EARLY RETIREMENT BENEFITS AND THE ARBITRARY AND CAPRICIOUS STANDARD UNDER ERISA IN SPACEK V. MARITIME ASS’N

INTRODUCTION

In 1974, with the enactment of the Employment Retirement Income Security Act ("ERISA"), Congress sought to regulate private pension plans by protecting employees in their relationships with their employers. ERISA is a comprehensive attempt to assure American workers that they will have a means to live and provide sustenance beyond their working years. There are currently two facets to ERISA causing discord and confusion in the federal district courts. The first issue causing confusion among the courts is whether early retirement benefits are accrued benefits protected under ERISA’s anticutback provisions. The second issue is how to apply the arbitrary and capricious standard to an administrator’s ruling under a private pension plan. Recently, these two issues surfaced in the United States Court of Appeals for the Fifth Circuit in Spacek v. Maritime Ass’n, ILA Pension Plan.

In Spacek, Daniel A. Spacek brought action against the administrators of his private pension for wrongfully suspending his early retirement benefits. Spacek claimed that: (1) this type of retroactive change was prohibited by ERISA’s anti-cutback provision, 29 U.S.C. § 1054(g), and (2) the administrators’ decision to retroactively apply

3. See infra notes 4-5 and accompanying text.
5. See Kemmerer v. ICI Americas Inc., 70 F.3d 281 (3d Cir. 1995) (holding that an employer may not terminate a “top hat” plan retroactively); Pratt v. Petroleum Prod. Man., Inc. Employee Savings Plan & Trust, 920 F.2d 651 (10th Cir. 1990) (declaring that amendments to a plan which allowed interim valuation could not be retroactively applied because the rights to receive the funds under the original valuation date had vested); Brug v. Pension Plan of the Carpenters Pension Trust Fund for N. Cal., 669 F.2d 570 (9th Cir. 1982) (holding that the rescission of an amendment that granted clerical employees certain disability benefits that was applied retroactively was arbitrary and capricious).
6. See infra notes 18-64 and accompanying text.
the amendment to him was "arbitrary and capricious." Both the statutory language of section 1054(g) and the standard of review issue were addressed by the district court. The district court found that section 1054(g) did not apply because Spacek's benefits were only suspended, not reduced as required by section 1054(g). On the issue of the arbitrary and capricious contention, the district court agreed with Spacek that the decision to retroactively apply the change to him was arbitrary and capricious. On appeal, the Fifth Circuit, also addressing these issues on de novo review, declared that "suspended" benefits do not receive protection under ERISA. However, the court held that the retroactive application of the amendment by the administrators to Spacek was not arbitrary and capricious.

This Note will first address the facts and holding of Spacek. Next, this Note will review the legislative history of ERISA and examine how other circuit courts have dealt with both the anticutback provision of section 1054(g) and the appropriate standard of review for an administrator's decision under a private pension plan. In addition, this Note will address why the Fifth Circuit's failure to address the fundamental question of whether early retirement benefits are accrued benefits makes its analysis overly broad. Finally, this Note will criticize the Fifth Circuit's conclusion that the administrators' retroactive application of the amendment to Spacek was not arbitrary and capricious.

**FACTS AND HOLDING**

On November 1, 1985, Daniel Spacek retired from the Houston longshoring industry. Spacek had spent thirty years working for an entity covered by The Maritime Association - I.L.A. Pension Plan and its Trustees ("Maritime"), which operated a "multiemployer pension plan providing retirement benefits to employees in the longshoring industry." Spacek was only fifty-one years of age when he applied for

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10. Id. at 963.
11. Id. at 964.
13. Id. at 289, 293.
14. See infra notes 18-64 and accompanying text.
15. See infra notes 65-241 and accompanying text.
16. See infra notes 242-326 and accompanying text.
17. See infra notes 327-423 and accompanying text.
19. Spacek, 134 F.3d at 285-86.
retirement, and according to the provisions of the plan qualified for early retirement benefits.\textsuperscript{20}

In 1985, at the time Spacek retired, the plan outlined certain limitations on an early retiree's ability to become "reemployed" in the industry.\textsuperscript{21} According to the provisions, if early retirement participants become "employed" in the industry they become an "active participant" and the benefits become subject to suspension.\textsuperscript{22} Section 9.1(b)(2) of the plan, as it stood in 1985, provided two conjunctive conditions for determining when a participant becomes reemployed in the industry.\textsuperscript{23} In basic terms, section 9.1(b)(2) defines "employment in the industry" as: (1) taking another job in the same trade or craft, in the same region covered by [Maritime], and (2) being credited for at least one credit hour.\textsuperscript{24}

On April 17, 1991, six years after Spacek qualified for early retirement, Maritime amended section 9.1(b)(2) by removing the "one credit hour" requirement.\textsuperscript{25} Accordingly, Maritime, as of 1991, was able to suspend an early retiree's benefits if they found that the first element, the participant had taken another job in the same industry in the region covered by the plan, had been satisfied.\textsuperscript{26} Approximately three

\begin{itemize}
\item 20. \textit{Id.} at 286.
\item 21. \textit{Id.} Section 9.1(d)(2) of the Maritime Association, I.L.A. Pension Plan provides:
If a Retired Participant is reemployed in the industry prior to his Normal Retirement Age, payment of his Age or Vested Pension and Temporary Bridge Benefit, if any, shall immediately cease and he shall immediately become an Active Participant. Such a Participant shall not be entitled to an Age or Vested Pension of Temporary Bridge Benefit while he continues to be employed in the industry or, if greater, for a period of six (6) months measured from the due date of the first monthly installment of his Age or Vested Pension which is withheld pursuant to this Paragraph.
\item 22. \textit{Spacek}, 134 F.3d at 286; \textit{see supra} note 21 and accompanying text.
\item 23. \textit{Spacek}, 134 F.3d at 286. Section 9.1(b)(2) of the Maritime Association, I.L.A. Pension Plan states:
A participant who is eligible for an Age or Vested Pension shall be considered to be "employed in the industry", [sic] or to be continuing his "employment in the industry," during a month if, and only if, both of the following conditions are met: (i) he is employed in the same industry, in the same trade or craft, and in the same geographic area covered by this Plan, as when he first became eligible for such pension; and (ii) he is credited with at least one (1) Credit Hour for the Payroll Period ending in such month.
\item 24. \textit{Spacek}, 134 F.3d at 286. The court in \textit{Spacek} stated:
Section 3.1 of the Plan provides the following description of 'credit hours' and their computation during the time period relevant to this case: An Employee's Credit Hours for any Year during the period January 1, 1937, through September 30, 1976, shall be the hours for which he was compensated, or entitled to compensation, by the Employers for periods during which he was an Employee.
\item 25. \textit{Spacek}, 134 F.3d at 286.
\item 26. \textit{Id.}
\end{itemize}
years after the plan was amended, and eight years after he retired, Spacek took a job as a superintendent with James J. Flanagan Stevedores of Houston.  

Spacek's new employment "constituted reemployment in the industry under amended section 9.1(b)(2)," but under section 9.1(b)(2) as it existed when Spacek retired, he would not have been qualified as "reemployed" because the one credit hour requirement was not satisfied.  

Maritime responded to Spacek's reemployment by suspending his benefits.  

On February 7, 1995, Spacek filed suit against Maritime in the United States District Court for the Southern District of Texas, Houston Division, to recover the total amount of retirement benefits withheld during the period of suspension.  

Spacek argued that the 1991 amendments to the plan violated numerous provisions of the Employment Retirement Income Security Act ("ERISA").  

Specifically, Spacek asserted that Maritime did not comply with an ERISA provision, 29 U.S.C. § 1102(b)(3), which requires every employee benefit plan covered by ERISA to "provide a procedure for amending such plan, and [a procedure] for identifying the persons who have authority to amend the plan."  

Additionally, Spacek argued that the 1991 amendment violated ERISA provision 29 U.S.C. § 1054(g)(1) and (2).  

Subsection (1) states: "[t]he accrued benefit of a participant under a [plan] may not be decreased by an amendment of the [plan], other than an amendment described in section 1082(c)(8) or 1441 of this title."  

Subsection (2) further states: "eliminating or reducing an early retirement benefit or a retirement-type subsidy . . . with respect to benefits attributable to service before the amendment shall be treated as reducing

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27. Id. at 286-87.
28. Id. at 287. Spacek did not receive any credit hours for his work with Flanagan Stevedores.  

Id. Section 2.5 defines "employee" as any person:  

(1) [w]ho is a water-front employee of the Employers whose wage rates and working conditions are established by collective bargaining agreements between the Union and the Employers; or (2) [w]ho is a walking foreman; or (3) [w]ho is a bona fide representative in the employ of any Local Union or of the South Atlantic and Gulf Coast District, I.L.A., and a bona fide resident of the area between Lake Charles, Louisiana and Brownsville, Texas; or (4) [f]or whom contributions are paid to the Trust by the West Gulf Maritime Ass'n by reason of a guaranteed annual income agreement between the Employers and the Union.

Id. at 287 n.3.
29. Spacek, 134 F.3d at 287.
30. Id. The total amount suspended was $12,998.95.  

Id.
33. Id. at 963.
34. Id.
accrued benefits." Spacek argued that section 1054(g)(1) and (g)(2) should apply to prohibit Maritime from stopping his benefits, because once they are suspended for a period of time they are gone, and therefore "reduced" as prohibited by the ERISA language.

Spacek's final argument to the district court was that Maritime's decision to apply the 1991 amendment to him retroactively was "arbitrary and capricious." Spacek argued that although Maritime had discretionary authority to interpret the terms of the plan, a court can evaluate the administrators' decisions to make sure their decision was not arbitrary or capricious.

Both Spacek and Maritime filed motions for summary judgment, and the district court ruled by granting in part and denying in part both motions. The district court ruled in favor of Maritime by finding that the amendment procedure set forth in section 15.1 of the plan was in accordance with ERISA's requirements, because the language of the plan clearly granted the administrators power to make such changes. Also, the court ruled that "Spacek's benefits were merely suspended and thus [section] 1054(g)(2) did not apply."

However, the district court agreed with Spacek that Maritime's decision to retroactively apply the amendment to his case was arbitrary and capricious, and the court ordered Maritime to pay Spacek $12,998.95. The district court reasoned that the arbitrary and capricious standard, as outlined in Wildbur v. ARCO Chemical Co., stood for the proposition that an administrator's decision is an abuse of discretion if the court finds that the administrator did not apply the

35. Id.
36. Id.; Spacek, 134 F.3d at 288.
38. Id. The arbitrary and capricious standard of review grants the plan administrators greater deference in making decisions under the plan. Id. In fact, under the arbitrary and capricious standard of review, a court will not disturb the administrator's ruling absent a clear abuse of discretion. Id.
40. Id. at 962 (citing Curtiss-Wright Corp. v. Schoonejegen, 115 S. Ct. 1223, 1229 (1995)). Section 15.1 of the Maritime Association, I.L.A. Pension Plan states:

The Trustees may amend the Plan, from time to time, in any manner not in conflict with the terms of the Trust; provided, however, that no such amendment will cause or permit any part of the Trust properties to be diverted to purposes other than for the exclusive benefit of the Participants or their spouses or permit any part of the Trust properties to revert to or become the property of the Employers.

Spacek, 134 F.3d at 286.
41. Spacek, 923 F. Supp. at 963 (citing Whishman v. Robbins, 55 F.3d 1140, 1147 (6th Cir. 1995)). Unlike the circuit court, the district court did not address this problem at length. Id. The district court simply stated that Spacek's benefits "are merely suspended and thus [section] 1054(g)(2) does not apply." Id.
42. Spacek, 134 F.3d at 287.
43. 974 F.2d 631 (5th Cir. 1992).
legally correct interpretation of the plan. Additionally, the district court noted that the Wildbur test did “not fully contemplate a situation where the plan administrator is interpreting a retroactive plan amendment.” The district court stated that “the issue is not whether the amendment is applied according to its terms, but rather, whether the amendment can be applied at all due to its retroactive nature.

Without the aid of the Wildbur test, the district court turned to the Second, Third, Ninth, and Tenth Circuit courts to determine whether a retroactive application of an amendment violated general principles of contract law and deprived Spacek of vested rights. Accordingly, the district court ruled that Maritime’s decision to suspend Spacek’s benefits was arbitrary and capricious and ordered Maritime to pay Spacek the lost benefits.

Maritime appealed the decision of the district court to the United States Court of Appeals for the Fifth Circuit, arguing that “reduced” benefits are not accrued benefits under ERISA and that the lower court erred in ruling that the retroactive application of the amendment to Spacek was arbitrary and capricious. On de novo review, the Fifth Circuit reversed the district court’s judgment and remanded for entry of judgment on behalf of Maritime. The Fifth Circuit examined in detail Spacek’s section 1054(g) argument. The court noted that there were many instances in statutory language that differentiated between “reducing” benefits and “suspending” benefits. Specifically, the court noted that other ERISA provisions and analogous tax statutes and regulations have used the terms “suspended” and “reduced” distinctly, attaching separate meaning to each. Further, the court stated that the “suspension of benefit payments is not a reduction of benefits[,]” and thus, the district court was correct not to apply section 1054(g)(2), primarily because the language of section 1054(g)(2) only protects “reduced” and “eliminated” benefits.

On the issue of whether Maritime’s decision to apply the amendment to Spacek was arbitrary and capricious, the Fifth Circuit held

44. Spacek, 923 F. Supp. at 963-64 (citing Wildbur v. ARCO Chemical, 974 F.2d 631, 638 (5th Cir. 1992)).
45. Id. at 964.
46. Id.
47. Id.
48. Spacek, 134 F.3d at 287.
49. Id.
50. Id. at 287, 299.
51. Id. at 288-92.
52. Id. at 288-89.
53. Id. at 288-92.
54. Id. at 288-89.
that the *Wildbur* standard of review should apply.\textsuperscript{55} The Fifth Circuit stated that "nothing in ERISA prohibits retroactive application of the [a]mendment to Spacek in this case."\textsuperscript{56} The court reasoned that ERISA does not specifically prohibit a retroactive application of amendments when the plan itself so states.\textsuperscript{57} Accordingly, the Fifth Circuit held that the *Wildbur* standard of review should apply, and that Maritime applied the correct interpretation of the plan.\textsuperscript{58} Thus, the Fifth Circuit overturned the district court's finding that had been in favor of Spacek.\textsuperscript{59}

The Fifth Circuit focused a large part of its discussion on the issue of determining whether Maritime applied the correct legal interpretation of the plan.\textsuperscript{60} The Fifth Circuit determined that a contractual analysis was appropriate in ascertaining the correct legal interpretation of the plan, but held that such an analysis should be viewed in the context of welfare benefit cases.\textsuperscript{61} Further, the Fifth Circuit asserted that welfare benefits "were not contractually guaranteed at a higher level than ERISA requires."\textsuperscript{62} In addition, the court declared that the cases relied upon by the district court could be differentiated upon the facts, or that the cases involved "top hat" benefit plans which are not covered by the provisions in ERISA.\textsuperscript{63} Accordingly, the Fifth Circuit reversed the district court's ruling that Maritime's decision to suspend Spacek's early retirement benefits was arbitrary and capricious.\textsuperscript{64}

**BACKGROUND**

**A. ERISA**

Retirement, remarked one scholar, "is a remarkably recent social phenomenon."\textsuperscript{65} One of the reasons the retirement issue has surfaced in recent times is related to the quantum advances in health and medicine, making it possible for individuals to live longer.\textsuperscript{66} For example, in 1900, life expectancy for individuals in the United States

\textsuperscript{55} Id. at 292-93.
\textsuperscript{56} Id. at 293.
\textsuperscript{57} Id.
\textsuperscript{58} Id. at 292-93, 298.
\textsuperscript{59} Id. at 299.
\textsuperscript{60} Id. at 293-99.
\textsuperscript{61} Id. at 294.
\textsuperscript{62} Id. at 293-94 (citations omitted).
\textsuperscript{63} Id. at 295-96. "Top Hat" plans are described in the ERISA code as unfunded plans "maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees." 29 U.S.C. § 1051(2) (1994).
\textsuperscript{64} *Spacek*, 134 F.3d at 285.
\textsuperscript{65} John H. Langbein & Bruce A. Wolk, Pension and Employee Benefit Law 2 (2d ed. 1990).
\textsuperscript{66} Langbein & Wolk, supra note 65, at 2-3.
was forty-seven years of age, whereas in 1984 life expectancy jumped to seventy-five years. In the past, individuals worked until their death, but with the increase in life expectancy the private pension system was born to provide sustenance and living to individuals from the time of retirement until death.

In its original form, the pension was a private contract between employee and employer. Similar to many realms of American economic life, the private pension was born in the Railroad industry in the late part of the nineteenth century and carried into the early part of the twentieth century. It was not until the economic boom of the post-World War II era, when workers gained greater power, that the private pension became commonplace in American commerce.

In December of 1963, an event occurred that spurred the United States government into a role of regulator in the private pension industry. In South Bend, Indiana, the Studebaker Corporation announced that they were closing their automobile plant, adversely affecting the pension plans of nearly 11,000 employees. Employees who were depending upon the pension, and those who had contributed into the pension, were left without adequate retirement benefits. The Studebaker incident is widely regarded as the “pivotal event” leading to the enactment of the Employment Retirement Income Security Act of 1974 (“ERISA”).

ERISA has been defined as a “comprehensive statute intended by Congress to reserve to the federal government the sole power to regulate the field of employee benefit plans, thereby eliminating the threat of conflicting and inconsistent state and local regulation.” The Studebaker incident made Congress realize that in the realm of pension benefits, employees needed protection against their employers. One senator, commenting on the lack of statutory protection for employees, stated:

If you remain in good health and stay with the same company until you are age sixty-five, and if the company is still in business, and if your department has not been abolished, and if

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67. Id. at 3.
68. Id. at 2.
69. Id. at 54.
70. Id. at 6.
71. Id. at 15.
72. Id. at 53.
73. Id. at 54.
74. Id. at 55.
75. Id. at 53.
77. LANGBEIN & WOLK, supra note 65, at 54-55.
you haven't been laid off for too long a period, and if there's enough money in the fund, and if that money has been pru-
dently managed, you will get a pension.\textsuperscript{76}

In other words, the pre-ERISA state of affairs did not provide employ-
ees an absolute guarantee that they would receive their pension bene-
fits.\textsuperscript{79} ERISA sought to regulate private pensions to ensure that employees would have sufficient income upon retirement.\textsuperscript{80} Consis-
tent with this, ERISA was created, in part, to protect the employees’
rights to, and expectations of, receiving vested benefits and to protect
the integrity of the plan and its assets.\textsuperscript{81}

1. \textit{ERISA and Early Retirement Benefits}

Congress enacted ERISA to protect employee benefits, but failed to
specify which types of benefits were protected.\textsuperscript{82} While this led to
uncertainty, some courts determined that ERISA, as originally
adopted, failed to protect early retirement benefits.\textsuperscript{83} To remedy this
situation, Congress passed the Retirement Equity Act of 1984
("REA").\textsuperscript{84} Section 301 of REA added subsection (2) to section 1054(g)
of ERISA.\textsuperscript{85} This amendment prohibited plan sponsors from amending plans if the amendments had the effect of “eliminating or reduc-
ing” early retirement benefits.\textsuperscript{86} Specifically, subsection (2) of section
1054(g) states that “a plan amendment that has the effect of... elimi-
nating or reducing an early retirement benefit” is protected by subsec-
tion (1), which states that an “accrued benefit . . . may not be
decreased by an amendment of [a] plan.”\textsuperscript{87} Thus, it appears from the
language of the statute, as amended by REA section 301, that early
retirement benefits may be treated as accrued benefits by plan
administrators.\textsuperscript{88}

The proposition that early retirement benefits are accrued bene-
fits under ERISA has been challenged on the contention that 29

\textsuperscript{76} Kris Wehrmeister, Note, \textit{Early Retirement Benefits and Gillis v. Hoechst Celanese Corp.: Same Desk, Same Job, So What?}, 28 U.C. DAVIS L. REV. 475, 476 n.6 (1994).


\textsuperscript{80} Wehrmeister, 28 U.C. DAVIS L. REV. at 475, 476.


\textsuperscript{82} Wehrmeister, 28 U.C. DAVIS L. REV. at 477.


\textsuperscript{85} Wehrmeister, 28 U.C. DAVIS L. REV. at 486.

\textsuperscript{86} 29 U.S.C. § 1054(g) (1994).

\textsuperscript{87} Id.

\textsuperscript{88} Wehrmeister, 28 U.C. DAVIS L. REV. at 486.
U.S.C. § 1002(23)(A), defining accrued benefits, states that an “individual’s accrued benefit . . . under [a] plan [is] expressed in the form of an annual benefit [which] commence[s] at normal retirement age.” On the one hand, the amended section 1054(g) considers early retirement benefits as accrued benefits, yet a literal reading of section 1002(23)(A) of ERISA defines accrued benefits as those which commence at “normal retirement age.” In an effort to resolve the apparent inconsistency, many circuit courts have addressed the question of whether an early retirement benefit is an accrued benefit.

In Meredith v. Allsteel, Inc., the United States Court of Appeals for the Seventh Circuit held that early retirement benefits were not accrued benefits within the meaning of ERISA. In Meredith, David L. Meredith and several other retirees of Allsteel, Inc. (“Allsteel”) complained that certain amendments to their plan were impermissible, because the amendments limited their accrued early retirement benefits. Specifically, Allsteel amended the plan to provide the employees with the opportunity to file for early retirement benefits if they applied between January 1, 1985, and March 31, 1991. Another provision of the plan classified the “retirement date” as the first day of the month in the month following the day of retirement. Accordingly, the employees went to Allsteel during the month of March to express interest in the early retirement opportunity; however, they were told that they had missed the deadline, when in fact the deadline was arguably in accordance with the amended section, which fixed the deadline for applying for early retirement benefits as March 31, not April 1. Afraid they would lose all benefits, the employees did not file for early retirement benefits due to the false information they received.

The employees subsequently brought action against Allsteel in the United States District Court for the Northern District of Illinois, claiming that as a result of the false information, Allsteel in effect terminated the plan early, denying them of their right to apply for early retirement benefits. The district court found for Allsteel, holding that the 1991 change to the plan did not violate ERISA’s accrued bene-

90. Compare 29 U.S.C. § 1054(g) (stating that early retirement benefits are accrued benefits under ERISA), with 29 U.S.C. § 1002(23)(A) (stating that the definition of accrued benefits relates to “normal retirement age”).
91. See infra notes 92-129 and accompanying text.
92. 11 F.3d 1354 (7th Cir. 1993).
93. Meredith v. Allsteel, Inc., 11 F.3d 1354, 1359 (7th Cir. 1993).
94. Meredith, 11 F.3d at 1359.
95. Id. at 1356.
96. Id.
97. Id. at 1356-57.
98. Id. at 1355.
99. Id.
Specifically, the district court agreed with Allsteel that the appropriate retirement date was as outlined by the plan originally.

The employees appealed the decision of the district court to the United States Court of Appeals for the Seventh Circuit, arguing that the district court erred by ruling that the 1991 amendment did not violate 29 U.S.C. § 1054(g), the reducing accrued benefits clause. The Seventh Circuit framed the issue as a question of whether early retirement benefits are accrued benefits. The Seventh Circuit affirmed, holding that for purposes of section 1054(g), early retirement benefits were not accrued benefits. The Seventh Circuit noted the definition section of ERISA defines an accrued benefit as "commencing at normal retirement age." Further, the Seventh Circuit defined normal retirement age as "the time a plan participant attains normal retirement age under the plan." Taken together, the Seventh Circuit concluded, these two provisions support the proposition that under ERISA early retirement benefits are not considered accrued benefits.

In Ahng v. Allsteel, Inc., the Seventh Circuit had occasion to review its holding in Meredith and overruled the Meredith decision by holding that early retirement benefits are accrued benefits within the meaning of ERISA. The facts and claims in Ahng were the same as in Meredith, because they derived out of the same corporation's decision to amend its retirement plan. The United States District Court for the Northern District of Illinois, relying upon the circuit court's ruling in Meredith, found for the employer.

100. Id. at 1357.
101. Id.
102. Id.
103. Id. at 1359.
104. Id.
105. Id.; 29 U.S.C. § 1002(23) (1994). Section 1002(23) provides:

The term 'accrued benefit' means[,] . . . in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and except as provided in section 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal retirement age.

Id.
106. Meredith, 11 F.3d at 1359.
107. Id. at 1359-60.
108. 96 F.3d 1033 (7th Cir. 1996).
110. Ahng, 96 F.3d at 1035. The Plan in Ahng attempted to argue that Ahng's claim was barred by the doctrine of res judica, but the court did not accept that contention. Id. at 1037.
111. Ahng, 96 F.3d. at 1036.
Ahng appealed the decision of the district court to the United States Court of Appeals for the Seventh Circuit.\textsuperscript{112} The Seventh Circuit reconsidered its opinion in \textit{Meredith} to decide whether early retirement benefits are accrued benefits under section 1054(g), and this time the Seventh Circuit stated that early retirement benefits were accrued benefits under ERISA.\textsuperscript{113} Additionally, the court stated that section 1054(g) "prohibits an employer from enacting amendments to its pension plan that result in the reduction of accrued benefits."\textsuperscript{114} The Seventh Circuit concluded that it was "appropriate under the circumstances" to revisit the earlier holding in \textit{Meredith} to "ensure that the law in this Circuit comports with the statutory scheme."\textsuperscript{115} The Seventh Circuit declared that the 1984 amendments to section 1054(g) specifically addressed the early retirement issue.\textsuperscript{116} Further, the court stated that the trends in other circuits and scholarly analysis support the proposition that early retirement should receive the protection of accrued benefits under section 1054(g).\textsuperscript{117}

The Fifth Circuit reached a similar conclusion in \textit{Harms v. Cavenham Forest Industries, Inc.},\textsuperscript{118} holding that a "predecessor employer's special early retirement benefits plans are protected from subsequent modifications under ERISA."\textsuperscript{119} In \textit{Harms}, the employer, Cavenham Forest, realizing a hostile take-over was imminent, provided its employees with a severance package and also added benefits to its retirement plan.\textsuperscript{120} In 1985, the take-over took place, and under the new management the plan was altered to the extent that retirement benefits of the employees were partially eliminated.\textsuperscript{121} Subsequently, a number of the employees adversely affected brought action in the United States District Court for the Eastern District of Louisiana.\textsuperscript{122} The district court entered summary judgment for the employees, but in doing so held that the new company was allowed to alter or amend the early retirement benefits because the benefits were unac-
crued welfare benefits unprotected by section 1054(g) of ERISA. The district court reasoned that a hostile take-over is analogous to plant shutdowns. Traditionally, in the context of plant shutdowns, severance-type benefits have been classified as welfare benefits.

The employees cross-appealed the decision of the district court to the United States Court of Appeals for the Fifth Circuit, arguing, in part, that section 1054(g) protected their early retirement benefits from subsequent amendments. The Fifth Circuit affirmed the overall ruling of the district court in favor of the employees, finding that summary judgment was proper. The Fifth Circuit reasoned that the welfare cases relied upon by the district court could be distinguished from the present case. Further, the circuit court concluded that section 1054(g) "prohibits the elimination or reduction of [early retirement] benefits by plan amendment 'with respect to a participant who satisfies . . . the preamendment conditions.'"

2. Contingent and Unfunded Benefits

Other circuits have analyzed the issue of whether early retirement benefits are "accrued" by asking if the "benefits" in question are contingent and/or unfunded. In Sutton v. Weirton Steel Division of National Steel Corp., the United States Court of Appeals for the Fourth Circuit held that unfunded, contingent benefits were ancillary benefits and not "accrued" under ERISA. In Sutton, a group of employees sued to prevent their employer from changing a plan which would have eliminated their contingent, early retirement benefits. The early retirement benefits were "contingent" because the beneficiaries were only to be paid if the plant shut down or the beneficiaries were laid off. The change complained of related to an agreement of purchase by a new company. Under the new management, the company would no longer recognize termination as a triggering event for early retirement benefits, but remained liable to the employees for

123. Id. at 691; 29 U.S.C. § 1051(1) (1994).
124. Harms, 984 F.2d at 691.
125. Id.
126. Id. at 687, 690-91.
127. Id. at 692, 695.
128. Id. at 691.
129. Id. at 692.
130. See infra notes 131-52 and accompanying text.
131. 724 F.2d 406 (4th Cir. 1983).
133. Sutton, 724 F.2d at 409-10.
134. Id. at 409.
135. Id. at 408-09.
plant shut-downs. The employees brought action against their employer in the United States District Court for the Northern District of West Virginia, arguing that the change violated ERISA's anticutback provision, because it divested them of rights already accrued. The district court ruled in favor of the employer, holding that the benefits had not vested.

The employees appealed the decision of the district court to the United States Court of Appeals for the Fourth Circuit, arguing: (1) that the employer was changing the plan in order to avoid pension payment liability; (2) that such action was a violation of the employer's fiduciary obligation to the employees; and (3) the change in the plan violated ERISA's accrual provisions. The Fourth Circuit affirmed, holding that ERISA's accrual language was not violated. The Fourth Circuit declared that the benefits in question were contingent, unfunded benefits and were the type of "ancillary" benefits that Congress did not intend to include as accrued under ERISA. In support of its holding, the court cited congressional findings which declared "vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income."

Two years after Sutton, the United States Court of Appeals for the Third Circuit was asked to address a similar problem in Bencivenga v. Western Pennsylvania Teamsters & Employers Pension Fund. In Bencivenga, Columbo A. Bencivenga challenged the pension fund and pension trustees' ("Trustees") right to raise the discount factor of his early retirement benefits. Bencivenga retired in March of 1979 and was eligible to receive early retirement benefits based on an actuarial formula, which would have provided him with $550 per month. Later in 1979, the Trustees amended the actuarial formula, which had the effect of lowering his monthly early retirement pension to $319. Bencivenga brought action in the United States District Court for the Western District of Pennsylvania, alleging that the Trustees' decision violated the anticutback provision of section 1054(g). The district
court found for the Trustees, holding that the benefits were not "ac-
crued" benefits protected under ERISA.\textsuperscript{148}

Bencivenga appealed the decision of the district court to the United States Court of Appeals for the Third Circuit, arguing that the district court failed to properly determine that the benefits at issue were "accrued benefits."\textsuperscript{149} Further, he argued that the change in the plan violated ERISA, because ERISA protects early retirement benefits from reduction.\textsuperscript{150} The Third Circuit affirmed, holding that early retirement benefits are not accrued benefits.\textsuperscript{151} The court reasoned that the plain language of ERISA, specifically section 1002(23), excluded early retirement benefits from its accrual definition.\textsuperscript{152}

B. EVOLUTION OF THE ARBITRARY AND CAPRICIOUS STANDARD OF REVIEW

In \textit{Firestone Tire & Rubber Co. v. Bruch},\textsuperscript{153} the United States Supreme Court held that when a court is asked to review the decision of a plan administrator, the appropriate standard of review is \textit{de novo}.\textsuperscript{154} The Court ruled that the exception to this rule is when the plan in question specifically states that the administrator shall have discretionary authority, in which case the standard of review shall be "arbitrary and capricious."\textsuperscript{155} In \textit{Firestone}, employee/beneficiaries of a retirement plan challenged Firestone's decision to deny their petition of severance benefits in the United States District Court for the Eastern District of Pennsylvania.\textsuperscript{156} The district court found for Firestone, holding that they "had satisfied [their] fiduciary duty," and that their decision was not "arbitrary and capricious."\textsuperscript{157} The district court reasoned that the appropriate standard to apply to Firestone's decision was the arbitrary and capricious standard providing greater deference to the employer.\textsuperscript{158}

The employee/beneficiaries appealed the district court's decision to the United States Court of Appeals for the Third Circuit, arguing that the district court erred in ruling that the arbitrary and capricious

\textsuperscript{148} Id. at 575-76.
\textsuperscript{149} Id. at 577.
\textsuperscript{150} Id. at 576.
\textsuperscript{151} Id. at 577, 581.
\textsuperscript{152} Id. at 577.
\textsuperscript{153} 489 U.S. 101 (1989).
\textsuperscript{155} \textit{Firestone}, 489 U.S. at 111. See supra note 38 and accompanying text for a definition of the arbitrary and capricious standard of review.
\textsuperscript{156} \textit{Firestone}, 489 U.S. at 101. The employer, Firestone, was also the administrator of the plan. \textit{Id.} at 105.
\textsuperscript{157} \textit{Firestone}, 489 U.S. at 106-07.
\textsuperscript{158} \textit{Id.} at 106-07, 111.
standard was the appropriate standard for judicial review. The Third Circuit reversed, holding that when an employer is the fiduciary and administrator of a plan, “its decision to deny benefits should be subject to de novo judicial review.” The Third Circuit reasoned that by playing the dual role of administrator and fiduciary, greater “deference is unwarranted given the lack of assurance of impartiality on the part of the employer.” Firestone appealed the Third Circuit’s decision to the United States Supreme Court, which granted certiorari to consider the issue of what standard of review is appropriate when a court has been asked to review an administrator’s interpretation of a plan as applied to its beneficiaries.

On appeal, the Supreme Court affirmed the decision of the Third Circuit, holding that the appropriate standard of review is a de novo standard unless the plan grants the administrator’s discretionary authority under the plan. Justice Sandra Day O’Connor, writing for the majority, reasoned that, traditionally, the arbitrary and capricious standard has been used in reviewing an administrator’s interpretation of the plan. The Court noted that this trend was due to the fact that ERISA has not expressly provided a standard for review, and therefore, courts have imported the language of section 1132(a)(1)(B) of the Labor Management Relations Act of 1947 (“LMRA”) into ERISA. The Court concluded that the adoption of the LMRA principles did not support the importation of the arbitrary and capricious standard into ERISA, and a “wholesale” use of the standard in ERISA is “unwarranted.”

In Salley v. E.I. DuPont de Nemoures & Co., the United States Court of Appeals for the Fifth Circuit held that when a plan administrator or fiduciary is granted discretionary power to determine coverage under a plan, the administrator’s decision will not be vacated absent an abuse of discretion. In Salley, DuPont participated in a medical-surgical coverage plan that was formed according to the parameters of ERISA. Danielle Salley, the daughter of DuPont’s employee Jack Salley, was receiving treatment under the plan for a mental condition she suffered until DuPont made an independent de-

159. Id. at 106-07.
160. Id. at 107.
161. Id. at 107-08.
162. Id. at 108-09.
163. Id. at 115.
164. Id. at 104, 109.
165. Id. at 109.
166. Id.
167. 966 F.2d 1011 (5th Cir. 1992).
169. Salley, 966 F.2d at 1012.
cision to cease her coverage. The Salleys brought suit in the United States District Court for the Eastern District of Louisiana against DuPont to recover the cost of Danielle's care during the period that benefits were not paid. The district court found in favor of the Salleys, ruling that DuPont's decision to terminate their coverage was an "abuse of discretion."

DuPont appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit, arguing that the lower court erred in ruling that DuPont had abused its discretion. The Fifth Circuit affirmed the decision of the district court, holding that DuPont did in fact abuse its discretion in stopping the benefits. The Fifth Circuit declared that DuPont did have discretionary authority under the plan, and in exercising that authority against the Salleys, they abused their discretion.

Thus, in summary, in Firestone the United States Supreme Court seemed willing to allow a plan administrator greater deference by adopting the arbitrary and capricious standard of review. Subsequently, in Salley, the Fifth Circuit attempted to place certain bounds on the Firestone decision. The only thing remaining was the need to have a workable test on how to apply the arbitrary and capricious standard to an administrator's decision, and this was provided in Wildbur v. ARCO Chemical Co.

1. Wildbur Test

In Wildbur, the United States Court of Appeals for the Fifth Circuit reviewed the abuse of discretion standard. Various employees brought action in the United States District Court for the Western District of Louisiana against their employers, seeking "enhanced retirement" benefits, and "special severance" benefits. In Wildbur,
Kenneth Wildbur and other employees were employed at ChemLink, a subsidiary of ARCO. In December of 1986, ARCO sold ChemLink to PONY, who decided to keep ChemLink's employees. Nonetheless, the employees brought action against ARCO, claiming that they were eligible under the original plan for “enhanced” and severance benefits.

The district court ruled that its review of the plan administrator's benefit decisions “should be conducted under a de novo standard.” Further, the district court found that the employees were never terminated, as required by the enhanced benefits provisions, because as the court reasoned, “a change of employers with a continuation of employment was not a termination from employment and therefore [the employees] were not entitled to . . . enhanced retirement benefits.”

The employees appealed the decision of the district court to the United States Court of Appeals for the Fifth Circuit, arguing that the district court erred by not “considering evidence beyond the administrative record.” The Fifth Circuit vacated the district court's ruling regarding the standard of review, and held that the application of the abuse of discretion standard was appropriate in this case. The Fifth Circuit declared that applying the abuse of discretion standard was a two-step process. First, a court must determine whether the administrator's interpretation of the plan was legally correct. If so, the court stated the inquiry ends; but if not, a court then looks to see whether the administrator's decision was an abuse of discretion.

2. Legally Correct Interpretation of the Plan and Retroactive Application

In Brug v. Pension Plan of the Carpenters Pension Trust Fund for Northern California, the United States Court of Appeals for the Ninth Circuit held that a plan trustees' decision to repeal a plan employee's actual age for benefit calculations; and by increasing the employee's average final base pay for benefit calculations.” Id.

181. Wildbur, 974 F.2d at 633.
182. Id.
183. Id. at 634.
184. Id.
185. Id. at 635.
186. Id.
187. Id. at 636.
188. Id. at 637, 646.
189. Id. at 637.
190. Id.
191. Id. at 638.
192. 669 F.2d 570 (9th Cir. 1982).
amendment, which granted clerical employees certain disability benefits, could not be applied retroactively against the employees' claim under the amendment. In Brug, the trustees of a plan governed by ERISA decided to retroactively retract a disability amendment for which Mary Brug would have been qualified and which she had been recommended for approval. Brug brought action against the trustees of the plan in the United States District Court for the Northern District of California, arguing that the decision to retroactively change her eligibility under the plan was arbitrary and capricious. The district court found for the trustees, holding that their action was not arbitrary or capricious. The district court reasoned that the trustees were granted with the power to amend the plan pursuant to the provision found therein, and that because such authority existed, it was not arbitrary or capricious to act upon that authority.

Brug appealed the district court's decision to the United States Court of Appeals for the Ninth Circuit, arguing that the retroactive rescission of the amendment was arbitrary and capricious. The Ninth Circuit reversed, holding that the retroactive rescission of the amendment was arbitrary and capricious. The Ninth Circuit reasoned that "[t]he Trustees did not have the discretionary authority to apply that termination so as to preclude Brug's eligibility for pension benefits that had vested in the meantime."

The concept of vesting and early retirement benefits was further addressed by the United States Court of Appeals for the Tenth Circuit in Pratt v. Petroleum Production Management, Inc. Employees Savings Plan & Trust. In Pratt, the Tenth Circuit held that the plan administrator and two trustees acted arbitrarily and capriciously when they used an amendment to retroactively deny Clair B. Pratt certain benefits. Pratt was an employee and beneficiary under a plan governed by ERISA, and was denied a substantial value to his benefits when the administrator and two trustees retroactively

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193. Brug v. Pension Plan of the Carpenters Pension Trust Fund for N. Cal., 669 F.2d 570, 571 (9th Cir. 1982).
194. Brug, 669 F.2d at 573. In Brug, the plan provided that a review board would review the employee's petition, then make a recommendation to the administrators, who would have the final say. Id. Upon review by the board, Brug's request was approved. Id.
195. Brug, 669 F.2d at 571.
196. Id. at 574.
197. Id.
198. Id. at 571.
199. Id.
200. Id. at 575.
201. 920 F.2d 651 (10th Cir. 1990).
changed the valuation date. Accordingly, Pratt brought suit alleging: (1) breach of contract; (2) breach of fiduciary duty; and (3) a claim for attorney’s fees. The district court found for Pratt, holding that the amendment retroactively denied him of his value in the plan, and therefore violated 29 U.S.C. § 1054(g)(1), which states that “accrued benefit[s] of a participant . . . may not be decreased by an amendment of the plan.” Further, the district court held that the administrator and two trustees had breached their fiduciary duty by retroactively applying the plan to Pratt. The district court reasoned that the three fiduciaries’ actions “were arbitrary, capricious or based upon a mistake at law.”

The administrator and the two trustees appealed the decision of the district court to the United States Court of Appeals for the Tenth Circuit, arguing that Pratt’s benefit was not an accrued benefit and that the power to amend the valuation date was expressly granted them via the specific language of the plan. The Tenth Circuit affirmed, holding that the retroactive application of the amendment to Pratt was not acceptable for several reasons. First, the Tenth Circuit reasoned that “[a] pension plan is a unilateral contract which creates a vested right in those employees who accept the offer it contains by continuing in employment for the requisite number of years.” Second, the Tenth Circuit ruled that the three fiduciaries were required to value Pratt’s benefits in accordance with the plan as it stood at the time he was terminated. Finally, the Tenth Circuit held that an amendment which is “used to defeat or diminish [Pratt’s] fully vested rights under the governing plan document is not only ineffective, but also arbitrary and capricious.”

The concept that a retroactive change in a plan that diminishes vested rights is arbitrary and capricious was confirmed by the United States Court of Appeals for the Third Circuit in Kemmerer v. ICI Americas Inc., in which the court held that an employer could not terminate a “top hat” plan to defeat the benefits of retired employ-
In *Kemmerer*, retired executives lost substantial value to their retirement benefits when ICI Americas decided to terminate the plan a number of years after the executives had retired. Accordingly, the retirees brought an action against the employer in the United States District Court for the Eastern District of Pennsylvania, arguing that the decision of the employer to retroactively terminate the benefits was a breach of contract. The district court found for the retirees, holding that the employer had breached the terms of the compensation plan. The district court reasoned that, by extinguishing the plan to deprive the beneficiaries of certain value, the employers violated contract principles and breached the terms of the plan.

The retirees appealed the decision of the district court to the United States Court of Appeals for the Third Circuit, arguing that the district court was correct in ruling that the plan had violated contract principles, but erred on the issue of damages. The Third Circuit affirmed, holding that a pension plan is a unilateral contract, and that the retirees had complied with the vesting prerequisites when they accepted the employer's offer. The Third Circuit reasoned that the plan constituted an offer, and once the participants began to perform, the offer became irrevocable. Therefore, the court stated, that the employer became obligated to perform its side of the bargain.

In addition, the court determined that "top hat" plans are subject to ERISA, but are exempt from ERISA's regulatory scheme. The Third Circuit reasoned that executives in "top hat" plans are not ordinarily in need of ERISA's protection. Despite this rule, the Third Circuit argued that "Congress' decision to exempt top hat plans from certain fiduciary standards does not mean that courts may not review their trustees'... actions. Rather, the exemption means only that they are not held to the strict fiduciary standards of loyalty and care otherwise applicable to ERISA fiduciaries."
3. Welfare Benefits and Retroactive Application

In *Chiles v. Ceridian Corp.*\(^{226}\), the United States Court of Appeals for the Tenth Circuit held that a reservation of rights clause in a plan provides the employer with the power to retroactively change the benefits of participants.\(^{227}\) In *Chiles*, a class of participants brought action against their employer in the United States District Court for the Western District of Oklahoma, arguing that the employer's decision to alter their medical benefits was a breach of contract and also a breach of the employer's fiduciary obligations to the employee/beneficiaries.\(^{228}\) The district court found that health care benefits did not vest when the plan participants became disabled.\(^{229}\)

The participants appealed the district court's decision to the United States Court of Appeals for the Tenth Circuit, arguing that their employer should not be allowed to alter the plan because their benefits were vested.\(^{230}\) The Tenth Circuit affirmed, holding that medical benefits do not vest when the participant becomes disabled, and that a provision which states benefits will continue for life does not trump a right of reservation the plan holds to alter or amend the plan.\(^{231}\) The Tenth Circuit reasoned that welfare benefits have been excluded from ERISA vesting requirements, and an employer may unilaterally modify or terminate welfare benefits.\(^{232}\) The Tenth Circuit further stated that, because there is no statutory protection under ERISA for welfare benefit claims, a plaintiff will carry the burden of demonstrating that the employer intended to have the benefits vest under the plan.\(^{233}\) Therefore, the Tenth Circuit concluded, unless that burden of proof is met, an employer can retroactively change welfare benefits of the participants.\(^{234}\)

Similarly, in *In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation*\(^{235}\), the United States Court of Appeals for the Third Circuit held that a retroactive change in a plan was allowed because the plan

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226. 95 F.3d 1505 (10th Cir. 1996).
227. *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1512 (10th Cir. 1996). A "reservation of rights," also defined as a "nonwaivable agreement," is defined as: "In insurance law, a contract in which the insured acknowledges that the insurer's investigation or defending against a claim against the insured does not waive the insurer's right to contest later." *Black's Law Dictionary* 442 (6th ed. 1996).
228. *Chiles*, 95 F.3d at 1509.
229. Id. at 1519.
230. Id. at 1510.
231. Id. at 1511-13, 1519.
232. Id. at 1510.
233. Id. at 1511.
234. Id. at 1511, 1519.
235. 58 F.3d 896 (3d Cir. 1995).
provided unambiguous provisions for such change.236 In *Unisys Corp.*, a class action was brought by the employees against their former employer, Unisys Corporation, in the United States District Court for the Eastern District of Pennsylvania, for violating ERISA by unilaterally modifying their benefits.237 The district court found for the employer, holding that the terms “lifetime” and “for life” are not inconsistent with the plan’s reservation of the right to amend the plan, and therefore, the plan was not ambiguous.238

The class participants appealed the decision of the district court to the United States Court of Appeals for the Third Circuit, arguing that the district court erred in ruling the plan was not ambiguous.239 The Third Circuit affirmed, holding that language in a plan which grants benefits “for life” is not “internally inconsistent” with other provisions in which the plan reserves a right to amend or alter the benefits.240 The Third Circuit reasoned that “[a]n employer who promises lifetime medical benefits, while at the same time reserving the right to amend the plan under which those benefits were provided, has informed plan participants of the time period during which they will be eligible to receive benefits *provided* the plan continues to exist.”241

**ANALYSIS**

In *Spacek v. Maritime Ass’n, ILA Pension Plan*,242 the United States Court of Appeals for the Fifth Circuit ruled that Maritime Association, ILA Pension Plan (“Maritime”) did not violate 29 U.S.C. § 1054(g), the anti-cutback provision, when it suspended Spacek’s early retirement benefits.243 In addition, the Fifth Circuit reversed the district court’s ruling in favor of Spacek by reasoning that Maritime complied with the legally correct interpretation of the plan.244 Regarding section 1054(g), the Fifth Circuit framed the issue by asking whether the amendment, which had an adverse effect upon Spacek, was made in compliance with ERISA.245 The thrust of the Fifth Circuit’s reasoning was that, because Spacek’s early retirement benefits were “suspended” and not eliminated or reduced, they were not

237. *In re Unisys Corp.*, 58 F.3d at 898-99.
238. *Id.* at 898.
239. *Id.*
240. *Id.* at 903-04, 908.
241. *Id.* at 904.
242. 134 F.3d 283 (5th Cir. 1998).
244. *Spacek*, 134 F.3d at 298-99.
245. *Id.* at 288.
the type of benefits protected by the ERISA anti-cutback provision of section 1054(g). In reaching this conclusion, the court reviewed statutory language, legislative history, and relevant regulations. The court determined that other statutes and regulations using the terms “reduced” and “suspended” gave an isolated, different meaning to these terms.

The *Spacek* court also addressed another disputed question: what is the correct standard of review when addressing an administrator’s decision to retroactively apply an amendment to a plan? The *Spacek* court went a step further by analyzing the components and elements to the arbitrary and capricious standard. The court reasoned that in order to determine whether the arbitrary and capricious standard should apply, the court must first determine if the administrator applied the legally correct interpretation of the plan.

The Fifth Circuit’s reasoning can be criticized for two reasons. First, while the court may have been correct in determining that the terms “reduced” and “suspended” were not synonymous, by failing to address the more fundamental question of whether early retirement benefits are accrued benefits, the *Spacek* decision is overly broad. Second, although the court effectively articulated an appropriate methodology to be used in questions of standard of review, namely ascertaining the legally correct interpretation of the plan, the court compromised its ruling by failing to determine the correct legal interpretation.

A. ERISA AND THE ANTI-CUTBACK PROVISION OF SECTION 1054(g)

1. “Suspended” Benefits

In *Spacek*, the Fifth Circuit determined that the amendment which deprived Spacek of his early retirement benefits was in compliance with ERISA, because his benefits were only suspended, not reduced or eliminated, as required by 29 U.S.C. § 1054(g). Section 1054(g) provides that early retirement benefits are “accrued benefits” and therefore may not be “decreased by an amendment to the

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246. *Id.* at 289.
247. *Id.* at 288-90.
248. *Id.*
249. *Id.* at 293.
250. *Id.*
251. *Id.* at 292.
252. See *infra* notes 255-56 and accompanying text.
253. See *infra* notes 257-328 and accompanying text.
254. See *infra* notes 329-422 and accompanying text.
The court based its conclusion upon an independent statutory analysis, because there was insufficient caselaw addressing the question of whether suspension of early retirement benefits amounts to a reduction as prohibited by ERISA. The court concluded that the word "reduced" was treated differently and had a separate meaning from the term "suspended." Therefore, the court declared that a plain language analysis of section 1054(g), which does not include the word "suspended," did not support Spacek's contention that section 1054(g) protected his early retirement benefits.

This evaluation was simplified when the court refused to accept Spacek's argument that the amendment did amount "to a reduction in benefits because he will never recover those suspended benefits and thus the cumulative total of benefits he will receive over his lifetime has been reduced." While the court conceded that this argument had "some logical appeal," the court dismissed it as not complying with the plain language of section 1054(g). The Fifth Circuit refused to address the issue of whether early retirement benefits are accrued benefits, reasoning that issue was not before the court to decide.

The court ruled that Spacek's argument could be further rejected by looking at the relevant regulations under ERISA and under analogous Internal Revenue clauses. Specifically, the court cited 29 U.S.C. § 1002(23), which defines an "accrued benefit" as that "expressed in [the] form of . . . annual benefits commencing at normal retirement age." In other words, in looking to the language of the statute, the court noted that an accrued benefit as defined by section 1002(23) uses the term "normal retirement age," and thus early retirement benefits are not accrued benefits. It is important to note that

257. Spacek, 134 F.3d at 289 n.6 (citations omitted).
258. Id. at 289.
259. Id.
260. Id. at 288.
261. Id.
262. Id. at 291 n.9.
263. Id. at 290.
264. Id.; 29 U.S.C. § 1002(23) (1994). Section 1002(23) provides:
   The term “accrued benefit” means —
   (A) in the case of a defined benefit plan, the individual’s accrued benefit determined under the plan and, except as provided in section 1054(c)(3) of this title, expressed in the form of annual benefit commencing at normal retirement age, or
   (B) in the case of a plan which is an individual account plan, the balance of the individual’s account.
265. Spacek, 194 F.3d at 290.
the Fifth Circuit cited no cases in support of this proposition, relying solely on a plain language analysis.\textsuperscript{266} The question of whether a suspended benefit receives protection under section 1054(g) is a question of whether a suspended benefit is treated the same as a "reduced" benefit.\textsuperscript{267} The Fifth Circuit, pursuant to its authority to make a \textit{de novo} review of summary judgment, appropriately addressed the factual question of suspended benefits, but a problem arises in the court's use of section 1002(23).\textsuperscript{268} On the one hand the court addressed the question of whether suspended benefits are protected under section 1054(g), then it turned to section 1002(23) as support for its proposition that "suspended" benefits are not "eliminated" or "reduced."\textsuperscript{269} Thus, the court specifically rejected Spacek's argument that his benefits were reduced, because he "will never recover those suspended benefits again," by arguing that the "plain language of [section] 1054(g)" does not support this contention.\textsuperscript{270} However, section 1002(23) merely states that accrued benefits are those benefits which commence at "normal retirement age."\textsuperscript{271} Section 1002(23) offers nothing to further the court's claim that suspended benefits are not reduced or eliminated.\textsuperscript{272} In fact, that section does not even use the words suspended, reduced, or eliminated.\textsuperscript{273} Thus, because the court improperly relied on section 1002(23) to interpret section 1054(g), the court was wrong to conclude that a suspension of Spacek's benefits was not contemplated under ERISA.\textsuperscript{274} Because the court concluded suspended benefits were not reduced, it was unnecessary for the court to engage in an analysis of accrued benefits.\textsuperscript{275} Accordingly, if the Fifth Circuit is wrong in its factual finding that suspended benefits are not reduced or eliminated, then its opinion in \textit{Spacek} fails, because the modern trend among the

\begin{footnotes}
\item[266] See generally id. (engaging in an analysis of other provisions and statutes independent of caselaw interpretation).
\item[267] Id. at 288.
\item[268] See generally id. (concluding that suspended benefits are not reduced). In the Fifth Circuit, the authority to review a district court's summary judgment ruling was derived from \textit{Texas Medical Ass'n v. Aetna Life Insurance Co.}, 80 F.3d 153, 156 (5th Cir. 1996).\textit{Id.}
\item[269] See \textit{Spacek}, 134 F.2d at 288, 290 (stating that "we must first look to ERISA's definition of accrued benefits").
\item[270] Id. at 288.
\item[272] See supra note 265 and accompanying text. Section 1002(23) defines accrued benefits. 29 U.S.C. § 1002(23). Nothing in the language of section 1002(23) addresses, either implicitly or explicitly, the parameters of "suspended" benefits. Id.
\item[273] See supra note 264 and accompanying text.
\item[274] See supra notes 255-73 and accompanying text.
\item[275] \textit{Spacek}, 134 F.3d at 291-92.
\end{footnotes}
circuit courts is to classify early retirement benefits as accrued, and thus protected under ERISA section 1054(g). 276

2. "Accrued" Benefits

ERISA, as it was enacted originally, did not specify what types of benefits were protected. 277 In 1984, this changed with the enactment of the Retirement Equity Act ("REA"). 278 The REA explicitly prohibited the reduction and/or elimination of early retirement benefits. 279 Section 301 of the REA amended section 1054(g) and protects early accrued retirement benefits, yet the section 1002(23) definition of accrued benefits remains the same. 280 Accordingly, the circuits are currently split on the question of whether early retirement benefits are accrued benefits. 281 Some of the circuits rely on the plain language argument of section 1002(23) to hold that early retirement benefits are not accrued benefits, and thus not protected by section 1054(g). 282 However, granting early retirement benefits protection under section 1054(g) is consistent with both the spirit and letter of the REA and ERISA. 283 Both were enacted to provide the employee with protection in the retirement years, and both were established to ensure the American worker would have stability and security in the prime of their life. 284

Early retirement benefits are protected under the accrued provisions of section 1054(g). 285 In 1996, the Seventh Circuit, in Ahng v. Allsteel, Inc., 286 overruled its earlier decision in Meredith v. Allsteel, Inc., 287 by holding that early retirement benefits are "accrued benefits" within the meaning of ERISA, and are therefore protected by section 1054(g)'s anti-cutback provision. 288 The Ahng court reasoned

276. See infra notes 277-84 and accompanying text.
278. Wehrmeister, 28 U.C. DAVIS L. REV. at 486.
280. Wehrmeister, 28 U.C. DAVIS L. REV. at 486.
281. See Ahng v. Allsteel, Inc., 96 F.3d 1033 (7th Cir. 1996) (citations omitted).
282. See Meredith v. Allsteel, Inc., 11 F.3d 1354, 1359 (7th Cir. 1993) (holding that the definition of accrued benefits as outlined in section 1002(23) does not include early retirement benefits because they are not those which "commence at normal retirement age"); Bencivenga v. Western Pa. Teamsters & Employers Pension Fund, 763 F.2d at 574 (3d Cir. 1985) (holding that the language of section 1002(23) does not operate to protect early retirement benefits).
283. See supra notes 277-82 and accompanying text.
284. See supra notes 82-91 and accompanying text.
286. 96 F.3d 1033 (7th Cir. 1996).
287. 11 F.3d 1354 (7th Cir. 1993).
that, in light of the 1984 REA amendment to ERISA, it was appropriate to revisit the question of whether early retirement benefits are accrued benefits.289 Further, the Ahng court concluded that both the circuit court trend and academic opinion support the argument that early retirement benefits become protected as accrued benefits under the amended section 1054(g).290 Specifically, the court summarized recent scholarship, stating that the effect of REA was to make it apparent that "a plan may not be amended to eliminate or reduce an early retirement benefit or a 'retirement-type' subsidy 'with respect to benefits attributable to service before the amendment.'"291 ERISA, as outlined above, now classifies early retirement benefits as receiving protection from plan amendments under the "accrued" provisions of section 1054(g).292

Despite the apparent contradiction and difficulty with sorting out the issues surrounding this matter, the Spacek court failed to tap into other circuits reviewing the question, or even its own past holding on the issue.293 In Harms v. Cavenham Forest Industries, Inc.,294 the Fifth Circuit ruled that early retirement benefits were protected from subsequent modifications under ERISA.295 The court reasoned that section 1054(g) prohibited the elimination or reduction of early retirement benefits.296 Further, the court found that when a plan participant satisfies all the preamendment conditions, the administrator of that plan cannot retroactively alter the early retirement benefits.297 Based on the language and ruling of the Harms decision, the Spacek court's holding becomes suspect.298 Spacek fulfilled all of his preamendment conditions.299 Because Maritime retroactively "altered" Spacek's accrued early retirement benefits by spending them and thereby eventually making them permanently noncollectable, this constituted an elimination or reduction of benefits in violation of sec-

289. Ahng, 96 F.3d at 1036.
290. Id. at 1034, 1036.
291. Id. at 1036 (citing John H. Langbein & Bruce A. Wolk, Pension and Employee Benefit Law 142-43 (2d ed. 1995)).
292. See Wehrmeister, 28 U.C. Davis L. Rev. at 486.
293. See Spacek, 134 F.3d at 291 n.9 (arguing that Harms did not apply, because the court was not concerned with the question of whether early retirement benefits are accrued or not).
294. 984 F.2d 686 (5th Cir. 1993).
296. Harms, 984 F.2d at 691-92.
297. Id.
298. See infra notes 300-02 and accompanying text.
299. Spacek, 134 F.3d at 285-89. For Spacek to qualify for early retirement, he was required to work for 30 years in the industry, a requirement he fulfilled. Id.
tion 1054(g). Therefore, *Harms* would support Spacek’s argument that 1054(g) shields him from subsequent amendments.

3. 29 U.S.C. § 1002(23)

Unlike the Seventh Circuit in *Ahng*, other courts have used the same section 1002(23) analysis in ruling that early retirement benefits are not accrued benefits under ERISA. The United States Court of Appeals for the Third Circuit, in *Bencivenga v. Western Pennsylvania Teamsters and Employers Pension Fund*, adopted a similar holding and analysis as *Meredith*. Specifically, the *Bencivenga* court held that early retirement benefits were not accrued, reasoning that ERISA definitions under section 1002(23) excluded early retirement benefits from the accrued definition. Significantly, the Third Circuit in *Bencivenga* prefaced its opinion by stating that “[f]or the most part, we are writing in a historical sense only, because, as will be later developed, Congress has now amended the ERISA statute in a manner that will have significant bearing on future claims of this kind.” The *Bencivenga* court went on to acknowledge that “Congress has amended ERISA . . . 29 U.S.C. § 1054(g) to include early retirement benefits within its accrued benefits protection for plan years beginning after December 31, 1984.” Thus, the court conceded that once the REA provisions are applied to pension plans, early retirement benefits would be protected.

By referring to section 1002(23) of ERISA, the *Spacek* court suggested that early retirement benefits are not accrued benefits, because they do not commence at “normal retirement age.” It was unnecessary for the court to apply section 1002(23) if its argument is confined to the question of whether suspended benefits are eliminated or reduced for purposes of section 1054(g). By applying the section 1002(23) accrued benefits definition, its ruling and reasoning become

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301. See *Harms*, 984 F.2d at 692 (holding that once early retirement benefits vested or accrued they were not subject to modification).
302. See infra notes 305-09 and accompanying text.
303. 763 F.2d 574 (3rd Cir. 1985).
304. Compare *Bencivenga v. Western Pa. Teamsters & Employers Pension Fund*, 763 F.2d 574, 577 (3rd Cir. 1985) (holding that “accrued benefits” refers to “normal,” not early retirement benefits), with *Meredith v. Allsteel, Inc.*, 11 F.3d 1354, 1359 (7th Cir. 1994) (holding that the plain language of ERISA does not include early retirement benefits as accrued benefits).
305. *Bencivenga*, 763 F.2d at 577 (quotations omitted).
306. *Id.* at 575.
307. *Id.* at 577 n.3.
308. *Id.* at 575.
309. *Spacek*, 134 F.3d at 290.
310. See infra notes 311-15 and accompanying text.
subject to criticism based on the principle that early retirement benefits are accrued benefits under ERISA. The Ahng court effectively articulated the proposition that, in light of the REA amendments to ERISA, early retirement benefits are granted the protection that did not exist before 1985. The pre- and post-REA analysis was especially evident in the qualifying language of Bencivenga. Therefore, if the Spacek court is hypothesizing that the suspended benefits are reduced or eliminated, and still not accrued because early retirement benefits are not so defined under section 1002(23), their opinion is inconsistent with post-REA reasoning, and inconsistent with the decisions in their own jurisdiction. If the court is making a factual finding regarding reduced benefits, such a ruling is restricted to factual scenarios similar to their own.

4. "Ancillary" Benefits

Because Maritime never argued that Spacek's benefits were "ancillary" benefits, the only type of benefit not protected under section 1054(g), the court should have found Spacek's benefits were protected under ERISA. As the Third Circuit in Bencivenga noted, the REA's amendment to ERISA "was not intended to insure the sanctity of early retirement expectations." The House Report on the amendment stated:

The term accrued benefit refers to pension or retirement benefits and is not intended to apply to certain ancillary benefits. . . . To require the vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income.

While no specific definition is provided in ERISA for ancillary benefits, courts have determined that when a plan is "contingent" and/or "unfunded," then it is classified as an ancillary benefit.

311. See Ahng, 96 F.3d at 1036 (concluding that with the passage of the REA, early retirement benefits do receive protection as accrued benefits.).
312. Id.
313. Bencivenga, 763 F.2d at 575.
314. See supra notes 277-301 and accompanying text.
315. See Spacek, 134 F.3d at 287-93
316. See infra notes 317-26 and accompanying text.
317. Bencivenga, 763 F.2d at 577.
319. See generally 29 U.S.C. §§ 1002(1)-(41) (failing to define "ancillary benefits"). See Sutton, 724 F.2d at 410 (declaring that accrued benefits under ERISA do not include unfunded, contingent early retirement benefits); Bencivenga, 763 F.2d at 577 (stating that ancillary benefits are not protected by ERISA).
Additionally, in Sutton v. Weirton Steel Division of National Steel Corp., the United States Court of Appeals for the Fourth Circuit ruled against the employees’ contention that a change in the plan would deprive them of early retirement benefits. The court found that the plan was contingent because the benefits did not come about unless, or until, the plant was taken over or the employees were laid off. Despite the fact that the court found the employer was changing the plan simply to avoid paying the early retirement benefits, the court ruled that these type of benefits were ancillary and not protected under the accrued provisions of ERISA.

Both caselaw and statutory language have eliminated ancillary benefits from the protection of accrued and vesting standards of ERISA. In presenting their case to the court, Maritime never argued that Spacek’s benefits were ancillary. Therefore, because Spacek’s benefits were accrued benefits, which were eliminated or reduced as a result of the amendment to the plan, the court was obligated to provide section 1054(g) protection.

B. ARBITRARY AND CAPRICIOUS STANDARD OF REVIEW

Spacek also asserted that the retroactive application of the 1991 amendment to his benefits was “arbitrary and capricious.” In essence, Spacek’s argument was centered upon the principle that when a “plan administrator has discretionary authority to determine coverage under the plan, the administrator’s decision will not be disturbed absent abuse of discretion.”

The United States District Court for the Southern District of Texas ruled — and the Fifth Circuit agreed — that in determining whether an administrator has abused his/her discretion, the court will walk the administrator’s ruling through the two-step analysis set forth in Wildbur v. ARCO Chemical Co. First,

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320. 724 F.2d 406 (4th Cir. 1983).
322. Sutton, 724 F.2d at 409-10.
323. Id. at 410.
324. See generally 29 U.S.C. § 1051 (1994) (providing that coverage under ERISA does not include pensions which are unfunded).
325. See generally Spacek, 134 F.3d at 288 (failing to address ancillary benefits because it was never raised by either side in the dispute).
326. See supra notes 316-25 and accompanying text.
328. Id. (citing Salley v. E.I. DuPont de Nemours & Co., 966 F.2d 1011, 1014 (5th Cir. 1992)).
329. Compare Spacek, 923 F. Supp. at 963-64 (holding that where a plan administrator is granted discretionary power under the plan, his/her decisions will not be disturbed absent an abuse of discretion according to the Wildbur test), with Spacek, 134 F.3d at 292-93 (holding that a court will not set aside an administrator’s decision under a plan unless there is an abuse of discretion, as determined by the Wildbur test).
the court must determine if the administrator applied the "legally correct interpretation of the plan." If so, then the decision of the administrator will be upheld; if not, the court will then consider subsequent factors.331

Whereas the district court and the circuit court in Spacek agreed that the Wildbur test should be used in determining whether Maritime abused their discretion, they disagreed on the issue of whether the Wildbur test should be applied to Spacek's claim.332 The district court reasoned that the "Wildbur [test] does not fully contemplate a situation where the plan administrator is interpreting a retroactive plan amendment." Conversely, the circuit court held that if ERISA does not prohibit a retroactive application of an amendment, the terms of the plan will determine whether one can retroactively apply the amendment.333 The circuit court went a step further by stating:

unless the terms of the Plan prohibit adoption of an amendment providing for the suspension of retired participants' benefit payments upon their reemployment in the same industry, trade or craft, and geographic area in any capacity, no basis exist for concluding that the Plan's application of the Amendment to Spacek constituted an abuse of discretion.334 In other words, the court seemed to suggest that in order to ascertain a legally correct interpretation one must look to the plan itself, and view the plan as a contract between the parties.335

The contract analysis adopted by the Fifth Circuit in Spacek is consistent with tradition and caselaw, but the outcome reached is not.336 The Fifth Circuit used contract law analysis in the context of welfare benefits caselaw.337 Welfare benefits have been expressly excluded from ERISA coverage provisions, while early retirement benefits have been included by the REA of 1984.338 Therefore, the Spacek

331. Id. The other factors will not be considered in this Note, but they are: (1) "the internal consistency of the plan under the administrator's interpretation, and (2) any relevant regulations formulated by the appropriate administrative agencies, and (3) the factual background of the determination and any inferences of lack of good faith." Id.
332. Spacek, 134 F.3d at 293. The circuit court disagreed with the district court on whether Wildbur could be applied to Spacek's case. Id.
334. Spacek, 134 F.3d at 293.
335. Id.
336. See generally id. (stating that a Plan's language can obligate the parties "to do what ERISA would otherwise entitle it to do").
337. See infra notes 338-41 and accompanying text.
338. Spacek, 134 F.3d at 294.
339. Compare 29 U.S.C. § 1051(1) (1994) ("This part shall apply to any employee benefit plan ... other than ... an employee welfare benefit plan"); with id. § 1054(g)(2) (including early retirement benefits).
court's use of welfare benefits caselaw in ascertaining the legally correct interpretation fails to grant the degree of protection currently existing to early retirement benefits.\textsuperscript{340} In short, the Fifth Circuit erred by placing early retirement benefits on the same level as welfare benefits when ERISA has specifically chosen to elevate early retirement benefits.\textsuperscript{341}

1. Understanding the Problem

The Fifth Circuit in \textit{Spacek} held that (1) the \textit{Wildbur} test should apply, and (2) there was no abuse of discretion by retroactively amending the plan.\textsuperscript{342} Therefore, the court determined that the legally correct interpretation of the plan supported Maritime's retroactive application of the amendment to Spacek's benefits.\textsuperscript{343} The Fifth Circuit arrived at this conclusion by viewing Spacek's claim in the context of welfare benefits and as "Extra-ERISA" obligations.\textsuperscript{344} This premise is wrong for the following reasons.\textsuperscript{345} First, the REA has been enacted to protect early retirement benefits, therefore we are not dealing with "Extra-ERISA" obligations.\textsuperscript{346} Next, a welfare benefits analysis can be contradicted by other analogous plan coverage, and is not the best method in ascertaining the "legally correct interpretation of the plan."\textsuperscript{347} The district court refused to apply the \textit{Wildbur} test, yet they adopted the underlying methodology of \textit{Wildbur} by approaching the issue is \textit{Spacek} using a contractual analysis.\textsuperscript{348} On this point, the overall methodology is not effected by the district court's rejection of \textit{Wildbur}, because both courts in fact applied the principles of \textit{Wildbur}.\textsuperscript{349}

2. Welfare Benefits Contract Analysis

In ascertaining whether Maritime acted arbitrarily and capriciously, the \textit{Spacek} court ruled that "contractual analysis in the welfare benefits cases provide[d] the proper framework" for determining whether Maritime applied the "legally correct interpretation of the

\textsuperscript{340} See supra note 339 and accompanying text.
\textsuperscript{341} See supra note 339 and accompanying text.
\textsuperscript{342} Spacek, 134 F.3d at 293.
\textsuperscript{343} Id.
\textsuperscript{344} Id. at 293-95.
\textsuperscript{345} See infra notes 346-49 and accompanying text.
\textsuperscript{347} See Spacek, 134 F.3d at 294 (recognizing that pension benefits have been afforded greater protection than welfare benefits traditionally).
\textsuperscript{348} Spacek, 923 F. Supp. at 964.
\textsuperscript{349} See supra notes 343-49 and accompanying text.
Accordingly, the court applied a contractual analysis to determine the "legally correct interpretation" of Spacek's benefits. Despite their finding that greater weight should be given to pension benefits, the Fifth Circuit applied a welfare analysis. The Fifth Circuit acknowledged that in "contract law" analysis the courts have traditionally afforded "pension benefits greater protection than welfare benefits." The court went on to state:

This tendency doubtless stems from the special solicitude that courts have shown in protecting the rights of pensioners, who have labored the greater portion of their lives under an expectation that their hard work would bring them security in retirement.

Notwithstanding its understanding of this transcendent maxim, the court ruled in a fashion that compromises the importance and significance of pension benefits by adopting a welfare benefits analogy as part of their methodology. Using a welfare benefits analysis, the Fifth Circuit failed to realize the significance of recent legislation and judicial trends in promoting early retirement benefits to a greater status than they had once held. Starting from the premise that the plan should be viewed in light of welfare benefits, the Fifth Circuit failed to identify the correct legal interpretation, and therefore erred in its ruling that Maritime's decision to retroactively apply the amendment to Spacek was not arbitrary and capricious.

The Fifth Circuit in *Spacek* seemed to equate welfare benefits with early retirement benefits when it relied on two cases from other circuits. Specifically, in *Chiles v. Ceridian Corp.*, the Tenth Circuit ruled that when a pension plan contains a "reservation of rights" clause, the employer/administrator possesses the power to retroactively alter the participants' benefits. Despite the fact that the language of the plan in *Chiles* stated that the medical benefits will continue for life, the Tenth Circuit ruled that the administrator's power to amend will not be altered when the language of the plan grants the administrator's right to amend. The *Chiles* court rea-
soned that, because welfare benefits have been excluded from ERISA's vesting requirements, an employer may unilaterally “modify or terminate” the benefits.362

Similarly, in *In re Unisys Corporation Retiree Medical Benefit “ERISA” Litigation*,363 the United States Court of Appeals for the Third Circuit held that the reservation of rights clause operates to prevent the medical benefits of the retirees from vesting.364 In *In re Unisys*, the beneficiaries challenged an amendment that terminated all existing medical benefits.365 The beneficiaries claimed, like in *Chiles*, that the language in the plan which stated that the benefits will be “for life” protected those benefits as vested.366 The court concluded that “Congress did not impose vesting requirements on welfare benefits.”367

By applying *Chiles* and *In re Unisys* in support of its findings that Maritime did not act arbitrarily or capriciously by retroactively amending Spacek's benefits, the Fifth Circuit asserted that early retirement benefits are similar to welfare benefits, or at least analogous to welfare benefits.368 However, the circuit court acknowledged that the “statutory framework of ERISA reflects [a] solicitude toward pensioners rights through minimum funding, vesting and accrual requirements for pension plans.”369 As such, the court determined that there is a statutory requirement with pension benefits precluding Maritime from “pulling the rug out from under [the] pensioners.”370 By not having ERISA protection, administrators under welfare plans — which reserve the right in the plan to amend — can do just that (i.e., pull the rug out from under the pensioners).371 Therefore, the court’s own rationale rebukes its application of welfare benefits caselaw to determine the legally correct interpretation of the plan.372

362. *Id.* at 1511, 1513.
363. 58 F.3d 896 (3rd Cir. 1995).
365. *Unisys Corp.*, 58 F.3d at 899.
366. Compare *id.* at 899-900 (declaring that the plan's term "lifetime" did not mean that the administrators could not amend or alter those benefits), *with Chiles*, 95 F.3d at 1512 (holding that the plan's language, which states that the benefits should continue for life, did not prohibit the plan from making changes and amendments to those benefits).
367. *Unisys Corp.*, 58 F.3d at 901.
368. See generally *Spacek*, 134 F.3d at 293-94 (declaring that because welfare benefits are not contractually guaranteed they are analogous to early retirement benefits).
369. *Id.* at 292-95.
370. *Id.* at 295.
371. See *supra* notes 368-70 and accompanying text.
372. See *supra* notes 368-70 and accompanying text.
With the adoption of the REA, early retirement benefits do receive a level of protection as accrued benefits. By comparing welfare benefits with early retirement benefits, the Fifth Circuit is asserting that the latter is not protected by ERISA's vesting standards. The district court did not agree. Rather than using a welfare benefits contract analysis, the Fifth Circuit should have followed the district court's lead and focused on the terms of the plan itself.

The district court in Spacek reasoned that vested rights are "rights that have matured based on the terms of the plan." For Spacek, this meant that once he had worked and earned credit for thirty years of labor, regardless his age, his rights to receive an early retirement pension became vested. The district court argued that restrictions placed on his benefits (i.e., not to work in the industry or trade) "do not render his pension rights nonvested but merely limit the scope of his vested rights." Under section 1054(g)(2), early retirement benefits are classified as accrued benefits, and receive protection from certain amendments and changes. The district court applied a different methodology in determining the correct legal interpretation of the plan. The district court concluded that the decision to retroactively apply the change to Spacek was arbitrary and capricious, because to do so deprived him of his vested rights. The district court reasoned that "vested rights" are not the same as "accrued rights," in that vested rights are the rights that have "matured based on the terms of the plan." In other words, the district court asserted that in order to ascertain the correct legal interpretation of the plan you look to the terms of the plan itself.

373. Wehrmeister, 28 U.C. Davis L. Rev. at 476 n.6.
374. See supra note 368 and accompanying text.
376. See infra notes 377-85 and accompanying text.
377. Spacek, 923 F. Supp. at 964
378. Id.
379. Id.
381. Compare Spacek, 923 F. Supp. at 964 (declaring that an analysis to determine the propriety of retroactive amendments should be done by viewing the plan as a contract), with Spacek, 134 F.3d at 292-93 (declaring that a contractual analysis is appropriate, but should be done in the context of welfare benefits caselaw).
383. Id.
384. See id. (focusing on the terms of the contract and when the contract vested as it applied to Spacek).
The district court’s holding and decision to use a pure contractual analysis was consistent with the Third, Ninth and Tenth Circuits.\(^3\)

The district court in *Spacek* cited to the Ninth Circuit’s decision in *Brug v. Pension Plan of Carpenters Pension Trust Fund for Northern California*,\(^3\) in which a plan beneficiary was denied her benefits under a disability benefits retirement plan, due to a retroactive change in the plan.\(^4\) In *Brug*, the plan administrators made an amendment to the plan that allowed Brug to become eligible to receive disability retirement benefits.\(^5\) Accordingly, she applied and her application was reviewed by a pension review board, which determined she satisfied all of the eligibility criteria.\(^6\) Subsequently, the administrators repealed the amendment and Brug was no longer eligible to receive disability benefits.\(^7\) The Ninth Circuit ruled that a retroactive application of an amendment altering the plan eligibility requirements was arbitrary and capricious.\(^8\)

The *Brug* court framed the issue as “whether the rescission of the amendment could be applied retroactively so as to exclude [Brug] as a covered employee.”\(^9\) In reaching the conclusion that the retroactive change had the effect of “pulling the rug out from under Brug,” the court looked at the stated facts that Brug had met all of the eligibility requirements: that she was one who was classified as eligible under the amended plan; that she was in fact disabled; and that all the requirements were met before the rescission of the plan.\(^10\) Further, the court found that even though the plan retained the authority to repeal and amend the plan, to do so retroactively was arbitrary and capricious.\(^11\) The court reasoned that such retroactive change could not be

\(^{385}\) *Spacek*, 134 F.3d at 286.

\(^{386}\) See Kemmerer v. ICI Americas Inc., 70 F.3d 281, 287 (3d Cir. 1995) (declaring that the lower court was correct to apply contract principles in ruling on the pension plan); Pratt v. Petroleum Prod. Management., Inc. Employee Savings Plan & Trust, 920 F.2d 651 (10th Cir. 1990) (declaring that once employees accept the offer under a pension plan, contract principles apply to create vested rights under the plan); *Brug v. Pension Plan of the Carpenters Pension Trust Fund for N. Cal.*, 669 F.2d 570, 571 (9th Cir. 1982) (holding that the rescission of an amendment that granted clerical employees certain disability benefits that was applied retroactively was arbitrary and capricious).

\(^{387}\) *Spacek*, 923 F. Supp. at 964; *Brug v. Pension Plan of the Carpenters Pension Trust Fund for N. Cal.*, 669 F.2d 570, 571 (9th Cir. 1982).

\(^{388}\) *Brug*, 669 F.2d at 571-73. Under the original plan, she was not eligible because she was classified as a clerical worker. *Id.* at 572. The amended section of the plan allowed clerical workers the opportunity to apply for disability benefits. *Id.*

\(^{389}\) *Brug*, 669 F.2d at 573.

\(^{390}\) *Id.*

\(^{391}\) *Id.* at 571.

\(^{392}\) *Id.* at 574.

\(^{393}\) *Id.* at 575-76.
made to "preclude Brug's eligibility for pension benefits that had vested." 396

The Fifth Circuit in Spacek attempted to discount the Brug ruling by arguing that, because Brug was decided prior to the REA, there would be a different result today based on the "accrued" analysis of section 1054(g). 397 However, the Brug court did not frame the issue according to the accrued language. 398 The Brug court reasoned that the issue to be resolved was whether plan administrators' decisions to rescind a plan amendment could be applied retroactively to exclude certain employees as beneficiaries under the plan whose benefits had vested. 399 Accrued benefits are protected under section 1054(g) of ERISA, but vested rights refer to rights that have matured under the plan. 400 In Spacek's case, because he worked thirty years in the industry, his rights under the plan vested. 401 Therefore, the REA notwithstanding, Spacek's benefits fall well within the Brug court's ruling. 402

The United States Court of Appeals for the Tenth Circuit, in Pratt v. Petroleum Production Management, Inc. Employee Savings Plan & Trust, 403 also used a contractual approach in addressing the same issue. 404 In Pratt, the claimant (Pratt) was terminated from employment and was therefore eligible to receive employer contribution benefits. 405 According to the terms of the plan, Pratt's benefits were to be valued on a certain date. 406 The administrator and two trustees acting as the plan's fiduciaries amended the plan to change the valuation date, and the differing dates had a substantial effect on the amount of benefits Pratt would receive. 407 Pratt sued, claiming that by altering the valuation date he was deprived of certain vested rights in his benefits. 408 The circuit court agreed, stating that a "pension plan is a unilateral contract." 409 In addition, the court reasoned that

396. Id. at 575.
397. Spacek, 134 F.3d at 295.
398. See Brug, 669 F.2d at 571 (focusing on whether a plan amendment could be applied retroactively).
399. Id.
402. See supra notes 387-401 and accompanying text.
403. 920 F.2d 651 (10th Cir. 1990).
405. Pratt, 920 F.2d at 652.
406. Id.
407. Id. at 652-53. According to the original valuation date, Pratt would have received $27,692.32, but under the amended date he would have received only $7184.37. Id. at 653.
408. Pratt, 920 F.2d at 652.
409. Id. at 661.
when Pratt was terminated his benefits should have been valued according to the plan then in effect.\textsuperscript{410}

In a similar case, the United States Court of Appeals for the Third Circuit ruled that the employer violated contract principles by retroactively amending a retirement plan.\textsuperscript{411} In Kemmerer v. ICI Americas Inc.,\textsuperscript{412} certain executives who had been provided a retirement package had their benefits retroactively canceled after years of retirement.\textsuperscript{413} The Kemmerer court ruled that a subsequent change to the plan amounted to a breach of the plan, because the former employees had “complied with all the prerequisites to vesting [when] they accepted the . . . offer.”\textsuperscript{414} Further, the court determined that a “pension plan is a unilateral contract which creates a vested right.”\textsuperscript{415}

The Spacek court also attempted to distinguish the Pratt and Kemmerer rulings by arguing that the cases involved “top hat” plans.\textsuperscript{416} They asserted that, because “top hat” plans are not “subject to ERISA's full panoply of regulations,” they are distinguishable from the facts in Spacek.\textsuperscript{417} Unfortunately, the Spacek court did not also address the qualifying language of Kemmerer, which stated:

Congress’ decision to exempt top hat plans from certain fiduciary standards does not mean that courts may not review their trustees' and sponsors' actions. Rather, the exception means only that they are not held to the strict fiduciary standards of loyalty and care otherwise applicable to ERISA fiduciaries.\textsuperscript{418}

By arguing that Pratt and Kemmerer are distinguishable from Spacek, the Fifth Circuit asserted the very argument rejected by the Third Circuit in Kemmerer.\textsuperscript{419}

CONCLUSION

In Spacek v. Maritime Ass'n, ILA Pension Plan,\textsuperscript{420} the United States Court of Appeals for the Fifth Circuit ruled that “suspended” benefits are not “reduced” for purposes of ERISA accrual protection.\textsuperscript{421}

\textsuperscript{410} Id.
\textsuperscript{411} See infra notes 412-15 and accompanying text.
\textsuperscript{412} 70 F.3d 281 (3d Cir. 1995).
\textsuperscript{413} Kemmerer v. ICI Americas Inc., 70 F.3d 281, 284-85 (3d Cir. 1995).
\textsuperscript{414} Kemmerer, 70 F.3d at 287.
\textsuperscript{415} Id.
\textsuperscript{416} Spacek, 134 F.3d at 296.
\textsuperscript{417} Id. at 296.
\textsuperscript{418} Kemmerer, 70 F.3d at 287.
\textsuperscript{419} See id. (stating that contract principles should govern these type of disputes).
\textsuperscript{420} 134 F.3d 283 (5th Cir. 1998).
\textsuperscript{421} Spacek v. Maritime Ass’n, I.L.A. Pension Plan, 134 F.3d 283, 288 (5th Cir. 1998).
Further, the court determined that the legally correct interpretation of the plan was ascertained by looking at the plan in the context of welfare benefits cases. As a result, the court determined that there was no abuse of discretion and reversed the district court's ruling in favor of Spacek, holding that: (1) Maritime did not violate ERISA's anticutback provision when it suspended Spacek's benefits, and (2) it was not arbitrary and capricious for Maritime to retroactively alter Spacek's benefits.

The Fifth Circuit's decision is overly broad and should be narrowly interpreted as applied to those cases in which suspending a participant's benefits will actually amount to a reduction or elimination, and thus come within the protection of 29 U.S.C. §1054(g)(2). It is even possible that in Spacek's case a suspension of $12,000 of his benefits, never to be reimbursed, could have been considered a reduction. Nonetheless, the court refused to hypothesize the possibility that their factual analysis could be wrong, or that Spacek's benefits could be reduced or eliminated, and therefore their ruling lacks broad application. As a result, the Fifth Circuit lost a prime opportunity to clarify the rule that early retirement benefits are accrued benefits in accordance with the REA's amendment to ERISA.

In addition, the Fifth Circuit's decision in Spacek is erroneous simply because it misapplied the doctrine of arbitrary and capricious standard of review. In reviewing Maritime's decision under the pension plan, the court was correct to apply an arbitrary and capricious standard of review. However, the Spacek court failed to correctly apply the first component of the arbitrary and capricious standard — the legally correct interpretation of the plan. The Fifth Circuit determined that viewing Spacek's claim in the context of welfare benefits led to the conclusion that the decision to retroactively apply an amendment to Spacek, depriving him of vested rights, was not arbitrary and capricious. The court's reasoning is based on the false notion that early retirement benefits are equal to welfare benefits in the eyes of ERISA. This premise is not only inconsistent with common sense, but also goes against the spirit and letter of ERISA as amended by the REA. Therefore, the court's use of welfare benefits caselaw in ascertaining the legally correct interpretation fails to grant the degree of protection currently given to early retirement benefits. In short, the Fifth Circuit erred by placing early retirement benefits on the same level as welfare benefits when ERISA has chosen to elevate early retirement benefits.

422. Spacek, 134 F.3d at 292-93.
423. Id. at 299.
Further, the Fifth Circuit ruled in a fashion that compromises the importance and significance of pension benefits by adopting a welfare benefits analogy as part of its methodology. Using a welfare benefits analysis, the Fifth Circuit failed to realize the significance of recent legislative and judicial trends in promoting early retirement benefits to a greater status than they had once enjoyed. Starting from the premise that the plan should be viewed in light of welfare benefits the Fifth Circuit failed to identify the correct legal interpretation, and therefore erred in their ruling that Maritime's decision to retroactively apply the amendment to Spacek was not arbitrary and capricious. On this point the district court was correct to focus on the language of the plan itself. The district court's ruling — that once Spacek had met all his preamendment conditions by serving in the trade for thirty years, his rights under the early retirement clause became vested — should be the correct holding in the case.

The Fifth Circuit's ruling has the effect of granting an employer greater deference in private pension plans than ERISA provides. The Spacek court's ruling with regard to the standard of review places a wide amount of discretion in the hands of the pension plan administrators, and compromises the balance of relations between the employee and employer that ERISA sought to create. In order to avoid an absolute deference to employers under the arbitrary and capricious standard, the legislature should take steps to expressly outline the appropriate standard of review and its parameters within the ERISA statute.

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