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Ninth Circuit Affirms Dismissal of ERISA Claims Against Health Insurers

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The Ninth Circuit agreed that the employer-members of Montana's Chamber of Commerce failed to state a claim for breach of fiduciary duty under ERISA § 502(a)(2) and violations of ERISA's prohibited transaction rules under ERISA § 502(a)(3) against health insurers as a result of alleged misrepresentations in the marketing and negotiation of the insurers' fully insured health plans to the Chamber's members. The Court first determined that defendants were not fiduciaries because they did not exercise discretion over plan management or control over plan assets. In so ruling, the Court explained that defendants had no fiduciary relationship to the plans and exercised no discretion over the plans' management because they were merely negotiating at arms-length to set rates and collect premiums prior to any agreement being executed. The Court also found that the allegedly excessive premiums that defendants collected did not qualify as plan assets because the plans were fully insured, i.e., the premiums were not held in trust and they were simply fixed fees paid in exchange for defendants' financial risk of providing the promised benefits.

The Court next dismissed the prohibited transaction claims because the nature of the underlying remedies sought, restitution and disgorgement, were not equitable in nature. The Court held that the remedy of restitution was legal because the premium payments plaintiffs sought to recover had no connection to any particular fund and plaintiffs failed to identify a specific fund to which they were entitled. Similarly, the Court held that disgorgement was not equitable because plaintiff did not identify any particular property from which defendants derived an improper profit or benefit.

Finally, the Court reversed the dismissal of plaintiffs' state law claims alleging fraud and misrepresentation and remanded for further proceedings. The Court held that plaintiffs' state law claims were not preempted by ERISA because they did not have an impermissible connection with an ERISA plan, but rather were connected to negotiations occurring prior to any ERISA-regulated relationship. In this vein, the Court characterized the case as one about fraud and misrepresentation in the sale of health insurance policies, rather than as a case implicating ERISA.

The case is *The Depot Inc. v. Caring for Montanans Inc.*, No. 9:16-cv-00074, 2019 WL 453485 (9th Cir. Feb. 6, 2019).

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