



ERISA ruling shows strength of law's preemption provision

By: Jeff Jeffrey ☉ March 29, 2016

Sometimes, it's just hard to get around ERISA.

The federal Employee Retirement Income Security Act sets a number of minimum standards for voluntary employee benefit plans, with the aim of protecting plan participants and beneficiaries. But the law also includes expansive preemption provisions, which make it exceedingly difficult for beneficiaries to bring claims against plan participants under state law.

Michael Hendrix of Lexington County, South Carolina, learned this the hard way in a recent lawsuit he filed on behalf of the estate of Amy Sue Hendrix. The lawsuit claimed the estate was improperly denied life insurance benefits under a voluntary insurance plan offered by Resource Residential and Unum Life Insurance Co. of America.

Michael Hendrix filed the lawsuit in state court, alleging Resource Residential and Unum breached the insurance contract covering Amy Sue Hendrix upon her death. Michael Hendrix also alleged separate claims of bad faith failure to pay insurance benefits, negligence and recklessness. In addition to the unpaid benefits, the lawsuit sought attorney's fees and interest.

However, the defendants argued the case should proceed in federal court under ERISA. For Resource Residential and Unum, making sure the case moved ahead in federal court was a big deal because ERISA limits the amount of damages available to plaintiffs should they prevail.

In a March 16 order, U.S. District Judge Michelle Childs sided with Resource Residential and Unum, finding that the alleged violations of state law claimed in Hendrix's lawsuit are preempted by ERISA.

Childs based her opinion on a three-part test developed by the 7th U.S. Circuit Court of Appeals for determining when ERISA preempts state-level claims. Under the test, preemption is required when plaintiffs have standing under ERISA, the claims fall within the scope of an ERISA provision, and the claim is not capable of being resolved without an interpretation of the contract governed by federal law. That test has been adopted by the 4th Circuit, Childs said.

That said, Childs noted there are regulatory exceptions to ERISA's preemption provisions. But Childs determined that none of those exceptions applied to Hendrix's case.

For example, ERISA provides an exception for claims brought against companies that participate in a plan but do not take an active role in administering it. Hendrix argued Resource Residential's sole role was to collect premiums through payroll deductions or dues checkoffs and to remit those to the insurer, which he claimed was beneath the threshold that would require ERISA's preemption provisions to kick in.

But Childs determined that Resource Residential's role was much more expansive than what Hendrix described. In addition to being the named fiduciary on the plan, Childs said Resource Residential also made financial contributions to the plan.

On the latter point, Childs was fleshing out an issue that has not been directly addressed by the 4th Circuit. Specifically, do group rate discounts constitute a subsidy and constructive contribution to the employee's premium payment for purposes of ERISA preemption?

While the 4th Circuit hasn't taken up the issue, Childs said, "Other circuits and district courts within the 4th Circuit have suggested that these discounts constitute a subsidy and constructive contribution to the employee's premium payment, and this court agrees."

Thanks to Childs' order, Hendrix's claims will proceed in federal court, barring an appeal.



Hendrix is represented by attorneys from Moore Taylor Law Firm in West Columbia. Calls to his attorneys were not returned by press time.

Resource Residential is represented by Kirby Shealy and Lyndey Zwingelberg of Adams and Reese in Columbia. Shealy declined to comment on Childs' ruling, citing the ongoing nature of the litigation.

Unum is represented by Theodore Willard of Montgomery Willard in Columbia. Willard could not be reached for comment.

Attorneys who handle ERISA cases say that many plaintiffs attempt to avoid having their cases proceed under the federal law because of the strict limitations ERISA places on claims. For one thing, damages in most cases are limited to the benefits in question, leaving out the possibility that plaintiffs could collect pain and suffering or other punitive damages. The federal law also forces judges to limit their evaluation of the facts to the administrative record created during a prescribed process. That means plaintiffs are not able to present witness testimony, as they would be under South Carolina insurance law.

Nathaniel Bax of the Foster Law Firm in Greenville says ERISA also presents other challenges for plaintiffs and their attorneys.

"ERISA has a number of very strict deadlines for how claims must proceed. If you miss one of those deadlines, you're more than likely going to severely damage the client's case, possibly irreparably," Bax said. "ERISA is a very narrow area of law and a lot of attorneys just don't feel comfortable handling those kinds of cases because they aren't familiar with all of the deadlines."

The U.S. Supreme Court has also taken a hard line when it comes to ERISA preemption. Earlier this month, the justices ruled that ERISA preempts a Vermont law that was designed to collect and analyze data about the costs and effectiveness of health care. The 6-2 ruling effectively halts similar data collection efforts in 20 other states.

"That case emphasizes the U.S. Supreme Court's view that the preemption provisions in ERISA are very strong at this point," Bax said.

The 16-page order came in *Hendrix v. Resource Residential* (Lawyers Weekly No. 002-059-16).

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