

# The Burger Court Opinion Writing Database

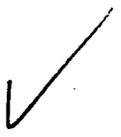
## *Massachusetts Mutual Life Insurance Co. v Russell*

473 U.S. 134 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
THE CHIEF JUSTICE

June 12, 1985

Re: No. 84-9 - MA Mutual Life Ins. v. Russell

Dear John:

I join.

Regards,

Justice Stevens

Copies to the Conference

INTRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

April 29, 1985

No. 84-9

Massachusetts Mutual Life  
Insurance v. Russell

Dear Byron,

Thurgood, you and I are in dissent  
in the above. Will you be willing to  
take on the dissent?

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice White

Copy to Justice Marshall

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 10, 1985

No. 84-9

Massachusetts Mutual Life Insurance Co.  
v. Russell

Dear Thurgood:

Although you and I agreed with the others at Conference that beneficiaries may not recover punitive damages under ERISA §409, we dissented from the view that compensatory damages also are barred under this provision. I have now read Byron's concurrence (circulated today) and have given the matter further thought, and I tend to agree with Byron that compensatory damages, if available, are subsumed under §502(a)(3) rather than §409. I am therefore inclined to join Byron's opinion concurring in the judgment and to file a few paragraphs taking issue with some of the broad dicta in John's opinion for the Court. How does this strike you?

Sincerely,

Justice Marshall

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 11, 1985

No. 84-9

Massachusetts Mutual Life Insurance Co.  
v. Russell

Dear Byron:

After giving this case further thought, I agree with you that compensatory damages, if available to a beneficiary or a participant under ERISA, are subsumed under §502(a)(3) rather than §409. Accordingly, I join your opinion concurring in the judgment. I will also be filing a short opinion setting forth my own views on what you describe as "the Court's wide-ranging discussion of the legislative history, purposes, and scope of ERISA."

Sincerely,



Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 14, 1985

No. 84-9

Massachusetts Mutual Life  
Insurance Co. v. Russell

Dear John:

I presently intend to file an opinion concurring in the judgment along the lines of the attached. Harry's letter of yesterday raises many of the same points that are troubling me, and I thought I'd pass a typescript copy of my draft along to you for your early consideration.

Sincerely,



Justice Stevens

Copies to the Conference

Attachment

Massachusetts Mutual Life Insurance Co. v. Russell

No. 84-9

JUSTICE BRENNAN, concurring in the judgment.

Section 502(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1132(a), provides a wide array of measures to employee-benefit plan participants and beneficiaries by which they may enforce their rights under ERISA and under the terms of their plans. A participant or beneficiary may file a civil action, for example, (1) "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," §502(a)(1)(B); (2) "for appropriate relief under [§409]," §502(a)(2); and (3) "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or ... to obtain other appropriate equitable relief ... to redress such violations," §502(a)(3) (emphasis added).<sup>1</sup>

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<sup>1</sup>Section 502(a), 88 Stat. 891, 29 U.S.C. §1132(a), provides in full:

"A civil action may be brought--

"(1) by a participant or beneficiary--

"(A) for the relief provided for in subsection (c) of this section, or

"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

"(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other

Footnote continued on next page.

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: JUN 14 1985

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-9

**MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY ET AL., PETITIONERS v. DORIS RUSSELL**

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

[June —, 1985]

JUSTICE BRENNAN, concurring in the judgment.

Section 502(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. § 1132(a), provides a wide array of measures to employee-benefit plan participants and beneficiaries by which they may enforce their rights under ERISA and under the terms of their plans. A participant or beneficiary may file a civil action, for example, (1) "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," § 502(a)(1)(B); (2) "for appropriate relief under [§ 409]," § 502(a)(2); and (3) "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or . . . to obtain *other appropriate equitable relief . . . to redress such violations*," § 502(a)(3) (emphasis added).<sup>1</sup>

<sup>1</sup> Section 502(a), 88 Stat. 891, 29 U. S. C. § 1132(a), provides in full:

"A civil action may be brought—

"(1) by a participant or beneficiary—

"(A) for the relief provided for in subsection (c) of this section, or

"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

"(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 20, 1985

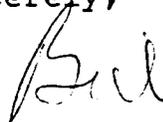
No. 84-9

Massachusetts Mutual Life Insurance  
v. Russell

Dear Byron,

Enclosed for your information is a typescript of the revisions in the above that I have today sent to the printer. I've taken the liberty of adding your name in light of your join of yesterday. You know I'm open to any suggestions.

Sincerely,



Justice White

Attachment

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 20, 1985

No. 84-9

Massachusetts Mutual Life Insurance  
v. Russell

Dear Thurgood and Harry,

Enclosed for your consideration is a typescript of my second draft in the above which I have today sent to the printer.

Sincerely,



Justice Marshall

Justice Blackmun

Attachment

WAT  
P  
C  
Massachusetts Mutual Life Insurance Co. v. Russell

No. 84-9

JUSTICE BRENNAN, with whom JUSTICE WHITE joins, concurring in the judgment.

Section 502(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1132(a), provides a wide array of measures to employee-benefit plan participants and beneficiaries by which they may enforce their rights under ERISA and under the terms of their plans. A participant or beneficiary may file a civil action, for example, (1) "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," §502(a)(1)(B); (2) "for appropriate relief under [§409]," §502(a)(2); and (3) "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or ... to obtain other appropriate equitable relief ... to redress such violations," §502(a)(3) (emphasis added).<sup>1</sup>

<sup>1</sup>Section 502(a), 88 Stat. 891, 29 U.S.C. §1132(a), provides in full:

"A civil action may be brought--

"(1) by a participant or beneficiary--

"(A) for the relief provided for in subsection (c) of this section, or

"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

"(3) by a participant, beneficiary, or fiduciary (A) to

Footnote continued on next page.

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

EXTENSIVE CHANGES  
THROUGHOUT

From: Justice Brennan

Circulated: \_\_\_\_\_

Recirculated: JUN 21 1985

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-9

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ET AL., PETITIONERS *v.* DORIS RUSSELL

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

[June —, 1985]

JUSTICE BRENNAN, with whom JUSTICE WHITE, and JUSTICE BLACKMUN join, concurring in the judgment.

Section 502(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. § 1132(a), provides a wide array of measures to employee-benefit plan participants and beneficiaries by which they may enforce their rights under ERISA and under the terms of their plans. A participant or beneficiary may file a civil action, for example, (1) "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," § 502(a)(1)(B); (2) "for appropriate relief under [§ 409]," § 502(a)(2); and (3) "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or . . . to obtain *other appropriate equitable relief . . . to redress such violations*," § 502(a)(3) (emphasis added).<sup>1</sup>

JUSTICE  
MARSHALL,  
and

<sup>1</sup> Section 502(a), 88 Stat. 891, 29 U. S. C. § 1132(a), provides in full:

"A civil action may be brought—

"(1) by a participant or beneficiary—

"(A) for the relief provided for in subsection (c) of this section, or

"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 4

From: Justice Brennan

Circulated: \_\_\_\_\_  
JUN 25 1985  
Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 84-9

MASSACHUSETTS MUTUAL LIFE INSURANCE COM-  
PANY, ET AL., PETITIONERS v. DORIS RUSSELL

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

[June 27, 1985]

JUSTICE BRENNAN, with whom JUSTICE WHITE, JUSTICE  
MARSHALL, and JUSTICE BLACKMUN join, concurring in the  
judgment.

Section 502(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. § 1132(a), provides a wide array of measures to employee-benefit plan participants and beneficiaries by which they may enforce their rights under ERISA and under the terms of their plans. A participant or beneficiary may file a civil action, for example, (1) "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," § 502(a)(1)(B); (2) "for appropriate relief under [§ 409]," § 502(a)(2); and (3) "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or . . . to obtain *other appropriate equitable relief . . . to redress such violations*," § 502(a)(3) (emphasis added).<sup>1</sup>

<sup>1</sup> Section 502(a), 88 Stat. 891, 29 U. S. C. § 1132(a), provides in full:  
"A civil action may be brought—  
"(1) by a participant or beneficiary—  
"(A) for the relief provided for in subsection (c) of this section, or  
"(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 29, 1985

84-9 - Massachusetts Mutual  
Life Insurance v. Russell

Dear Bill,

It is likely that I shall join the majority to reverse on compensatory damage as well as punitive, particularly since this case won't touch what may be recovered under §502(a)(3). Thus, I shall await the majority opinion.

Sincerely yours,



Justice Brennan

Copy to Justice Marshall

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 7, 1985

84-9 - Massachusetts Mutual Life  
Insurance Company v. Russell

Dear John,

I intend to write briefly and to concur  
in the judgment.

Sincerely yours,



Justice Stevens

Copies to the Conference

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To: The Chief Justice  
Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice White**

Circulated: JUN 10 1985

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-9

**MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ET AL., PETITIONERS v. DORIS RUSSELL**

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

[June —, 1985]

JUSTICE WHITE, concurring in the judgment.

I agree with the Court's resolution of the narrow question presented by this case: whether §§ 409(a) of ERISA may serve as the basis for an award of extracontractual damages to a plan beneficiary complaining that a plan fiduciary has breached his or her fiduciary duties in connection with the handling of a claim for benefits. As the opinion of the Court explains, the language of § 409(a) is best understood as providing for remedies running only to the plan itself. Accordingly, a beneficiary suing under § 502(a)(2) for relief under § 409 is not entitled to an award of compensatory or punitive damages.

Given my agreement with this result, I see no need to join the Court's wide-ranging discussion of the legislative history, purposes, and scope of ERISA. I also emphasize that I see no necessary inconsistency between either the Court's opinion or the result in this case and the Court's recognition in other cases that in passing ERISA "Congress invoked the common law of trusts to define the general scope of [fiduciary] authority and responsibility." *Central States Pension Fund v. Central Transport, Inc.*, \_\_\_ U. S. \_\_\_, \_\_\_ (1985); see also *NLRB v. Amax Coal Co.*, 453 U. S. 322, 329-334 (1981). Saved for another day, therefore, is the question whether, in light of general principles of trust law as

To: The Chief Justice  
Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice White

Circulated: \_\_\_\_\_

Recirculated: JUN 12 1985

P 1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-9

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ET AL., PETITIONERS v. DORIS RUSSELL

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

[June —, 1985]

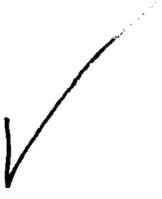
JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in the judgment.

I agree with the Court's resolution of the narrow question presented by this case: whether §§ 409(a) of ERISA may serve as the basis for an award of extracontractual damages to a plan beneficiary complaining that a plan fiduciary has breached his or her fiduciary duties in connection with the handling of a claim for benefits. As the opinion of the Court explains, the language of § 409(a) is best understood as providing for remedies running only to the plan itself. Accordingly, a beneficiary suing under § 502(a)(2) for relief under § 409 is not entitled to an award of compensatory or punitive damages.

Given my agreement with this result, I see no need to join the Court's wide-ranging discussion of the legislative history, purposes, and scope of ERISA. I also emphasize that I see no necessary inconsistency between either the Court's opinion or the result in this case and the Court's recognition in other cases that in passing ERISA "Congress invoked the common law of trusts to define the general scope of [fiduciary] authority and responsibility." *Central States Pension Fund v. Central Transport, Inc.*, — U. S. —, — (1985); see also *NLRB v. Amax Coal Co.*, 453 U. S. 322, 329-334 (1981). Saved for another day, therefore, is the

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Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 19, 1985

84-9 - Massachusetts Mutual v. Russell

Dear Bill,

Upon reconsideration of this case, I  
withdraw my concurring opinion and join  
yours.

Sincerely yours,

Justice Brennan

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 21, 1985

84-9 - Massachusetts Mutual v. Russell

Dear Bill,

I am still with you.

Sincerely yours,



Justice Brennan

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1985

Re: No. 84-9-Massachusetts Mutual v. Russell

Dear Byron:

Please join me in your concurrence.

Sincerely,

*J.M.*

T.M.

Justice White

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 21, 1985

Re: No. 84-9-Massachusetts Mutual v. Russell

Dear Bill:

Please join me in your opinion concurring in the judgment.

Sincerely,

*Jm.*

T.M.

Justice Brennan

cc: The Conference

✓

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 13, 1985

Re: No. 84-9, Massachusetts Mutual Life Ins. Co. v. Russell

Dear John:

I have some of the same problems with the circulating opinion that Byron has identified.

I could probably join your opinion (1) if you eliminate the discussion from page 8 to the end of part I, on page 10, so as to make clear that the Court does not address the possibility of relief under other sections of ERISA, and (2) if you would be willing to eliminate that portion of the opinion from page 13 on. If you are not willing to do this, I perhaps must join Byron.

My reasons for the second change are as follows:

It seems to me that the discussion rejecting the implied cause of action claim is too broadly written. Perhaps this is because I never have felt that the argument was substantial enough to merit extensive discussion. In any event, I believe it is persuasively rejected in the discussion at pp. 10-12 of the current draft. I am much less persuaded by the extended argument at pp. 13-21 involving the "entire structure" of ERISA. Specifically, I agree with Byron that much of what you say in dicta about the relationship between ERISA and the common law is overbroad and may come back to haunt us. Footnote 22 on p. 21 concerns me in particular.

Finally, I am not sure I understand the argument you make concerning the relevance of ERISA's pre-emption clause at pp. 20-21. If you mean to suggest that Congress' decision broadly to pre-empt state common law remedies implies that Congress also meant to "pre-empt" application of common law principles for purposes of federal law, I must disagree. I doubt that the breadth of the pre-emption provision has any particular relevance to an argument concerning the existence of an implied federal cause of action.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 19, 1985

Dear John:

Re: No. 84-9, Massachusetts Mutual v. Russell

Thank you for your response of June 18. As I understand your letter, you will not be making any changes unless a majority of the Court is satisfied that the changes are necessary or adequate, and you are less content about the possibility of the elimination of pages 10-12 than about the elimination of pages 13-22.

I continue to hold the view I expressed tentatively in my letter of June 13. I cannot join the current draft if it contains either the discussion at pages 10-12 or the extended discussion starting at page 13. I share your understanding that the Conference did not wish to reach the merits of a possible claim under §502(a)(3), or anything else beyond the narrow statutory question presented concerning §§409 and 502(a)(2). That is why I am unable to join any opinion that in dicta purports to resolve the general question of the availability of extra-contractual compensatory damages for claim beneficiaries under ERISA. I am also not very happy with the suggestion that Part 4 and Part 5 of ERISA are wholly unrelated, such that plan fiduciaries have no fiduciary duties directly towards beneficiaries as such. See page 8. ERISA is complex, lengthy, confused in parts, and has caused us difficulties in the past. I prefer not to reach out to resolve questions not decided below, briefed, or argued.

Perhaps I am being over-cautious, but for the same reasons I have minor difficulties with the substitute language you have proposed in your letter of June 18. The respondent argued in the alternative that she had an implied private right of action under §409. I see no reason to hold any more than that there is no such action under §409. Thus I would be more content if in your first proposed paragraph before the second footnote you were to state "damages under §409," rather than merely "damages." I also have trouble with your proposed penultimate sentence on the same ground. I doubt reference to "the structure of the entire statute" is necessary to resolve this narrow statutory question, and I would join the opinion only if it is made clear that we were deciding the question of the availability of "extra-contractual damages" under §409 and §502(a)(2), not the availability of extra-contractual damages in general.

I appreciate the degree to which you have attempted to address my concerns. I suppose if you do not agree to these additional changes, we must agree to disagree, and I shall join Byron's opinion concurring in the judgment.

Sincerely,

Justice Stevens

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 20, 1985

Re: No. 84-9, Massachusetts Mutual Life Ins. v. Russell

Dear John:

I appreciate the substantial changes you have made in your opinion, and you now have a Court. In view, however, of the retention of pp. 8-10 and, in particular, of the dicta on page 8, I must join Bill Brennan and am doing so today.

Sincerely,



Justice Stevens

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 20, 1985

No. 84-9, Massachusetts Mutual Life Ins. v. Russell

Dear Bill:

I am still with you.

Sincerely,



Justice Brennan

cc: Justice White  
Justice Marshall

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 20, 1985

Re: No. 84-9, Massachusetts Mutual Life Ins. v. Russell

Dear Bill:

Please join me in your separate opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 8, 1985

84-9 Massachusetts Mutual v. Russell

Dear John:

I am with you on the result in this case, but I want to give the case some further thought before I come to rest.

As you will recall, I have hoped that this case also would afford an opportunity for the Court - or at least for me - to express reservations as to the modern validity of punitive damages in the absence of statute and where compensatory relief is available. In my view, the due process question is far from frivolous.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

June 18, 1985

84-9 Massachusetts Mutual v. Russell

Dear John:

Having missed several days last week, and with my clerks' reunion this past weekend, I did not have an opportunity until last night to read your opinion again carefully in light of what Byron has written, and Harry's letter of June 13.

It is important for you to have a Court, and I do not foreclose the possibility of my joining your opinion as presently written. I do think, however, your first draft covers a good deal of unnecessary ground. This is particularly true with respect to rejecting the implied cause of action claim - as Harry has noted. I appreciate your having written this in light of my disinclination to imply causes of action. I believe, however, that your reliance on the four-factor analysis of Cort v. Ash adequately disposes of respondent's argument - an argument that essentially is frivolous. Putting it differently, I think your disposition of this point well could be a stronger precedent if it were dealt with in a more summary fashion.

Although I doubt that either noncontractual or punitive damages relief would be available under other sections of ERISA, the only question before us is whether CA9's relief was appropriate under §409. Accordingly, I would be content to eliminate the dicta with respect to other sections, and say - perhaps in a note - that as the respondent and CA9 relied only on §409, we have no occasion to consider whether noncontractual provable damages could be recovered under other provisions of ERISA.

In sum, John, as I am sure you want my candid opinion, I would feel a good deal more comfortable if your opinion were more narrowly focused and much of what seems to be dicta were eliminated.

Sincerely,

Justice Stevens

lfp/ss

June 18, 1985

84-9 Massachusetts Mutual v. Russell

Dear John:

This refers to your response to Harry. I would approve of elimination of much of the present discussion on the implied cause of action issue - as I indicated in my letter earlier today.

I am still concerned - if I understand your letter correctly - that your opinion could be read as deciding whether a beneficiary ever could sue for extra-contractual damages under other provisions of ERISA, particularly under the rather sweeping language of §502(a)(3). Specifically, as §502(a)(3) was not an issue in this case and not included in the grant of cert, I think the question of possible remedies under other sections simply could be put aside in a footnote as being not before us. If it were here, I probably would agree with you but I think our opinion would be subject to criticism if we made this decision in this case.

I am sending this letter only to you.

Sincerely,

Justice Stevens

lfp/ss

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 19, 1985

84-9 Massachusetts Mutual v. Russell

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 5, 1985

Re: No. 84-9 Massachusetts Mutual Life Insurance Co. v.  
Russell

Dear John,

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 8 1985

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-9

**MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ET AL., PETITIONERS v. DORIS RUSSELL**

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

[June —, 1985]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented for decision is whether, under the Employee Retirement Income Security Act of 1974 (ERISA), a fiduciary to an employee benefit plan may be held personally liable to a plan participant or beneficiary for extra-contractual compensatory or punitive damages caused by improper or untimely processing of benefit claims.

Respondent Doris Russell, a claims examiner for petitioner Massachusetts Mutual Life Insurance Company, is a beneficiary under two employee benefit plans administered by petitioner for eligible employees. Both plans are funded from the general assets of petitioner and both are governed by ERISA.

In May 1979 respondent became disabled with a back ailment. She received plan benefits until October 17, 1979, when, based on the report of an orthopedic surgeon, petitioner's disability committee terminated her benefits. On October 22, 1979, she requested internal review of that decision and, on November 27, 1979, submitted a report from her own psychiatrist indicating that she suffered from a psychosomatic disability with physical manifestations rather than an orthopedic illness. After an examination by a second psychiatrist on February 15, 1980 had confirmed that respondent was temporarily disabled, the plan administrator reinstated

Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 3, 18-19, 21

From: **Justice Stevens**

Circulated: \_\_\_\_\_

Recirculated:         JUN 6 1985        

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-9

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ET AL., PETITIONERS *v.* DORIS RUSSELL

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 11, 1985

Re: 84-9 - Massachusetts Mutual Life Ins.  
Co. v. Russell

Dear Lewis:

Thank you for your note about this case. I am sympathetic to the suggestion that something special ought to be said about the extreme character of the punitive damages claim in this case, but having analyzed the statute the way I did, I concluded that it would really be reaching out for me to include any special commentary on that subject. I should think it would be far more appropriate for you to add a concurrence highlighting the problem. Having said this, I would, of course, always be happy to consider any specific suggestion you might like to make for inclusion in what may or may not turn out to be a Court opinion.

If the concerns that motivated the separate writing by Byron are troubling you, I might just make these observations. First, I am somewhat puzzled why Byron is unable to join Part I of my opinion which responds to the statutory argument based on §409(a). I must confess that I am also somewhat puzzled as to how he proposes that I should respond to the implied cause of action argument without reviewing the legislative history, inasmuch as at least two of the Cort v. Ash factors do support the argument which we reject. It is true that the oral argument did not focus on the implied cause of action argument, but respondent's brief placed significant emphasis on that contention and I really felt that it was important to meet it head on.

In all events, I will welcome any suggestions about how the opinion might be improved.

Respectfully,

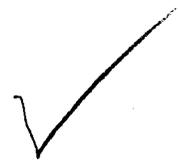
A handwritten signature in cursive script, appearing to read "John".

Justice Powell

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



June 18, 1985

Re: 84-9 - Massachusetts Mutual  
v. Russell

Dear Lewis:

Thanks for your additional note. I have sent the opinion back to the printer with an additional footnote that will limit our holding, and which I believe will satisfy your concerns. Please let me know if you still have concerns after you have a chance to look at the new draft.

Respectfully,

A handwritten signature, likely of Justice Powell, is written below the word "Respectfully,".

Justice Powell

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 18, 1985

Re: 84-9 - Massachusetts Mutual Life Ins.  
Co. v. Russell

Dear Harry:

Many thanks for your letter of June 13 explaining your concerns about the circulating opinion.

If five Members of the Court are satisfied that the implied cause of action argument is adequately rejected by the discussion at pages 10-12 of my circulating opinion, I would be content to eliminate the material from page 13 through the end of page 22 and merely substitute the following:

"In contrast to the repeatedly emphasized purpose to protect contractually defined benefits,<sup>1</sup> there is a stark absence--in the statute itself and in its legislative history--of any reference to an intention to authorize the recovery of extra-contractual damages.<sup>2</sup> Because 'neither the statute nor the legislative history reveals a congressional intent to create a private right of action ... we need not carry the Cort v. Ash inquiry further.' Northwest Airlines, Inc. v. Transport Workers Union, 451 U.S., at 94, n. 31.

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<sup>1</sup>See, e.g., Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S., at 374-375; 120 Cong. Rec. 29196 (1974), 3 Leg. Hist. 4665; 119 Cong. Rec. 30041 (1973), 2 Leg. Hist. 1633.

<sup>2</sup>Indeed, Congress was concerned lest the cost of federal standards discourage the growth of private pension plans. See, e.g., H.R. Rep. No. 93-533, 1, 9 (1973), 2 Leg. Hist. 2348, 2356; 120 Cong. Rec. 29949 (1974), 3 Leg. Hist. 4791; 120 Cong. Rec. 29210-29211 (1974), 3 Leg. Hist. 4706-4707.

III

"Thus, the relevant text of ERISA, the structure of the entire statute, and its legislative history all support the conclusion that Congress did not provide, and did not intend the judiciary to imply, a cause of action for extra-contractual damages caused by improper or untimely processing of benefit claims.

"The judgment of the Court of Appeals is therefore reversed."

As presently advised, I am most reluctant to eliminate the discussion from page 8 to the end of Part I. Again, however, if five Members of the Court share the view that that discussion is unnecessary, I suppose such a change could be made in the opinion.

I must note, however, that I am completely at odds with Bill Brennan's discussion of §502(a)(3). I had simply omitted any discussion of that section because I understood that to be the sense of the Conference discussion. If, however, Bill's opinion is sound, I do not understand why he is not dissenting instead of concurring in the judgment. Surely the mere fact that the Court of Appeals may have relied on the wrong section of the statute should not be a reason for denying the plaintiff her day in court if she has alleged facts which would entitle her to relief. Part of my reasoning in rejecting her claim for relief rests on the analysis found in pages 8-10.

Respectfully,



Justice Blackmun

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 19, 1985

Re: 84-9 - Massachusetts Mutual  
v. Russell

Dear Harry:

Thank you for your additional letter. Perhaps additional changes may still be necessary, but I am hopeful that the elimination of pages 13-22 and the addition of the new footnote 5 on page 4 will enable five Members of the Court to accept this draft.

I feel rather strongly that we should not eliminate the material at pages 10-12, but as always, will continue to consider the possibility if others share your view. I do want to point out, however, that the question presented by the certiorari petition was not limited to §409 as some of the correspondence seems to assume. The question presented, which is quoted in precisely the same terms in respondent's brief, reads as follows:

"Whether, under the Employee Retirement Income Security Act, a fiduciary to an employee benefit plan may be held personally liable to a plan participant or beneficiary for punitive damages or extra-contractual compensatory relief for improper or untimely processing of benefit claims?"

Respectfully,



Justice Blackmun

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P.S. Both of us have referred to pages 10-12 but you may actually have intended to refer to pages 8-10. In any event, I really think those pages are necessary in order to respond to the argument on which the Court of Appeals relied.

*new footnote 5  
Footnote renumbered  
p. 13-22 deleted*

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: \_\_\_\_\_

Recirculated: JUN 19 1985

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-9

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ET AL., PETITIONERS *v.* DORIS RUSSELL

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

[June —, 1985]

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 4, 1985

No. 84-9 Massachusetts Mutual Life Insurance  
Company v. Russell

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Dear John,

Please join me.

Sincerely,

*Sandra*

Justice Stevens

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 14, 1985

Re: 84-9 Massachusetts Mutual Life Ins. Co. v. Russell

Dear John,

Although I have joined your opinion I would be content to see you make changes in it along the lines suggested by Harry.

Sincerely,

*Sandra*

Justice Stevens

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

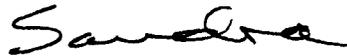
June 19, 1985

Re: 84-9 Massachusetts Mutual Life Insurance Company,  
et al. v. Doris Russell

Dear John,

I am still in agreement with your third  
draft.

Sincerely,



Justice Stevens

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