



Alerts

ERISA Plan Entitled to Seek Reimbursement from Plan Beneficiary Who Recovered Damages in Tort Action Related to Underlying Accident

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The LHD/ERISA Advisor

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In *Vercellino v. Optum Insight*, 2020 U.S. Dist. LEXIS 205952 (D. Neb. Nov. 24, 2020), the Nebraska district court held that a self-funded ERISA plan could seek reimbursement for medical benefits paid from any recovery the plan beneficiary received in a third-party tort action for damages related to his injuries.

Plaintiff Nathan Vercellino, a covered dependent on his mother's ERISA health plan, was injured in an all-terrain vehicle accident in 2013 at the age of 15. Vercellino's mother was a participant in the Ameritas Holding Company Health Plan (the Plan), which was administered by defendants Ameritas Holding Company and United Healthcare (collectively "Defendants").

Defendants paid \$595,770.80 in medical expenses for the then minor beneficiary's injuries stemming from the accident. In January 2019, the now adult-aged Vercellino sued the family of the individual who had driven the vehicle at the time of his crash. Defendants asserted an interest in any recovery that Vercellino received in that tort action pursuant to a Plan provision authorizing reimbursement of the expenses incurred for Vercellino's medical treatment from any recovery by a covered person relating to the accident.

Vercellino then initiated a separate suite alleging that Defendants had no such right to reimbursement for several reasons. The district court rejected each of Vercellino's arguments.

First, Vercellino argued that the Plan only allowed for reimbursement of medical expenses, not third-party tort recovery. The court disagreed, holding that the Plan provision (provided below) was broad enough to cover any recovery relating to the accident, taking special note of language stating that the Plan was to be reimbursed for "any and all benefits paid by it, from any monies received." The court noted that "[t]he plan does not limit Defendants' reimbursement to monies characterized as medical-expense damages."

Second, Vercellino argued that the Plan failed to seek recovery within Nebraska's four-year statute of limitations for medical claims. The court rejected this argument on the ground that ERISA pre-empted the state-law time bar.

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Third, Vercellino argued that the Plan could only recover sums obtained by his mother, the primary Plan participant, but not him. He further contended that as a minor when the accident occurred, he lacked capacity to contract and could not be bound by the Plan's reimbursement provision. The court declined to read these limitations into the Plan. Instead, it held, "[t]he Court is aware of no requirement that an ERISA plan obtain the assent of a beneficiary in order for the covered person to be bound to the plan's terms; it does not matter that the beneficiary is not the employee that signed up for coverage."

Accordingly, the court granted Defendant's motion for summary judgment and held that Defendants were entitled to an equitable lien against any recovery that Vercellino received in the tort case. This holding is a good example of the continued willingness of courts to uphold standard reimbursement provisions in ERISA plans, notwithstanding some creative arguments made by the plaintiff in this case.

Below for reference is the Plan language that the district court enforced:

[C]overed persons, including all dependents, agree to transfer to the plan their rights to make a claim, sue and recover damages when the injury giving rise to the benefits occurs through the act or omission of another person. Alternatively, if a covered person receives any full or partial recovery, by way of judgment, settlement or otherwise, from another person or business entity, the covered person agrees to reimburse the Plan, in first priority, for any medical, disability or any other benefits paid by it (i.e., the Plan shall be first reimbursed fully, to the extent of any and all benefits paid by it, from any monies received, with the balance, if any, retained by the covered person). The obligation to reimburse the Plan, in full, in first priority, exists regardless of whether the judgment or settlement, etc. specifically designates the recovery, or a portion thereof, including medical, disability or other expenses.

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