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## ERISA Liens in Personal Injury Cases

by Valerie A. Vladyka and Brian R. Lehrer

**T**he Employment Retirement Income Security Act of 1974 (ERISA) governs most employee welfare benefit plans.<sup>1</sup> It is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. The goal of the legislation is to ensure that employee benefit plans are established and maintained in a fair and financially sound manner.

The scope of ERISA is enormous. Generally, it contains a broad preemption provision, which mandates that the statute supercedes virtually any state law that conflicts with it.<sup>2</sup> The statute does contain a “savings” clause, which provides that states retain authority over the regulation of insurance.<sup>3</sup> This article will examine ERISA liens in personal injury cases in the state of New Jersey. The authors submit that the state of the law in New Jersey is that ERISA liens are always valid in personal injury cases.

The seminal case concerning health insurance liens is *Perreira v. Rediger*.<sup>4</sup> The issue in *Perreira* was whether the collateral source rule at N.J.S.A. 2A:15-97 allowed a health insurer who paid funds on behalf of an injured insured to recover those payments through subrogation or contract reimbursement when the insured recovered a judgment against the tortfeasor. The Court held that the answer is no.<sup>5</sup>

*Perreira* involved two cases, both arising out of personal injuries suffered as a result of the negligence of separate tortfeasors. In sum, both plaintiffs suffered injuries and had their medical bills paid by their respective health insurers. The health insurers sought to recover the medical bills paid out of the plaintiff’s personal injury settlements through clauses in the insurance policies, which permitted reimbursement for the amount of money spent due to the tortuous conduct of another. The plaintiffs argued that the collateral source rule barred the insurer’s right of subrogation and/or contract reimbursement rights. The Supreme Court agreed.

The collateral source rule states, in relevant part, that:

in any civil action brought for personal injury or death...if a plaintiff receives or is entitled to receive benefits for the

injuries allegedly incurred from any other source other than a joint tortfeasor, the benefits, other than worker’s compensation benefits or the proceeds from a life insurance policy, shall be disclosed to the Court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award recovered by the plaintiff...<sup>6</sup>

At the time the case was pending, the collateral source rule was in conflict with a New Jersey administrative code provision allowing subrogation and reimbursement provisions in health insurance policies. The Court held that the collateral source rule trumped the administrative regulation and thus the insurers were not entitled to reimbursement or subrogation.

Health insurers have no common law equitable right to subrogation. Under the common law Collateral Source Rule, plaintiffs have the right to keep their health insurance proceeds and their full tort judgments. In amending the common law Collateral Source Rule, N.J.S.A. 2A:15-97 eliminated double recovery to plaintiffs, allocated the benefit of that elimination to liability carriers, and left health insurers in the same position they had been in before its enactment—with no right to recover paid benefits from the insured or from the tortfeasor. In allocating the benefit of no-double-recovery to liability carriers, N.J.S.A. 2A:15-97, in turn, barred the commissioner of insurance from enacting a different allocation scheme. Thus, the commissioner’s regulations empowering health insurers to include reimbursement and subrogation provisions in their contract only apply to cases that do not involve the Collateral Source Rule.<sup>7</sup>

Thus, after *Perreira* the law regarding subrogation or reimbursement provisions in health insurance contracts seemed pretty clear: They were invalid. However, where ERISA plans are concerned the answer is not so simple.

In *Levine v. United Healthcare*, the Third Circuit addressed the question of whether an ERISA plan may assert a lien on a personal injury settlement.<sup>8</sup> In *Levine*, the plaintiffs were injured in separate, unrelated events. All of the plaintiffs were

insured by policies issued through their employers, and thus those policies were governed by ERISA. The plaintiffs settled their cases with the tortfeasors and paid a portion of their settlements to their respective carriers, pursuant to the contractual reimbursement clauses contained in the policies.

However, after the plaintiffs settled with the carriers, the *Perreira* decision was announced. As a result, realizing that subrogation and reimbursement provisions were no longer permitted in New Jersey health insurance policies, the plaintiffs sued their insurers in state court to recover the amounts they had paid. The insurers removed the cases to federal court, claiming complete preemption under ERISA.

The district court concluded the New Jersey collateral source rule was a statute "regulating insurance," and thus was "saved" from ERISA preemption. The Third Circuit reversed.

The Third Circuit held the collateral source rule is preempted by ERISA. Therefore, the reimbursement provisions in the health insurance policies stood and the plaintiffs/insureds claims had to be dismissed.

The Third Circuit noted that generally a state law that "relates to" an ERISA-governed plan is preempted by ERISA. The court noted ERISA's expansive express preemption rule provides that its regulatory structure supersedes any and all state laws insofar as they may now or hereafter relate to any employee benefit plan.<sup>9</sup> The Third Circuit rejected the application of the savings clause to the collateral source rule, noting the rule is not specifically directed toward insurance.

Before turning to the affect the statute has on New Jersey insurance law, an examination of the statute itself indicates that it is more than just an insurance regulation. New Jersey did not define Section 2(A):15-97 as an "anti-

subrogation law," nor did New Jersey place this statute among the statutes regulating insurance. Rather, the statute is entitled, 'personal injury or wrongful death actions; benefits from sources other than joint tortfeasors; disclosure; deduction from plaintiff's award,' and is included in the portion of New Jersey statutes dealing with civil actions. The plain language of the statute reveals that this statute is not limited to regulating either health insurance or liability insurance providers.<sup>10</sup>

The court concluded by noting that to avoid ERISA preemption a state law must be specifically directed toward the insurance industry. The collateral source rule is not. Therefore, the rule is one that merely has a significant impact on the insurance industry, and a significant impact is not sufficient to avoid ERISA preemption.<sup>12</sup>

The scope of ERISA preemption is daunting. The United States Supreme Court recently addressed the issue in the context of an ERISA lien on a personal injury settlement and held that all of the settlement proceeds, with the exception of the lawyer's fee, were subject to the lien.<sup>12</sup>

The Appellate Division recently held that ERISA preempted a medical provider's claims against an ERISA-governed benefit plan for payment of the provider's customary fee for the services it rendered to patients, rather than the discounted fees the plan would have been legally entitled to pay had the carrier not breached its contractual obligation for timely payment.<sup>13</sup>

ERISA liens are obviously a contentious issue. Disputes often arise about the validity of the lien, especially where the amount impedes settlement. However, the *Levine* court's holding seems pretty simple and straightforward: ERISA has a broad preemptive reach and subrogation and/or reimbursement provisions in ERISA plans trump the collateral source rule. ⚖

## Endnotes

1. 29 U.S.C. § 1001 *et. seq.*
2. 29 U.S.C. § 1144.
3. 29 U.S.C. § 1144(b)(2)(A).
4. *Perreira v. Rediger*, 169 N.J. 399 (2001).
5. N.J.S.A. 2A:15-97.
6. *Id.*
7. *Perreira v. Rediger*, 169 N.J. at 418 (2001).
8. *Levine v. United Healthcare*, 402 F. 3d 156 (3rd Cir. 2005).
9. 29 U.S.C. § 1144(a).
10. *Levine v. United Healthcare*, 402 F. 3d at 165-166.
11. *See generally, Pilot Life Insurance Co. v. Dedeaux*, 41 U.S. 41 (1987) where the Court held that Mississippi's bad faith law, though identified as its law of bad faith with the insurance industry, was grounded in general tort and contract law, not insurance law, and thus did not fall within the savings clause from ERISA preemption.
12. *U.S. Airways, Inc. v. McCutchen*, \_\_\_ U.S. \_\_\_ (2013).
13. *St. Peter's University Hospital v. NJ Building Laborers*, 431 N.J. Super. 446 (App. Div. 2013)

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