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Insurers Can't Use ERISA To Block NJ Orthopedists' Suit

By **Bill Wichert**

Law360 (December 11, 2018, 10:09 PM EST) -- Two insurance companies have fallen short in their bid to toss an orthopedic practice's suit alleging they failed to fully cover a patient's surgery after approving the procedure, with a New Jersey federal judge rejecting the insurers' argument that the claims are preempted by the Employee Retirement Income Security Act.

Chief U.S. District Judge Jose L. Linares on Monday largely denied a motion from Oxford Health Insurance Inc. and United Healthcare Services Inc. to dismiss Comprehensive Spine Care PA's amended complaint, finding that its state law claims are neither completely nor expressly preempted by ERISA.

The judge left intact the practice's breach of contract, promissory estoppel and account stated claims — saying they were sufficiently alleged — but dismissed a quantum meruit claim. Since the surgical procedure benefited the patient, not the insurers, Comprehensive Spine Care cannot pursue that claim, the judge said.

"As in *E. Coast*, Defendants here 'attack[] the merits' of Plaintiff's contract and promissory estoppel claims at the motion-to-dismiss stage, when the Court's task is to ask 'not whether a plaintiff will ultimately prevail[,] but whether the claimant is entitled to offer evidence to support the claim,'" Judge Linares said, citing the New Jersey federal court's June 21 [E. Coast Advanced Plastic Surgery v. Aetna](#) opinion.

"With the exception of the quantum meruit claim, the court concludes that plaintiff is entitled to do so here," the judge added.

Comprehensive Spine Care, which is an out-of-network provider with respect to the insurers' plans, has claimed that its representatives contacted the insurers to request prior authorization for the surgery, and that they provided that authorization, court documents state. The surgery was conducted on Nov. 7, 2012, court documents state.

The practice later billed the insurers for \$145,032, saying the bill "represents normal and reasonable charges for the complex procedures performed by a board-certified orthopedic surgeon practicing in New Jersey," court documents state.

The insurers, however, only paid \$1,474, leaving the patient on the hook for the remaining \$143,558, according to the complaint. The practice is seeking that outstanding balance from the insurers.

Comprehensive Spine Care, located in Westwood, New Jersey, initially filed the suit in New Jersey state court in April, and the insurers removed the matter to federal court in June.

In seeking to dismiss the amended complaint, the insurers asserted in part that the practice's claims are preempted by ERISA since its bill was submitted for payment under an employee welfare benefit plan governed by ERISA.

A state law claim is completely preempted by ERISA Section 502(a), in part, if the plaintiff could

have brought the claim under that section, which enables "a beneficiary or participant of an ERISA-regulated plan" to bring such a claim.

The judge found that Comprehensive Spine Care's claims are not completely preempted, in part because the practice is "neither a 'beneficiary' nor a 'participant' of an ERISA-regulated plan — plaintiff is a healthcare provider asserting claims on its own behalf, not on behalf of patient."

"Accordingly, plaintiff is not 'the type of party' that can bring a § 502(a) claim," Judge Linares said.

The judge also found that the claims are not expressly preempted under ERISA section 514(a), which "preempts 'any and all state laws insofar as they may now or hereafter relate to any [ERISA] employee benefit plan.'"

Judge Linares said the claims do not "relate to" a plan regulated under ERISA.

"Contrary to defendants' assertions, plaintiff's claims do not 'relate to' an ERISA-regulated plan because the amended complaint does not seek damages pursuant to the terms of patient's benefit plan," the judge said. "Indeed, nothing in the amended complaint directs the court to consider the terms of patient's benefit plan in any way."

In addition to the preemption argument, the judge also rejected the insurers' argument that the amended complaint "fails to state a claim upon which relief can be granted," saying the allegations were sufficiently pled.

Comprehensive Spine Care's attorney, Aaron A. Mitchell of Cohen & Howard LLP, told Law360 on Tuesday in an email, "We are pleased to see the Federal Courts continuing to recognize the state law rights of out-of-network providers. Of course, insurance carriers would probably argue that ERISA even preempts the story you are writing about this decision."

Counsel for the insurers could not immediately be reached for comment Tuesday.

Comprehensive Spine Care is represented by Aaron A. Mitchell of Cohen & Howard LLP.

The insurers are represented by Michael H. Bernstein and Matthew P. Mazzola of Robinson & Cole LLP.

The case is Comprehensive Spine Care PA v. Oxford Health Insurance Inc. et al., case number 2:18-cv-10036, in the U.S. District Court for the District of New Jersey.

--Editing by Adam LoBelia.