



Court Holds That Physician's State Law Claim For Disability Benefits Is Preempted by ERISA: *Hershan v. Unum Group Corporation*

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A federal court has held that a radiologist's state law contract claim for certain disability insurance benefits arose under a welfare benefit plan governed by ERISA and was therefore preempted by ERISA. In *Hershan v. Unum Group Corporation*, No. 2:14-6120 (D.N.J., February 5, 2015), the court first had to determine that three disability insurance policies constituted an ERISA-governed benefit plan and that ERISA still controlled the plan even though the radiologist's employer was defunct by the time his claim arose.

The Background. The plaintiff (Hershan) was a radiologist previously employed at Sharlin Radiological Associates (Sharlin Radiological). Between 1983 and 1991, while Hershan was employed there, he purchased three disability insurance policies (the Policies) from a predecessor of defendant Unum Group Corporation. Those policies were subject to certain Salary Allotment Agreements between Sharlin Radiological and the Unum predecessor pursuant to which Hershan received a 15% discount on his premiums. Hershan would sometimes tender his premiums to the Unum predecessor, but he sometimes submitted the premiums to Sharlin Radiological and assumed that his employer transmitted the payments to the Unum predecessor, along with payments for other Sharlin employees covered by disability policies. When the Unum predecessor received any overpayments from the employer, it issued a refund to Sharlin Radiological – not to the employees.

Hershan contended that Sharlin Radiological stopped doing business in October 2004 and that, in 2005, he converted his coverage by accepting an offer from the Unum predecessor to continue his insurance as an individual, with the same 15% discount. He began paying all premiums directly to the insurance company. However, in the later litigation, Unum contended that Sharlin Radiological stayed in business until 2006, and maintained a profit sharing plan for its employees until 2007.

After all of those conflicting dates, Hershan was injured at his home in January 2010, suffering a head

injury that he said would entitle him to lifetime disability benefits under the Policies. Unum began paying his benefits in the summer of 2012, but stopped the payments in June 2013, contending that Hershan was no longer disabled. Hershan and Unum were unable to resolve their dispute, and he filed suit in New Jersey state court in 2014. His complaint set out two claims, one asking for relief under ERISA and the other asking (in the alternative) for damages for breach of contract under New Jersey law. Unum removed the case to federal court, and moved to dismiss Hershan's state law claim on the basis of ERISA preemption.

The Court's Ruling. Treating Unum's motion as a motion for summary judgment, the court first had to determine whether Hershan's benefit claim arose under an ERISA-governed plan. The court noted that the statutory and case authorities guiding this analysis required the court to decide in this instance whether the Policies were obtained through (1) a plan, fund or program (2) established or maintained (3) by an employer (4) for the purpose of providing benefits (5) to its participants or beneficiaries. The facts here showed a clearly intended set of benefits, a class of beneficiaries, namely, Sharlin Radiological employees, a source of financing, and a clear procedure to receive the benefits. Relying on Third Circuit precedent, the court held further that the funding could come from the employer, the employee, or both, and the payment of the premiums by Hershan, an employee, satisfied that requirement. In addition, the employer had participated in a meaningful way in creating or administering the plan, by enabling the employees to enjoy a 15% premium discount pursuant to the Salary Allotment Agreements and by handling payments for the premiums. This was enough to "establish or maintain" a plan. The court concluded that there existed a "welfare benefit plan" within ERISA's definition.

The crucial issue was whether that plan was still relevant and ERISA still controlled after Sharlin Radiological had ceased operations prior to Hershan's injury. Acknowledging that Sharlin Radiological ceased operations before 2010, the court nonetheless held that an ERISA welfare benefit plan, under the statutory definition, could be a plan that *had been* established or maintained, and that the plan did not lose its ERISA status merely because the employer subsequently went defunct.

Once it determined that Hershan was raising claims under a welfare benefit plan still subject to ERISA, the court lost little time in holding that his state law contract claim was preempted by ERISA and granted summary judgment dismissing that claim with prejudice. (Following entry of that order, the parties settled the case, and the remaining ERISA claim has been dismissed.)

The Significant Lessons: *Hershan* is instructive for two reasons. First, its ERISA claim did not arise in the typical setting of a single, clearly stated employee benefit plan document, but required analysis of circumstances in which an employee's purchase of disability benefit policies comprised a welfare benefit plan within ERISA's statutory definition and the related case precedents. As *Hershan* illustrates, the absence of such a typical scenario may not be decisive. Second, *Hershan* still applied ERISA and its preemptive power long after the employer had ceased operation, much less ceased to be actively engaged in plan administration. While these particular facts may not arise frequently, the *Hershan* ruling reminds us that the scope of ERISA's definitions and its goals can still give the statute a long reach in a relevant setting.

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