



ERISA LITIGATION BULLETIN

Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc.
No. 12-17604, 2014 WL 5651325 (9th Cir. Nov. 5, 2014)

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In *Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc.*, No. 12-17604, 2014 WL 5651325 (9th Cir. Nov. 5, 2014), the United States Court of Appeals for the Ninth Circuit reviewed a decision by the District Court of Arizona involving a number of interesting issues related to ERISA-governed health plans, including: the Article III standing of an assignee of plan beneficiaries to bring a lawsuit seeking payment of health benefits; assignment of claims for breach of fiduciary duty; enforcement of contractual limitations periods; enforcement of anti-assignment provisions; proper defendants; and exhaustion of administrative remedies. Indicative of the number of facts, legal issues and parties in this case, the Ninth Circuit reversed in part, affirmed in part, vacated in part, and remanded the case to the district court for further proceedings.

Spinedex was a physical therapy clinic which treated beneficiaries of the defendant health plans (the "Plans"). United Healthcare ("United") was the claims administrator and insurer of plan benefits for most of the defendant Plans, all of which were governed by ERISA. *Id.* at *1. Spinedex's patients signed an assignment of benefits form (the "Assignment"), which assigned to Spinedex their "rights and benefits" under their respective Plans. *Id.* The Plans made payments directly to providers who were in United's network, but beneficiaries were responsible for requesting payment from the Plans when they received services from a non-network provider such as Spinedex. Most Plans, however, allowed written assignment of claims for services rendered by non-network providers, which

allowed direct payment of expenses due to such providers. *Id.* at *2.

United paid some claims for patients treated by Spinedex, but denied other claims. Spinedex filed a complaint, claiming United and the Plans improperly denied benefits and United breached its fiduciary duty. After the District Court of Arizona granted summary judgment to the defendants, the plaintiffs filed this appeal.

Article III Standing: The Ninth Circuit reversed the district court's finding that Spinedex, as an assignee of its patients' claims for benefits, did not have standing under Article III of the Constitution to bring those claims. The court found Spinedex could bring claims, not on its own behalf, but derivatively, based on its patients' assignments of their claims for benefits. *Id.* at *2-3. The court noted federal courts routinely entertain suits in which plaintiffs, such as trustees, guardians ad litem, and executors, do not themselves obtain benefits. *Id.* at *4. Because the Plan beneficiaries had Article III standing at the time of the assignment, Spinedex, as an assignee standing in the shoes of the Plan beneficiaries, likewise had Article III standing. *Id.* at *6.

Assignment of Breach of Fiduciary Duty Claims: The Ninth Circuit agreed with the district court that Spinedex's patients did not assign their rights to Spinedex to bring claims for breach of fiduciary duty. The Assignment provided that the Plans would make payments directly to Spinedex for services rendered. Any such payments would be considered

“payment toward the total charges for the professional services rendered. THIS IS A DIRECT ASSIGNMENT OF MY RIGHTS AND BENEFITS UNDER THIS POLICY.” *Id.* at *5. Spinedex argued that the word “benefits” referred to payments to non-network providers, but the word “rights” referred to the right to bring claims for breach of fiduciary duty. *Id.* at *6. But the court found it was essential to an assignment of a right that the assignor manifest an intention to transfer the right to another person. Here, the entire focus of the Assignment was the payment for medical services provided by Spinedex, and the Assignment did not provide that patients were assigning the right to bring breach of fiduciary duty claims to Spinedex. The Ninth Circuit concluded Spinedex only was assigned the right to bring claims against the defendants for payment of benefits. *Id.*

Whether Claims Were Time-Barred: The Ninth Circuit also reversed the district court’s holding that certain claims assigned to Spinedex were time-barred by the two-year limitations periods in the summary plan descriptions (“SPDs”) for the Plans applicable to those claims. While there was no question Spinedex’s action was filed after the expiration of the two-year limitations period expired, the Ninth Circuit held that the limitations periods were not properly disclosed in the SPDs and, therefore, unenforceable. *Id.* Under 29 C.F.R. §2520.102-2 (b), the description or summary of restrictive plan provisions, which include the time limitations for bringing suit, must be placed in “close conjunction with the description or summary of benefits,” or the page on which the restrictive provision is described must be “noted” “adjacent to the benefits description.” *Id.* According to the court, the SPDs did not comply with either requirement, even though the court had little difficulty finding the limitation provision, labeled “Limitations of Actions,” in Section 9 of the Plan, which itself was titled “General Legal Provisions.” *Id.* Similarly troubling is the Ninth Circuit’s criticism of the placement of the limitation provision in Section 9, which would “in effect, require a plan beneficiary to read every provision of an SPD in order to ensure that he or she did not miss a limitation provision.” *Id.*

Anti-Assignment Provision: The Ninth Circuit affirmed the district court’s decision that the anti-assignment provision in one Plan prevented Spinedex’s patients from assigning claims under the Plan. The plaintiffs argued that United, as Claims Administrator, consented to the assignments by sending Explanation of Benefit letters stating that certain payments had been assigned to Spinedex and had waived any right to enforce the anti-assignment provision by failing to raise it during the administrative appeals process. *Id.* at *10.

The Ninth Circuit noted that the Plan’s anti-assignment provision provided that the Plan beneficiary could not assign his or her Plan benefits to a non-network provider without the consent of the Plan, which referred to the Plan Sponsor. While the Claims Administrator had discretionary authority to pay a non-network provider directly for services rendered to a Plan beneficiary, it did not have authority to consent to an assignment of benefits. *Id.* In addition, there was no evidence that United was aware or should have been aware during the administrative process that Spinedex was acting as its patients’ assignee – for all United knew, Spinedex was acting as the patient’s representative with authority to file, collect, or appeal a claim on the patient’s behalf. *Id.* at *11. The defendants, therefore, did not waive their objection to the assignment when it became clear for the first time in the district court that Spinedex was claiming benefits as an assignee. *Id.*

Proper Defendants: The Ninth Circuit also considered whether United was proper defendant for claims brought by a self-insured Plan. Based on the Ninth Circuit’s prior decision in *Cyr v. Reliance Standard Life Insurance Co.*, 642 F.3d 1202 (9th Cir. 2011), Spinedex claimed that § 1132(a)(1)(B) of ERISA did not limit the classes of defendants that might be sued to the plan or the plan administrator. *Id.* at *11. The Ninth Circuit, however, found it was unclear whether United was a formally designated or *de facto* administrator. The district court’s conclusion that United was not an administrator because the Plan did not designate a plan administrator could not be reconciled with the defendants’ statement that United was a claims administrator for each of the Plans named as defendants. *Id.* at *12. The Ninth Circuit,

therefore, remanded this issue for further proceedings in the district court. *Id.*

Exhaustion of Administrative Remedies: Although the district court had dismissed certain claims on the basis that Spinedex did not have Article III standing, the court also stated that, even if Spinedex had standing, some individuals failed to exhaust their administrative remedies. Plaintiffs argued, however, that a number of the Plans did not expressly require exhaustion and, even where the Plans required exhaustion, the claims should be “deemed” exhausted because United failed to follow appropriate claim procedures. *Id.* The Ninth Circuit vacated and remanded this issue, noting some circuits have held a claimant does not need to exhaust administrative remedies if the plan does not require it or if a claimant reasonably interprets the SPD as not requiring exhaustion. *Id.* at *13. Moreover, even where a plan expressly requires exhaustion, 29 C.F.R. 2560.503-1(1) provides that where a plan fails “to establish or follow claims procedures consistent with the requirements of this section,” claimants are “deemed to have exhausted [their] administrative remedies,” allowing for *de minimis* exceptions in certain circumstances. *Id.*

The *Spinedex* decision contains a mixed bag of results -- some good and some problematic for ERISA plan insurers. While the Ninth Circuit’s recognition that a typical health insurance assignment does not include an assignment of ERISA breach of fiduciary duty claims is a good decision for plan insurers, its rulings on contractual limitations provisions and exhaustion of administrative remedies serve as a warning to insurers on those perennial issues.

If you have any questions about this Client Bulletin, please feel free to contact any of the attorneys listed or the CMN attorney with whom you regularly work.

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