Claims by Health Care Provider Against Employer Not Preempted by ERISA When Claims Arise From an Oral Contract Separate From ERISA Plan

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In *Marin General Hospital v. Modesto & Empire Traction Co.*, ___ F.3d. ___, 2009 WL 2882832 (9th Cir. 2009), the Ninth Circuit Court of Appeals considered whether section 502(a)(1)(B) of ERISA completely preempted state-law causes of actions for breach of contract, negligent misrepresentation, quantum meruit and estoppel brought by a hospital against a patient's employer and its claims administrator based on an alleged oral agreement between the hospital and claims administrator to pay for services provided by the hospital. Because the claims could not be pursued under section 502(a)(1)(B), but rather relied on legal duties that were independent from duties required by the ERISA plan, the Ninth Circuit concluded that the state-law claims were not preempted, depriving the court of subject matter jurisdiction. Accordingly, removal from state court was improper and the case was remanded to the district court with instructions to remand the matter to state court.

In the complaint, Plaintiff Marin General Hospital (the "Hospital") alleged that it telephoned the Medical Benefits Administrators of M.D., Inc. ("MBAMD") on April 8, 2004 to confirm that a prospective patient had health insurance through an ERISA plan provided by his employer, Modesto & Empire Traction Co. ("Modesto"). MBAMD was the administrator of Modesto's plan. The Hospital alleged that MBAMD orally verified the patient's coverage, authorized treatment and agreed to cover 90% of the patient's medical expenses at the Hospital. The Hospital thereafter submitted a bill to MBAMD in the amount of $178,926.54 for services rendered to the patient. MBAMD paid the Hospital $46,655.54, asserting that the Hospital was not entitled to further payment.

The Hospital then filed suit in California state court against Modesto, MBAMD and MBAMD's CEO and Chairman (collectively, "Defendants") for breach of implied contract, breach of an oral contract, negligent misrepresentation, quantum meruit and estoppel. Defendants removed the suit to federal court. The Hospital moved to remand to state court, while the Defendants moved to dismiss, arguing that ERISA completely preempted the Hospital's state-law claims and that the Hospital failed to allege any cognizable claim under ERISA. The district court denied the motion to remand and dismissed the complaint. The Hospital appealed the dismissal.

The Ninth Circuit first explained that removal was only proper if the Hospital's state law claims were completely preempted under section 502(a)(1)(B) of ERISA. It then examined whether the claims asserted by the Hospital were completely preempted by ERISA, concluding that they were not. In reaching this conclusion, the Ninth Circuit clarified a distinction between complete preemption under section 502(a) and conflict preemption under section 514(a). Citing to *Franciscan Skemp Healthcare, Inc. v. Central States Joint Board Health & Welfare Trust Fund*, 538 F.3d 594, 596 (7th Cir. 2008), the Ninth Circuit explained that complete preemption under section 502(a) is "really a jurisdictional rather than a preemption doctrine, [as it] confers exclusive federal jurisdiction in certain instances where Congress intended the scope of a federal law to be so broad as to entirely replace any state-law claims." In contrast, the "rule is that a defense of federal preemption of state-law claims, even conflict preemption under section 514(a) of ERISA, is an insufficient basis for original federal question jurisdiction."

Relying on *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004), the Ninth Circuit explained that a state-law cause of action is completely preempted by section 502(a)(1)(B) if: (1) "an individual, at some point in time, could have brought [the] claim under ERISA section 502(a)(1)(B);" and (2) "where there is no other independent legal duty that is implicated by a defendant's actions." Based on this conjunctive two-prong test, the Ninth Circuit concluded that the Hospital's state-law claims were not pre-empted.

First, the Ninth Circuit found that the state-law causes of action did not satisfy the first prong as the Hospital could not have brought the claims under section 502(a)(1)(B). The claims were premised on a phone conversation between the Hospital and MBAMD during which MBAMD allegedly agreed to pay 90% of the patient's charges. The Hospital was not contending that it was owed monies under the patient's ERISA plan. Rather, it was contending that the monies were owed to it based on the alleged oral contract with MBAMD. Thus, the Ninth Circuit concluded these claims were not claims which could have been brought under section 502(a)(1)(B), relying on *Blue Cross of California v. Anesthesia Care Associates Medical Group, Inc*., 187 F.3d 1045 (9th Cir. 1999) (claims by providers against health care plan for breach of provider agreements not preempted by ERISA).

While the Defendants contended that the state-law causes of action "relate[d] to" the patient's ERISA plan and thus the claims were preempted, the Ninth Circuit concluded that the "relate[d] to" standard was applicable only for conflict preemption under section 514(a). In so doing it stated, "Defendants are free to assert in state court a defense of conflict preemption under section 514(a), but they cannot rely on that defense to establish federal question jurisdiction." Further, the fact that the patient assigned to the Hospital his rights to payment under his ERISA plan was not availing, as this fact did not preclude the Hospital's suit for breach of the oral agreement.

Second, the Ninth Circuit concluded that the Hospital's claims were based on independent legal duties that arose separate from duties under an ERISA plan. Therefore, the Defendants failed to satisfy the second prong of the complete preemption test under section 502(a)(1)(B). It noted that the Hospital's claims all arose from the April 8 telephone call with MBAMD, thus, they bore no relation to any duty under an ERISA plan. The court was not persuaded by defendants' argument that since the remedy sought was the same as a possible remedy under section 502(a)(1)(B) the Hospital's suit amounted to a suit under section 502(a)(1)(B).

Finally, the Ninth Circuit noted that its conclusion that the state-law causes of action were not completely preempted was supported by its recent decision in *Cedars-Sinai Medical Center v. National League of Postmasters of the United States*, 497 F.3d 972 (9th Cir. 2007) (holding that state law claims were not preempted by the Federal Employee Health Benefits Act).