

# WHAT'S ERISA ALL ABOUT ANYWAY?

A Refresher Summary for Those Who Never Paid Attention to  
the ERISA subject in Law School ...

Or Never Took the Course

By Gregory Pepe

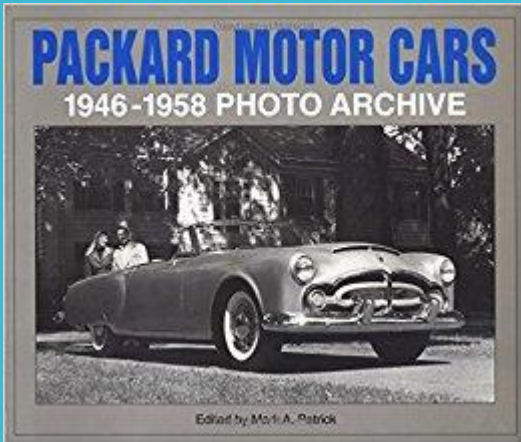
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TO KNOW  
ERISA  
IS TO LOVE  
ERISA



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# A LITTLE HISTORY



- ERISA was conceived as a law to regulated pension plans following the bankruptcies of the Packard Motor Car Company in 1958 and Studebaker in 1963, leaving tens of thousands of workers without the pension benefits which had promised to them.

ERISA constitutes a compromise between Congress and employers consolidating reforms begun in the late 1950's and throughout the 1960's.

## THE ESSENTIAL PROVISIONS OF ERISA

- PREEMPTION CLAUSE
- SAVINGS CLAUSE
- DEEMER CLAUSE
- CONFLICT PREEMPTION EXCLUSIVE FEDERAL COURT JURISDICTION
- NO DAMAGES

## PREEMPTION CLAUSE

- Erisa's provisions preempt any and all state laws insofar as they relate to an employee benefit plan.

## SAVINGS CLAUSE

- Nothing in ERISA shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

## DEEMER CLAUSE

- This provision prevents state regulation of self-insured plans by preventing by prohibiting States from “deeming” these plans to be insurance arrangements. If they were insurance, they would otherwise be subject to regulation by the States.

## CONFLICT PREEMPTION

- Even if a state insurance regulation that would otherwise be saved from preemption under the Savings Clause conflicts with the substantive provisions of ERISA, that state regulation will also be struck down and preempted by ERISA.
- For instance, a state law which seeks to duplicate, supplement or supplant the remedies provided under ERISA conflicts with Congress' intention to create a single cause of action under ERISA.



## EXCLUSIVE FEDERAL COURT JURISDICTION

- This provision under ERISA is why so many cases filed in state courts are removed to federal court. As part of the grand compromise reached when ERISA was enacted, Congress agree to shield plans from the vagaries of the state court judiciary systems and allow the federal courts to have exclusive jurisdiction.

# NO DAMAGES

- A party bringing an action under ERISA cannot sue for many kinds of damages normally available under state law. ERISA limits the relief which can be afforded to the following:
  1. Denial of Benefits - this can only be the value of those benefits, but not consequential damages, punitive damages, or other types of damages customarily sought in state court;
  2. Breach of Fiduciary Duty;
  3. Injunctive Relief – this are is the source of some interesting cases recently, when plans and insurers seek to recover money from providers.

WERE YOU  
PAYING  
ATTENTION? A  
QUIZ

- Which of the following are true statements about ERISA?
  1. ERISA stands for the Employee Retirement Income Security Act of 1974.
  2. ERISA has been said to stand for “Every Ridiculous Idea Since Adam”.
  3. ERISA is the name of a heroine in a bad 1960’s Science Fiction novel.
  4. All of the above.

(Answer: #4)

QUESTION  
TWO OF THE  
QUIZ

- Which of the following is **NOT** a clause contained in ERISA?
  1. The ***Preemption Clause***, whereby ERISA preempts all state laws which conflict with ERISA.
  2. The ***Insurance Savings Clause***, which saves from preemption state laws that regulate insurance.
  3. The ***Deemer Clause***, which prohibits self-funded benefit plans that resemble insurance from being deemed to be insurance, and thereby subject to state-law regulation.
  4. The ***Beemer Clause***, which guarantees to each attorney well versed in ERISA enough fee income to afford a BMW.

(Answer: #4)

## FINAL JEOPARDY QUESTION

- The remedies available to a litigant filing suit under ERISA do **NOT** include which of the following?
  1. Payment of plan benefits.
  2. Attorneys fees incurred in obtaining plan benefits.
  3. An order preventing a plan from taking money back from a provider.
  4. Declaratory relief to clarify rights under a plan.
  5. Penalties of up to \$100 per day for failure to supply plan documents within 30 days of written receipt for the same.
  6. Punitive damages for failing to provide plan documents to a party seeking them.

(Answer: #6)

# Contact



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