



## **Health Care Reform – Pending Litigation Cases**

June 8, 2011

**By Andrew Malahowski and Veronica Minin**

Since the Patient Protection and Affordable Care Act (PPACA) was enacted last year, several state attorneys general and other private plaintiffs have filed lawsuits to repeal it. These lawsuits, among other issues, challenge the constitutionality of the mandate under PPACA that individuals purchase health insurance no later than 2014 or face a penalty. This is known as the “individual mandate.” This alert highlights the most prominent cases which have been decided at the federal district court level. It is very difficult to predict the eventual outcome of any of these cases. As a result, plan administrators, employers and insurers should be extremely cautious in making a decision to rely on any court decision, short of a decision of the U.S. Supreme Court, to avoid compliance with any part of PPACA.

### ***State of Florida v. U.S. Dep't of Health & Human Services***

***Decided on January 31, 2011, U.S. District Court for the Northern District of Florida, Pensacola Division***

At issue was whether the government is reaching beyond its constitutional power to regulate interstate commerce by imposing the individual mandate. Judge Vinson declared the individual mandate of PPACA to be unconstitutional similar to other court decisions. However, Judge Vinson’s ruling went beyond previous cases, declaring PPACA unconstitutional in its entirety. An appeal is scheduled to be heard in the U.S. Court of Appeals for the 11th Circuit on June 8, 2011.

### ***Commonwealth of Virginia v. Sebelius***

***Decided on December 13, 2010, U.S. District Court for the Eastern District of Virginia, Richmond Division***

Judge Hudson declared the individual mandate unconstitutional but severable. Thus, the remaining provisions of PPACA would be unaffected and remain valid. Oral arguments were heard in the U.S. Court of Appeals for the 4th Circuit on May 10, 2011.

### ***Thomas More Law Center v. Obama***

***Decided on October 7, 2010, U.S. District Court for the Eastern District of Michigan, Southern Division***

Judge Steeh dismissed this case upholding the individual mandate as constitutional, stating that declining health insurance coverage and paying for services with out-of-pocket money instead is an economic decision which impacts interstate commerce. Further, Judge Steeh points out that the Supreme Court has consistently rejected claims that individuals who choose not to engage in commerce thereby place themselves beyond the reach of the Commerce Clause. Oral arguments were scheduled to be heard in the U.S. Court of Appeals for the 6th Circuit on June 1, 2011.

### ***Liberty University v. Timothy Geithner***

***Decided on November 30, 2010, U.S. District Court for the Western District of Virginia, Lynchburg Division***

Plaintiffs argued that the employer mandate (i.e., requiring large employers to provide health insurance or pay a penalty) and the individual mandate violate the Commerce Clause. Judge Moon dismissed the case stating that declining insurance is an economic decision to pay for healthcare services later as costs are incurred



instead of in advance through insurance. Consequently, Judge Moon held that the individual mandate is a valid exercise of federal power under the Commerce Clause. Further, Judge Moon stated that the employer mandate is a valuable benefit offered in exchange for the employee's labor, much like a wage or salary. As a result, Judge Moon concluded that the employer mandate resembles the requirement imposed by the FLSA on employers to offer a minimum wage, which courts have historically upheld. An appeal to the U.S. Court of Appeals for the 4th Circuit was heard on May 10, 2011.

***Mead v. Holder***

***Decided on February 22, 2011, U.S. District Court for the District of Columbia***

Similar to the *Thomas More Law Center* case, Judge Kessler found that the decision on the method of payment for health insurance is an economic one and therefore within Congress's regulatory powers under the Commerce Clause. Further, in response to the plaintiffs' argument that the requirement to purchase health insurance is in conflict with their Christian beliefs, Judge Kessler ruled that the mandate is not a substantial burden on their religious exercise taking into account the compelling "public interest" that the individual mandate serves. Judge Kessler further noted that individuals who are conflicted may also pay the fee and not obtain health coverage. An appeal has been filed.

**More Information**

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