

A Plan's Choice of Law Provision Might Not Trump State Insurance Regulations Banning Discretionary Language

By [Mike Reilly](#) on January 30th, 2012

Can an ERISA plan's "choice of law" provision trump a state's insurance regulation banning discretionary review? Sometimes yes, this time no.

Here's the case of [Curtis v. Hartford Life and Accident Insurance Company, \[PDF\]](#), No. 11 C 24489 (N.D. Illinois, January 18, 2012)(Magistrate Judge Jeffrey Gilbert)(Opinion attached)(Plan's choice of law provision, applying another state's law which does not ban discretionary language was found to be contrary to public policy).

FACTS: Illinois resident Curtis sought ERISA disability benefits under a plan administered by Hartford. Hartford determined that Curtis was not disabled, and terminated the benefits. Curtis sued. The plan had discretionary language, but Illinois has an insurance regulation banning discretionary language. Noteworthy: the plan included a choice of law provision requiring application of Delaware law.

ISSUE: Does the Illinois Insurance regulation banning discretionary language apply when the ERISA Plan's choice of law provision requires application of Delaware law?

HELD: The ERISA Plan's Choice of Law Provision Did Not Trump the Insurance Regulation Banning Discretionary Language

1. The Illinois insurance regulation applies to this ERISA plan and de novo standard of review controls. Op. at 17. ERISA does not preempt the Illinois insurance regulation. Op. at 19.
2. The Plan's choice of law provision (requiring application of Delaware law which does not have a regulation banning discretionary language) does not control. Delaware allows inclusion of discretionary clauses in policies. This is clearly contrary to the Illinois regulation "and the public policy of Illinois." Accordingly the Illinois regulation is not displaced by the Plan's choice of law provision. Op. at 19.