

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

12-29-2011

Summary of Munda v. Summerlin Life & Health Ins. Co., 127 Nev. Adv. Op. No. 83

Joseph Bowen
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the **Torts Commons**

Recommended Citation

Bowen, Joseph, "Summary of Munda v. Summerlin Life & Health Ins. Co., 127 Nev. Adv. Op. No. 83" (2011). *Nevada Supreme Court Summaries*. 200.
<https://scholars.law.unlv.edu/nvscs/200>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

TORTS — FEDERAL STATUTORY PREEMPTION

Summary

An appeal from a district court order granting a motion to dismiss in a tort action.

Disposition/Outcome

The Court concluded that state law claims of negligence and negligence per se may not always be preempted by the Employee Retirement Income Security Act (ERISA)² if the claims are based on actions while administering a managed care organization (MCO), separable from administering an ERISA plan. Consequently, the Court reversed and remanded because the appellants alleged a set of facts that could entitle them to relief if the respondent operated as an MCO administrator, and not an ERISA plan administrator.

Factual and Procedural History

Respondent Summerlin is an insurer/MCO that contracts with medical providers to provide healthcare services. Summerlin contracted with the Endoscopy Center of Southern Nevada and the Gastroenterology Center of Nevada (collectively, “the Clinic”) to provide healthcare services. Appellants Janise and Gibb Munda (collectively, “Mundas”) alleged that from at least 2002, Summerlin encouraged its insureds to seek treatment from the Clinic. Between March 2004 and February 2008, the Clinic engaged in a number of unsafe medical practices that were ultimately discovered in early 2008 through an investigation conducted by the Southern Nevada Health District and the Centers for Disease Control and Prevention. Summerlin subsequently terminated its contract with the Clinic based on the investigation.

Summerlin insured Janise Munda through her employer's health plan, which was governed by ERISA. She sought treatment at the Clinic on February 16, 2007, and March 2, 2007, because it was a Summerlin provider. Janise was later diagnosed with hepatitis C, which the Health District determined she contracted as a result of being treated at the Clinic. The Mundas sued Summerlin for failure to comply with quality assurance standards, alleging negligence, negligence per se, breach of implied covenant of good faith and fair dealing/bad faith, and loss of consortium. The Mundas further alleged that Summerlin failed to evaluate, audit, monitor, and supervise its healthcare providers as required by NRS 695G.180(1).³

The Mundas' based their claims on Summerlin's role as an MCO, not as an administrator of an ERISA plan. Summerlin filed a motion to dismiss, arguing that ERISA preempted the Mundas' claims. The district court granted Summerlin's motion pursuant to ERISA and NRCP

¹ By Joseph Bowen

² ERISA's preemption provisions 502(a) and 514(a) are codified at 29 U.S.C. §§ 1132(a) and 1144(a).

³ NEV. REV. STAT. 695G.180(1) provides in part that “[e]ach managed care organization shall establish a quality assurance program designed to direct, evaluate and monitor the effectiveness of health care services provided to its insureds.”

12(b)(5). This appeal followed.

Discussion

Writing for a unanimous en banc court⁴, Justice Douglas reversed the district court's grant of Summerlin's motion to dismiss based on the ERISA preemption statutes because it was not beyond a doubt that the Mundas "'could prove no set of facts ... [that] would entitle [them] to relief.'"⁵

In determining whether ERISA preempted the Mundas' claims, the Court first looked to the intent of Congress. The Court noted that Congress enacted ERISA to protect the interests of participants in employee benefit plans and their beneficiaries. Additionally, to ensure that employee benefit plan regulation remains exclusively a federal concern, ERISA has expansive preemption provisions. However, the United States Supreme Court determined there is "a presumption against holding that ERISA preempts state or local laws regulating matters that fall within the traditional police powers of the State."⁶ Traditionally, such powers include the regulation of health and safety matters.⁷

Next, the Court turned its attention to whether ERISA preempts NRS Chapter 695G. ERISA 514(a) expressly preempts all state laws that "relate to" any employee benefit plan.⁸ A law "relates to" a covered employee benefit plan if it has a "reference to" or "connection with" it.⁹ The Court determined that the "reference to" prong does not preempt NRS 695G.180 because NRS Chapter 695G's quality assurance requirements apply to all MCOs, regardless of their ERISA status or relationship with any ERISA plan.¹⁰

To determine whether a state law has a "connection with" a covered employee benefit plan, courts consider whether the state law: (1) regulates the types of benefits of ERISA employee welfare benefits plans; (2) requires the establishment of a separate employee benefit plan to comply with the law; (3) imposes reporting, disclosure, funding, or vesting requirements for ERISA plans; and (4) regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee.¹¹

The Court noted that when the conduct at issue is not performed in the capacity of the ERISA plan, plan administrator, or plan agent, it is not preempted by ERISA section 514(a) because the relationship with the ERISA plan is too tangential. While NRS Chapter 695G may affect an ERISA plan if the plan elects to purchase an insurance plan or lease access to a provider

⁴ Justice Pickering voluntarily recused herself from participation in the decision of this matter.

⁵ *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (*quoting* *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)).

⁶ *Golden Gate Rest. v. City & County of S.F.*, 512 F.3d 1112, 1120 (9th Cir. 2008).

⁷ *De Buono v. NYSA-ILA Med. & Clinical Service Fund*, 520 U.S. 806, 814 (1997).

⁸ 29 U.S.C. § 1144(a)

⁹ *Ca. Div. of Labor v. Dillingham Constr. N.A. Inc.*, 519 U.S. 316, 324 (1997).

¹⁰ *Cervantes v. Health Plan of Nev.*, 127 Nev. __, __, __ P.3d __, __ (Adv. Op. No. 70, October 27, 2011).

¹¹ *Insko v. Aetna Health & Life Ins. Co.*, 673 F. Supp. 2d 1180, 1187 (D. Nev. 2009) (*quoting* *Oper. Eng. Health & Welfare v. JWJ Contracting Co.*, 135 F.3d 671, 678 (9th Cir. 1998)).

network from an MCO, these would only be indirect economic effects. Furthermore, because NRS Chapter 695G does not bind an ERISA plan to any particular choice, section 514(a)'s preemptive effect is not triggered. In this situation, NRS Chapter 695G only affects an ERISA plan to the extent that it voluntarily chooses to utilize the products of an MCO that is regulated by the statute. Thus, NRS Chapter 695G does not have a “connection with” an ERISA plan *under the set of facts alleged before it*.

In the instant case, the Mundas alleged facts to support a finding that preemption does not apply, specifically, that Summerlin, who was acting as an MCO instead of an ERISA plan administrator, insured them. Because ERISA section 514(a) does not preempt claims brought against Summerlin in its capacity as an MCO, there was a question as to whether Summerlin's selection and retention choices regarding the Clinic were made in conjunction with its status as an MCO or its status as the ERISA plan administrator. Since there was no automatic preemption under the set of facts alleged before it, it did not appear beyond a doubt that the Mundas could not prove a set of facts that would entitle them to relief, and the allegations were legally sufficient to constitute the elements of the claims asserted, the Court reversed the district court's order.

Conclusion

Although it provided insurance coverage through an employee/employer benefit plan, ERISA may not automatically preempt claims against Summerlin in its capacity as an MCO. In the case at bar, the state law claims for negligence should have survived a motion to dismiss because the Mundas alleged sufficient facts to support the finding that Summerlin acted as an MCO, and not an ERISA plan administrator.