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EXPERT ANALYSIS

ERISA Preemption: Don't Tread on my Uniform System of Plan Administration

By Elizabeth J. Bondurant, Esq., and John G. Perry, Esq.
Womble Carlyle Sandridge & Rice

On March 1 the U.S. Supreme Court again reinforced the broad preemptive scope of the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §1001. In *Gobeille v. Liberty Mutual Insurance Co.*, 136 S. Ct. 936, the court held that a Vermont law aimed at creating an all-inclusive heath care database was preempted by ERISA because its reporting requirements encroached upon a key aspect of ERISA: a uniform system of plan administration for employee benefit plans.

Writing for the 6-2 majority, Justice Anthony Kennedy found that reporting, disclosure and record-keeping are "central to," "an essential part of," "integral aspects of" and "fundamental components of" ERISA and its regulation of plan administration, and that the Vermont law must be preempted because the central design of ERISA "is to provide a single uniform national scheme for the administration of ERISA plans without interference from the laws of the several states."

The Vermont law was preempted with respect to ERISA-governed, self-insured health plans because it potentially exposed ERISA plans to a patchwork of state-by-state regulations and reporting requirements the court found would likely increase administrative costs and liability for ERISA plans.

In 1974, Congress enacted ERISA to create a uniform system of regulation for benefits provided by employers to employees, such as life, health and disability insurance. Since its enactment, ERISA has been highly litigated, especially in the area of federal preemption of state law.

Congress included an express preemption provision in ERISA with the goal of making regulation and administration of employee benefits plans uniform across the country to reduce administrative costs and limit the exposure of ERISA plans to patchwork regulation.

From early after its passage, courts and litigants have struggled to find the boundary between federal and state law under ERISA. ERISA expressly preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan."

The Supreme Court has recognized the limiting words "relate to" really provide no limitation (or guidance) at all. Through a series of opinions over the past several decades, it has created certain parameters in an attempt to provide guidance on what "relate to" means in the context of ERISA preemption.

Historically, the court has broadly interpreted the express preemption provision. For example, in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), it held that ERISA provides the exclusive remedy any time a plaintiff makes a claim for benefits under any employee benefit plan, preempting all state law causes of action seeking benefits under an ERISA-governed plan, including state law bad-faith claims. Despite its broad reading of the preemption clause, the court has refused to apply preemption on numerous occasions.

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The Vermont law at issue in *Gobeille* created what is commonly known as an all-payer claims database to provide a comprehensive set of data to insurers, employers, providers and patients to review health care costs as well as utilization and performance for patients in the state of Vermont and for Vermont citizens treated outside the state.

The law requires entities that provide and pay for health care services to Vermont citizens and individuals treated in the state to report certain information "relating to health care costs, prices, quantity, utilization, or resources required," including information about paid health insurance claims and enrollment data.[1]

The law expressly encompassed self-insured health care benefit plans and third-party administrators. A regulation titled the Vermont Healthcare Claims Uniform Reporting and Evaluation System implemented the law. It required claims and enrollment data to be reported with specific formatting and coding to a state agency, and it also set other requirements.[2]

Liberty Mutual Insurance Co. has a self-insured employee benefit health plan governed by ERISA. It also acts as the plan administrator, and as the plan sponsor it has fiduciary duties and obligations. Liberty Mutual contracted with Blue Cross Blue Shield of Massachusetts Inc. to act a third-party administrator that processes, reviews and pays claims for members of Liberty Mutual's plan.

As a mandatory reporter under the Vermont law, Blue Cross was required to report information regarding Liberty Mutual's plan members and paid claims. Liberty Mutual itself qualified as voluntary reporter because it covered fewer than 200 Vermont citizens. Vermont threatened Blue Cross' noncompliance with fines of up to $2,000 a day and a suspension of Blue Cross' Vermont operations for up to six months.

Liberty Mutual instructed Blue Cross to not comply with the Vermont law in the face of a subpoena from the state of Vermont because of concerns it might violate its fiduciary duty by allowing the disclosure of confidential member information.

Liberty Mutual then filed suit in the U.S. District Court for the District of Vermont, seeking a declaration that the Vermont law was preempted by ERISA. It sought injunctive relief preventing Vermont from compelling disclosure of member information.

The District Court found that ERISA did not preempt the law. The 2nd U.S. Circuit Court of Appeals reversed, finding that the law impermissibly interfered with one of the core functions of ERISA: reporting.

The Supreme Court's prior precedent identifies two categories of state laws that must fall to preemption because they "relate to" ERISA plans: those that "reference to" ERISA plans, and those that have an "impermissible connection with" ERISA plans.[3] The "reference to" category encompasses any state law that explicitly references ERISA, if the law "acts immediately and exclusively upon ERISA plans" or "the existence of ERISA plans is essential to the law's operation."

Gobeille did not focus on this category but extensively discussed the "impermissible connection" category. A state law has an impermissible connection with ERISA plans if it governs "a central matter of plan administration" or "interferes with nationally uniform plan administration."[4] What constitutes a "central matter of plan administration" is subject to interpretation and debate, and it represents the ultimate divide between the majority and the dissent in *Gobeille*.

Additionally, if a state law has specific indirect economic effect that forces "an ERISA plan to adopt a certain scheme of substantive coverage or effectively restricts its choice of insurers," it would have an impermissible connection to ERISA.

When determining whether there is an impermissible connection, the court considers ERISA's objectives as a guide to Congress' intent on the scope of the state law that would survive and the nature of the state law's effect on ERISA plans.

The court has established that Congress' intent in passing the express preemption provision in ERISA was to ensure a uniform body of law that would minimize the costs of complying with multiple and possibly conflicting regulations.

Simply put, "The basic thrust of the preemption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans."[5]

The *Gobeille* opinion holds that ERISA preempts Vermont's law under the impermissible connection doctrine because Vermont's reporting regime "intrudes upon 'a central matter of plan administration' and 'interferes with nationally uniform plan administration'" i.e., reporting, disclosure and record-keeping.

The court described ERISA's reporting, disclosure and record-keeping requirements as "extensive." It catalogued various requirements set forth in ERISA before noting that a violation of any of the requirements may result in civil or criminal liability.

Due to the extensive requirements already in place under ERISA in these areas, and the objective of national uniformity in the administration of employee benefit plans, the *Gobeille* majority concluded the Vermont law must be preempted to prevent a multitude of similar regulations that "could create wasteful administrative costs and threaten to subject plans to wide ranging liability" and "to prevent the states from imposing novel, inconsistent, and burdensome reporting requirements on plans."

Justice Stephen Breyer echoed this reasoning in his concurring opinion, finding that without preemption ERISA plans could be subject to 50 or more potentially conflicting reporting requirements that could create serious administrative problems and increased plan costs.

The majority rejected Vermont's arguments that the law should not be preempted because:

- The reporting regime had not caused Liberty Mutual to incur actual economic costs.
- The objectives of the Vermont law differed from those of ERISA.
- The state has traditional power to regulate in the area of public health.

The majority reasoned the preemption challenge was not based solely on the economic burdens caused by the law, and that despite differing objectives the Vermont law is a "direct regulation of a fundamental ERISA function." Moreover, the majority said ERISA preempts state laws that regulate core functions of plan administration despite being in an area where "the state law exercises a traditional state power."

The dissent, authored by Justice Ruth Bader Ginsburg and joined by Justice Sonia Sotomayor, argued that ERISA and Vermont law serve different purposes and that the burdens imposed by the law were not sufficient to invoke preemption.

The dissent's primary disagreement with the majority centers on the role of reporting, disclosure and record-keeping in ERISA. While the majority repeatedly stressed the central, essential, integral and fundamental role these requirements serve in ERISA and its goal of uniform administration, the dissent rejected this notion and found "no central matter of plan administration is touched by Vermont's data-collection law" and that these requirements were merely "ancillary to the areas ERISA governs."

What will be the impact of *Gobeille* on employee health benefit plans going forward? *Gobeille* already has been viewed as a victory for ERISA plans, sponsors and administrators. Over one-third of states have enacted or are in the process of enacting similar all-payer claims database laws to create similar health care information databases.

Although the intent of these laws is to create a more informed government health care system for participants in an attempt to understand, control and reduce ballooning health care costs, the potential for increased costs and conflicting regulation proved to be too much for the majority of the court.

Gobeille instructs that such state laws, despite such intent, would not be enforceable against self-funded plans governed by ERISA. The Gobeille opinion further defines and broadens the parameters of ERISA's preemption power and provides new arguments for defeating state laws in the future.

What constitutes a "central matter of plan administration" is subject to interpretation, and the issue divided the court.

NOTES

[1] 18 Vt. Stat. Ann. § 9410(c)(3) (2015 Cum. Supp.).

[2] Reg. H-2008-01, Code of Vt. Rules 21-040-021, § 4(D) (2016) (CVR).

[3] *See, e.g., N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,* 514 U.S. 645 (1995); *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr.,* 519 U.S. 316 (1997); *Egelhoff v. Egelhoff,* 532 U.S. 141 (2001).

[4] *Egelhoff*, 532 U.S. at 148.

[5] *Travelers*, 514 U.S. at 656.

Elizabeth (Lisa) J. Bondurant (L) is a partner in the business litigation practice group at **Womble Carlyle Sandridge & Rice** in Atlanta, and she is also vice chair of the Insurance and Reinsurance Committee of the International Association of Defense Counsel. Her practice is concentrated in insurance litigation and ERISA. For more than 30 years, she has been lead counsel on a variety of cases involving complex insurance issues; ERISA; life, health, disability and accidental death benefits; and disputes involving brokers, producers and agents. She can be reached at lisa.bondurant@wcsr.com. **John G. Perry** (R) is a partner in the business litigation practice group at the firm's Atlanta office. His practice is concentrated in insurance litigation, restrictive covenants, trade secrets and financial services litigation. He handles a variety of cases for insurers, employers and brokers involving complex coverage issues, benefits and disputes involving brokers, producers and agents. He can be reached at joperry@wcsr.com.