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CLIENT BULLETIN

U.S. Supreme Court Holds that ERISA Preempts Vermont's Health Care Services Reporting Law

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On March 1, 2016, in *Gobeille v. Liberty Mutual Ins. Co.*, No. 14-181, 577 U.S. __ (2016), the Supreme Court affirmed the Second Circuit, holding that ERISA pre-empts a Vermont law requiring "certain public and private entities that provide and pay for health care services to report information to a state agency" as it applies to ERISA plans. Vermont's statute requires that the reported information be compiled in "a database reflecting 'all health care utilization, costs, and resource in Vermont, and health care and utilization costs for services provided to Vermont residents in another state.'" *Id.*, No. 14-181, at 1-2 (quoting VT. STAT. ANN. tit. 18, § 9410(b) (2015 Cum. Supp.)). Justice Kennedy wrote the 6-2 decision. Justices Thomas and Breyer filed concurring opinions and Justice Ginsburg filed a dissenting opinion, which was joined by Justice Sotomayor.

Liberty Mutual Insurance Company ("Liberty Mutual") maintains, as a fiduciary and plan administrator, a self-insured and self-funded health plan (the "Plan") that provides benefits to more than 80,000 people in all 50 states. Blue Cross Blue Shield of Massachusetts, Inc. ("Blue Cross") is the Plan's third-party administrator. Under the statute, the Plan is a voluntary reporter because it covers fewer than the required number of individuals in Vermont for mandatory reporter. Blue Cross, however, is a mandatory reporter because it serves more than the required number of individuals in Vermont. Therefore, the statute requires it to report the information it has regarding Liberty Mutual's Plan members in Vermont. *Id.*, No. 14-181, at 2-3. When Vermont subpoenaed such information from Blue Cross, Liberty Mutual instructed Blue Cross not to comply with the subpoena. Liberty Mutual then filed suit in the United States District Court for the District of Vermont, seeking a declaration that ERISA pre-empts the statute and regulation with respect to the Plan and an injunction to prevent Vermont's acquisition of data about the Plan or its members. The district court granted summary judgment to Vermont, and the Second Circuit reversed. *Id.*, No. 14-181, at 3-4.

The Supreme Court noted that "ERISA's reporting, disclosure, and recordkeeping requirements for welfare benefit plans are extensive," and that "welfare benefit plans governed by ERISA must file an annual report with the Secretary of Labor." Further, violation of these requirements are subject to "civil and criminal liability." The Court also noted that such "reporting, disclosure, and recordkeeping are central to, and an essential part of, the uniform system of plan administration contemplated by ERISA." It held that Vermont's "reporting regime … both intrudes upon a 'central matter of plan administration' and 'interferes with nationally uniform plan administration.'" *Id.*, No. 14-181, at 9-10 (quoting *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001)).

The Court rejected Vermont's argument that Liberty Mutual failed to show the state's reporting regime resulted in economic costs, because, the Court noted, Liberty Mutual's "challenge is not based on the theory that the State's law must be pre-empted solely because of economic burdens caused by the state law." It also refused to accept the argument that ERISA does not pre-empt the statute "because the state reporting scheme has different objectives." The Court also rejected Vermont's contention that the State has "traditional power to regulate in the area of public health," noting that "ERISA pre-empts a state law that regulates a key facet of plan administration even if the state law exercises a traditional state power." *Id.*, No. 14-181, at 12 (citing *Egelhoff*, 532 U.S. at 151-52.

Finally, the Court declined to resolve the issue, raised by Liberty Mutual, of whether "the Patient Protection and Affordable Care Act (ACA), which created new reporting obligations for employer-sponsored health plans and incorporated those requirements into the body of ERISA, further demonstrates that ERISA pre-empts Vermont's reporting regime." It did not resolve the issue because it held that ERISA's "reporting, disclosure, and recordkeeping provisions … maintain their pre-emptive force whether or not the new ACA reporting obligations also pre-empt state law."

This decision is significant for ERISA Plans because, as the Court noted, "[a]lmost 20 States have or are implementing similar databases" to the one Vermont has.

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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