Gobielle v. Liberty Mutual

No. 14-181, U.S. Supreme Court

Does E.R.I.S.A. spell the demise of all payer claims databases?

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What's the issue?

Whether a state can require self-insured health plans to report paid claims data to state-established all-payer claims databases?

- Self-insured health plans are those that pay the medical claims of its beneficiaries with the assets of the employer. Claims are not paid by an insurance company, though the employer can hire an insurance company to process the claims.

- Federal law (the Employee Retirement Income Security Act of 1974, or ERISA) exempts self-insured plans from most state insurance laws, including reserve requirements, mandated benefits, premium taxes, and consumer protection regulations.

Who are the players?

- **Green Mountain Care Board ("the Board")**: Vermont state agency that maintains healthcare-information databases pursuant to state law.
  - Created in 2011 as part of the state's health reform initiative, its purposes are to improve the health of Vermont residents by reducing the cost of healthcare, protecting access and quality of care, and creating and maintaining a database of healthcare data collected from health care providers.
- **Alfred Gobielle**: Head of Green Mountain Care Board.
- **Liberty Mutual (LM)**: Fiduciary and plan administrator of LM's self-insured medical benefits plan.
- **Blue Cross Blue Shield of Massachusetts (BCBS)** (not official party, but plays role): Contracted by LM to process medical claims on behalf of the plan's beneficiaries.

How did they get to the Supreme Court?

- Vermont created an APCD, maintained by the Board, with enforcement powers
- Because LM did not report paid claims data, the Board issued a subpoena
- LM instructed BCBS not to respond to the subpoena, and instead
- LM asked the federal court to stop Vermont from asking for the data – to declare that the Vermont APCD law did not apply to it and to other self-insured health care plans

➢ **I'll spare you the legal details >> the district court agreed with Vermont, but LM appealed and won in the circuit court, and Vermont asked the Supreme Court to review that decision and decide which court was right**

Why is it important?

If the Supreme Court decides that self-insured health plans CANNOT be required to report to state APCDs, **then:**

(1) Utility of APCDs may be significantly diminished.

- Development of comprehensive, effective health care policies based on claims data analysis can only be done with information for ALL paid claims.

- Employer-provided health insurance remains most common forms of health coverage; and 61% of covered workers in 2014 are in a plan that is completely or partially self-insured. *Source: 2014 Employer Health Benefits Survey, Kaiser Family Foundation, available at http://kff.org/report-section/ehbs-2014-section-ten-plan-funding/.

- Consumers need for policymakers and regulators to have all necessary data to enable them to make policies for more affordable, accessible, and better quality health care.

Why is it important?

Also, a decision in favor of LM would . . .

(2) Reinforce an already opaque/non-transparent system of health care insurance, payment, and delivery.

(3) Create a slippery slope. The same argument made in this case--that federal law (ERISA) "trumps" the APCD state law--could be used to prevent states from passing other laws to gather information about or regulate other areas of health care.

A Little About ERISA

- Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.
- Designed to "protect . . . the interests of participants in the employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b).

- Bottom line: Plan administrators and fiduciaries were mismanaging funds and Congress wanted to give beneficiaries ways to: (1) know what was going on with their plans; and (2) sue for any wrongdoing or negligence.

- Employee benefit plans include health insurance. If the employer is funding the insurance, they are the plan fiduciary and administrator and have certain reporting obligations under ERISA (e.g., related to how plan is administered and how funds are used).

Why should self-insureds get special treatment?

- LM argued that it already has reporting requirements under ERISA and that Vermont's APCD reporting requirements interfere with those ERISA requirements and impose an undue burden on the administration of its ERISA-governed plan.

- In a nutshell LM argued that federal law (ERISA) trumps state law (Vermont APCD statute)—legal doctrine called "preemption."

- The ERISA statute says that it trumps "any and all State laws insofar as they . . . relate to any employee benefit plan."

So, the Supreme Court Must Decide . . .

- Whether the Vermont law that authorizes APCD and mandates data reporting from all health care providers **"relates to"** an employee benefit plan.

- As with anything in the law, you can't just look up the dictionary meaning of the words "relates to." These words have a specific meaning within the legal doctrine of preemption as applied to ERISA.

- The parties' arguments propose different interpretations of what "relates to" actually means as applied to the facts of the case and in the context of the Supreme Court's ERISA preemption doctrine.

AARP's Friend of the Court Brief

AARP, Families USA, and USPIRG (in support of Vermont):

- Reinforced Vermont's argument that the APCD law is not preempted because it does not conflict with ERISA requirements and it has no impact on plan administration.

- Gave the Court context about the policies and purposes animating both ERISA and the APCD statutes, and contrasted them to illustrate that the laws are in different regulatory spheres.

Here's the Difference In a Nutshell

- ERISA's reporting structure works to police the behavior of plan administrators and fiduciaries, ensure that participants receive the benefits to which they are entitled, and that beneficiaries can enforce their rights.

- Vermont's APCD reporting structure works to influence the future behavior of health care market players with data analysis, and does not regulate ERISA plans.

Predictions on how the Court will rule?

- Mixed

- Some believe that the fact that Court granted review means that they will reverse the appellate court's decision that ERISA trumps

  - First "relates to" preemption case since 2001
  - 4 new justices since 2001 (Roberts, Alito, Sotomayor, Kagan)

- Others believe that this will be a close call

- LM's responsive brief is due on 10/13, and the case is not yet set for oral argument. It is possible that Court sets the case or argument in late November or in December, in which case a decision would come no earlier than March 2016.

Appendix

In case you'd like more detail about the legal arguments . . .

Legal Framework for "Relates to" ERISA Preemption

- Start with presumption that state laws regulating health care are not preempted, "unless that was the clear and manifest purpose of Congress."

- Can rebut that presumption by:
  - showing that the law conflicts with ERISA and frustrates its objectives; OR
  - showing that the law has a direct effect on an ERISA benefit plan (not indirect or incidental effect).

- Fact-specific inquiry.

Parties' Arguments – Liberty Mutual

- Vermont law requires reporting of information related to the essential functioning of employee health benefit plans—the payment of claims.

- Vermont regulation is complex, inconsistent with those of other states, and inconsistent with ERISA requirements for plan administration.

- ERISA's purpose was also to protect plans and employers with self-funded plans from the burdens of complying with inconsistent state regulations >> only one federal legal framework for employee benefit regulation.

- Vermont's statute is not just a law of general applicability where ERISA has nothing to say, it has more than an incidental impact on ERISA plans.

- Preemption is not death knell for APCDs.

Parties' Arguments – Gobielle (Vermont)

- LM did not overcome presumption in favor of Vermont's APCD law.

- Vermont's law is a generally applicable state health care regulation that neither mandates particular employee benefits nor interferes with plan administration.

- Vermont's law does not intrude on core ERISA function and has nothing to do with ERISA's plan reporting requirements—need to look at what type of reporting is required by each law, not just that some reporting is required.

- Incidental administrative burden of reporting paid claims data is not enough to warrant preemption—no evidence that claims reporting will affect the way LM administers its plan.

Friends of the Court

2 filed in support of neither party: Professor Edward A. Zelinsky and the Association of American Physicians & Surgeons.

In addition to AARP's, 9 other briefs filed in support of Vermont:

- Nat'l. Governors Assn., et al.
- New Hampshire
- United States
- Amer. Hospital Assn. and Assoc. of Amer. Medical Colleges
- New York
- Connecticut Health Insurance Exchange
- Harvard Law School Center for Health & Policy Innovation
- Nat'l. Assoc. of Health Data Orgs.
- Amer. Medical Assoc. and Vermont Medical Society

*** Expecting friends of the court briefs to be filed in favor of LM when its brief is filed.**

AARP's Friend of the Court Brief

- Contrasted purposes of ERISA and of its reporting requirements to those of the APCD law/regulations to illustrate lack of conflict and impact on ERISA plans.

ERISA:

- Regulates fiduciary duties and obligations of plan administrators
- Provides plan participants with comprehensive information about their plans and gives right to sue for wrongful or negligent administration
- Required reporting was intended as tool to police plan administration
- Not intended to invade states' traditional power to regulate health care

APCD:

- Does not regulate plan
- Provides information to regulators, policymakers and consumers to inform policy regarding health care costs, utilization, and quality
- Does not provide beneficiaries with information about how plan is administered
- Does not provide beneficiaries right to sue/enforce rights
- Not intended to police the administration of health care plans

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