Q I know you have lots more to say, particularly on ERISA trends that you would like to change, but space is running short, so please provide a few closing comments to our readers.

A I have three closing comments. First, I truly do not mean to malign anybody. The truth is this: most lawyers believe that ERISA is one of the most, or perhaps the most, complex chaotic, uncertain areas of law. Take that complexity and then try to offer an ERISA plan in a marketplace to our country's employers and employees in an effective and understandable way. By design, it is an impossible task unless the system entirely changes.

Second, about 10 years ago one of our former highest ranking U.S. government officials shared with me his personal assessment that back in the mid-1970s, when ERISA was passed, his first (and lasting) impression of ERISA was that its complexity made it an "obscene" statutory scheme. He offered hope that someday, perhaps, ERISA will be toppled, and we can begin anew with legislation that is simpler yet serves the government's legitimate purposes underlying ERISA.

Toward this end, I received a Report of the Special Committee on Pension Simplification, approved by the Executive Committee of the New York State Bar Association in June 1999, entitled "ERISA: A Process Still Awry, A Need to Simplify." I read the well-written report with great interest and concurrence. It was penned by the Chairman of the Committee, Alvin Lurie, with whom I recently reconnected. The report makes a persuasive impassioned plea to essentially dump ERISA and come up with something else. In eloquent terms, it echoes my exact sentiments. For example, it states in part:

> We do not think it is necessary to prove that the present regulation of private pensions is too complicated by a very great margin. No one seriously questions that radical simplification of ERISA, especially the tax qualification provisions, is urgently demanded. To put the matter into proper perspective, the issue is not just simplification for its own sake, or even for the sake of individual plan sponsors for whom the risks of plan disqualification have grown exponentially and the costs of administration have become increasingly prohibitive. Even more importantly, the matter has a macroeconomic dimension. An efficient, cost-effective pension scheme is critical to the economic health of the nation, sustaining not only the financial well-being of retirees, but, also—as the largest single repository of private capital and the principal inducement to personal savings and investment—the greatest private engine for economic growth. . . .
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> If Einstein said, as was reputed, that the tax law was beyond him, imagine how he would have described the pension law. Even tax lawyers who can handle the most complex corporate reorganizations avow that they are glad they do not have to deal with ERISA. We view that, not as a tribute to the special erudition of pension lawyers, but an impeachment of a body of law that requires too much lawyering from everyone who must work with it. . . .
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> The problem with ERISA is not regulation, but the *extent* of regulation—and not so much in the original version of the 93rd Congress [ERISA in 1974], as in the continuous accretions, constraints, and embellishments that have been tacked on by every single succeeding Congress in the ensuing 25 years. Do they have it right now? Will it stop here? Congress itself has been its own harshest critic, judging by all the changes it has continually made in the work product of its predecessors. Some way must be found to slow, if not end for a time, the amendments; for, as must as anything, they have added enormously to the difficulty of operating under the statute, necessitating a continuous process of plan amendments, which, apart from burden and cost, has also brought with it the continuous risk of disqualification. But more than just a moratorium on statutory changes is needed.

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➤ **Q&A**

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A cutting back of the present complexity is urgently called for. . . .

If ERISA is to have a future, it must be vastly simplified, most importantly for small business, but, if not to the same extent, certainly to a large extent for the large plans too. As we observed above, it does not justify oppressive regulation of large plans that "they can afford it". . . .

To arrive at some comprehension of the burden of coping with ERISA's complexities, one need only sit in on any of the numerous study groups around the country and listen to the abstruse comments of experienced practitioners exchanging views as to the unending problems they continuously encounter in their practices, agonizing over minutiae, debating alternative and often opposing solutions. Exhilaration may be detected among the participants engaging in these sessions. They *do* enjoy the intellectual challenge of what they do; they are no less adept at, nor relish any less than rocket scientists, their work. But while the expenditure of such erudition is an appropriate use of our nation's brainpower to launch us into space, or even cyberspace, it is dubious whether one can justify its employment in the launching or sustaining of viable pension plans for our millions of businesses, many small.

I love reading the above, and that was written 13 years ago when the law was far simpler than it is today.

My third comment merely echoes everything preceding in this interview. "Simple" is almost always best. Who, I ask you, will make this simple, to truly allow employees an opportunity for a comfortable retirement without killing employers in the process? ❖