

Commentary

Understanding Complete And Conflict Preemption Under ERISA:

A Primer For Lawyers

By

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and

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Legal issues frequently arise when an insurer denies a request for benefits asserted by a participant in a long-term disability plan. These legal issues, and available remedies, fall under the purview of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001. ERISA is a comprehensive federal law governing employee benefits. Congress intended ERISA to preempt state law claims. See §514(a) of ERISA, 29 U.S.C. §1144(a); *Pilot Life Ins. v. Dedeaux*, 481 U.S. 41, 47 (1987). An ERISA action against an insurer challenging a denial of benefits must be filed in federal court, and may assert only the types of claims that ERISA permits.

Too often, however, lawyers are not mindful of ERISA preemption and incorrectly bring actions challenging denials of benefits in state court, asserting claims

such as bad faith, intentional infliction of emotional distress, retaliation, and loss of consortium. Courts sometimes also are confused by ERISA preemption and have not always applied the preemption doctrines correctly.

This article offers a primer on how ERISA preemption operates. By understanding ERISA preemption, lawyers can plead the proper claims in the correct forum.

A. Complete vs. Conflict Preemption

Much of the confusion about how ERISA preemption operates stems from a lack of understanding about the differences between "complete" preemption and "conflict" preemption (also known as "traditional" preemption).

Complete preemption occurs where Congress' intent in enacting a federal statutory scheme is to supplant state law completely and create federal jurisdiction under 28 U.S.C. §1331. See *Avco Corp. v. Machinists*, 390 U.S. 557 (1968). Complete preemption is based on the view that if Congress clearly intended for a claim to be brought under federal law, then the claim must be brought in federal court, not in state court. See, e.g., *Ackerman v. Fortis Benefits Ins. Co.*, 254 F. Supp. 2d 792, 813-814 (S.D. Ohio 2003).

In situations where there is complete preemption of the particular field of law covering the type of claim

that is asserted, a court will treat a complaint that on its face alleges only a state law cause of action as in fact alleging a viable federal cause of action that provides a basis for removal. *Taylor Chevrolet Inc. v. Med. Mut. Serv.*, No. 2:07-cv-53, 2007 U.S. Dist. LEXIS 35428, at *9 (S.D. Ohio May 15, 2007) (citing, e.g., *AmSouth Bank v. Dale*, 386 F.3d 763, 776 (6th Cir. 2004))(when Congress has indicated its intent to completely occupy a field, any ostensible state law claim is in fact a federal claim providing a basis for federal jurisdiction)). Complete preemption affords a basis for removal even when there is no alternative basis for federal jurisdiction. *Ackerman*, 254 F. Supp. 2d at 814 (citing *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 457-68 & n.11 (6th Cir. 2002)). In a field of law that has been completely preempted, claims properly are removable to federal court, no matter how the particular causes of action are labeled in the complaint.

Conflict preemption is a different doctrine. Conflict preemption provides that state remedies that are not permitted by federal law or exceed federal remedies are disallowed, and this preemption may properly be asserted as a defense seeking dismissal of a state court action. *Taylor Chevrolet*, 2007 U.S. Dist. LEXIS 35428, at *8; see also *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Darcangelo v. Verizon Commc'ns, Inc.*, 292 F.3d 181, 186-87 (4th Cir. 2002). Because conflict preemption is a defense to a state cause of action, it normally does not appear on the face of the plaintiff's well-pleaded complaint and does not provide a basis for removal to federal court. *Taylor Chevrolet*, 2007 U.S. Dist. LEXIS 35428, at *8 (citing *Metro. Life Ins. Co.*, 481 U.S. at 63). Instead, the conflict preemption doctrine provides a ground for a state court to dismiss a cause of action. In other words, if a state law claim is conflict preempted, it is as if such a claim does not exist and may not be asserted anywhere.

B. Complete And Conflict Preemption Under ERISA

ERISA is an example of a federal statute under which both complete preemption and conflict preemption may arise. As a result, it is important not to conflate and incorrectly apply these two concepts. The concepts must be viewed distinctly.

Whether a claim for denial of benefits is completely preempted is analyzed under §502 of ERISA, 29

U.S.C. §1132(a). Section 502 is ERISA's civil enforcement provision. It outlines an employee's available remedies under ERISA. These include, among other things, the right to recover benefits according to the terms of the plan, or to enforce or clarify the employee's rights under the plan. In order to be completely preempted, the state law claim must be capable of being characterized as a claim authorized by §502(a). *Taylor Chevrolet*, 2007 U.S. Dist. LEXIS 35428, at *11; *Sonoco Prods. Co. v. Physicians Health Plan, Inc.*, 338 F.3d 366, 371 (4th Cir. 2003). Such claims, even if labeled as state law claims, are deemed to assert a federal cause of action and are removable to federal court under the complete preemption doctrine.

If a claim is not a type authorized by §502, it will be subject to a conflict preemption analysis by virtue of the broad preemption provision contained in §514 of ERISA. That means that the claim will be vulnerable to outright dismissal in state court, because it is not authorized by §502 and therefore cannot be viable. See *Arana v. Ochsner Health Plan*, 338 F.3d 433, 440 (5th Cir. 2003).

Thus, it is very important that lawyers determine at the outset, before filing a claim for denial of benefits, whether a state law claim would be completely preempted or conflict preempted by ERISA. Complete preemption and conflict preemption are distinct and mutually exclusive. *Ackerman*, 254 F. Supp. 2d at 818. A lawyer wastes both time and money when asserting a state law claim that is conflict preempted, because such claims cannot exist in either a federal or a state forum. A lawyer also should avoid the inefficient practice of bringing a state law claim that is completely preempted. If a court correctly applies the complete preemption doctrine, the claim will be re-characterized as a federal cause of action and will be removable to federal court. But if a court misunderstands complete preemption, and applies a conflict preemption analysis instead, the litigant runs the risk of incurring dismissal of a completely preempted claim that actually properly could be asserted in federal court.

C. Handling An ERISA Claim After Removal To Federal Court

The risks to a client if a claim for denial of benefits is incorrectly pleaded as a state law claim in state court are great. That is because courts have demonstrated

a fair amount of confusion over how to treat an ostensibly state law claim under ERISA once it has been removed to federal court. The courts' confusion has sometimes led to the dismissal of a claim in federal court that actually should have been allowed to proceed.

For example, under one approach, courts have held that a completely preempted state law claim is necessarily conflict preempted too, and that the claim must be dismissed after removal to the federal court. *See, e.g., Butero v. Royal Maccabees Life Ins. Co.*, 174 F.3d 1207, 1213 (11th Cir. 1999) (affirming the district court's dismissal of plaintiff's state law claims based on conflict preemption after plaintiff's claims were removed to federal court on the ground of complete preemption); *Lister v. Stark*, 890 F.2d 941, 944 (7th Cir. 1989), *cert. denied*, 498 U.S. 1011 (1990) (holding that claims that are completely preempted are substantively preempted under conflict preemption too).

Under a second approach, courts have held that a completely preempted claim is a viable federal claim for removal purposes, and also for purposes of allowing the plaintiff to proceed with the litigation, albeit subject to ERISA rules. *See, e.g., Crull v. GEM Ins. Co.*, 58 F.3d 1386, 1392 (9th Cir. 1995); *Carland v. Metro. Life Ins. Co.*, 935 F.2d 1114, 1119 (10th Cir. 1991), *cert. denied*, 502 U.S. 1020 (1991); *Ackerman v. Fortis Benefits Ins. Co.*, 254 F. Supp. 2d 792, 814-815 (S.D. Ohio 2003); *Murphy v. Metro. Life Ins. Co.*, 152 F. Supp. 2d 755, 758 (E.D. Pa. 2001).

Under a third approach, courts have allowed plaintiffs to proceed with their claims in federal court following removal, but have required them to amend their complaints to expressly plead an ERISA claim. *See, e.g., Degnan v. Publicker Indus., Inc.*, 83 F.3d 27, 30 (1st Cir. 1996); *Erbaugh v. Anthem Blue Cross and Blue Shield*, 126 F. Supp. 2d 1079, 1082 (S.D. Ohio 2000).

The first approach is based on a fundamental misunderstanding of preemption principles; simply because an ERISA-type claim is completely preempted does not automatically mean that it is conflict preempted and foreclosed from being pursued in federal court after the case is removed. As for the second and third approaches, although they ultimately lead to the same result — allowing a plaintiff to proceed — they carry different risks that could easily have been avoided if the claims had been pleaded correctly as ERISA claims in federal court in the first instance. Courts that take the second approach end up adjudicating an ERISA claim that is not pleaded expressly as an ERISA claim, which can lead to confusion as to whether the ERISA requirements are being followed. And courts that follow the third approach require plaintiffs to incur the extra time and expense of re-pleading their state law claims as ERISA claims, which is what should have been done in at the outset.

D. Conclusion

The lesson for an attorney contemplating bringing a claim challenging a denial of benefits under a long term disability benefits plan is this: plead the claim expressly as an ERISA claim, not as a state common law claim, and file the claim in federal court, not state court. If the attorney brings a completely preempted claim in state court, chances are that the claim will be removed to federal court, and the further risk is that the federal or state court will mistakenly conclude that the claim is conflict preempted and therefore subject to dismissal. By bringing a conflict preempted claim, the attorney is wasting everyone's time and money, because such claims are disallowed in any event. By understanding that state law claims challenging benefits plans are either completely preempted or conflict preempted, lawyers can avoid the extra time and money that is wasted when a preempted claim is filed in an incorrect forum. ■