscores the significance of the Court's failure to fully analyze that section.84

The Court's presentation of ERISA's legislative history similarly invites misinterpretation. The majority noted a "stark absence . . . in [ERISA's] legislative history . . . of any reference to an intention to authorize the recovery of extra-contractual damages."85 This statement reaches far beyond the confines of section 409 to reach other relief-producing sections of the Act. Moreover, this statement is arguably erroneous.86 Although the legislative history does not explicitly refer to extracontractual damages, it may implicitly support such a damage claim.87 Congress intended that courts look to the common law of trusts when resolving ERISA disputes.88 Trust law allows extracontractual damage awards in some cases.89 Thus, lower courts should not rely on the Court's overreaching dicta, but should look instead to Congress's intentions.

The majority's opinion also fails to distinguish between meth-

83 Id. at 3091.
84 See infra notes 121-23 and accompanying text.
86 Justice Brennan, in his concurrence, makes an argument similar to the one presented here. See id. at 3097-98.
87 See infra notes 99-109 and accompanying text.
88 See infra note 104 and accompanying text.
89 See infra notes 106-08 and accompanying text.
odds of enforcement and available remedies. In order to award extracontractual damages, however, a court need not alter ERISA's enforcement scheme. Rather, it need only determine the proper damages available under the existing scheme. Moreover, the Court's reluctance to "fine-tune" ERISA may prompt lower courts to construe ERISA narrowly, delaying Congress's intention that courts develop federal common law to govern pension plans.

The Court's dicta is significant for several reasons. First, it indicates that a majority of the Court is not amenable to extracontractual and punitive damage awards under ERISA. Second, it demonstrates that the damage issue remains very much alive. Third, the Court's construction of the Act applies not only to Russell's particular claim but also to most or all claims for extracontractual and punitive damages.

C. Potentially Available Relief

After Massachusetts Mutual, a plan or a participant suing on behalf of a plan may still recover extracontractual and punitive damages under section 409. The viability of these forms of damages will hinge upon a court's interpretation of the meaning of "such other equitable or remedial relief as the court may deem appropriate." The Court did not reach this question because it held that participants cannot personally obtain any relief under section 409. Thus, Massachusetts Mutual does not preclude a cause of action to recover extracontractual and punitive damages on behalf of a plan. The Court also did not preclude recovery of extracontractual and punitive damages for a participant who brings an action under ERISA section 502(a)(3), for the majority did not refer to this subsection.

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90 The Court stated that it was "reluctant" to "fine-tune" ERISA's detailed enforcement scheme by awarding Russell extracontractual damages. Mass. Mut., 105 S. Ct. at 3093.
91 See infra note 100 and accompanying text. Federal common law will never emerge if courts are unnecessarily restrained in reaching beyond ERISA's literal language.
92 Five justices subscribed to Justice Stevens's broad language; four Justices concurred to point out its error.
93 See Mass. Mut., 105 S. Ct. at 3092 n.12 ("In light of this holding, we do not reach any question concerning the extent to which § 409 may authorize recovery of extracontractual compensatory or punitive damages from a fiduciary by a plan.").
95 See supra note 78 and accompanying text.
96 29 U.S.C. § 1132(a)(3) (1982). This subsection allows a participant to bring an action to obtain "appropriate equitable relief . . . to redress [fiduciary] violations." Id. See supra note 10 and accompanying text.
97 The concurrence implied that § 502(a)(3) may support a damage claim like Russell's. Mass. Mut., 105 S. Ct. at 3095 ("[S]ince § 502(a)(3) already provides participants
Finally, the Court's focus on an individual's relief under section 409 leaves lower courts without effective guidance when considering the scope of damage relief for a plan or for a participant under another ERISA section. Thus, the Massachusetts Mutual decision is of limited use in considering future ERISA damage claims brought under other sections of the statute.

IV
EXTRACONTRACTUAL AND PUNITIVE DAMAGES UNDER ERISA

The Court's narrow holding leaves unanswered the question of whether courts can award extracontractual and punitive damages under ERISA. The increasing importance and financial magnitude of employee benefit plans assures that this issue will arise again. This section explores the propriety of awarding extracontractual and punitive damages under ERISA in such future cases by examining the Act's legislative history, trust law concepts, and the statutory language itself. The Note concludes that ERISA, in appropriate circumstances, authorizes awards of extracontractual, but not punitive, damages.

A. Legislative History and Trust Law Concepts

In enacting ERISA one of Congress's declared purposes was to protect employees' interests in their benefit plans by "providing for appropriate remedies, sanctions, and ready access to the Federal courts." Congress intended that the courts develop a federal common law to govern ERISA disputes. Thus, the remedies to which Congress referred need not be explicitly set forth in the statutory text. The courts must therefore have discretion in formulating remedies for violations of the statute.

Courts should fashion remedies for ERISA violations with reference to the right to be vindicated. Congress enacted ERISA in part to guarantee specific rights to benefit plan participants. These rights are meaningless without remedies to compensate for...

...with 'other appropriate equitable relief...to redress [ERISA] violations,' there is no reason to construe § 409 expansively...This does not resolve, of course, whether and to what extent extra-contractual damages are available under § 502(a)(3)."

\[98\] In 1975, 44.5 million employees participated in 340,000 plans. The total amount of money invested in these plans was $543 billion. In 1983, 67 million employees participated in 775,000 plans having a total value of $900 billion. Experts estimate that by 1995, three trillion dollars will be invested in benefit plans. Lilly, The Employee Retirement Income Security Act, 35 Lab. L.J. 603, 604 (1984).


\[100\] Senator Javits remarked, "It is...intended that a body of Federal substantive law will be developed by the courts to deal with the issues involving rights and obligations under private welfare and pension plans." 120 Cong. Rec. 29,942 (1974).

\[101\] See infra note 126 and accompanying text.
their violation. As Blackstone wrote, "Remedies are an integral and necessary part of any system of law, for the substantive rights are impotent unless a means for asserting those rights exists."102 Moreover, the chosen remedy should further the substantive policy that Congress hoped to implement with the Act.103

Courts are not without guidance as to how to fashion these remedies. Congress explicitly directed the judiciary to look to trust law in construing ERISA.104 Nonetheless, Congress did not propose a wholesale adoption of trust principles. Instead, it intended that courts shape trust concepts to accommodate the purposes and goals of ERISA.105

The general goal of damage awards in trust law106 is to make the victim whole.107 Both kinds of compensatory damages—general and extracontractual—serve this purpose. In order to make a plaintiff whole, trust law allows extracontractual compensatory damages awards to a plaintiff,108 indicating that under proper circumstances,

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102 W. Blackstone, Commentaries 55-56 (J. Andrews 4th ed. 1855). Chief Justice Marshall enunciated the significance of the remedy-right relationship within the structure of our democratic system. "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803).

103 "The remedy is merely the means of carrying into effect a substantive principle or policy. Accordingly it is a first principle that the remedy should be selected and measured to match that policy." D. Dobbs, supra note 15, at 3.

104 Senator Williams stated that in requiring strict fiduciary standards Congress aimed to make the common law of trusts applicable to ERISA. Thus, ERISA prohibits exculpatory clauses, establishes uniform fiduciary standards, prevents transactions endangering plan assets, and (most pertinent to this Note) provides effective remedies for breach of trust. 120 Cong. Rec. 29,932 (1974). See also H.R. Rep. No. 533, 93d Cong., 1st Sess. 11 (1973), reprinted in 1974 U.S. Code Cong. & Ad. News 4639, 4649 ("The fiduciary responsibility section, in essence, codifies and makes applicable to . . . fiduciaries certain principles developed in the evolution of the law of trusts.").

105 The Senate report reads, "It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act." S. Rep. No. 127, 93d Cong., 1st Sess. 29 (1973), reprinted in 1974 U.S. Code Cong. & Ad. News 4838, 4865. Therefore, it is reasonable to suppose that courts should also shape remedies with these interests in mind.

106 Although law and equity have been merged, equity principles traditionally govern trust law. See A. Scott, The Law of Trusts § 197 (3d ed. 1967); Restatement (Second) of Trusts § 197 (1959). Therefore, a court must apply equitable remedies to redress the harm that a trustee has caused by his breach of duty. Equity courts historically could award monetary damages to remedy a fiduciary's breach of duty. See supra note 26 and accompanying text.

107 G. Bogert, supra note 26, § 863, at 48 ("The sole object of allowing the beneficiary interest is to make him whole—to place him in the position he would have been in if the trustee had performed his duty."); Restatement (Second) of Trusts § 205 & comment a (1959) (beneficiary entitled to remedy "which will put him in the position in which he would have been if the trustee had not committed the breach of trust").

108 For instance, trust damages frequently include an assessment of interest. See G.
ERISA: DAMAGES

Courts should award extracontractual damages under ERISA. A claim for punitive damages is more tenuous under trust law. The vast majority of courts have refused to award such damages. Despite the merger of law and equity, courts generally hold that they cannot award punitive damages when acting in their equitable capacity. Such damages remain a creature of law courts. Principles of equity require courts to redress a victim for his harm; punitive damages go beyond that goal by providing a windfall to the plaintiff and punishing the defendant.

Nonetheless, some courts have allowed punitive damages in equity. The future of this trend, however, remains uncertain. Those courts that have awarded punitive damages in trust cases typ-

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110 Many courts, when denying punitive awards, subscribe to a strict procedural approach—equity courts cannot award punitive damages. For an example of a court adopting this approach, see e.g., Carter Equip. Co. v. John Deere Indus. Equip. Co., 681 F.2d 386, 396 (5th Cir. 1982) (“fiduciary duties are creatures of equity... and... punitive damages are not recoverable in a court of equity”) (citations omitted).

A minority of courts do allow punitive damages. See, e.g., Goggin v. Moss, 221 F. Supp. 905, 920 (N.D. Tex. 1962) (“In view of the Fraudulent [sic] and flagrant misconduct of the defendant... he is liable to the plaintiffs in exemplary damages....”), aff’d, 323 F.2d 36 (5th Cir. 1963). For an argument opposing punitive damages awards in breach of trust cases, see Wellman, Punitive Surcharges Against Disloyal Fiduciaries—Is Rothko Right?, 77 Mich. L. Rev. 95 (1978).

111 See Curtis v. Loether, 415 U.S. 189, 196 (1974) (“[T]he relief sought here—actual and punitive damages—is the traditional form of relief offered in the courts of law.”); Walker v. Ford Motor Co., 684 F.2d 1355, 1364 (11th Cir. 1982) (“[c]ompensatory and punitive damages are legal not equitable remedies”).

112 See supra notes 20-21 and accompanying text; see also D. Dobbs, supra note 15, at 211 (“One reason [that punitive damages are not available in equity] given [by courts is] that equity’s power was limited to equitable relief; any money judgment given in equity was given only so far as necessary to decide the case and give complete relief. This excluded recovery of punitive damages, since the plaintiff could certainly get complete relief without them.”).

ically have done so only in instances of extreme fiduciary disloyalty. Therefore, if a court ever awards punitive damages under ERISA, it should do so only for the most egregious fiduciary breaches.

In addition to equity’s presumption against punitive damages, ERISA’s legislative history and statutory scheme militate against awarding such damages. The Supreme Court has required a clear congressional directive in a statute or its legislative history to award punitive damages before it will grant this relief. Congress intended that plan participants gain complete relief; however, punitive damages surpass this goal. Furthermore, ERISA explicitly provides criminal sanctions for some fiduciary violations. These sanctions provide ample deterrence, rendering punitive awards unnecessary. Finally, courts disfavor punitive damages as a form of relief. For all of these reasons, courts should award extracontractual, but not punitive damages, under ERISA.

B. Another Look at the Statute

The broad language of ERISA’s enforcement provisions supports awarding extracontractual damages. Section 502(a)(3) explicitly grants participants a cause of action for redress of fiduciary violations. If a participant establishes that a fiduciary violation has occurred, the section requires that the court determine the scope of “appropriate equitable relief to redress [the fiduciary] violations.” This statutory language is compatible with the trust law

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115 Some courts have allowed claims for punitive damages under ERISA. See, e.g., Winterrowd v. David Freedman & Co., 724 F.2d 823, 826 (9th Cir. 1984) (“wilful, wanton, and malicious” refusal by employer to make promised contributions justified punitive award); Jiminez v. Pioneer Diecasters, 549 F. Supp. 677 (C.D. Cal. 1982) (court refused to dismiss case because of plaintiff’s request for punitive damages).
116 See, e.g., International Bhd. of Elec. Workers v. Foust, 442 U.S. 42, 52 (1979) (Court refused to award punitive damages against union “[a]bsent clear congressional guidance”); Local 20 Teamsters Union v. Morton, 377 U.S. 252, 260-61 (1964) (Court refused to award punitive damages because such damages were in “conflict with the congressional judgment, reflected both in the language of the federal statute and in its legislative history”) (discussing National Labor Relations Act § 303, 29 U.S.C. § 187 (1982)) (footnotes omitted).
118 See supra notes 20-21 and accompanying text.
119 Smith v. Wade, 461 U.S. 30, 58 (1983) (Rehnquist, J., dissenting) (“Despite ... attempted justifications, the doctrine of punitive damages has been vigorously criticized throughout the Nation’s history.”); Lee v. Southern Home Sites Corp., 429 F.2d 290, 294 (5th Cir. 1970) (punitive damages “are not a favorite in law and are to be allowed only with caution and within narrow limits”).
120 See supra note 10. Thus, a court will not have to engage in a Cort v. Ash analysis, see supra text accompanying note 55, to imply a cause of action on behalf of the plaintiff.
damage principle that courts should make awronged beneficiary whole. 122 Adopting this approach, a number of courts have awarded ERISA plaintiffs extracontractual damages. 123

Section 409(a) contains language very similar to section 502(a)(3); it subjects fiduciaries to any "equitable or remedial relief as the court may deem appropriate." 124 "Remedial relief" encompasses all types of compensatory damages. Thus, section 409(a)'s language justifies an award of extracontractual damages to the plan.

V
A FRAMEWORK FOR DETERMINING WHEN EXTRACONTRACTUAL DAMAGES ARE APPROPRIATE UNDER ERISA

Although extracontractual damages should be available under ERISA, they are not appropriate in every case. Courts need a reasoned approach to decide what circumstances warrant such an award. In deciding what remedies are available for the violation of a participant's right under ERISA, a court should first define the scope of the right by examining ERISA's purposes, legislative history, and statutory text. Next, a court should note the general trust law principles used to vindicate similar rights. Finally, a court should apply those trust remedies that vindicate the participant's right and that further the special concerns that Congress expressed in establishing federal control over employee benefit plans.

The facts of Massachusetts Mutual illustrate the bases for this proposed framework. The specific analysis of Russell's case will proceed in the context of a motion for summary judgment, that of a court considering the plaintiff's allegations in their most favorable light. 125 Russell could claim that her fiduciaries incompetently administered her benefit claim. Although aware of her past history of psychosomatic illnesses, her fiduciaries required that she only undergo an orthopedic examination and relied solely on the orthopedic surgeon's report in denying her claim. A more prudent trustee would have decided that her past medical history warranted a psychiatric as well as orthopedic evaluation. Thus, a prudent trustee would have examined the results of both examinations in determining Russell's eligibility.

Given this analysis, a court would allow Russell's action to proceed to trial where the factfinder could determine if her fiduciaries' action constituted incompetent or imprudent administration of her

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122 See supra note 107 and accompanying text.
123 See supra note 109.
125 See Fed. R. Civ. P. 56(c).
claim. Both sides would have to produce evidence concerning the action that a reasonable and prudent fiduciary would take in considering a similar claim. Then, the factfinder could compare the actions of Russell's fiduciaries to this standard and determine if they acted within it. If the factfinder found a violation, then the court would determine the appropriate damages under the proposed framework.

A. Defining the Scope of the Right to Competent Claims Administration

1. The Substantive Policies in ERISA's Legislative History

A survey of ERISA's purposes reveals that a participant has a broad right to careful claims administration. The overriding purpose of ERISA is to protect employees' "interests" in their benefit plans. Protection of these "interests" or "rights" should be a court's paramount concern when resolving an ERISA dispute. A number of courts have recognized this concern by liberally construing ERISA to fully protect participants' rights.

ERISA's legislative history demonstrates that Congress intended to establish broad participant rights. Congress noted that pension plan fiduciaries generally had become corrupt. Congress hoped that ERISA would eliminate this abuse and create a sense of financial security for plan participants. A Senate Report maintained that Congress hoped ERISA would "assure American workers that they may look forward with anticipation to a retirement with financial security." To reach this goal, Congress sought to regulate fiduciaries' maintenance of the trust corpus.

126 Congress declared that the purpose of ERISA is "to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries . . . 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." 29 U.S.C. § 1001(b) (1982).


128 See, e.g., Smith v. CMTA-IAM Pension Trust, 746 F.2d 587 (9th Cir. 1984) (ERISA is remedial legislation that courts should construe liberally in favor of protecting plan participants); In re M&M Transp. Co., 5 Bankr. 722 (S.D.N.Y. 1980) (same).

129 See, e.g., S. Rep. No. 383, 93d Cong., 1st Sess. 3 (1973), reprinted in 1974 U.S. CODE CONG. & AD. NEWS 4890, 4892 ("Cases have been noted of extreme misuse of pension funds.").


131 Id.

132 ERISA imposes guidelines for adequate funding. See 29 U.S.C. §§ 1082-1085 (1982) (detailing minimum funding standards, exceptions, and alternatives). The statute also provides guidelines for competent fiduciary actions in securing benefit funds...
sought to protect participants' financial security by imposing general standards of fiduciary care in the maintenance and administration of ERISA plans. These guidelines help to give participants confidence that they will ultimately receive their benefits.

ERISA section 404 imposes strict duties on plan fiduciaries; these duties complement the broad participant right to financial security. Broadly stated, a fiduciary must act for the exclusive benefit of plan participants in a manner becoming a similarly situated prudent person. A participant has the right to expect that a fiduciary will meet this standard of conduct.

Congress intended that fiduciary duties apply to claims administration as well as management of the trust corpus. Consequently, if a fiduciary fails to fulfill one of his administrative duties, thereby undermining a participant's rightful expectations, a court should make the fiduciary compensate for his wrong. Otherwise, the duty to refrain from such actions will become nonexistent, undermining the individual's right to competent claims administration.


See infra note 134 and accompanying text.

Section 404 provides in part:

(a) Prudent man standard of care. (i) . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.[1]


Congress recognized the interplay between participants' interests and fiduciary duties by including provisions for private suits for breaches of fiduciary duty, see 29 U.S.C. § 1132(a)(1)-(4) (1982), and the recovery of attorney's fees, see 29 U.S.C. § 1132(g)(1) (1982), so that financial constraints would not prevent participants from bringing suit.

See 120 Cong. Rec. 29,932 (1974) (ERISA imposes "strict fiduciary obligations upon those who exercise management or control over the assets or administration of an employee pension or welfare plan") (statement of Sen. Williams); H.R. Rep. No. 1280, 93d Cong., 2d Sess. 301 n.1 (conference report) (procedures for delegating fiduciary duties include "allocation or delegation of duties with respect to payment of benefits"), reprinted in 1974 U.S. CODE CONG. & AD. NEWS 5038, 5081 n.1.

A conference report stressed that § 502 entitles participants not only to "recover benefits due under the plan" and "clarify rights to receive future benefits under the plan" but also to obtain other "relief from breach of fiduciary responsibility." H.R. Rep. No. 1280, 93d Cong., 2d Sess. 326 (conference report), reprinted in 1974 U.S. CODE CONG. & AD. NEWS at 5107. See also 120 Cong. Rec. 29,933 (1974) (beneficiaries entitled to recover benefits "as well as to obtain redress of fiduciary violations") (statement of Sen. Williams).
B. Trust Law Fiduciary Obligations in the Administration of Claims

Because Congress granted the courts broad lawmaking authority138 and looked to the common law of trusts139 as a guide for developing the substantive law, the next step in considering a claimant's ERISA damages is to ascertain the approach that trust law would dictate. Trust law recognizes a beneficiary's right to adequate administration and disbursement of trust funds.140 Proper administration of the trust represents one of a fiduciary's most basic duties.141 Remedies for trust misadministration include extracontractual damages, such as an award of attorney's fees to beneficiaries who sue to prevent unlawful trust administration142 or an award of interest for a trustee's failure to pay trust property when due.143 Thus, trust law provides a basis for Russell's claim for extracontractual damages for fiduciary misadministration under ERISA.

C. Trust Principles in the Context of ERISA: Appropriate Remedies for Misadministration

The final step in determining the appropriate type of damages for an injured ERISA participant is to apply trust law principles in the context of ERISA. Recognizing that the right to competent

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138 See supra notes 99-100 and accompanying text. One commentator, recognizing this congressional mandate, stated that "the broad sweep of powers traditionally accorded to courts of equity is fully applicable under ERISA. . . . Consistent with that standard it has been held from the very beginning under ERISA that the equity courts have 'the power and the duty to afford [sic, enforce] that [sic, the] remedy which is most advantageous to the participants and most conducive to effectuating the purposes of the trust.' " Gallagher, Recent Developments in Concepts Relating to Fiduciary Liability, 16 FORUM 753, 763 (1981) (quoting Eaves v. Penn, 587 F.2d 453, 462 (10th Cir. 1978)) (emphasis and errors by Gallagher).

139 See supra note 104 and accompanying text.


143 See, e.g., Fox v. Schaeffer, 151 Conn. 439, 41 A.2d 46 (1944) (where trustee willfully withheld payments to beneficiaries of trust fund, courts may charge trustees compound interest); In re Koffend's Will, 218 Minn. 206, 15 N.W.2d 590 (1944) (where trustee failed to pay over property to beneficiary, courts may award beneficiary interest to make him whole); In re Grove's Estate, 12 Misc. 2d 727, 177 N.Y.S.2d 317 (Sup. Ct. 1958) (where trustee's failure to make prompt payment is good faith mistake, court has discretion to set interest rate). Courts may award either simple or compound interest depending upon which type will make the beneficiary whole. Riggs v. Loweree, 189 Md. 437, 445, 56 A.2d 152, 156-57 (1947); see also G. BOGERT, supra note 26, § 863.
claims administration is broad, and that trust law has allowed extracontractual damages for breach of this right, Russell's claim for such damages should receive serious consideration. Russell's extracontractual damage claim included two parts: damages for her husband's cashout of his retirement savings and damages for mental distress. Both types of extracontractual awards comport with ERISA's policies.

Russell's right to competent claims administration was the means for ensuring her financial security. Her fiduciaries' improper administration allegedly caused her such financial hardship that her husband cashed out his retirement savings. If true, then her fiduciaries undermined Congress's goal of providing participants with financial security; damages would properly compensate her for her loss.

Congress also sought to provide ERISA plan participants with confidence in their benefit plans. Congress sought to eliminate a participant's fear of not receiving benefits when eligible. Russell's realization of this fear allegedly caused her mental distress. Thus, the policy of the Act further supports a damage award for mental distress.

In summary, a court should permit Russell, stating her claim under ERISA section 502(a)(3), to maintain a cause of action for extracontractual relief. Allowing extracontractual damages would

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144 Some courts have stated that ERISA heightens traditional trust law fiduciary duties. For instance, the Tenth Circuit noted that ERISA prohibits numerous specific transactions and limits the acquisition and holding of employer securities and real property by plans. Eaves v. Penn, 587 F.2d 453, 457 (10th Cir. 1978). These restrictions supplement the familiar requirements of undivided loyalty to beneficiaries, the prudent man rule, and the rule requiring diversification of investments. See also Eaton v. D'Amato, 581 F. Supp. 743, 746 (D.D.C. 1980) (“The legislative history is replete with indications of congressional concern to assure adequate protection for the interests of plan participants and beneficiaries beyond that available under conventional trust law.”).

In Massachusetts Mutual, petitioners argued that ERISA's comprehensive statutory scheme precludes a finding that Congress intended to award punitive or extracontractual damages for misadministration of benefit claims. Brief for Petitioners at 21-24, 36-39, Mass. Mut., 105 S. Ct. 3085 (1985) (microfiche). This argument fails to recognize that such remedies may be necessary to further the substantive portion of the act. It also fails to acknowledge that such remedies are indeed implicit within the statutory scheme. See supra notes 120-24 and accompanying text.


146 See supra notes 133-35 and accompanying text.

147 Such an award would comport with traditional notions of damage relief. For instance, Professor Sedgwick writes: "In all cases ... of civil injury and of breach of contract the declared object of awarding damages is to give compensation for pecuniary loss; that is, to put the plaintiff in the same position ... as he would have been if the contract had been performed or the tort not committed." 1 T. SEDGWICK, A TREATISE ON THE MEASURE OF DAMAGES § 30, at 25 (1891) (footnotes omitted).

148 See supra note 130.
vindicate a claimant's broad right to competent claims administration. It would solidify the accompanying fiduciary duty. Furthermore, such a damage award would fulfill the Act's purpose of legitimizing employee benefit plans.

CONCLUSION

The Supreme Court's narrow holding in Massachusetts Mutual—extracontractual and punitive damages are unavailable to a plan participant who brings an action for personal relief under section 409 of ERISA—fails to provide a framework for evaluating damage claims under other ERISA provisions. ERISA's substantive policies indicate that federal courts should provide full relief to a plan participant when a fiduciary violates the participant's substantive rights. To adequately reflect the scope of a participant's rights as granted by the Act, courts should award extracontractual damages. An award of punitive damages, however, would reach beyond the goal of redress and Congress's purposes in enacting ERISA.

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