ance companies or insurance contracts.[33] Interpretation of the provisions has resulted in contentious and divided Court opinions.[34]

Also illustrative of the judicial difficulty with ambiguous preemption language are the fractured opinions in *Cipollone*, in which the Court had to decide whether sections of the Federal Cigarette Labeling and Advertising Act, enacted in 1965 and 1969, preempted state common-law actions against a cigarette company for the alleged harm visited on a smoker.[35] The 1965 provision barred

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[33] 29 U.S.C. §§ 1144(a), 1144(b)(2)(A), 1144(b)(2)(B). The Court has described this section as a "virtually unique pre-emption provision." Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 24 n.26 (1983). *See* Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138–139 (1990); *see also* id. at 142–45 (describing and applying another preemption provision of ERISA).

[34] Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990) (ERISA preempts state common-law claim of wrongful discharge to prevent employee attaining benefits under plan covered by ERISA); FMC Corp. v. Holliday, 498 U.S. 52 (1990) (provision of state motor-vehicle financial-responsibility law barring subrogation and reimbursement from claimant's tort recovery for benefits received from a self-insured health-care plan preempted by ERISA); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1987) (state law requiring employers to provide a one-time severance payment to employees in the event of a plant closing held not preempted by 5–4 vote); Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985) (state law mandating that certain minimum mental-health-care benefits be provided to those insured under general health-insurance policy or employee health-care plan is a law "which regulates insurance" and is not preempted); Shaw v. Delta Air Lines, 463 U.S. 85 (1983) (state law forbidding discrimination in employee benefit plans on the basis of pregnancy not preempted, because of another saving provision in ERISA, and provision requiring employers to pay sick-leave benefits to employees unable to work because of pregnancy not preempted under construction of coverage sections, but both laws "relate to" employee benefit plans); Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) (state law prohibiting plans from reducing benefits by amount of workers' compensation awards "relates to" employee benefit plan and is preempted); District of Columbia v. Greater Washington Bd. of Trade, 506 U.S. 125 (1992) (law requiring employers to provide health insurance coverage, equivalent to existing coverage, for workers receiving workers' compensation benefits); John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank, 510 U.S. 86 (1993) (ERISA's fiduciary standards, not conflicting state insurance laws, apply to insurance company's handling of general account assets derived from participating group annuity contract); New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995) (no preemption of statute that required hospitals to collect surcharges from patients covered by a commercial insurer but not from patients covered by Blue Cross/Blue Shield plan); De Buono v. NYSA–ILA Medical and Clinical Services Fund, 520 U.S. 806 (1997); California Div. of Labor Standards Enforcement v. Dillingham Construction, Inc., 519 U.S. 316 (1997); Boggs v. Boggs, 520 U.S. 833 (1997) (decided not on the basis of the express preemption language but instead by implied preemption analysis); Aetna Health, Inc. v. Davila, 542 U.S. 200 (2004) (suit brought against HMO under state health care liability act for failure to exercise ordinary care when denying benefits is preempted).

[35] Cipollone v. Liggett Group, 505 U.S. 504 (1992). The decision relied on two controversial rules of construction. First, the courts should interpret narrowly provisions that purport to preempt state police-power regulations, and, second, that when a law has express preemption language courts should look only to that language and presume that when the preemptive reach of a law is defined Congress did not intend to go beyond that reach, so that field and conflict preemption will not be found.