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CONKRIGHT v. FROMMERT130 S. Ct. 1640 (2010)

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I. INTRODUCTION

Despite its comprehensive character, the Employee Retirement Income Security Act of 1974 ("ERISA") is silent regarding the appropriate standard of review that a court must employ when evaluating plan administrators' interpretations of employee benefit plans.[1] In deciding denial-of-benefits actions brought under ERISA, the Supreme Court of the United States has established that plan administrators' interpretations are subject to a default de novo standard of review.[2] The Court, however, has crafted an important exception to de novo review. If the language in a plan grants its plan administrators discretionary authority to interpret and construe terms of the plan, a court must employ a deferential standard in reviewing its reasonableness.[3]

Conkright v. Frommert[4] concerned an ERISA-regulated pension plan that granted discretionary authority to its administrators.[5] Ordinarily, a court would have employed a deferential standard in its review.[6] *Conkright*, however, presented a much narrower question due to the factual scenario surrounding the dispute.[7] Specifically, *Conkright* involved plan administrators whose *initial* interpretation of the plan had been reviewed under a deferential standard and found to be unreasonable and in violation of ERISA.[8] The Court faced the task of determining whether the administrators' second attempt to interpret the same plan should be reviewed under a deferential standard, taking into account the previous abuse of discretion.[9] Reversing the Court of Appeals for the Second Circuit's decision, the Supreme Court held that the plan administrators' subsequent interpretation of the plan—despite the previous abuse of discretion—could not be stripped of deferential review unless the abuse of

1. *See* Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 108-09 (1989).
2. *Id*. at 115.
3. *See id*.
4. 130 S. Ct. 1640 (2010).
5. *See id*. at 1644.
6. *See id*. at 1646.
7. *See id*. at 1644-46.
8. *Id*. at 1645.
9. *Conkright*, 130 S. Ct. at 1644.

discretion was the result of a bad faith act.[10] Since the record in *Conkright* indicated that the abuse of discretion was the result of an inadvertent mistake, the Court held that the plan administrators' second interpretation was entitled to deferential review.[11]

II. THE FACTUAL AND PROCEDURAL HISTORY

Xerox Corporation employed a group of individuals who left the company in the 1980s.[12] Upon their termination, Xerox awarded these employees lump-sum distributions of money accounting for the benefits they had acquired up to that point.[13] Years later, Xerox re-hired this group of individuals who continued to work for the company for a number of years up to the date of their ultimate retirement.[14]

In calculating the employees' new benefits, Xerox's plan administrators attempted to account for the lump-sum distributions that the employees had previously received by employing a method of calculation the Court refers to as the "phantom approach."[15] In simple terms, this method converted the lump-sum distributions of money to present value by hypothetically assuming that these sums had never left Xerox's investment funds.[16] Subsequently, the new figure was subtracted from the current calculation of benefits.[17] Xerox's plan administrators failed to notify the employees that the phantom approach would be applied in the calculation of their benefits.[18] The employees acknowledged that Xerox had notified them that their present benefits would be subject to an offset accounting for the previous distributions.[19] However, the employees asserted that because no reference was made with regard to the use of the phantom approach, they anticipated that their benefits would be reduced by the *actual* amounts they had received and not by a hypothetical figure.[20]

Dissatisfied with the employment of the phantom approach and the lack of notice thereof, the employees challenged the action via Xerox's internal administrative body.[21] Unsuccessful in the internal proceedings and after

10. *Id.* at 1651-52.
11. *Id*. at 1644.
12. *Id.* at 1645.
13. *Id.*
14. *Conkright*, 130 S. Ct. at 1645.
15. *Id.*
16. *Id*.
17. *Id*.
18. *Id.*
19. *Conkright*, 130 S. Ct. at 1653 (Breyer, J., dissenting).
20. *Id.* at 1654.
21. *Id.* at 1645 (majority opinion).

exhausting their internal remedies, an action was brought in the District Court for the Western District of New York.[22] The district court entered summary judgment in favor of the administrators.[23]

On appeal, the Second Circuit found that the administrators' use of the phantom approach constituted an abuse of discretion and a violation of ERISA's notice requirement and anti-cutback provision.[24] The Second Circuit remanded the case for the district court to establish an appropriate method for calculating the employees' present benefits and to fashion a remedy.[25] On remand, the district court heard proposals from both the employees and Xerox's plan administrators.[26] The plan administrators claimed that their proposal was entitled to deferential review.[27] Due to the previous abuse of discretion, however, the court refused to grant deference. Instead, the court adopted a method of calculation that reduced the present benefits by the nominal sums employees had received upon their initial retirement.[28] The Second Circuit accepted the lower court's "one-strike-and-you're-out" approach and affirmed the decision. While the court acknowledged that the plan administrators' interpretation would ordinarily be entitled to deferential review, it found that due to the previous abuse of discretion and violation of ERISA, it was within the district court's discretion to craft its own remedy.[29]

The Supreme Court reversed the Second Circuit's decision and held that plan administrators' interpretations of a pension plan should be reviewed under a deferential standard, even in cases where the administrators had previously abused their discretion in the interpretation of the same plan by making an honest mistake.[30] The Court based its determination on the negative effect that divesting an administrator from deferential review would have on ERISA's interests in efficiency, predictability, and uniformity.[31]

22. *Id.*
23. *Id*.
24. *Conkright*, 130 S. Ct. at 1654 (Breyer, J., dissenting).
25. *Id.* at 1645 (majority opinion).
26. *Id.*
27. *Id.*
28. *Id.* at 1645.
29. Frommert v. Conkright, 535 F.3d 111 (2d Cir. 2008).
30. *See Conkright*, 130 S. Ct. at 1645.
31. *Id.* at 1648-49.

III. DECISION AND RATIONALE

A. The Majority Opinion of the Court

Chief Justice Roberts, writing for the majority, began the opinion by discussing two pivotal cases previously considered by the Supreme Court examining the proper standard of review to be employed in reviewing plan administrators' interpretations of ERISA-regulated plans.[32] In *Firestone Tire & Rubber Co. v. Bruch*,[33] the Court determined that because ERISA was silent on the matter, the Court would be guided primarily by principles of trust law.[34] Applying trust law principles, the Court in *Firestone* found that when a pension plan gives its administrators the power to discretionarily change or construe its terms, the administrators' decisions are entitled to deferential review and must be accepted if reasonable.[35] The Supreme Court expanded *Firestone* in *Metropolitan Life Insurance Co. v. Glenn*.[36] The *Glenn* Court, again looking to trust law principles, held that plan administrators' interpretations are entitled to deference even in cases in which the administrators have conflicts of interest.[37]

The majority in *Conkright* attempted to guide its reasoning by the framework established in *Firestone* and *Glenn*—namely, the terms of the plan, principles of trust law, and the principles underlying ERISA.[38] First, the majority found that under the terms of the Xerox retirement plan, the administrators had been granted broad discretion and general authority to "construe the plan."[39] Thus, the majority found that the district court had erred when it chose to divest the plan administrators from deference solely because of their previous abuse of discretion.[40] The majority explained that nothing in the *Firestone* or *Glenn* opinions indicated that the standard of deference granted to ERISA plan administrators was subject to "ad hoc exceptions" such as the one crafted by the Second Circuit.[41]

Second, the majority discussed the relevance of trust law principles to the matter at hand.[42] The majority cited the *Scott and Ascher on Trusts* treatise in which it is emphasized that a court will ordinarily not divest a trustee of

32. *Id.* at 1646.
33. 489 U.S. 101 (1989).
34. *Id.* at 111.
35. *Id.* at 115.
36. 554 U.S. 105 (2008).
37. *Id.* at 115.
38. *Conkright*, 130 S. Ct. at 1647.
39. *Id.*
40. *Id.* at 1646.
41. *Id.* at 1646.
42. *Id.* at 1647.

deference unless there is evidence of bad faith.[43] The majority, however, also acknowledged that there was authority in support of allowing courts to fashion a remedy in cases in which a trustee has acted beyond the bounds of reasonable judgment without necessarily exercising bad faith.[44] The majority concluded that due to the conflicting approaches, trust law principles were "unclear . . . on the question" and unable to resolve the specific issue.[45] As justification for its exclusion of principles of trust law as guidance, the majority relied on *Varity Corp. v. Howe*,[46] in which the Supreme Court found that "trust law does not tell the entire story" with regard to actions brought under ERISA.[47]

Finally, the majority explained that because trust law principles were unclear on the matter, the principles underlying ERISA would provide better guidance.[48] Justice Roberts reasoned that the interests of efficiency, predictability, and uniformity that Congress had in mind when it enacted ERISA, would be better served by affording plan administrators deferential review of their interpretation of pension plans.[49] The statute's interest in efficiency would be promoted because under a deferential standard of review, the sole question before the court would be whether the administrator's proposed interpretation is reasonable.[50] On the other hand, reviewing the administrator's proposal under a de novo standard would result in time-consuming and costly litigation in which courts would have to inquire beyond the reasonableness of the proposed interpretation.[51] Likewise, ERISA's interest in promoting predictability would be undermined by divesting an administrator of deference.[52] The majority illustrated this proposition by pointing to the district court's decision on remand in which a method of calculation that did not take into account the time value of money was adopted.[53] This method, Justice Roberts indicated, was "heresy, and highly unforeseeable" and plan administrators would have not have considered it as a viable option.[54] In addition, the majority argued that the interest of uniformity would be adversely affected by refusing to

43. *Conkright*, 130 S. Ct. at 1647.
44. *Id.* at 1648.
45. *Id.*
46. 516 U.S. 489 (1996).
47. *Id.* at 497.
48. *Conkright*, 130 S. Ct. at 1648.
49. *Id.* at 1649.
50. *Id.*
51. *Id.* at 1649-50.
52. *Id.* at 1650.
53. *Conkright*, 130 S. Ct. at 1650.
54. *Id.*

afford deference to the administrators.[55] The majority reasoned that this could potentially lead to different interpretations of the same plan by courts in various jurisdictions, not only making it difficult for administrators to oversee the implementation of their benefit programs but also discouraging other employers from establishing ERISA-regulated plans.[56]

B. The Dissenting Opinion of Justice Breyer

Justice Breyer organized his dissent by addressing what he believed were three significant mistakes in the case.[57] The first and second mistakes were only briefly discussed. First, Justice Breyer pointed to Xerox's failure to notify employees of the use of the phantom approach in the calculation of their benefits.[58] In an appendix, Justice Breyer explained the substantial impact that the utilization of the phantom approach would have had on employees' expectations.[59] This was portrayed by giving the example of Paul Frommert, a retiree who would have been entitled to $2,482.00 per month had his new benefits been reduced by the *actual* distributions he had already received, but found himself entitled to $5.31 per month when Xerox employed the phantom approach.[60] The second mistake addressed was that of the district court by upholding the validity of the phantom approach after rejecting the employees' argument that they had not received notice.[61]

The crux of the dissent focused on the third mistake: the majority's misapplication of trust law principles.[62] Justice Breyer pointed to the contradictory statements made by the majority. Initially, the majority recognized the relevance of trust law principles to the matter and even admitted that the Court was "guided by principles of trust law in ERISA cases."[63] On the other hand, the majority also found that the state of trust law was "unclear"[64] and unable to resolve the specific issue presented.[65] The dissent criticized the majority's conclusion that trust law principles were unhelpful. In support of its contention that trust law was unambiguous and highly relevant, the dissent cited various sources of authority including case law and treatises establishing that when trustees have abused their

55. *Id*. at 1650-51.
56. *Id*.
57. *Id*. at 1652 (Breyer, J., dissenting).
58. *Conkright*, 130 S. Ct. at 1653-54 (Breyer, J., dissenting).
59. *Id*. at 1661-62
60. *Id*. at 1662.
61. *Id*. at 1654-55.
62. *Id*. at 1655.
63. *Conkright*, 130 S. Ct. at 1648 (majority opinion).
64. *Id*. at 1647.
65. *Id*.

discretion, a court is not required to review any subsequent interpretations under a deferential standard.[66] While it is true that a court may elect to afford deference, the dissent explained that it is entirely within the court's discretion to fix its own remedy.[67]

IV. ANALYSIS

A. Introduction

The majority held that despite its previous abuse of discretion, plan administrators' second attempts to interpret employee benefit plans should be reviewed under a deferential standard.[68] The majority alleged that its determinations were based on the *Firestone* and *Glenn* decisions, in which the Court also considered the proper standard of review applicable to administrators' interpretations of ERISA-regulated plans.[69] An analysis of the majority's rationale, however, indicates that the *Firestone* and *Glenn* decisions were misinterpreted. Despite *Firestone* and *Glenn* making it clear that courts must be guided by principles of trust law,[70] the majority blatantly ignored this consideration. Instead, the majority relied entirely on principles underlying ERISA to support its findings.[71] This analysis focuses on the majority's misinterpretation of the *Firestone* and *Glenn* decisions, its misapplication of trust law principles, and its one-sided assessment of the effect continued deference could potentially have on the principles underlying ERISA.

66. *See id*. at 1655-58 (Breyer, J., dissenting).

67. *Id*. at 1659-60.

68. *Conkright*, 130 S. Ct. at 1644 (majority opinion).

69. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989); *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008).

70. *See Firestone*, 489 U.S. at 111 (stating that "[i]n determining the appropriate standard of review for actions under [ERISA], we are guided by principles of trust law"); *Glenn*, 554 U.S. at 111 (explaining that in determining the appropriate standard of review, a court "should analogize a plan administrator to the trustee of a common-law trust; and it should consider a benefit determination to be a fiduciary act").

71. *Conkright*, 130 S. Ct. at 1648 ("Here trust law does not resolve the specific issue before us, but the guiding principles we have identified underlying ERISA do.").

B. Discussion

1. The Majority's Misinterpretation of the Firestone and Glenn Decisions

The majority maintained that *Firestone* and *Glenn* guided its ruling.[72] In *Firestone*, the Court had to determine the standard of review applicable to a plan administrator's determination of benefits under ERISA.[73] The Court found that because ERISA was silent on the matter, trust law principles would provide primary guidance.[74] Based on these principles, the *Firestone* Court determined in dictum that when a pension plan grants discretionary authority to its administrators, their interpretations must be reviewed employing a deferential standard.[75] *Glenn* applied *Firestone's* dictum by finding that *Firestone* deference is applicable even in cases where plan administrators operate under conflicts of interest, provided that the administrators are granted discretionary authority.[76]

The majority held that despite the Xerox plan administrators' initial abuse of discretion, the lower courts had erred by refusing to review their second interpretation of the plan under a deferential standard.[77] The majority justified its holding by noting that if *Glenn* had determined that operating under a conflict of interest was not grounds to divest an administrator of deference, it was difficult to see why "a single honest mistake" would.[78] In doing so, the majority failed to recognize a fundamental difference between *Glenn*, *Firestone*, and the present case. *Glenn* and *Firestone* involved the review of an administrator's *initial* interpretation of a pension plan. Neither case involved plan administrators whose previous interpretations of the same plan were found unreasonable and in violation of ERISA. Throughout its discussion, the majority mistakenly referred to the type of deference sought by Xerox plan administrators as "*Firestone* deference."[79] This characterization is erroneous and fails to recognize the difference between *Firestone* deference—that which is afforded to an administrator's *initial* interpretation of a plan—and the continued deference sought by Xerox's plan administrators. Most importantly, the majority failed to acknowledge that

72. *Id.* at 1647.
73. *See Firestone*, 489 U.S. at 105.
74. *Id.* at 109.
75. *Id.* at 115.
76. *See Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 115 (2008).
77. *Conkright*, 130 S. Ct. at 1646-47.
78. *Id.* at 1647.
79. *See id*. at 1646-47, 1649-50.

the Second Circuit had already determined that the phantom approach was unreasonable even if reviewed under *Firestone* deference.[80]

2. The Majority's Misapplication of Trust Law Principles

In enacting ERISA, Congress invoked the common law of trusts to define the general scope of plan administrators' duties and responsibilities.[81] Therefore, plan administrators' duties under ERISA are analogous to the fiduciary duties required from trustees under trust law.[82] Since ERISA is silent regarding the standard of review applicable to plan administrators' interpretations of pension plans, the Supreme Court in *Firestone* established that courts must look to principles of trust law for guidance.[83] While *Firestone* and *Glenn* acknowledged that courts must consider the purposes underlying ERISA in their determinations, it was clearly established that principles of trust law would provide primary guidance.[84] The majority in *Conkright*, however, based its decision entirely on principles underlying ERISA.[85] Due to the impact the majority's exclusion of trust law principles had on the ultimate disposition of the case, it is important to clarify the state of trust law with regard to the question presented.

The majority justified its exclusion of principles of trust law by citing *Varity Corp. v. Howe*,[86] in which the Supreme Court stated that trust law "does not tell the entire story" in ERISA-based actions.[87] The majority, however, misinterpreted *Howe* by portraying it as one that permitted the deliberate exclusion of trust law principles in actions brought under ERISA. A careful reading of *Howe's* rationale fails to support such a characterization. In *Howe*, a group of employees brought an action against Varity, a corporation that performed a dual role as employer and pension plan administrator.[88] The employees claimed that a misrepresentation had been made to them with regard to their pension benefits in violation of ERISA.[89] Under ERISA only a "fiduciary" may incur liability.[90] Varity

80. Frommert v. Conkright, 433 F.3d 254, 265-66 (2d Cir. 2006) ("It is clear, under *either an arbitrary or capricious standard* or as a matter of law, that the Plan administrator's conclusion that the Plan always included the phantom account is unreasonable.") (emphasis added).

81. *See* Cent. States v. Cent. Transp., 472 U.S. 559, 570 (1985).

82. *Id.*

83. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 109-11 (1989).

84. *See Firestone*, 489 U.S. at 111; *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 111 (2008) ; *see also* Brief for the United States as Amicus Curiae Supporting Respondents at 13-14, Frommert v. Conkright, 130 S. Ct. 1640 (2010) (No. 08-810).

85. *Conkright v. Frommert*, 130 S. Ct. 1640, 1648 (2010).

86. 516 U.S. 489 (1996).

87. *Id.* at 497.

88. *Id.* at 491-92.

89. *Id.* at 492.

argued that when the misrepresentation occurred, it was not acting in its capacity as ERISA "fiduciary," but merely as an employer.[91] In order to determine whether the corporation was acting as a fiduciary when it made the misrepresentation to its employees, the Court did not look to trust law for definitions, but instead directed its attention to the language of ERISA.[92] The reason the Court chose to ignore trust law principles in this specific instance is a simple one. Trust law, unlike ERISA, does not permit fiduciaries to hold positions that create conflicts of interest with trust beneficiaries.[93] In other words, trust law would have not permitted Varity to perform the role of plan administrator due to the conflict of interest that this would have entailed. It was in consideration of this factor that the Court categorized trust law as a mere "starting point," since being guided by trust law would have led the Court into an inaccurate determination.

While *Howe* established that when there is conflict between trust law and ERISA the statute must control, it also implied that when ERISA is silent on a particular issue, principles of trust law should guide a court in its determinations. After establishing that under ERISA one is a fiduciary if "he exercises any discretionary authority" respecting the management and administration of such plan,[94] the Court attempted to look at ERISA's language to determine the exact meaning of "management" and "administration."[95] Finding no clear definitions under ERISA, the Court looked to trust law for guidance.[96]

It is clear that *Howe's* statement that trust law is only a "starting point" applies to instances in which ERISA unambiguously defines its position on a particular matter.[97] In cases in which ERISA is silent—e.g., standards of review—*Howe* implicitly holds that a reviewing court must look to trust law principles as guiding authority to render an accurate determination.

While the *Conkright* majority was unable to present any legal authority in support of its contention that trust law was unclear in the matter,[98] the

90. *See id*. at 495, 498.

91. *Howe*, 516 U.S. at 495.

92. *See id*. at 498.

93. *Id*. (citing NLRB v. Amax Coal Co., 453 U.S. 322, 329-30 (1981)).

94. *Id*. (quoting Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(21)(A) (1974)).

95. *See id*. at 498.

96. *See Howe*, 516 U.S. at 502.

97. *See id*. at 497.

98. The majority attempted to illustrate the "unclear state of trust law" by citing to a Texas Supreme Court opinion determining the proper standard of review applicable to a trustee's second interpretation of a trust document, after his initial interpretation had been determined an abuse of discretion. *See Conkright v. Frommert*, 130 S. Ct. 1640, 1648 (2010) (citing State v. Rubion, 308 S.W.2d 4, 11 (Tex. 1957). That opinion, however, fails to support the majority's position. Although the Texas Supreme Court acknowledged that the state of trust law with regard to the specific question presented had been

dissent offered ample authority establishing that principles of trust law are unambiguous and highly relevant to the issue presented.[99] The Bogart and Bogart treatise, *The Law of Trusts and Trustees*, for example, states that when there has been a previous abuse of discretion by a trustee, a reviewing court is allowed to fashion a remedy instead of affording deference to the trustee's subsequent interpretations.[100] Likewise, the *Third Restatement of Trusts* states that a trustee's fiduciary powers are subject to judicial control in cases in which there has been a previous abuse of discretion.[101] Several cases were also cited to portray how courts have applied trust law principles in similar scenarios.[102] In *State v. Rubion*,[103] for example, the Texas Supreme Court decided that because "there ha[d] . . . been an abuse of discretion by the trustee . . . a remand of the case to the trial court for the definite establishment of amounts to be paid [would] better promote a speedy administration of justice and a final termination of this litigation."[104]

The majority clearly erred in deeming principles of trust law "unclear" and unable to offer guidance. As the foregoing sources establish, trust law permits courts to fashion a remedy in cases in which trustees have previously abused their discretion. The district court, therefore, was within the parameters of its discretion by electing to divest the plan administrator of continued deference and establishing its own remedy.

3. The Majority's Reliance on the Principles Underlying ERISA

Without taking into account principles of trust law, the majority concluded that affording deference to an administrator despite a previous abuse of discretion would better serve ERISA's interests in efficiency, predictability, and uniformity.[105] Assuming, arguendo, that the majority's rationale was appropriate, it seems unlikely that an objective analysis would have yielded the same outcome.

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subject to different interpretations, it rejected the possibility of deferring to the trustee's second interpretation, and instead concluded that *due to the previous abuse of discretion*, "a remand of the case to the trial court for the definite establishment of amounts to be paid [would] better promote a speedy administration of justice and a final termination of th[e] litigation." *Rubion*, 308 S.W.2d at 11.

99. *See Conkright*, 130 S. Ct. at 1655-56 (2010) (Breyer, J., dissenting).

100. *See* G. BOGERT & G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 560, 222-23 (2d rev. ed. 1980).

101. RESTATEMENT (THIRD) OF TRUSTS § 50(1) (2001)).

102. *See Conkright*, 130 S. Ct. at 1656 (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989); Colton v. Colton, 127 U.S. 300, 322 (1888); *Metro Life Ins. Co. v. Glenn*, 554 U.S. 105, 127 (2008) (Scalia, J., dissenting)).

103. 308 S.W.2d 4 (Tex. 1957).

104. *Id.* at 11.

105. *Conkright*, 130 S. Ct. at 1649.

When Congress enacted ERISA in 1974, it was motivated by the need to protect employees from the existing maladministration and lack of adequate safeguards regarding employee benefit plans.[106] ERISA provided for "standards of conduct, responsibility, and obligations" to be followed by plan administrators.[107] Despite ERISA's clear intention to protect employees' interests, the majority's analysis focused entirely on the negative impact that refusing to grant continued deference would have on employers and administrators.[108] No reference was made to the negative impact that continued deference could potentially have on employees and beneficiaries' expectations.[109]

The majority found that ERISA's interest in efficiency would be better served by granting continued deference to an administrator.[110] According to the majority, granting deference would prevent time-consuming and costly litigation because under a deferential review a court's sole inquiry would be whether an administrator's interpretation falls within the bounds of reasonableness.[111] The majority's simplified assertion, however, fails to recognize some of the potential threats that could arise from granting continued deferential review.

For example, since the majority's affordance of continued deference depends on the good-faith character of the administrators' previous abuse of discretion, courts will first have to resolve whether the abuse of discretion was actually the result of an honest mistake. This will not always be an easy task and could result in prolonged litigation, preventing the employees from gaining access to their benefits. Even more detrimental to plan beneficiaries is that by taking advantage of their right to continued deference, plan administrators could attempt to adopt less-than-reasonable interpretations of plans, knowing that each of their attempts would be reviewed under a deferential standard. Since the Court's holding does not set a limit on the number of times an administrator may offer alternative interpretations of a plan, this could be a threat to ERISA's policy of quick and effective dispute resolution.[112] As the United States observed in its brief as amicus curiae, the negative impact of continued deference will be particularly noticeable in cases involving elderly beneficiaries who are in need of timely delivery of benefits.[113]

106. *See* Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001(a) (1974).
107. *Id.* § 1001(b).
108. *See Conkright*, 130 S. Ct. at 1648 -51.
109. *See id*. at 1640-52.
110. *Id.* at 1649.
111. *Id.*
112. *See* 29 U.S.C. § 1001(b).
113. Brief for the United States as Amicus Curiae Supporting Respondents, *supra* note 84, at 53.

The majority also found that divesting an administrator of deference would undermine ERISA's interest in predictability.[114] In support of this contention, the majority directed attention to the district court's method of calculation that did not take into account the present value of the benefits previously distributed.[115] The majority claimed that the plan administrators' expectations had been harmed due to the highly unforeseeable nature of the adopted method.[116] Once again, the majority ignored the adverse impact that granting deference to the administrator would have on the *employees*' expectations. Prior to their ultimate retirement, the employees were notified that their new calculation of benefits would be subject to an offset attributable to the distributions they had previously received.[117] Because no reference was made to the utilization of the phantom approach, the employees expected for their benefits to be reduced by the *actual* sums they had previously received.[118] One of the core objectives of ERISA is to safeguard "employees' justified expectations of receiving the benefits their employers promise them."[119] In considering the employees' expectations, the district court on remand adopted a method of calculation that "clearly reflect[ed] what a reasonable employee [had] anticipated."[120] The majority's decision, however, will allow the plan administrators' proposed method to be reviewed under a deferential standard. Most likely, this proposed method will—as the phantom approach did—adjust the previously received distributions to present value. Considering that the employees had anticipated that their benefits would be reduced by the nominal amount of their previous distributions, the Court's holding will clearly undermine ERISA's purpose of protecting the reasonable expectations of plan beneficiaries.

Finally, the majority discussed the negative effect that divesting an administrator from deference would have on ERISA's interest of preserving uniformity.[121] The majority noted that if courts throughout the country were permitted to adopt their own interpretations of pension plans, employers such as Xerox "could be placed in an impossible situation" resulting from employees being entitled to different benefits depending on where they

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114. *Conkright*, 130 S. Ct. at 1650.
115. *Id.*
116. *Id.*
117. *See* Brief for the United States as Amicus Curiae Supporting Respondents, *supra* note 84, at 23.
118. *Id.*
119. Cent. Laborers' Pension Fund v. Heinz, 541 U.S. 739, 743 (2004).
120. Frommert v. Conkright, 472 F. Supp. 2d 452, 458 (W.D.N.Y. 2007).
121. *Conkright*, 130 S. Ct. at 1650-51.

initiated their legal action.[122] While this is plausible, employees should not be the ones burdened by their plan administrators' failure to interpret their pension plans reasonably. The burden of preserving uniformity should be imposed on the cheapest cost avoiders, in this case, employers and plan administrators. Putting the burden of maintaining a uniform pension system on employers and administrators would simply require them to interpret their plans in a reasonable manner. On the other hand, continuously affording deference to administrators' interpretations will encourage the adoption of less-than-reasonable plans and impose an unnecessary burden on employees who will likely suffer the consequences of prolonged legal processes.

Although it is essential for a court to consider ERISA's underlying principles when reviewing an administrator's interpretation of a plan, basing a court's entire decision on these principles is not supported by established precedent. It is important to recognize that reviewing plan administrators' *initial* interpretations under a deferential approach furthers the principles underlying ERISA by encouraging employers to adopt such plans. On the other hand, affording continued deference to administrators' interpretations after an abuse of discretion contravenes ERISA's principle of protecting employees from the maladministration of plans. Continued deference will not only encourage the adoption of less-than-reasonable plans, but will also result in lengthy and costly litigation that does not always yield fair outcomes.

V. CONCLUSION

Firestone and *Glenn* established that because ERISA is silent with regard to the standard of review to be employed by courts when reviewing a plan administrator's interpretation of a plan, courts must look at principles of trust law for guidance. While it is imperative for courts to consider the purposes underlying ERISA, precedent establishes that it is the common law of trusts that must provide primary guidance. The majority made two crucial mistakes in its resolution of the case. First, it excluded principles of trust law, going against well-established precedent. Second, its conclusion that affording deferential review would better serve the purposes of ERISA resulted from a one-sided analysis that failed to consider employees' expectations. A proper application of trust law principles that takes into account ERISA's underlying principles not only would have resulted in a fair resolution but would have also provided a clear and predictable

122. *Id.* at 1650.

framework for reviewing courts to follow in the future. The majority's erroneous approach yielded an unfair result that will threaten the protections that employees are entitled to under ERISA.