



From the Bench

Louisiana Federal Court Rejects Defendant's ERISA Preemption Claims in Suit Against Stop-Loss Carrier

Candies Shipbuilders, LLC v. Westport Ins. Co., No. 15-1798, in the United States District Court for the Eastern District of Louisiana, February 16, 2016

Written by Thomas A. Croft, Esq.

This was a very easy case in my judgement. While the Court's actual opinion is quite lengthy and detailed, the issues were straightforward and not necessarily deserving of the extensive analysis given them by the Court.

Westport issued a stop-loss policy to Candies Shipbuilders ("Candies") with a \$50,000 spec. A prematurely born baby of a Plan beneficiary incurred unspecified, but apparently quite large, medical expenses. Westport denied a portion of these charges for reasons not described in the Court's opinion. Candies sued for breach of contract, plus extra-contractual damages in the form of penalties and attorney's fees under three Louisiana statutes: La. Rev. Stat. §§ 22:1892, 22: 1973 and 22.1821.

Westport moved for summary



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judgment as to the three statutorily based claims for extra-contractual damages, arguing that relief under the first two was barred by Louisiana statutory law and that the claim under the third was preempted by ERISA.

The Court granted the carrier summary judgment as to the claims under the first two statutes, first observing that, under Louisiana statutory law, the stop-loss contract was “health and accident” insurance.

The first of the three statutes expressly provided that it only applied to “policies other than life and health and accident policies.” Strike one to the plaintiff.

The Court also granted summary judgment under the second of the three statutes, because it stated that it “shall not be applicable to claims made under health and accident insurance policies.” Strike two.

Both these holdings would seem perfectly simple conclusions from the very language of the statutes themselves.

The third statute, La. Rev. Stat. § 22:1821, did clearly apply to “health and accident contracts” by its own terms. Westport attempted to argue in support of its contention that

Candies’ claims should be dismissed under this statute as well because ERISA preempted them.

The Court then set sail in its opinion on the different kinds of preemption available under ERISA (“complete” and “conflict” preemption), ultimately concluding that neither applied. Perhaps the plaintiff’s arguments in this regard were spawned by the district court’s opinion in *Bank of Louisiana v. Aetna Healthcare* (see <http://stoplosslaw.com/cases-and-commentary/bank-of-louisiana-v-aetna-us-healthcare>) many years earlier, in 2004. In my write-up of that decision, I concluded that the Court had simply “gotten lost in the ERISA Funhouse” and misconstrued the law.

The federal Court of Appeals in the *Bank of Louisiana* case set things straight and in my opinion, endorsed the notion that ERISA simply had no effect on run-of-the-mill stop-loss cases, which are governed exclusively by state law. See <http://stoplosslaw.com/cases-and-commentary/bank-of-louisiana-v-aetna-life-ins-co>.

It was this Court of Appeals decision on which the district court relied to hold that no ERISA preemption existed in the Candies case. This result is consistent with all modern stop-loss cases with which I am familiar. They are state law based claims and one need not wander around inside the “ERISA Funhouse” – as this Court did for a time in its opinion – to decide them.

So, Westport’s third pitch was outside the strike zone by a good margin and Candies will get a jury trial on its contract and claims for penalties, barring a settlement or other unforeseen developments in this case. ■

Tom Croft currently consults extensively on medical stop-loss claims and related issues, as well as with respect to HMO Excess Reinsurance, Medical Excess of Loss Reinsurance and Provider Excess Loss Insurance. He maintains an extensive website analyzing more than one hundred cases and containing more than fifty articles published in the Self-Insurer Magazine over many years. See www.stoplosslaw.com. He regularly represents and negotiates on behalf of stop-loss carriers, MGUs, Brokers, TPAs and Employer Groups informally, as well as in litigated and arbitrated proceedings and has mediated as an advocate in many stop-loss related mediations. Tom can be reached at tac@xsloss.com.

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