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ERISA-Exempt Governmental Plan Withstands Putative Class Action Challenge

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Our Insights

- Labor & Employment
- Estates & Trusts
- Litigation / Trial Practice

- 4th Circuit (incl. bankruptcy)

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Late last year, we wrote about *Shore v. The Charlotte-Mecklenburg Hospital Authority, et al.,* in which former Atrium Health employees filed a putative class action in the U.S. District Court for the Middle District of North Carolina under the Employee Retirement Income Security Act of 1974 (ERISA). The employees alleged that the defendants wrongfully treated Atrium Health's employee benefit plans as ERISA-exempt governmental plans and thus failed to comply with ERISA. The defendants filed motions to dismiss the ERISA claims for failure to state a claim and for lack of subject matter jurisdiction under Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure.

Background

The Charlotte-Mecklenburg Hospital Authority (Authority) is a nonprofit healthcare

conglomerate that established and maintains a pension plan, a 401(k) retirement savings plan, and a health plan. The Authority treats these plans as exempt from ERISA under the statute's governmental plan exemption. Under ERISA, a governmental plan is a "plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

The court first analyzed whether the Authority was a political subdivision of North Carolina, applying the test set forth in *National Labor Relations Board v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604–605 (1971). Under this test, "political subdivisions" are "entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate."

Under North Carolina's Hospital Authorities Act (HAA), the state authorized cities and counties to create hospital authorities in the interest of the public health and welfare. The state thus delegated its authority to the city of Charlotte, which then created the Authority pursuant to the HAA. According to the court, the city's creation of the Authority through an enabling state statute satisfies the first prong of the *Hawkins* test.

Although only one of the two prongs needs to be satisfied, the court also examined whether the Authority met the second prong, i.e., whether the Authority was administered by individuals responsible to public officials or the general electorate. The court noted that, according to case law, this prong is satisfied when public officials have the power to appoint and remove the entity's governing members.

Here, the Authority's board of commissioners was appointed by a public official from a list of nominees provided by the board. Even though the public official historically approved all nominees provided, he had the power to reject the nominees and request new nominees. The official also had the power to remove a commissioner for inefficiency, neglect of duty, or misconduct.

Other characteristics of the Authority that further demonstrated that it was a political subdivision included its power of eminent domain, its broad grant of authority from the HAA, the appropriations it received from the general tax fund, the fact that it was subject to public records laws, and that its commissioners were not compensated.

The District Court's Decision

The court granted the defendants' motions to dismiss, holding that the Authority was a political subdivision of the state and thus exempt from ERISA. The court did not address whether the Authority was an agency or instrumentality of the state.

The plaintiffs filed an appeal to the U.S. Court of Appeals for the Fourth Circuit on September 27, 2019.

Key Takeaways

Shore is interesting for two reasons. First, it is a challenge to ERISA exemptions, similar to cases that have challenged the ERISA church plan exemption in an effort to apply more stringent ERISA requirements to non-ERISA plans. Second, it challenges medical plan fee arrangements in a manner similar to fee challenges filed against ERISA 401(k) plans. It remains to be seen whether these types of cases will get any traction.