SUPREME COURT OF THE UNITED STATES

No. 91–1671

WILLIAM J. MERTENS, ALEX W. BANDROWSKI, JAMES A. CLARK, AND RUSSELL FRANZ,
PETITIONERS *v.* HEWITT ASSOCIATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 1, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

The question presented is whether a nonfiduciary who knowingly participates in the breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 832, as amended, 29 U. S. C. §1001 *et seq.*, is liable for losses that an employee benefit plan suffers as a result of the breach.

According to the complaint, the allegations of which we take as true, petitioners represent a class of former employees of the Kaiser Steel Corporation (Kaiser) who participated in the Kaiser Steel Retirement Plan, a qualified pension plan under ERISA. Respondent was the plan's actuary in 1980, when Kaiser began to phase out its steelmaking operations, prompting early retirement by a large number of plan participants. Respondent did not, however, change the plan's actuarial assumptions to reflect the additional costs imposed by the retirements. As a result, Kaiser did not adequately fund the plan, and eventually the plan's assets became insufficient to satisfy its benefit obligations, causing the Pension Benefit Guaranty Corporation (PBGC) to terminate the plan pursuant

to 29 U. S. C. §1341. Petitioners now receive only the benefits guaranteed by ERISA, see §1322, which are in general substantially lower than the fully vested pensions due them under the plan.

Petitioners sued the fiduciaries of the failed plan, alleging breach of fiduciary duties. See *Mertens* v. *Black*, 948 F. 2d 1105 (CA9 1991) *(per curiam)* (affirming denial of summary judgment). They also commenced this action against respondent,[1] alleging that *it* had caused the losses by allowing Kaiser to select the plan's actuarial assumptions, by failing to disclose that Kaiser was one of its clients, and by failing to disclose the plan's funding shortfall. Petitioners claimed that these acts and omissions violated ERISA by effecting a breach of respondent's "professional duties" to the plan, for which they sought, *inter alia*, monetary relief. In opposing respondent's motion to dismiss, petitioners fleshed out this claim, asserting that respondent was liable (1) as an ERISA fiduciary that committed a breach of its own fiduciary duties, (2) as a nonfiduciary that knowingly participated in the plan fiduciaries' breach of their fiduciary duties, and (3) as a nonfiduciary that committed a breach of nonfiduciary duties imposed on actuaries by ERISA. The District Court for the Northern District of California dismissed the complaint, App. to Pet. for Cert. A17, and the Court of Appeals for the Ninth Circuit affirmed in relevant part, 948 F. 2d 607 (1991).[2]

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[1]The complaint also named as defendants the plan and the PBGC, in its capacity as the plan's statutory trustee. The District Court's dismissal of these defendants was not appealed, nor was its dismissal of the PBGC's cross-claim demanding that any recovery by petitioners be paid to it.

[2]Petitioners also claimed that respondent's activities constituted a party-in-interest transaction prohibited by ERISA and professional malpractice under state

Petitioners sought certiorari only on the question whether ERISA authorizes suits for money damages against nonfiduciaries who knowingly participate in a fiduciary's breach of fiduciary duty. We agreed to hear the case. 506 U. S. ___ (1992).

ERISA is, we have observed, a "comprehensive and reticulated statute," the product of a decade of congressional study of the Nation's private employee benefit system. *Nachman Corp.* v. *PBGC*, 446 U. S. 359, 361 (1980). The statute provides that not only the persons named as fiduciaries by a benefit plan, see 29 U. S. C. §1102(a), but also anyone else who exercises discretionary control or authority over the plan's management, administration, or assets, see §1002(21)(A), is an ERISA "fiduciary." Fiduciaries are assigned a number of detailed duties and responsibilities, which include "the proper management, administration, and investment of [plan] assets, the maintenance of proper records, the disclosure of specified information, and the avoidance of conflicts of interest." *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134, 142–143 (1985); see 29 U. S. C. §1104(a). Section 409(a), 29 U. S. C. §1109(a), makes fiduciaries liable for breach of these duties, and specifies the remedies available against them: the fiduciary is personally liable for damages ("to make good to [the] plan any losses to the plan

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law. The District Court's dismissal of the former claim was not appealed, but the Court of Appeals reversed the dismissal of the pendant claim on state-law grounds. Petitioners also sought declaratory and injunctive relief, which the District Court deemed irrelevant, given that the plan had been terminated and with it respondent's position as the plan's actuary. The Court of Appeals did not address this point.

resulting from each such breach"), for restitution ("to restore to [the] plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary"), and for "such other equitable or remedial relief as the court may deem appropriate," including removal of the fiduciary. Section 502(a)(2), 29 U. S. C. §1132(a)(2)—the second of ERISA's "six carefully integrated civil enforcement provisions," *Russell*, *supra*, at 146[3]—

[3]Section 502(a) reads in its entirety:

"(a) Persons empowered to bring a civil action

"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 1109 of this title;

"(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 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 [section] 1025(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

allows the Secretary of Labor or any plan beneficiary, participant, or fiduciary to bring a civil action "for appropriate relief under section [409]."

The above described provisions are, however, limited by their terms to fiduciaries. The Court of Appeals decided that respondent was not a fiduciary, see 948 F. 2d, at 610, and petitioners do not contest that holding. Lacking equivalent provisions specifying *non*fiduciaries as potential defendants, or damages as a remedy available against them, petitioners have turned to §502(a)(3), 29 U. S. C. §1132(a)(3), which authorizes a plan beneficiary, participant, or fiduciary to bring a civil action:

> "(A) to enjoin any act or practice which violates any provision of [ERISA] 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 [ERISA] or the terms of the plan . . . ."

See also §502(a)(5), 29 U. S. C. §1132(a)(5) (providing, in similar language, for civil suits by the Secretary based upon violation of ERISA provisions). Petitioners contend that requiring respondent to make the Kaiser plan whole for the losses resulting from its alleged knowing participation in the breach of fiduciary duty by the Kaiser plan's fiduciaries would constitute "other appropriate equitable relief" within the meaning of §502(a)(3).

We note at the outset that it is far from clear that, even if this provision does make money damages available, it makes them available for the actions at issue here. It does not, after all, authorize "appropriate equitable relief" *at large*, but only "appropriate equitable relief" for the purpose of "redress[ing any] violations or . . . enforc[ing] any provisions" of ERISA or an ERISA plan. No one

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under subsection (c)(2) or (i) or (*l*) of this section." 29 U. S. C. §1132(a) (1980 ed. and Supp. III).

suggests that any term of the Kaiser plan has been violated, nor would any be enforced by the requested judgment. And while ERISA contains various provisions that can be read as imposing obligations upon nonfiduciaries, including actuaries,[4] no provision explicitly requires them to avoid participation (knowing or unknowing) in a fiduciary's breach of fiduciary duty. It is unlikely, moreover, that this was an oversight, since ERISA *does* explicitly impose "knowing participation" liability on cofiduciaries. See §405(a), 29 U. S. C. §1105(a). That limitation appears all the more deliberate in light of the fact that "knowing participation" liability on the part of *both* cotrustees *and* third persons was well established under the common law of trusts. See 3 A. Scott & W. Fratcher, Law of Trusts §224.1, p. 404 (4th ed. 1988) (hereinafter Scott & Fratcher) (cotrustees); 4 Scott & Fratcher §326, p. 291 (third persons). In *Russell* we emphasized our unwillingness to infer causes of action in the ERISA context, since that statute's carefully crafted and detailed enforcement scheme provides "strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." 473 U. S., at 146–147. All of this notwithstanding, petitioners and their *amicus* the United States seem to assume that respondent's alleged action (or inaction) violated ERISA, and address their arguments almost exclusively to what forms of relief are available. And

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[4]For example, a person who provides services to a plan is a "party in interest," 29 U. S. C. §1002(14)(B), and may not offer his services or engage in certain other transactions with the plan, §1106(a), for more than reasonable compensation, §1108(b)(2). See also §1023(d)(8) (annual reports must include certification by enrolled actuary); §1082(c)(3) (minimum funding standards for plan to be based on "reasonable" actuarial assumptions).

respondent, despite considerable prompting by its *amici*, expressly disclaims reliance on this preliminary point. See Brief for Respondent 18, n. 15; Tr. of Oral Arg. 46. Thus, although we acknowledge the oddity of resolving a dispute over remedies where it is unclear that a remediable wrong has been alleged, we decide this case on the narrow battlefield the parties have chosen, and reserve decision of that antecedent question.[5]

Petitioners maintain that the object of their suit is "appropriate *equitable* relief" under §502(a)(3). They do not, however, seek a remedy traditionally viewed as "equitable," such as injunction or restitution. (The Court of Appeals held that restitution was unavailable, see 948 F. 2d, at 612, and petitioners have not challenged that.) Although they often dance around the word, what petitioners in fact seek is nothing other than compensatory *damages*—monetary relief for all losses their plan sustained as a result of the alleged breach of fiduciary duties. Money damages are, of course, the classic form of *legal* relief. *Curtis* v. *Loether*, 415 U. S. 189, 196 (1974); *Teamsters* v. *Terry*, 494 U. S. 558, 570–571 (1990); D. Dobbs, Remedies §1.1, p. 3 (1973). And

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[5]The dissent expresses its certitude that "the statute clearly does not bar such a suit." *Post*, at 3, n. 1. That, of course, is not the issue. The issue is whether the statute affirmatively *authorizes* such a suit. To meet that requirement, it is not enough to observe that "trust beneficiaries clearly had such a remedy [against nonfiduciaries who actively assist in the fiduciary's breach] at common law." *Ibid*. They had such a *remedy* because nonfiduciaries had a *duty* to the beneficiaries not to assist in the fiduciary's breach. A similar duty is set forth in ERISA; but as we have noted, only *some* common-law "nonfiduciaries" are made subject to it, namely, those who fall within ERISA's artificial definition of "fiduciary."

though we have never interpreted the precise phrase "other appropriate equitable relief," we have construed the similar language of Title VII of the Civil Rights Act of 1964 (before its 1991 amendments)—``any other equitable relief as the court deems appropriate,'' 42 U. S. C. §2000e-5(g)—to preclude "awards for compensatory or punitive damages." *United States* v. *Burke*, 504 U. S. ___, ___ (1992) (slip op., at 9).

Petitioners assert, however, that this reading of "equitable relief" fails to acknowledge ERISA's roots in the common law of trusts, see *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U. S. 101, 110–111 (1989). "[A]lthough a beneficiary's action to recover losses resulting from a breach of duty superficially resembles an action at law for damages," the Solicitor General suggests, "such relief traditionally has been obtained in courts of equity" and therefore "is, by definition, `equitable relief.'" Brief for United States as *Amicus Curiae* 13–14. It is true that, at common law, the courts of equity had exclusive jurisdiction over virtually all actions by beneficiaries for breach of trust. See *Lessee of Smith* v. *McCann*, 24 How. 398, 407 (1861); 3 Scott & Fratcher §197, p. 188.[6] It is also true that money damages were available in those courts against the trustee, see *United States* v. *Mitchell*, 463 U. S. 206, 226 (1983); G. Bogert & G. Bogert, Law of Trusts and Trustees §701, p. 198 (rev. 2d ed. 1982) (hereinafter Bogert & Bogert), and against third persons who knowingly participated in the trustee's breach, see *Seminole Nation* v. *United States*, 316 U. S. 286, 296–297

[6]The only exceptions were actions at law to obtain payment of money or transfer of chattels immediately and unconditionally due the beneficiary, see 3 Scott & Fratcher §198—and even then the courts were divided over whether equivalent actions could also be brought in equity, see *id.*, §198.3.

(1942); Scott, Participation in a Breach of Trust, 34 Harv. L. Rev. 454 (1921).

At common law, however, there were many situations—not limited to those involving enforcement of a trust—in which an equity court could "establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority." 1 J. Pomeroy, Equity Jurisprudence §181, p. 257 (5th ed. 1941). The term "equitable relief" can assuredly mean, as petitioners and the Solicitor General would have it, whatever relief a court of equity is empowered to provide in the particular case at issue. But as indicated by the foregoing quotation —which speaks of "legal remedies" granted by an equity court—"equitable relief" can also refer to those categories of relief that were *typically* available in equity (such as injunction, mandamus, and restitution, but not compensatory damages). As memories of the divided bench, and familiarity with its technical refinements, recede further into the past, the former meaning becomes, perhaps, increasingly unlikely; but it remains a question of interpretation in each case which is intended.

In the context of the present statute, we think there can be no doubt. Since *all* relief available for breach of trust could be obtained from a court of equity, limiting the sort of relief obtainable under §502(a)(3) to "equitable relief" in the sense of "whatever relief a common-law court of equity could provide in such a case" would limit the relief *not at all*.[7] We will not

[7]The dissent argues that it would limit the relief by rendering punitive damages unavailable. *Post*, at 8–11. The notion that concern about punitive damages motivated Congress is a classic example of projecting current attitudes upon the helpless past. Unlike the availability of money damages, which always has been a central concern of courts and legislatures in fashioning causes of action, the availability of

read the statute to render the modifier superfluous. See *United States* v. *Nordic Village, Inc.*, 503 U. S. ___, ___ (1992) (slip op., at 6); *Moskal* v. *United States*, 498 U. S. 103, 109–110 (1990). Regarding "equitable" relief in §502(a)(3) to mean "all relief available for breach of trust at common law" would also require us either to give the term a different meaning there than it bears elsewhere in ERISA, or to deprive of all

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punitive damages is a major issue today, but was not in 1974, when ERISA was enacted. See *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 61–62 (1991) (O'CONNOR, J., dissenting); P. Huber, Liability 127 (1988); Ellis, Fairness and Efficiency in the Law of Punitive Damages, 56 So. Cal. L. Rev. 1, 2–3 (1982). That is particularly so for breach-of-trust cases. The 1988 edition of Scott & Fratcher cites no pre-ERISA case on the issue of punitive damages, see 3 Scott & Fratcher §205, p. 239, n. 2; the 1982 edition of Bogert & Bogert cites two, see Bogert & Bogert §862, p. 41, n. 12. The 1992 supplements to these treatises, however, each cite more than a dozen cases on the issue from the 1980s.

But even if Congress *had* been concerned about "extracompensatory forms of relief," *post*, at 8, it would have been foolhardy to believe that excluding "legal" relief was the way to prohibit them (while still permitting *other* forms of monetary relief) in breach-of-trust cases. The dissent's confident assertion that punitive damages "were not available" in equity, *ibid*., simply does not correspond to the state of the law when ERISA was enacted. A year earlier, a major treatise on remedies was prepared to say only that "a majority of courts that have examined the point probably still refuse to grant punitive damages in equity cases." D. Dobbs, Remedies §3.9, p. 211 (1973). That, of course, was speaking of equity cases *in general*. It would have been even riskier to presume that punitive damages were unavailable in

meaning the distinction Congress drew between "equitable" and "remedial" relief in §409(a),[8] and between "equitable" and "legal" relief in the very same section of ERISA, see 29 U. S. C. §1132(g)(2)(E); in the same subchapter of ERISA, see §1024(a)(5)(C); and in the ERISA subchapter dealing with the PBGC, see §§1303(e)(1), 1451(a)(1).[9] Neither option is acceptable. See *Estate of Cowart* v. *Nicklos Drilling*

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that subclass of equity cases in which law-type damages were routinely awarded, namely, breach-of-trust cases. The few trust cases that *did* allow punitive damages were not exclusively actions at law. See *Rivero* v. *Thomas*, 86 Cal. App. 2d 225, 194 P. 2d 533 (1948). The two decisions upon which the dissent relies, *Fleishman* v. *Krause, Lindsay & Nahstoll*, 261 Ore. 505, 495 P. 2d 268 (1972), and *Dixon* v. *Northwestern Nat. Bank of Minneapolis*, 297 F. Supp. 485 (Minn. 1969), see *post*, at 10, held only that the breach-of-trust actions at issue could be brought at law, thus entitling the plaintiffs to a jury trial. While both decisions noted in passing that the plaintiffs sought punitive as well as compensatory damages, neither said that those damages could be obtained, much less that they could be obtained *only at law*.

The dissent's claim that the Courts of Appeals have adopted its theory that "equitable relief" was used in ERISA to exclude punitive damages, see *post*, at 11, n. 6, is also unfounded. The only opinion the dissent cites that permits punitive damages when an "equitable relief" limitation does not exist (viz., under §502(a)(2), which permits not only "equitable" but also "remedial" relief) is *Kuntz* v. *Reese*, 760 F. 2d 926 (CA9 1985). That opinion (a) was based on the Ninth Circuit precedent we subsequently reversed in *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134 (1985), see *Kuntz, supra,* at 938; (b) was formally withdrawn after being vacated on other grounds, see

Co., 505 U. S. ___, ___ (1992) (slip op., at 9); cf. *Lorillard* v. *Pons*, 434 U. S. 575, 583 (1978). The authority of courts to develop a "federal common law" under ERISA, see *Firestone*, *supra*, at 110, is not the authority to revise the text of the statute.

Petitioners point to ERISA §502(*l*), which was added to the statute in 1989, see Omnibus Budget Reconciliation Act of 1989 (OBRA), Pub. L. No. 101–

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785 F. 2d 1410 *(per curiam)*, cert. denied, 479 U. S. 916 (1986); and (c) has never been relied upon again, even by the Ninth Circuit.

[8]We agree with the dissent, see *post*, at 8, n. 4, that the distinction between "equitable" and "remedial" relief is artless, but do not agree that we are therefore free to consider it meaningless. "Equitable" relief must mean *something* less than *all* relief. Congress has, it may be noted, used the same language ("other equitable or remedial relief") elsewhere. See 5 U. S. C. §8477(e)(1)(A).

[9]The dissent postulates that Congress used the "legal or equitable relief" language only where the cause of action it was authorizing lacked "any discernible analogue in the common law of trusts," as a means of indicating that the courts are "free to craft whatever relief is most appropriate." *Post*, at 7. That is demonstrably not so. Administrative accounting requirements like the ones enforced through 29 U. S. C. §1024(a)(5)(C) (which uses the "legal or equitable" formulation) were not unheard-of before ERISA, see 2A Scott & Fratcher §172, p. 456, and they have an "analogue" in the basic duty of trustees to keep and render accounts upon demand by the beneficiary, see *id*., §172; Bogert & Bogert §861, pp. 7–9. Moreover, in a 1986 amendment to the subchapter dealing with the PBGC, Congress created a cause of action to enforce the provisions governing termination of single-employer plans, using the same "other appropriate equitable relief" language as

239, §2101, 103 Stat. 2123, and provides as follows:

> "(1) In the case of—
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> "(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or
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> "(B) any knowing participation in such a breach or violation by any other person,
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> "the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount." 29 U. S. C. §1132(*l*)(1) (1988 ed., Supp. III).

The Secretary may waive or reduce this penalty if he believes that "the fiduciary or other person will [otherwise] not be able to restore all losses to the plan without severe financial hardship." §1132(*l*)(3)(B). "Applicable recovery amount" is defined (in §502(*l*)(2)(B)) as "any amount . . . ordered by a court to be paid by such fiduciary or other person to a plan or its participants or beneficiaries in a judicial proceeding instituted by the Secretary under [§502](a)(2) or (a)(5)." It will be recalled that the latter subsection, §502(a)(5), authorizes relief in actions by the Secretary on the same terms ("appropriate equitable relief") as in the private-party actions authorized by §502(a)(3). Petitioners argue that §502(*l*) confirms that §502(a)(5)—and hence, since it uses the same language, §502(a)(3)—allows actions for damages, since otherwise there could be no "applicable recovery amount" against some "other person" than the fiduciary, and the Secretary would have no occasion to worry about whether any such "other person" would be able to "restore all losses to the plan" without financial hardship.

We certainly agree with petitioners that language

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appears in §502(a)(3). See 29 U. S. C. §1370(a)(2). That cause of action no more reflects some common-law "analogue" than do those created by the other PBGC provisions referred to in text (which employ the "legal or equitable" formulation).

used in one portion of a statute (§502(a)(3)) should be deemed to have the same meaning as the same language used elsewhere in the statute (§502(a)(5)). Indeed, we are even more zealous advocates of that principle than petitioners, who stop short of applying it directly to the term "equitable relief." We cannot agree, however, that §502(*l*) establishes the existence of a damages remedy under §502(a)(5)—*i.e.*, that it is otherwise so inexplicable that we must give the term "equitable relief" the expansive meaning "all relief available for breach of trust." For even in its more limited sense, the "equitable relief" awardable under §502(a)(5) includes restitution of ill-gotten plan assets or profits, providing an "applicable recovery amount" to use to calculate the penalty, which the Secretary may waive or reduce if paying it would prevent the restoration of those gains to the plan; and even assuming nonfiduciaries are not liable at all for knowing participation in a fiduciary's breach of duty, see *supra*, at 5–6, cofiduciaries expressly are, see §405(a), so there are some "other person[s]" than fiduciaries-in-breach liable under §502(*l*)(1)(B). These applications of §502(*l*) give it meaning and scope without resort to the strange interpretation of "equitable relief" in §502(a)(3) that petitioners propose. The Secretary's initial interpretation of §502(*l*) accords with our view. The prologue of the proposed regulation implementing §502(*l*), to be codified at 29 CFR §2560.502l-1, states that when a court awards "equitable relief"—as opposed to "monetary damages"—a §502(*l*) penalty will be assessed only if the award involves the transfer to the plan of money or property. 55 Fed. Reg. 25288, 25289, and n. 9 (1990).

In the last analysis, petitioners and the United States ask us to give a strained interpretation to §502(a)(3) in order to achieve the "purpose of ERISA to protect plan participants and beneficiaries." Brief for Petitioners 31. They note, as we have, that before

ERISA nonfiduciaries were generally liable under state trust law for damages resulting from knowing participation in a trustees's breach of duty, and they assert that such actions are now pre-empted by ERISA's broad pre-emption clause, §514(a), 29 U. S. C. §1144(a), see *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 139–140 (1990). Thus, they contend, our construction of §502(a)(3) leaves beneficiaries like petitioners with *less* protection than existed before ERISA, contradicting ERISA's basic goal of "promot[ing] the interests of employees and their beneficiaries in employee benefit plans," *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 90 (1983). See *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U. S., at 114.

Even assuming (without deciding) that petitioners are correct about the pre-emption of previously available state-court actions, vague notions of a statute's "basic purpose" are nonetheless inadequate to overcome the words of its text regarding the *specific* issue under consideration. See *PBGC* v. *LTV Corp.*, 496 U. S. 633, 646–647 (1990). This is especially true with legislation such as ERISA, an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests—not all in favor of potential plaintiffs. See, *e.g.*, *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 54–56 (1987). The text that we have described is certainly not nonsensical; it allocates liability for plan-related misdeeds in reasonable proportion to respective actors' power to control and prevent the misdeeds. Under traditional trust law, although a beneficiary could obtain damages from third persons for knowing participation in a trustee's breach of fiduciary duties, only the trustee had fiduciary duties, see 1 Scott & Fratcher §2.5, p. 43. ERISA, however, defines "fiduciary" not in terms of formal trusteeship, but in *functional* terms of control and authority over the plan, see 29 U. S. C. §1002(21)

(A), thus expanding the universe of persons subject to fiduciary duties—and to dam-
ages—under §409(a). Professional service providers such as actuaries become liable for damages when they cross the line from advisor to fiduciary; must disgorge assets and profits obtained through participation as parties-in-interest in transactions prohibited by §406, and pay related civil penalties, see §502(i), 29 U. S. C. §1132(i); and (assuming nonfiduciaries can be sued under §502 (a)(3)) may be enjoined from participating in a fiduciary's breaches, compelled to make restitution, and subjected to other equitable decrees. All that ERISA has eliminated, on these assumptions, is the common law's joint and several liability, for *all* direct and consequential damages suffered by the plan, on the part of persons who had no real power to control what the plan did. Exposure to that sort of liability would impose high insurance costs upon persons who regularly deal with and offer advice to ERISA plans, and hence upon ERISA plans themselves. There is, in other words, a "tension between the primary [ERISA] goal of benefitting employees and the subsidiary goal of containing pension costs." *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U. S. 504, 515 (1981); see also *Russell*, 473 U. S., at 148, n. 17. We will not attempt to adjust the balance between those competing goals that the text adopted by Congress has struck.

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The judgment of the Court of Appeals is

Affirmed.