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Stop Loss Insurers Not Governed By ERISA

On August 4, 2006, in Bank of Louisiana v. Aetna US Healthcare, Inc., 2006 WL 2212021 (5th Cir. 2206), the Fifth Circuit, held that the Employee Retirement Income Security Act ("ERISA") did not preempt state law contract claims between a policyholder and its stop-loss insurer, finding that stop-loss insurers are not necessarily plan fiduciaries governed by ERISA.

In 1995, the Bank contracted to have Aetna US Healthcare Inc. and Aetna Life Insurance to provide stop-loss insurance for the Bank's self-insured employee benefit plan.

Generally, ERISA's preemption clause states that with certain exceptions, ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . ." The Supreme Court has held that a state law "relates to an ERISA plan 'if it has a connection with or reference to such a plan.'" Although "relate to" is a very broad phrase, the ERISA preemption clause is not applied without limits. Instead, the Court is guided by the objectives of the ERISA statute in determining the scope of the state law that Congress understood would survive and the effect of the state law on ERISA plans. For example, one of Congress' objectives in enacting ERISA was to protect the interests of participants in employee benefit plans and their beneficiaries.

The Court recognized that Aetna was a vendor of insurance when it made a coverage determination with respect to certain claims made by the Bank under the stop-loss insurance policy. The duties that Aetna allegedly breached were owed to the Bank not to the plan beneficiaries. As the Court stated, "the benefits of stop-loss insurance inure solely to the Bank. A stop-loss insurer is not necessarily a plan fiduciary. A plan's relationship to its stop-loss insurer is similar to that between any commercial entities and is not regulated by ERISA."

The Bank of Louisiana case highlights the confusion that sometimes reigns in this area of insurance law amongst courts and even amongst insurers. For example, in an unpublished New Jersey decision, Hitran v. AIG Life Ins. Co., an insurer took the position that ERISA preempted the policyholder's state law contract claims under a stop-loss policy. Taking such a position is dangerous, as it opens up the insurer to potential duties and liabilities under ERISA not likely contemplated when the stop-loss policy was originally underwritten.

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