1980 WL 120829 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 18, 1980

***1 SUBJECT: Application of State insurance laws to benefit plans under the Employee Retirement Income Security Act.**

An employee benefit plan which qualifies under the ERISA Act and is a self-insurer providing benefits to its members is exempted from the application of State laws regulating the business of insurance.

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QUESTION PRESENTED:

1. Do State insurance laws apply to employee benefit plans under the ERISA statutes?

STATUTES AND CASES:

South Carolina Code of Laws, (1976), § 38-1-30;

Employee Retirement Income Security Act, § 514; § 514(a); § 514(b)(2)(A); § 514(b)(2)(B);

Bruce W. Wadsworth, et al. v. Frances A. Whaland, 562 F.2d 70;

Hewlett Packard Company v. Willie R. Barnes, 425 F.Supp. 1294, 571 F.2d 502;

Keeton, Insurance Law Basic Text, Chapters 1 and 2.

DISCUSSION:

Notwithstanding the provisions of the Employee Retirement Income Security Act [1], it is the opinion of this Office that a self-insured employee benefit plan would come within the meaning of § 38-1-30, Code of Laws of South Carolina (1976), as amended, and thereby be subject to State regulations if the self-insured employee benefit plan entailed the following elements:
1. An insurable interest;

2. A risk of loss;

3. An assumption of the risk by the insured;

4. A general scheme to distribute the loss among the larger group of persons bearing similar risks;

5. The payment of a premium for the assumption of risks; [2]

The definition of the term insurance as set forth in § 38-1-30 is broad and non-specific. Therefore, definitional categorization of transactions as insurance contracts or the business of insurance must be on a case by case basis.

In 1974, Congress passed the Employee Retirement Income Security Act. [3] The purpose of the ERISA statute was to protect the interests of participants in private employee benefit plans. Congress attempted to accomplish this by requiring detailed disclosures and reporting to participants, and by establishing a standard of conduct and responsibility enforced by appropriate remedies, sanctions, and access to the federal courts. The desired result of the ERISA Act was the improvement of the equitable character and soundness of employee benefit plans.

In order to determine whether or not State insurance regulations can be applied to self-insured employee benefit plans, one must look to § 514 of the Erisa Act. Section 514 deals with the exemption of certain employee benefit plans, which qualify for protection under the ERISA statute, from regulation by the States. In order to qualify for the ERISA exemption, the employee benefit plan must come within the definition of an employee welfare benefit plan as set forth in 29 U.S.C. § 1003.

Specifically, § 514 is made up of three interrelating provisions. Section 514(a) of the ERISA statute, [4] known as the Preemption Clause, provides as follows:
***2** Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter 3 of this chapter shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in § 1003(a) of this Title and not exempted under § 1003(b) of this Title.

From a reading of § 514(a) it can be seen that the ERISA statute supersedes any and all State laws relating to employee benefit plans as described in the Act. However, § 514(a) is qualified by § 514(b)(2)(A). This provision is known as the Savings Clause [5] and provides as follows:
Except as provided in subparagraph b, nothing in this chapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

An isolated examination of § 514(a) and 514(b)(2)(A) would lead one to the interpretation that even though the ERISA statute preempts State laws effecting employee benefit plans, it has no application to State insurance laws which may affect self-insured plans. However, the two aforementioned sections cannot be read in isolation from § 514(b)(2)(B) of ERISA [6] . This provision of the ERISA Act is known as the Deemer Clause and provides as follows:
Neither an employee benefit plan described in § 1003(a) or this Title, which is not exempted under § 1003(b) of this Title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law or any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

The Deemer Clause as set forth in § 514(b)(2)(B), modifies the Savings Clause as set forth § 514(b)(2)(A) to the extent that ERISA does preempt State insurance regulations insofar as they pertain to employee benefit plans as defined by the ERISA Act. The Deemer Clause effectively eliminates any direct regulation by State insurance laws of employee benefit plans. Hewlett Packard Company v. Willie R. Barnes, 425 F.Supp. 1294, 571 F.2d 502; Bruce W. Wadsworth, et al. v. Frances A. Whaland, 562 F.2d 70.

Given the interrelationship of the Preemption Clause, the Savings Clause and the Deemer Clause, an employee benefit plan which qualifies under the ERISA Act, and is a self-insurer providing benefits to its members, is exempt from the application of any State laws regulating the business of insurance.

CONCLUSION:

An employee benefit plan which qualified under the ERISA Act and is a self-insurer providing benefits to its members is exempted from the application of State laws regulating the business of insurance.

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Footnotes

1 ERISA
2 Chapter 1 and Chapter 2, Keeton, Insurance Law Basic Text.
3 P.L. 93-408, 88 Stat., 829 (Codified at 29 U.S.C. § 1001, et seq.
4 Codified at 29 U.S.C. § 1144(a)
5 Codified at 29 U.S.C. § 1144(b)(2)(A)
6 Codified at 29 U.S.C. § 1144(b)(2)(B)

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