

Ninth Circuit Enforces Hawaii Anti-Reimbursement Statutes Against Insured Plan

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ERISA health care plans typically include reimbursement and subrogation clauses, which give plans a right to reimbursement of medical expenses paid on behalf of a beneficiary where the injury is caused by a third party. While such provisions are common in ERISA health care plans, they sometimes conflict with state laws that prohibit plans and insurers from seeking reimbursement. A recent decision from the Ninth Circuit illustrates the interplay between ERISA and state laws prohibiting an insurer's right to reimbursement for medical bills paid on behalf of a participant. *See Rudel v. Haw. Mgmt. Alliance Ass'n*, No. 17-17395, 2019 WL 4283633 (9th Cir. Sept. 11, 2019). As discussed below, the decision also serves as a good reminder to plan sponsors to ensure that their plans' reimbursement and subrogation provisions are updated to achieve the desired outcome.

In this case, Randy Rudel, a plan participant, was hit by a car while riding his motorcycle and, as a result, he sustained numerous and severe injuries. Rudel had health insurance from the Hawaii Medical Alliance Association (HMAA) pursuant to an ERISA plan. HMAA paid \$400,779.70 in medical bills on behalf of Rudel. Rudel also received \$1.5 million in a tort settlement for "general damages" related to the injury. The damages included medical expenses and damages for emotional distress, but did not include special damages that would "duplicate medical payments, no-fault payments, wage loss, [or] temporary disability benefits."

HMAA subsequently sought reimbursement of the medical bills it paid based on a plan provision that gave HMAA the "right to be reimbursed for any benefits [it] provide[s], from any recovery received from . . . any third party or other source of recovery including general damages from third-party settlements." Rudel refused to reimburse the plan and sued in state court based on two Hawaii statutes that prohibited reimbursement for general damages from third-party settlements.

HMAA removed the case to federal court in Hawaii, arguing that ERISA preempted the Hawaii anti-reimbursement statutes. Subject to certain exceptions, ERISA § 514 provides that ERISA supersedes all state laws insofar as they “relate to” any employee benefit plan. An exception applies for state laws that regulate insurance, banking, or securities—commonly referred to as the “savings clause.” Rudel sought to move the case back to state court, arguing that his claim was not preempted because the Hawaii statutes were protected by the savings clause.

The Ninth Circuit held that the Hawaii statutes were saved from ERISA preemption and that HMAA had no right to reimbursement based on the statutes. In so holding, the Court first determined that Rudel’s state law claims were completely preempted for purposes of jurisdiction under ERISA § 502(a) because his claim was one to clarify his rights to benefits under the plan. This meant that the case could stay in federal court rather than being remanded to state court. Next, the Court ruled that the Hawaii statutes were saved from preemption because they were directed toward entities engaged in insurance and substantially affected the risk pooling arrangement between the insurer and the insured. In other words, the Hawaii statutes regulate the extent to which insurers may limit coverage and recover certain types of reimbursement and thus impact the eventual net value of any payment made to a plan member and create more risk for insurers.

Proskauer’s Perspective: While the Ninth Circuit’s decision reminds us that fully-insured plans have to comply with state insurance laws, including anti-reimbursement statutes, it should not be forgotten that state insurance laws apply only to fully-insured plans. ERISA’s broad preemption provision continues to apply for self-insured plans. On the topic of plan reimbursement and subrogation provisions, plan sponsors should consider periodically reviewing their plans’ reimbursement and subrogation provisions to ensure that they reflect the sponsor’s intention in terms of the types of payments subject to recoupment, the type of legal interest created, and the type of funds subject to reimbursement. Because such provisions affect injured beneficiaries’ recoveries, they are hotly contested. Accordingly, plan sponsors will want to ensure that their plan provisions are up to date.

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