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Internet Resources

- ◆ Employee Benefits Library, including access to ERISA Regulations, legislative history and the statute itself (<http://www.benefitsattorney.com/links/ERISA>)
- ◆ Department of Labor website with information concerning the ERISA statute and consumer publications (<http://www.dol.gov/dol/topic/health-plans/erisa.htm>)



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Supreme Court Limits Participants In Employee Benefit Plans To ERISA Remedies Only

By Linda Karpel & Kerry Malloy

The United States Supreme Court recently dealt a blow to participants in employee health and benefit plans by reaffirming that aggrieved "ERISA" plan participants are limited to only those remedies provided by the "ERISA" statute. See Aetna Health Inc. v. Davila, 124 S.Ct. 2488 (2004).

"ERISA," or the Employment Retirement Income Security Act, creates a comprehensive scheme for the regulation of HMOs, insurance, pension, and other employee benefit plans. The ERISA statute not only sets out regulatory requirements for those employee benefit plans, but also establishes certain remedies when those requirements are violated. Under the express language of ERISA, participants may file suit against their benefit plans to clarify their rights to benefits, to recover wrongfully denied benefits, or to remedy a fiduciary's breach of duty to the plan. However, the Supreme Court has generally held that other remedies are not available under ERISA. Accordingly, "tort" damages, such as damages for pain and suffering or lost income, are not normally available under ERISA. As Justice Ginsburg noted in her concurring opinion in Davila: "A series of the Court's decisions has yielded a host of situations in which persons adversely affected by ERISA-proscribed wrongdoing cannot gain make-whole relief." Id.

In view of the limited remedies offered by the ERISA statute, a number of plan participants have attempted to bring state statutory and common law actions against their benefit plans and the managers of those plans. However, the Supreme Court has generally held that ERISA preempts or bars state law claims. In order to avoid the preemptive effect of ERISA, plan participants usually try to distinguish their state causes of action from ERISA claims. Davila is the latest example of a failed attempt by an ERISA plan participant to avoid the preemptive effect of ERISA.

The Davila case was actually a combination of two lawsuits. In the first, Mr. Davila claimed that, after his HMO plan refused to cover a prescription drug for his arthritis, he took a covered drug instead and suffered a severe reaction requiring treatment and hospitalization. In the second, Ms. Calad claimed that after she underwent surgery, her plan denied coverage for an extended stay recommended by her doctor and she suffered post-surgical complications which would have been avoided, had she been allowed to remain in the hospital. Both Mr. Davila and Ms. Calad brought state court actions under the Texas Health Care Liability Act ("THCLA"), which imposed a duty on health care providers to "exercise or-

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dinary care when making health care treatment decisions." They asserted that the failure of the insurance companies administering their HMO plans to exercise the "duty of ordinary care" required by THCLA was the cause of their injuries.

The insurance companies removed both cases from state court to federal court, arguing that both Mr. Davila and Ms. Calad's claims under THCLA were preempted or barred by ERISA. The federal district courts agreed with the insurance companies and invited the two policyholders to amend their complaints to set forth ERISA claims, instead. When Mr. Davila and Ms. Calad refused to do so, their cases were dismissed with prejudice. They appealed those dismissals to the Fifth Circuit Court of Appeals, which sided with them, finding that their THCLA claims were not barred. The insurance companies, however, successfully appealed to the Supreme Court, which ruled in their favor.

The Supreme Court concluded that the actions of Mr. Davila and Ms. Calad were properly removed from state to federal court. While the normal rule is that cases may be removed only if the suing party states a claim of which the federal courts have jurisdiction, there is an exception for cases where a federal law "wholly displaces the state-law cause of action through complete preemption." Davila, 124 S. Ct. at 2495. The Court found this to be one of those cases, and ultimately concluded that ERISA completely barred the claims of Mr. Davila and Ms. Calad under THCLA.

The Supreme Court began its discussion with its conclusion that the Davila and Calad state law claims under THCLA really amounted to complaints about their plan administrators' denials of coverage promised under their ERISA benefit plans. According to the Court, those complaints could be redressed under the provisions of the ERISA statute--the patients could have paid for the desired treatment themselves and sought reimbursement under ERISA.

On the other hand, Mr. Davila and Ms. Calad argued that their actions were brought to remedy violations of the legal duty of care imposed by THCLA,

which was independent of both ERISA and ERISA remedies. In response, the Supreme Court pointed out that THCLA was not independent of ERISA because, under THCLA's express language, an HMO administrator could not be found liable for denying coverage for treatment, if that treatment was not covered by the terms of the HMO plan. A determination of whether the treatment was covered under the HMO plan required interpretation of the plan's provisions, which brought ERISA into play.

The Fifth Circuit appellate court had previously concluded that the Mr. Davila and Ms. Calad's THCLA claims were permissible, and not preempted, because those claims were not duplicative of ERISA. The THCLA claims were "tort" claims, rather than the contract claims for benefits that ERISA provides. The Supreme Court disagreed, holding that "the mere fact that the state cause of action [under THCLA] attempts to authorize remedies beyond those authorized by ERISA" did not put the state statute [THCLA] beyond the scope of ERISA's comprehensive scheme. Davila, 124 S.Ct. at 2499. According to the Court, the causes of action by plan participants that are preempted by ERISA are not limited to those which duplicate claims that may be made under ERISA, but also include those that offer additional remedies for claims of the sort that ERISA addresses:

The limited remedies available under ERISA are an inherent part of the careful balancing between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans. . . .Congress' intent to make the ERISA civil enforcement mechanism exclusive would be undermined if state causes of action that supplement the ERISA § 502(a) remedies were permitted, even if the elements of the state cause of action did not precisely duplicate the elements of an ERISA claim."

Id. at 2499-2500 (internal quotations omitted; emphasis added).

The Supreme Court also addressed the argument of Mr. Davila and Ms. Calad that their THCLA claims were not preempted because THCLA regulates insurance and therefore falls within the ERISA provision or "savings clause" which exempts state laws that regulate insurance from ERISA's preemptive reach. See Davila, 124 S.Ct. at 2500 & n.5. The Court pointed out that, where there is a comprehensive remedial scheme like ERISA, the overpowering federal policy behind that scheme may affect the way such a savings clause is interpreted. The Court noted its own holdings, in previous cases, that even those state laws which regulate insurance may be preempted or barred if they provide alternative ways to assert claims for benefits "outside of, or in addition to," ERISA. Id. at 2500.

Finally, the Supreme Court rejected the argument that the THCLA claims of Mr. Davila and Ms. Calad did not "relate to an employee benefit plan," because the insurers' decisions not to cover the treatments at issue were not of a "fiduciary" nature. Davila, 124 S. Ct. at 2500-01.

In doing so, the Supreme Court distinguished its previous decision, in Pegram v. Herdrich, 530 U.S. 211 (2000), in which the court held that an HMO was not a fiduciary. In the Pegram case, patient benefits were actually administered by physicians, who decided both the course of treatment and whether the health plan covered that treatment. The Court concluded that the more usual case in an ERISA health plan, exemplified by the health plans of Mr. Davila and Ms. Calad, involves separate people making treatment recommendations (doctors) and decisions concerning eligibility for coverage (plan administrators). According to the Court, the decisions of the plan administrators in this more usual case constitute "fiduciary" acts, because they are decisions about "managing assets and distributing property to beneficiaries" and are not mixed up with making treatment recommendations. Davila, 124 S.

Ct. at 2501. Because the insurers' benefit decisions were fiduciary decisions, they fell within the scope of ERISA. The Supreme Court's decision in Davila is consistent with its previous strict interpretation of ERISA and its general reluctance to extend the scope of the statute beyond its express language. This approach by the Supreme Court continues to disappoint ERISA plan participants, who must now rely on Congress to broaden ERISA's reach. As Justice Ginsburg asserted in her Davila concurrence, "I also join in the rising judicial chorus urging that Congress and [this] Court revisit what is an unjust and increasingly tangled ERISA regime." Davila, 124 S.Ct. at 2503 (internal quotation omitted). Only time will tell if Congress heeds the advice of Justice Ginsburg.

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